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IN THE
COURT OF APPEALS OF INDIANA

Marquis David Young,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 11, 2022

Court of Appeals Case No.
21A-CR-2341

Appeal from the
Lake Superior Court

The Honorable
Diane Ross Boswell, Judge

Trial Court Cause No.
45G03-2012-MR-48

Vaidik, Judge.

Case Summary

- [1] Marquis David Young was convicted of one count of murder and two counts of attempted murder for a gas-station shooting in Gary. Young appeals, arguing

the evidence is insufficient to prove he was the shooter. We agree and therefore reverse his convictions.

Facts and Procedural History

- [2] Shortly before 11:45 p.m. on May 3, 2020, Dion Clayton, Virgil King, and Ajee Spence went to a gas station at the southwest corner of 45th Avenue and Broadway in Gary. Clayton drove Spence’s Hyundai, with Spence in the front passenger seat and King in the back seat. Clayton wore a bulletproof vest that night because he had “a lot going on.” Tr. Vol. IV p. 179.
- [3] Just before Clayton, King, and Spence arrived at the gas station, Young was inside the store. Clayton and King knew Young.¹ Young—who was wearing a black hooded coat with a white shirt underneath, dark pants, a black stocking cap, and white shoes—smoked a cigarette while making a purchase and then exited the store. *See* Ex. 152D. Clayton, King, and Spence were in the Hyundai at the gas station (but had not yet pulled up to a pump) when Young exited the store and got in his car. Young started to drive forward from the pump but was prevented from doing so because the Hyundai was pulling up to the pump in front of him. Young backed out, drove around the pumps, and turned left (west) onto 45th Avenue. He passed an alley and then turned right (north) onto Washington Street, which is parallel to the alley. The following diagram, which

¹ The State sought to admit evidence through King about the nature of the relationship, but the trial court ruled it was inadmissible. *See* Tr. Vol. IV pp. 163-72.

is for illustrative purposes only and is not drawn to scale, shows Young's direction of travel as he left the gas station:



As Young pulled out of the gas station, Clayton pulled up to a pump (the back of the Hyundai was against 45th Avenue), and he and King went inside the store. After making a purchase and exiting the store, King got in the back seat of the Hyundai while Clayton walked over to the adjacent pump to talk to his uncle, who had since pulled up. While sitting in the back seat, King heard two

gunshots followed by several more. The shots came from behind the Hyundai (from the direction of 45th Avenue), and King did not see the shooter because he was faced the other direction. King saw Clayton—who had been shot in the abdomen and right arm—run south from the gas station toward 46th Avenue. About fifteen shots were fired into the Hyundai, one of which hit King in the back. King climbed into the driver’s seat and drove away with Spence, who was not shot. King was later treated at a hospital for his gunshot wound.

[4] Upon hearing the gunshots, nearby police officers responded to the gas station. The police secured the area and recovered twenty-three bullet casings, but a gun was never found. The police also spotted blood and followed the trail. Clayton was found dead about two blocks south of the gas station.

[5] The police didn’t find any eyewitnesses who could identify the shooter, but they found three surveillance cameras in the area: (1) at the gas station; (2) at Buggy’s Tavern, which is diagonal from the gas station on the northeast corner of Broadway and 45th Avenue; and (3) in the alley behind 4444 Broadway, which is north of the gas station. These locations are noted on the diagram above. Although the police couldn’t identify the shooter from any of the surveillance videos, they noticed that a person in the alley around the time of the shooting appeared to discard a lit cigar or cigarette. In an attempt to locate the item, on May 5—two days after the shooting—Detective Kristopher Adams went inside the control room at 4444 Broadway while Detective Antwan Jakes—the lead investigator in this case—went to the alley. “While watching the old footage and watching the live footage of [Detective Jakes] outside,

[Detective Adams] was able to direct [Detective Jakes] to where the item” appeared to be discarded in the footage. Tr. Vol. IV p. 28; Tr. Vol. V p. 6. Upon spotting a cigarette in the area, Detective Jakes called an evidence technician, who came to the scene to photograph the cigarette and collect it for evidentiary purposes. Although there were other cigarettes in the alley, *see* Tr. Vol. IV pp. 33-34, according to Detective Jakes and the evidence technician the cigarette collected was the only one in the area, *see id.* at 97-99; Tr. Vol. V pp. 108-09; Exs. 177-83.

[6] The case then went cold. In the fall, Detective Jakes got a tip from an anonymous caller to look at Young. Detective Jakes sent the cigarette to the Indiana State Police Laboratory for DNA testing, which revealed Young’s DNA on the cigarette.²

[7] In December 2020, the State charged Young with one count of murder (Clayton) and two counts of attempted murder (King and Spence). At the jury trial, the State’s theory was as follows: (1) Young left the gas station by turning left onto 45th Avenue and then right onto Washington Street; (2) he parked his car somewhere on the north side of the alley; (3) he ran south through the alley,

² The record is unclear when the cigarette was sent to the lab or when the results came back. According to the probable-cause affidavit, the cigarette was sent to the lab in September 2020 (after the anonymous tip was received), and the results showing the DNA on the cigarette “resulted in a high stringency” with Young came back on November 11, 2020. Appellant’s App. Vol. II p. 18.

In May 2021, after Young had been charged, the police obtained a buccal swab from him in the Lake County Jail. Ex. p. 173. The buccal swab from Young matched the DNA from the cigarette.

discarding his cigarette; (4) he walked across 45th Street to the edge of the gas station and fired twenty-three shots at Clayton and the Hyundai; and (5) he walked back across 45th Avenue, north through the alley, and to his parked car. The State pieced together its theory of the shooter's movements by relying largely on the fact that Young's DNA was on the cigarette found in the alley two days after the shooting and the 4444 Broadway and Bugsy's Tavern footage, which the State acknowledged was of such poor quality that the shooter couldn't be identified.

[8] The footage from the gas station, which is in color, showed Young, Clayton, and King while they were inside the store. It also showed Clayton and King exiting the store and King getting in the Hyundai and Clayton walking up to his uncle's car. Although the shooting occurred just off camera, the footage showed the lower half of the shooter's body approaching the gas station from 45th Avenue (wearing dark pants and white shoes) and Clayton running south from the gas station. *See* Ex. 152D ("Gas Station Exterior").

[9] The footage from Bugsy's Tavern showed that a dark figure appeared at the "mouth" of the alley, crossed 45th Avenue, and walked to the edge of the gas station. *See* Ex. 150 ("ch04"); Tr. Vol. V p. 78 (Detective Jakes acknowledging the footage doesn't show the shooter "emerge" from the alley; rather, it only shows the person in the "mouth" of the alley). The person started shooting a gun in the direction of the Hyundai. After shooting, the dark figure ran back across 45th Avenue and "in the direction of the mouth of the alley." Tr. Vol. V p. 79.

[10] The footage from 4444 Broadway was captured by an infrared camera on the backside of the building, facing “northwest” into the alley. Tr. Vol. III p. 134. Detective Sanders described the alley as being in a residential/business neighborhood with “[a] [l]ot of people” and “a bunch of houses” and where “people often congregate.” *Id.* at 165. The footage is in black and white, and the alley for the most part is dark. In the footage, a person ran south in the alley from the direction of 44th Avenue toward the gas station on 45th Avenue. Ex. 151 (file “2209”). The person appeared to discard a lit cigar or cigarette on the ground. Less than two minutes later, a person walked north in the alley from the direction of the gas station on 45th Avenue toward 44th Avenue. *Id.* Though it is hard to see details, the person running south and walking north in the alley appeared to be wearing white or light-colored shoes and a white or light-colored hat or do-rag.

[11] Although a gun was never found, Detective Samuel Perez, a forensic firearms examiner, testified about the twenty-three casings found at the scene. He said the “caliber for all of the casings w[as] .40 caliber” and the casings were “fired from the same firearm,” which had a “Glock-type firing pin most commonly known from a Glock firearm.” Tr. Vol. IV pp. 63, 68. However, Detective Perez acknowledged “there are other manufacturers that have that type of firing pin.” *Id.* at 68.

[12] Finally, evidence was presented that a search of Young’s phone revealed his Google location data was turned off for May 3-4 but on for May 5. Tr. Vol. V p. 36. Young also had searched YouTube videos for how to clean and disassemble

“a Glock .40 caliber” “in the week or two following the shooting on May 3rd.”
Id. at 37 (cleaned up).³

[13] During closing arguments, the State told the jury it was “a hard case, a difficult case, and one that I expect you to deliberate long on[.]” *Id.* at 163. Indeed, no eyewitnesses could identify the shooter, there was no evidence of motive or where Young’s car went after turning right onto Washington Street, and the gun used was never found. Several people didn’t testify, including Spence and Clayton’s uncle. But ultimately, the State believed it had proved the identity of the shooter “the only way available,” that is, through Young’s DNA on the cigarette found in the alley two days after the shooting. *Id.* The jury found Young guilty as charged, and the trial court sentenced him to 115 years.

[14] Young now appeals.

Discussion and Decision

[15] Young contends the evidence is insufficient to support his convictions. When reviewing such claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the verdict and any reasonable inferences that

³ On appeal, the State argues Young researched how to clean and disassemble “the precise model of firearm used in the shooting.” Appellee’s Br. p. 10. But as just explained above, the record isn’t clear about the precise model of firearm used. The State also argues Young later “disposed” of the murder weapon. *Id.* But the State cites no evidence to support this.

can be drawn from the evidence. *Id.* A conviction will be affirmed if there is “substantial evidence of probative value” to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* Circumstantial evidence alone may be sufficient to support a conviction. *Jones v. State*, 780 N.E.2d 373, 376 (Ind. 2002).

[16] Young doesn’t dispute he was at the gas station at the same time as Clayton, King, and Spence or that he left the gas station by turning left onto 45th Avenue and then right onto Washington Street. *See* Tr. Vol. V pp. 164, 175. Rather, Young’s sole argument is that the State failed to prove beyond a reasonable doubt he returned to the gas station and did the shooting.

[17] The key evidence relied upon by the State was Young’s DNA on the cigarette found in the alley two days after the shooting in the same general area where the person in the alley footage discarded the lit object. Young, however, argues it can’t be “certain[] that the recovered cigarette in fact came from the individual on the video,” especially considering that two days had passed between the shooting and when the cigarette was recovered in the high-traffic alley. Appellant’s Br. p. 12. He highlights Detective Adams’s testimony there were “[o]ther cigarette butts in the alley” on May 5 and he didn’t “know” whether the cigarette collected on May 5—which had Young’s DNA on it—was the same cigarette that had been discarded on May 3 in the 4444 Broadway footage. Tr. Vol. IV pp. 33-34. This evidence shows only that sometime before May 5 a cigarette with Young’s DNA was left in the alley in the same general

area where the person in the 4444 Broadway footage discarded the lit object on May 3.

[18] Young also argues that “a simple comparison between the individual in the alleyway and Young at the gas station minutes earlier demonstrates that the two are not the same person.” Appellant’s Br. p. 12. Young points out he was wearing a black stocking cap in the gas-station footage while the person in the 4444 Broadway footage was wearing “a white or light-colored head covering, appearing to be a do-rag.” *Id.* at 13. At trial, Detective Sanders testified that on infrared camera, a dark-colored object that is “warm” shows up lighter than a dark-colored object that is “cool.” Tr. Vol. III p. 169. As a result, he said he couldn’t determine whether the person’s hat or clothing in the 4444 Broadway footage was a “particular” color. *Id.* But on cross-examination, Detective Sanders acknowledged that if someone was wearing a black suit and a white shirt, the white shirt would appear “lighter” than the black suit. *Id.* at 172. He also acknowledged a light-colored hat could show up light on an infrared camera. *Id.*

[19] Young also points out the gas-station footage shows he has a thicker frame while the Bugsy’s Tavern footage shows the shooter had “a visibly thinner frame.” Appellant’s Br. p. 13. At trial, the State asked Detective Sanders if the fact that the Bugsy’s Tavern footage was “transposed” affected “the height-and-

weight proportions” of the shooter. *Id.* at 169. However, defense counsel objected, and the State withdrew the question.⁴

[20] Notwithstanding Young’s arguments on appeal and at trial,⁵ the State’s entire case consisted of the following evidence: Young’s DNA was on a cigarette found in the alley two days after the shooting in the same general area where the person in the alley footage discarded a lit object, Young was at the gas station minutes before the shooting, Young searched the internet a week or two after the shooting about how to clean and disassemble a weapon that could have been used in the shooting but no one could say was definitely the kind of weapon used in the shooting, and Young turned off his Google location data the day of and the day after the shooting. This evidence falls short of the “substantial evidence of probative value,” circumstantial or not, required to support the verdicts. *Willis*, 27 N.E.3d at 1066.

[21] This case is distinguishable from *Meehan v. State*, 3 N.E.3d 255 (Ind. 2014). In that case, an employee locked an overhead door upon leaving work for the day. When he came back early the next morning, a panel of the overhead door had been removed and items had been taken. Immediately inside the overhead door

⁴ Young also argues the person in the alley was “incapable” of being the shooter (and that it was likely “the shooter simply walked east down 45th [Avenue] towards Broadway, before crossing over upon reaching the gas station”). Appellant’s Br. pp. 13-14. He highlights the timestamp for the 4444 Broadway footage (which Detective Sanders testified was “dead-on accurate,” Tr. Vol. III p. 134) shows the person in the alley at the “exact[]” time the timestamp for the Bugsy’s Tavern footage (which Detective Sanders corrected) shows the shooting occurred. Appellant’s Br. p. 15.

⁵ We do not rely on the discrepancies in the footage that Young points out on appeal, even though they are apparent.

a glove that was not there the day before contained the defendant's DNA. Here, Young's DNA was on a cigarette found in the alley in the same general area where the person in the alley footage discarded a lit object. But the cigarette was found two days after the shooting in a high-traffic, public alley. This fact alone distinguishes this case from *Meehan*.

[22] While we seldom reverse for insufficient evidence, we have an affirmative duty to ensure the proof at trial is sufficient to support the verdict beyond a reasonable doubt. *Webb v. State*, 147 N.E.3d 378, 386 (Ind. Ct. App. 2020), *trans. denied*. Although the sufficiency-of-the-evidence standard of review is deferential, it is not impossible to overcome, nor should it be. *Id.* As our Supreme Court has observed, the Indiana Constitution guarantees “in all cases an absolute right to one appeal.” *Galloway v. State*, 938 N.E.2d 699, 709 (Ind. 2010), *reh'g denied*. An impossible standard of review under which appellate courts merely “rubber stamp” the fact-finder's determinations, no matter how unreasonable, would raise serious constitutional concerns because it would make the right to an appeal illusory. *Webb*, 147 N.E.3d at 387. The evidence in this case comes nowhere close to proof beyond a reasonable doubt. We therefore reverse Young's convictions.

[23] Reversed.

Altice, J., concurs.

Crone, J., dissents with separate opinion.

I N T H E
C O U R T O F A P P E A L S O F I N D I A N A

Marquis David Young,
Appellant-Defendant,

Court of Appeals Case No.
21A-CR-2341

v.

State of Indiana,
Appellee-Plaintiff

Crone, Judge, dissenting.

- [1] In reciting the applicable standard of review, the majority acknowledges that “[c]ircumstantial evidence alone may be sufficient to support a conviction.” Slip op. at 9 (citing *Jones*, 780 N.E.2d at 376). But the majority fails to mention that “[o]n appeal, the circumstantial evidence need not overcome every reasonable hypothesis of innocence. It is enough if an inference reasonably tending to support the verdict can be drawn from the circumstantial evidence.” *Vehorn v. State*, 717 N.E.2d 869, 876 (Ind. 1999) (citation omitted). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). “We must affirm a conviction if the finder-of-fact heard evidence of probative value from which it could have

inferred the defendant's guilt beyond a reasonable doubt." *Brown v. State*, 827 N.E.2d 149, 152 (Ind. Ct. App. 2005).

- [2] The majority has disregarded this well-settled standard of review and essentially accepted at face value the hypotheses of innocence that Young presented to the jurors, who considered and weighed all the evidence and unanimously found him guilty beyond a reasonable doubt on all three counts. The evidence supporting the jurors' verdicts, and the reasonable inferences that can be drawn from that evidence, are more than sufficient to affirm Young's convictions.
- [3] State's Exhibit 196, a composite of camera footage from the gas station, Bugsy's Tavern, and 4444 Broadway that was published as a demonstrative exhibit during the State's closing argument and rebuttal, provides a compelling unified video narrative of the events surrounding the shootings. As for Detective Sanders' testimony regarding the videos' inconsistent timestamps, it is axiomatic that "[t]he factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe, and is not required to believe a witness'[s] testimony even when it is uncontradicted." *Wood v. State*, 999 N.E.2d 1054, 1064 (Ind. Ct. App. 2013) (citation omitted), *trans. denied* (2014), *cert. denied*. Thus, the jurors were not bound to accept the detective's statement that the timestamp for the 4444 Broadway footage was "dead-on accurate." Tr. Vol. 3 at 134. Nor were the jurors bound to accept Young's argument that "the gas-station footage shows he has a thicker frame while the Bugsy's Tavern footage shows the shooter had 'a visibly thinner frame.'" Slip op. at 11 (quoting Appellant's Br. at 13). The Bugsy's Tavern

camera was located much farther away, positioned at a much different angle (especially with respect to the gas-station lights, which caused the shooter to appear in silhouette), and provided footage of much worse quality than the gas-station camera. Our supreme court has held that an appellate court may not overturn a factual finding based on a video recording “unless the video evidence at issue indisputably contradicts” that finding, i.e., “when no reasonable person can view the video and come to a different conclusion” than that of the appellate court. *Love v. State*, 73 N.E.3d 693, 700 (Ind. 2017). In my view, the Bugsy’s Tavern video does not indisputably contradict the jurors’ unanimous finding that Young was the shooter depicted in that video.

[4] On May 3, 2020, Young entered the gas station’s convenience store moments before Clayton, King, and Spence arrived. Both Clayton and King knew Young. One of the store’s interior surveillance videos showed Young holding a cell phone and a lighted cigarette and dressed in a black stocking cap, a dark coat and pants, and white shoes with black markings. As Young exited the store and walked toward his car, one of the store’s exterior surveillance videos showed him looking in the direction of the Hyundai driven by Clayton, which had arrived but not yet pulled up to a pump. Young attempted to drive forward onto 45th Avenue but was unable to do so because Clayton was driving the Hyundai toward the pump directly in front of him. Young backed up, exited the parking lot, and ultimately turned north onto Washington Street. Seconds later, Clayton and King entered the store to purchase beverages. While Clayton and King were inside the store, the infrared camera at 4444 Broadway captured a

figure, wearing what appears to be a stocking cap and carrying a lighted cigarette, running southward down the alley toward 45th Avenue; based on Detective Sanders' testimony, the jury reasonably could have inferred that the infrared camera made the stocking cap appear lighter in color due to the running figure's body heat. The figure tossed the glowing cigarette butt to the ground and kept running. Two days later, police used the infrared camera's video to locate the discarded butt, which was the only one in the area and was later found to contain Young's DNA.

[5] Clayton and King left the store and reached the Hyundai just as a figure wearing dark pants and white shoes exited the alley and walked quickly across 45th Avenue into the gas-station parking lot. That figure drew a .40-caliber semiautomatic handgun, fired approximately twenty-three shots⁶ at close range at the occupants of the Hyundai, and retreated northward into the alley, where he was detected by the infrared camera at 4444 Broadway. After Young was brought to the attention of the police as a suspect in the shootings, Detective Jakes discovered that Young had turned off his phone's Google location data on May 3 and 4, which is strong evidence of consciousness of guilt, and had also searched for YouTube videos on how to clean and disassemble a .40-caliber Glock, which was the same as or very similar to the weapon used in the shootings.

⁶ Detective Jakes testified that Glock .40-caliber handguns can carry extended magazines containing more than twenty-three rounds of ammunition. Tr. Vol. 5 at 39.

[6] In *Meehan v. State*, our supreme court affirmed the defendant’s conviction for burglarizing a mechanical contracting business based solely on the presence of a glove containing his DNA “just steps from the point of entry” into the building “and in an area [he] had no right to be[.]” 7 N.E.3d 255, 269 (Ind. 2014).⁷ In this case, the State presented far more probative evidence connecting Young to the senseless shootings at the gas station, and therefore I must dissent from the majority’s decision to overturn the jury’s guilty verdicts.

⁷ The *Meehan* court also found it significant that when the defendant was taken into custody on a street corner seven months *after* the burglary, he “possessed bolt cutters, a pocket knife, a screwdriver, a chisel, and two Allen key sets.” 7 N.E.3d at 256.