

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andre Deon Johnson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 6, 2023

Court of Appeals Case No.
22A-CR-2811

Appeal from the
Marion Superior Court

The Honorable
Cynthia L. Oetjen, Judge

Trial Court Cause No.
49D30-2202-MR-3068

Memorandum Decision by Senior Judge Baker
Judges Crone and Brown concur.

Baker, Senior Judge.

Statement of the Case

- [1] Following his conviction for murder, a felony,¹ Andre Deon Johnson appeals, challenging the sufficiency of the evidence. Unbeknownst to him, his every move was meticulously tracked by GPS and captured on video when he murdered Marlin Kiser in cold blood. Having reviewed the evidence most favorable to the verdict, we find the evidence sufficient and affirm.

Facts and Procedural History

- [2] On the evening of January 30, 2022, Johnson drove his black Ford truck from his home to the Carriage House East Apartments complex in Indianapolis. At the time, Johnson was wearing a GPS ankle monitor as a condition of a sentence he received for a prior conviction. When he reached the apartment complex, Johnson lingered in the parking lot for several hours. And when Kiser arrived in his own truck, Johnson donned a pair of latex gloves, retrieved his Arsenal SLR-105 semiautomatic rifle, and fired at Kiser in an ambush from behind. Johnson and Kiser were friends and had known each other for many years. Johnson immediately fled the scene and returned to his home. Indianapolis Metropolitan Police Department officers who were stationed nearby heard the gunshots. When they arrived on scene, they discovered Kiser

¹ Ind. Code § 35-42-1-1(1) (2018).

lying on the ground near the parking lot. Medics arrived shortly thereafter, and Kiser was pronounced dead.

[3] As detectives processed the scene, they recovered eight bullet cartridge casings and reviewed the apartment complex's video surveillance footage. The recording captured the shooting, as well as the license plate number on Johnson's truck. Following this lead, detectives traveled to Johnson's home, where they discovered the rifle and a pair of latex gloves laying in plain view on the passenger's seat floorboard of Johnson's truck. In the early morning hours of January 31, Johnson was arrested.

[4] Meanwhile, Kiser's autopsy revealed that he was wounded by seven gunshots, at least two of which were, by themselves, fatal. The bullets and bullet fragments recovered from Kiser's body, as well as the eight cartridge casings found at the scene, were fired from and matched the additional bullets in Johnson's rifle.

[5] On February 2, the State charged Johnson with Kiser's murder and with unlawful possession of a firearm by a serious violent felon, a Level 4 felony. Following a two-day jury trial, Johnson was found guilty of murder and pled guilty to the firearm count. The trial court entered judgment of conviction on both counts and imposed a sixty-four-year aggregate sentence. Johnson now appeals.

Discussion and Decision

I. Standard of Review

[6] Johnson argues there was insufficient evidence to support his conviction of murder. The standard of review for sufficiency of the evidence is well settled. When reviewing these claims, we do not judge the credibility of the witnesses, nor do we reweigh the evidence. *Warren v. State*, 725 N.E.2d 828, 834 (Ind. 2000). The only evidence considered is that which supports the verdict. *Id.* From that evidence, we draw all reasonable inferences. *Id.* And if a jury could have, beyond a reasonable doubt, found the defendant guilty based on the evidence’s probative value, we will affirm the conviction. *Id.*

II. Circumstantial Evidence

[7] To sustain a conviction for murder, the State must prove that Johnson knowingly killed Kiser. *See* Ind. Code § 35-42-1-1(1); *see also* Appellant’s App. Vol. II, p. 27. Johnson’s sole contention calls into question the first element of the offense, namely that he was identified as the perpetrator and later convicted of the offense based on circumstantial evidence alone. Appellant’s Br. pp. 8, 9. “Circumstantial evidence by its nature is a web of facts in which no single strand may be dispositive.” *Kriner v. State*, 699 N.E.2d 659, 664 (Ind. 1998). But if the circumstantial evidence collectively presented favors a reasonable inference of guilt, then a murder conviction may be sustained on that evidence alone. *Fry v. State*, 25 N.E.3d 237, 248 (Ind. Ct. App. 2015), *trans. denied*. Likewise, the State is not required to “overcome every reasonable hypothesis of

innocence.” *Kriner*, 699 N.E.2d at 663. “The rule that circumstantial evidence must be of so conclusive a character, and point so surely and unerringly to the guilt of the accused, as to exclude every reasonable hypothesis of his innocence, is solely for the guidance of trial courts and juries, and not courts of review.” *Wahl v. State*, 229 Ind. 521, 529-30, 98 N.E.2d 671, 675 (1951).

[8] Johnson acknowledges and relies upon the following pieces, or lack thereof, of circumstantial evidence: (1) Johnson’s DNA and fingerprints were not found on the murder weapon; (2) Johnson’s truck was used in the commission of the crime, but Johnson cannot be identified as the perpetrator in the video surveillance footage; and (3) Johnson’s GPS ankle monitor placed him near the scene of the crime at the time of the offense. Appellant’s Br. pp. 8-9.

A. Murder Weapon

[9] The murder weapon – an Arsenal SLR-105 semiautomatic rifle – was found in Johnson’s truck alongside a pair of latex gloves. Crime Scene Specialist Jenna Hood later examined the rifle for latent prints and swabbed the rifle in various areas in an effort to collect residual DNA. She found no fingerprints, and the swabs were never submitted for testing. The absence of fingerprints is unsurprising because Johnson wore latex gloves when he used the rifle to murder Kiser. Moreover, a separate analysis of the rifle completed by Forensic Scientist Michael Putzek revealed that the bullets, bullet fragments, and cartridge casings recovered from both Kiser’s body and the crime scene were fired from Johnson’s rifle.

B. Video Surveillance Footage

[10] Johnson claims that, at most, the video evidence shows the perpetrator exiting Johnson’s truck, but “the video is too blurry to identify the [perpetrator]” and “[t]he person getting out of the truck could have been anyone.” *Id.* at 9. Our Supreme Court has recently held that the standard of review for video evidence is the same as the deferential standard of review for all other evidence unless the video evidence “indisputably contradicts” the fact-finder. *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). Relying upon the video evidence – and even reversing the fact-finder – does not constitute reweighing of the evidence. *Id.* Video evidence indisputably contradicts the fact-finder when no reasonable person could reach a different conclusion after viewing the video. *Id.* Characteristics that affect whether the evidence is indisputable include the quality, lighting, angle, and audio of the video. *Id.* Indisputability also depends on whether the video is an accurate representation of the events at issue. *Id.* In instances where the video is not clear, not complete, or subject to different interpretations, we will defer to the fact-finder. *Id.*

[11] The video here is a compilation of surveillance footage from multiple cameras throughout the Carriage House East Apartments complex. The complex, located on the north side of 42nd Street, consists of more than twenty buildings spread over multiple streets, including Aristocrat Lane, Aristocrat Drive North, and Tinton Court. Aristocrat Lane runs north and south, perpendicular to 42nd Street, while Aristocrat Drive North and Tinton Lane branch off to the east, parallel to 42nd Street.

[12] The surveillance footage first captured Johnson's truck turning onto Aristocrat Lane from 42nd Street at 6:25 p.m. Ex. 27A at 0:00:31-0:00:37. The perpetrator, a person of average height and stocky build, initially parked the truck along the west side of Aristocrat Lane but moved to a parking spot on Tinton Court at 6:43 p.m. *Id.* at 0:02:08-0:02:22. At 8:28 p.m., Kiser arrived at the complex and drove directly to his residence on Aristocrat Drive North. *Id.* at 0:02:41-0:03:10. As Kiser exited his truck, the perpetrator ran from Johnson's truck towards Kiser and fired at Kiser from behind. *Id.* at 0:03:17-0:04:10. The perpetrator immediately retreated and fled the scene onto 42nd Street at 8:31 p.m. *Id.* at 0:04:31-0:04:52. Here we also observe that there is no evidence in the record which suggests that Johnson did not have possession of, or control over, his truck in the hours surrounding the murder.

[13] The videos, all captured in late evening hours and from various angles, are, as a whole, remarkably clear. Clear enough, in fact, to accurately depict the license plate number on the rear of Johnson's truck as it fled the scene. Conversely, there is no direct way to identify the perpetrator because the perpetrator's movements and the shooting were captured from a distance.

[14] When Johnson began sporting the ankle monitor in August of 2022, his height and weight were recorded as 5'7 and 230 pounds, respectively. Ex. 30. Compared to the average height and stocky build of the perpetrator in the video, the resemblance is uncanny. Because of this similarity, we cannot say that the video evidence indisputably contradicts the jury's guilty verdict, nor can we say that the video evidence indisputably exonerates Johnson.

Moreover, the video evidence need not independently illustrate that Johnson was the perpetrator, as the videos represent only one single strand of circumstantial evidence considered in this case. *See Kriner*, 699 N.E.2d at 664.

C. GPS Ankle Monitor Records

- [15] Johnson's GPS ankle monitor records place him on Aristocrat Lane from 6:26 p.m. to 6:41 p.m.; on Tinton Court from 6:42 p.m. to 8:29 p.m.; on Aristocrat Drive North precisely at 8:30 p.m.; and on 42nd Street at 8:31 p.m. Ex. 32-33. When compared to time stamps on the video surveillance footage, these records place Johnson *at* the crime scene at the time of the murder, not just *near* it.

Conclusion

- [16] We conclude the circumstantial evidence collectively presented favors a reasonable inference of guilt and thus is sufficient to support Johnson's conviction of murder.
- [17] Affirmed.

Crone, J., and Brown, J., concur.