

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darryl A. Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No.
22A-CR-1247

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2009-MR-28

Bailey, Judge.

Case Summary

[1] Darryl Davis appeals his convictions for murder, a felony,¹ and unlawful possession of a firearm by a serious violent felon,² as a Level 4 felony, as well as an enhancement for the use of a firearm in the commission of an offense.³ We affirm.

Issues

[2] Davis raises two issues for our review:

1. Whether the State presented sufficient evidence to support his convictions.
2. Whether the trial court abused its discretion when it admitted as evidence jail house phone calls.

Facts and Procedural History

[3] In September 2020, Dawayne Rogers (“Dawayne”) lived in the Baldwin Creek Apartment complex. On September 1, Dawayne threw a birthday party that lasted well into the night. At some point in the early morning hours of September 2, someone informed Dawayne that an individual who might have

¹ Ind. Code § 35-42-1-1 (2022).

² I.C. § 35-47-4-5.

³ I.C. § 35-50-2-11

been “threatening” one of his sisters was at the Quick Mart gas station, which was located across the street from his apartment complex. Tr. Vol. 1 at 212. Dawayne was agitated and “wanted to fight,” so he headed toward the gas station. *Id.* Dawayne’s brother, Damaria Rogers (“Damaria”) attempted to stop Dawayne, but Dawayne “wanted to release some anger,” so he went anyway. *Id.* Damaria, Charles Hapner, and Virshawn Lewis followed Dawayne to the gas station.

[4] Once he arrived at the gas station, Dawayne encountered Stephon Holland. That “wasn’t who [Dawayne] was expecting,” but Dawayne recognized Holland as someone he knew. *Id.* at 213. Dawayne and Holland “exchange[d] a few words” and “attempted to hit each other,” but they “didn’t connect.” *Id.* Damaria, Hapner, and Lewis watched the fight but did not intervene. At some point, a man in a “grey hoodie” walked to the gas station, “moved” the three individuals “out of the way,” and “shot his firearm.” *Id.* at 228. The bullet struck Holland in the chest and killed him almost instantly. At that point, everyone “scattered,” and the shift manager at the Quick Mart called 9-1-1. *Id.* at 228.

[5] Officers responded to the 9-1-1 call. During a search of the gas station, officers located a “brass shell casing” and a “jacket from a projectile.” *Id.* at 160. In addition, officers obtained video surveillance footage from the Quick Mart. Detective Christopher Hawthorne with the Fort Wayne Police Department (“FWPD”) viewed the footage. Detective Hawthorne was able to observe “a group of males” approach and enter the gas station. *Id.* at 174. At that time,

Detective Hawthorne was able to observe “a physical altercation[.]” *Id.* He was also able to observe that the other individuals “appeared to have firearms in their hands.” *Id.* at 174. And he saw “a male in a grey hoodie” open the door, “reach[] around with a firearm” and “fire[] one shot toward” Holland. *Id.*

[6] Detective Hawthorn was only able to identify Dawayne and Lewis from the video footage, and he was able to determine that neither of those individuals had fired the gun at Holland. FWPD Detective Scott Studebaker released images of the shooter to the media in order to help identify him. In those images, the shooter is wearing white shoes, grey sweatpants, and a grey hooded sweatshirt with “designs on the sleeve.” *Id.* at 193. Anthony Ruse saw the photographs on the news, and he recognized the shooter to be Davis. Ruse had known Davis from work, and he had taken a picture of Davis wearing “the exact same grey sweatsuit” that the shooter was wearing in the images. *Id.* at 200. Ruse provided officers with a copy of that photograph. Detective Hawthorne was ultimately able to identify the two other individuals in the video to be Hapner and Damaria.

[7] Shortly after 10:00 p.m. that night, FWPD Detective Shane Pulver conducted a traffic stop on a vehicle. Detective Pulver discovered that the driver, Dana Atkins, did not have a valid driver’s license, so he decided to tow her vehicle. Prior to towing the car, Detective Pulver conducted an inventory search and discovered a handgun. Atkins was “surprised” that there was a weapon in the vehicle. *Tr. Vol. 2* at 86. Later testing revealed that the casing officers found in the gas station had been fired from the firearm found in Atkins’ vehicle.

- [8] On September 3, FWPD Detective Brian Martin interviewed Davis. During the interview, Davis asked if he could call his mother. Detective Martin used his phone to call Davis's mother. Davis's father joined the call, and Davis twice said to his parents: "We f**ked up. We f**ked up." *Id.* at 155. During the course of the investigation, Detective Studebaker showed Damaria a photo array to possibly identify the shooter. Damaria identified Davis as the "person he saw shoot a gun into the gas station." *Id.* at 138.
- [9] The State charged Davis with murder, a felony, and unlawful possession of a firearm, as a Level 4 felony. In addition, the State alleged that Davis had used a firearm in the commission of an offense. The trial court then held a bifurcated jury trial. During the first phase, Hapner testified that Davis had approached him at Dawayne's party, that Davis seemed "agitated," and that Davis had "pulled" a gun on him. *Id.* at 4. Hapner additionally testified that he recognized Davis as one of the men in the surveillance videos and that Davis was wearing a grey "sweatsuit." *Id.* at 13.
- [10] The State called Corporal Jeffrey Kroemer with the Allen County Sheriff's Department as a witness. Corporal Kroemer testified that that the Allen County jail has a "GTL phone system" that allows the inmates to "make phone calls any time they want" and that the jail has a system that "keeps records of every phone call going outside" the jail. *Id.* at 102-03. He further testified that the system contains information regarding the date and time of the call as well as "information as to the number that was dialed." *Id.* at 105. Corporal Kroemer then testified that all inmates receive an "inmate name number" and

that “every inmate uses their inmate name number to identify themselves when using the phone system.” *Id.* at 106.

[11] At that point, the State moved to admit recordings of three phone calls that Davis had placed. Davis objected on the ground that the State had laid an “improper foundation” because it had not identified “the parties on the other end” of the calls. *Id.* at 108. The court admitted the calls over Davis’s objection. Corporal Kroemer then testified that he was able to identify Davis as the caller because the inmate name number used to place the calls belonged to Davis, because Davis had used the same “4-digit personal PIN” for all three calls, and because Corporal Kroemer had “trace[d]” the call back to the IP address “established for” Davis.⁴ *Id.* at 109. Corporal Kroemer further testified that he had listened to all three calls and that each call began with a statement that it was a call from Davis and that he had recognized Davis’s voice. Corporal Kroemer testified that Davis had placed the phone calls to numbers that belonged to Nephatie Brownlee and Lakeisha Dominguez. During the phone calls, Davis discussed Atkins, and the calls showed that Davis was in a relationship with Atkins.

[12] At the conclusion of the first phase of the trial, the jury found Davis guilty of murder. Then, at the conclusion of the second phase, the jury found Davis guilty of possession of a firearm by a serious violent felon and that he had used

⁴ Every inmate receives his own tablet that is connected to his inmate name number and personal PIN.

a firearm in the commission of the offense. The court entered judgment of conviction accordingly. Following a sentencing hearing, the court sentenced Davis to an aggregate term of sixty years, enhanced by twenty years for the firearm enhancement. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence

[13] Davis first contends that the State failed to present sufficient evidence to support his convictions. Our standard of review on a claim of insufficient evidence is well settled:

For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id.* We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Love v. State, 73 N.E.3d 693, 696 (Ind. 2017).

[14] To convict Davis of murder, the State was required to prove that he had knowingly or intentionally killed Holland. *See* Ind. Code § 35-42-1-1(1). To support his conviction on Count 2, the State was required to prove that Davis, as a serious violent felon, had knowingly or intentionally possessed a firearm. I.C. § 35-47-4-5(c). And, to support his sentence enhancement, the State was

required to prove that Davis had knowingly or intentionally used a firearm in the commission of an offense. I.C. § 35-50-2-11(d).

[15] On appeal, Davis does not dispute that someone knowingly or intentionally killed Holland or that someone had used a firearm in the commission of that offense. Rather, Davis only contends that the State failed to present sufficient evidence to prove that he was the person who had fired the gun at Holland. In particular, Davis contends that the only evidence regarding his identity as the shooter came from Hapner and Damaria. And he asserts that Hapner only identified Davis as the shooter based on a photograph and “did not say he saw Mr. Davis shoot while at the gas station.” Appellant’s Br. at 12. And he contends that, while Damaria was shown a photo array by the police, he “chose two different pictures as the potential shooter.” *Id.* at 13. Thus, Davis maintains that his convictions are based on “equivocal” evidence. *Id.* at 13.

[16] However, we hold that the State presented sufficient evidence from which a reasonable jury could conclude that Davis was the person who had shot and killed Holland. The evidence most favorable to the trial court’s judgment demonstrates Davis had a firearm on the night of the offense. Indeed, Hapner testified that Davis had “pulled” a gun on him while at Dewayne’s party. Tr. Vol. 2 at 5. Further, the evidence shows that the person who shot and killed Holland was a man in a grey hooded sweatshirt with “designs on the sleeve.” Tr. Vol. 1 at 193. And, based on the images that officers released to the media, Ruse recognized the shooter as Davis—both because he knew Davis from work and because the sweatsuit that the shooter wore was “the exact same grey

sweatsuit” that Ruse had previously seen Davis wear. *Id.* at 200. Further, when officers showed Damaria a photo array, he affirmatively identified Davis as the person “he saw shoot a gun in the gas station.” Tr. Vol. 2 at 138. In addition, during a phone call with his parents, Davis twice said: “We f**ked up. We f**ked up.” *Id.* at 155

[17] Based on that evidence, the State presented sufficient evidence to identify Davis as the shooter. Davis’s argument is simply a request that we reweigh the evidence and judge witness credibility, which we cannot do.

Issue Two: Admission of Evidence

[18] Davis next contends that the trial court abused its discretion when it admitted certain evidence. As our Supreme Court has stated:

Generally, a trial court’s ruling on the admission of evidence is accorded “a great deal of deference” on appeal. *Tynes v. State*, 650 N.E.2d 685, 687 (Ind. 1995). “Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion” and only reverse “if a ruling is ‘clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights.’” *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)).

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015). On appeal, Davis specifically contends that the court abused its discretion when it admitted the phone calls from jail because the State had not properly authenticated those calls as required by Indiana Evidence Rule 901(a).

[19] Indiana Rule 901(a) provides that, in order to satisfy the requirement of authenticating or identifying an item of evidence, “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” On appeal, Davis contends that the State failed to lay the proper and necessary foundation and authentication for the phone calls because the State neither demonstrated that he was the person who had placed the call nor identified the persons to whom Davis was speaking.

[20] However, we need not decide whether the trial court erred when it admitted the recordings of the jail calls because any error in the admission of that evidence was harmless. It is well settled “that a claim of error in the admission or exclusion of evidence will not prevail on appeal ‘unless a substantial right of the party is affected.’” *Troutner v. State*, 951 N.E.2d 603, 612 (Ind. Ct. App. 2011) (quoting *Pruitt v. State*, 834 N.E.2d 90, 117 (Ind. 2005)), *trans. denied*. That is, even if the trial court errs in admitting or excluding evidence, this Court will not reverse the defendant’s conviction if the error is harmless. *See id.* An error in the admission of evidence is harmless where the “probable impact” of the erroneously admitted evidence, “in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights” of the defendant. Ind. Appellate Rule 66(A).

[21] Here, the jail phone calls simply establish a connection between Davis and Atkins, the owner of the vehicle in which officers found the gun that had been used to shoot Holland. However, there is ample other evidence to show that Davis both had a firearm on the night of the offense and that he is the person

who shot Holland. As discussed above, the evidence shows that Davis had pulled a gun on Hapner earlier in the night. In addition, Ruse identified Davis as the shooter from the images released to the media based on his personal knowledge of Davis and the identification of Davis's sweatsuit as the exact sweatsuit the shooter had worn. And Damaria identified Davis as the shooter from a photo array.

[22] In light of all of the evidence before the court, we can say “with confidence” that the probable impact of the jail phone calls “was sufficiently minor” so as to not affect Davis’s substantial rights. *Caesar v. State*, 139 N.E.3d 289, 292 (Ind. Ct. App. 2020), *trans. denied*. Accordingly, we conclude that any error in the court’s admission of that testimony was harmless.

Conclusion

[23] The State presented sufficient evidence to demonstrate that Davis was the person who had shot and killed Holland. And any error in the court’s admission of the jail phone calls was harmless in light of the other evidence before the jury. We therefore affirm Davis’s convictions.

[24] Affirmed.

Riley, J., and Vaidik, J., concur.