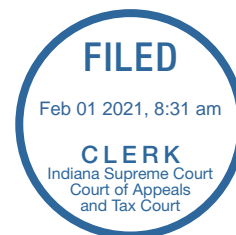


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Lorenzo C. Pfeifer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 1, 2021

Court of Appeals Case No.
20A-CR-417

Appeal from the St. Joseph Circuit
Court

The Honorable John E. Broden,
Judge

Trial Court Cause No.
71C01-1707-MR-8

Mathias, Judge.

- [1] Lorenzo C. Pfeifer was convicted of murder in St. Joseph Circuit Court. He appeals his conviction and raises two issues:

- I. Whether his federal and state rights of confrontation were violated when the trial court admitted deposition testimony into evidence; and
- II. Whether the evidence is sufficient to support his conviction.

[2] We affirm.

Facts and Procedural History

[3] On August 27, 2016, Jewel Scott and Chandra Johnson (“CJ”) were sitting in Scott’s vehicle outside of his grandmother’s home near the corner of Diamond and Vassar Streets in South Bend, Indiana. Scott and CJ heard gunshots, and two to three minutes later, Pfeifer, who was also known as “Black”, drove up and stopped his vehicle next to Scott’s vehicle. Scott saw Pfeifer pointing a gun at himself and CJ. Pfeifer fired one shot, striking CJ in the chest. CJ died as a result of injuries sustained due to the gunshot wound to his chest.

[4] Scott initially told the police that he could not identify the shooter. However, in November 2016, Scott told the investigating detective that Pfeifer shot CJ. During their investigation, law enforcement learned that Pfeifer and CJ had a history of arguments and fighting. On July 13, 2017, Pfeifer was indicted for CJ’s murder.

[5] Pfeifer’s jury trial commenced on December 16, 2019. During trial, the State presented testimony from three witnesses who were incarcerated with Pfeifer. Each witness testified that, on separate occasions, Pfeifer described the shooting and admitted to killing CJ. Tr. Vol. II, pp. 125, 160, 168, 195, 202, 222, 225, 248; Vol. III. p. 8. Pfeifer also kept a “Snitch List” with Scott’s name on it in his

jail cell. Pfeifer told a fellow inmate that the people on the list should be “murdered or messed up because they were telling.” Tr. Vol. II, pp. 161, 196–97.

[6] The State subpoenaed Scott to appear and testify at trial, and after he failed to appear, the trial court issued a writ of body attachment. The State tried to locate but could not find Scott. Therefore, the State asked the trial court to admit Scott’s deposition into evidence and argued that it was admissible because Scott was unavailable. Pfeifer objected and argued that admitting Scott’s deposition testimony would violate his right to confront witnesses against him. The trial court overruled the objection and Scott’s deposition was read to the jury.

[7] The jury found Pfeifer guilty of murder. Sentencing was held on January 23, 2020. The trial court ordered Pfeifer to serve a sixty-year executed sentence, and also ordered him to serve the sentence consecutive to the sentence Pfeifer was serving in federal prison for a felon in possession of a firearm conviction.

[8] Pfeifer now appeals. Additional facts will be provided as necessary.

I. Right to Confrontation

[9] Pfeifer argues that his federal and state constitutional rights of confrontation were violated when the trial court admitted Scott’s deposition into evidence. A trial court generally has broad discretion in ruling on the admissibility of evidence, and we disturb a trial court's evidentiary rulings only upon an abuse of discretion. *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013). However, when a

defendant contends that a constitutional violation has resulted from the admission of evidence, the standard of review is de novo. *Id.*

[10] First, we address Pfeifer’s argument that his Sixth Amendment right of confrontation was violated. The Confrontation Clause of the Sixth Amendment to the United States Constitution provides, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. CONST. amend. VI. This right is not infringed by admission of an absent witness’s testimonial out-of-court statement if the witness is unavailable and the defendant has had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 59 (2004).

[11] A witness is unavailable for purposes of the Confrontation Clause only when the prosecution has made a good-faith effort to obtain the witness’s attendance at trial. *Garner v. State*, 777 N.E.2d 721, 724 (Ind. 2002). “Even if there is only a remote possibility that an affirmative measure might produce the declarant at trial, the good faith obligation may demand effectuation. Reasonableness is the test that limits the extent of alternatives the State must exhaust.” *Id.* at 724–25 (citation omitted). Pfeifer argues that the State did not make a good-faith effort to secure Scott’s attendance at trial. We disagree.

[12] Law enforcement officers believed Scott was living in Niles, Michigan in November and December 2019. Scott was deposed in November 2019, approximately three weeks before trial. Scott was subpoenaed, by mail at his last known address, and by receiving a copy of the subpoena on the Friday

before he was deposed, to appear for trial. Tr. Vol. III, p. 100. Scott acknowledged the subpoena to appear for trial on the date of his deposition. *Id.* In the weeks leading up to trial, the prosecutor’s office communicated with Scott via telephone. A paralegal in the prosecutor’s office spoke to Scott the day before Pfeifer’s trial began, but Scott failed to respond to any attempts to communicate with her thereafter. *Id.* at 101. On the first day of trial, when Scott failed to appear, the trial court issued a writ of body attachment at the State’s request. The State was unable to locate Scott during trial. Under these facts and circumstances, we conclude that the State made a good-faith effort to secure Scott’s attendance at trial.

[13] Pfeifer also argues that his right to confrontation was violated because he did not personally participate in Scott’s deposition. Pfeifer acknowledges that his counsel participated in the deposition but observes that, in his absence, his “counsel was deprived of the input and consultation with his client when the deposition was occurring.” Appellant’s Br. at 16.

[14] Pfeifer does not cite to any authority establishing that the Sixth Amendment confrontation right is violated if the defendant is unable to consult with counsel during a witness’s deposition. The purpose of this constitutional right is to ensure that the defendant has the opportunity to cross-examine the witnesses against him. *Howard v. State*, 853 N.E.2d 461, 465 (Ind. 2006). The right to adequate and effective cross-examination is fundamental and essential to a fair trial. *Id.* “It includes the right to ask pointed and relevant questions in an

attempt to undermine the opposition’s case, as well as the opportunity to test a witness’ memory, perception, and truthfulness.” *Id.*

[15] Even though Pfeifer did not personally participate in Scott’s deposition, his right to adequate and effective cross-examination was secured by his counsel’s thorough questioning of Scott. After Scott was asked to describe the events surrounding CJ’s shooting, Pfeifer’s counsel questioned Scott about inconsistencies between his deposition testimony and his prior statements to law enforcement officers. Counsel also challenged Scott’s recollection of the shooting and explored the nature of the relationship between CJ and Pfeifer. *See generally* Ex. Vol. pp. 72–141.

[16] For all of these reasons, Pfeifer has not established that his Sixth Amendment right of confrontation was violated when the trial court admitted Scott’s deposition into evidence.

[17] Pfeifer also argues his right to confrontation under [Article 1, Section 13\(a\) of the Indiana Constitution](#) was violated because he was not given the opportunity to meet the witness face to face.¹ [Article 1, Section 13\(a\)](#) “places a premium upon live testimony” and the “defendant’s right to meet the witnesses face to face has not been subsumed by the right to cross-examination.” *Brady v. State*,

¹ Although the federal right of confrontation and the state right to a face-to-face meeting are co-extensive to a “considerable degree,” the rights guaranteed by [Article 1, Section 13](#) are not necessarily identical to those given by the Sixth Amendment. *Brady v. State*, 575 N.E.2d 981, 987 (Ind. 1991). The federal and state rights have been interpreted to encompass two distinct components: meeting witnesses face-to-face and cross-examination. *Id.*

575 N.E.2d 981, 988 (Ind. 1991). “[W]here a defendant has never had the opportunity to cross-examine a witness and meet him face to face, admission of prior testimony at a subsequent proceeding violates the [] right of confrontation.” *Hill v. State*, 137 N.E.3d 926, 936 (Ind. Ct. App. 2019) (quoting *State v. Owings*, 622 N.E.2d 948, 950 (Ind. 1993)), *trans. denied*.

[18] However, the right is not absolute. *Brady*, 575 N.E.2d at 987. Indiana’s confrontation right is an individual privilege relating to the procedure at trial and therefore may be waived. *Mathews v. State*, 26 N.E.3d 130, 135 (Ind. Ct. App. 2015). A waiver is effective when there is an intentional relinquishment or abandonment of a known right or privilege. *Id.* Whether a defendant has waived a constitutional right depends on the circumstances of the particular case. *Id.* Waiver can occur by word or deed. *Id.* Where the defendant has not established that he or she is unable to attend a deposition and fails to object to the deposition proceeding, the defendant waives his right to confrontation even if the witness is unable to testify at trial. *Id.*

[19] Pfeifer was incarcerated when Scott’s deposition was taken. Scott was deposed at Pfeifer’s request. There is nothing in the record that would lead us to conclude that Pfeifer requested to be present at the deposition either in person or via video or telephone. Pfeifer’s counsel did not object to the deposition proceeding in Pfeifer’s absence. For these reasons, we conclude that Pfeifer waived his right to confront Scott face to face. *See Mathews*, 26 N.E.3d at 137 (concluding that the defendant waived his right to a face-to-face confrontation when he failed to attend the victim’s deposition and counsel did not object to

the deposition proceeding in defendant's absence); *see also Hill*, 137 N.E.3d at 936–37.

[20] Moreover, as we noted above, Pfeifer's counsel thoroughly questioned Scott concerning the events surrounding CJ's shooting. *See Ex. Vol.* pp. 72–141. And Pfeifer does not argue that further examination of Scott would benefit his case. Although [Article 1, Section 13](#) sometimes affords greater protection than the Sixth Amendment, Pfeifer has not demonstrated that this is one of those cases.

[21] Because the admission of Scott's deposition did not violate Pfeifer's right of confrontation under either constitutional provision, we conclude that the trial court did not abuse its discretion when it admitted the deposition into evidence.²

II. Sufficient Evidence

[22] Pfeifer also claims that the State failed to present sufficient evidence to support his conviction. The standard of review we apply to claims of insufficient evidence is well settled:

When reviewing a claim that the evidence is insufficient to support a conviction, we neither reweigh the evidence nor judge the credibility of the witnesses; instead, we respect the exclusive province of the trier of fact to weigh any conflicting evidence. We

² Because we conclude that the deposition was properly admitted, we do not address the State's argument that any error in the admission of the deposition was harmless. The State observes in its brief that Scott's testimony that Pfeifer shot CJ was cumulative of the testimony the State presented from three of Pfeifer's fellow inmates, who all testified that Pfeifer admitted that he shot CJ. Appellee's Br. at 13.

consider only the probative evidence supporting the verdict and any reasonable inferences which may be drawn from this evidence. We will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.

Harrison v. State, 32 N.E.3d 240, 247 (Ind. Ct. App. 2015) (citing *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005)), *trans. denied*.

- [23] In his challenge to the sufficiency of the evidence, Pfeifer challenges the credibility of three jailhouse informants each of whom testified at trial that Pfeifer described to them the shooting and admitted that he killed CJ. *See* Tr. Vol. II, pp. 125, 160, 168, 195, 202, 222, 225, 248; Vol. III. p. 8. By making this argument, Pfeifer ignores our well-established standard of review. We do not reweigh the credibility of witnesses on appeal. *See Harrison*, 32 N.E.3d at 247.
- [24] Pfeifer also argues that the State’s evidence was entirely circumstantial and that there was no physical evidence linking him to the crime. However, “[a] conviction for murder may be sustained on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt.” *Fry v. State*, 25 N.E.3d 237, 248 (Ind. Ct. App. 2015) (citing *Lacey v. State*, 755 N.E.2d 576, 578 (Ind. 2001)). Here, the circumstantial evidence supports such an inference.
- [25] Scott identified Pfeifer as the person who shot CJ. And Pfeifer told a fellow inmate that he hoped Scott was dead so Pfeifer “could beat his case.” Tr. Vol. II, p. 124. The “Snitch List” found in Pfeifer’s jail cell contained a drawing of a rat and a list of names, including “Lil Jewel Scott.” Ex. Vol. p. 62; Tr. Vol. II

pp. 196, 200. Pfeifer told another inmate that he kept a list of people that should be “murdered or messed up because they were telling.” Tr. Vol. II, pp. 161, 196–97.

[26] At trial, Pfeifer argued that he was not the person who shot CJ, challenged the credibility and inconsistent statements of the witnesses who identified him as the shooter, and presented alibi evidence. The jury weighed Pfeifer’s arguments and evidence against Scott’s testimony identifying Pfeifer as the shooter and Pfeifer’s admission to fellow inmates that he shot CJ. It was within the province of the jury to do so, and we will not reweigh that evidence on appeal. We therefore conclude that the evidence is sufficient to support Pfeifer’s murder conviction.

Conclusion

[27] Pfeifer’s rights of confrontation under the Sixth Amendment to the Constitution of the United States and [Article 1, Section 13](#) of the Constitution of Indiana were not violated when the trial court admitted Scott’s deposition testimony into evidence. And the evidence is sufficient to support Pfeifer’s murder conviction. We therefore affirm.

[28] Affirmed.

Altice, J. and Weissmann, J. concur.