

## 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

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Reginald Delorence Smith,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 20, 2022

Court of Appeals Case No.  
21A-CR-991

Appeal from the Marion Superior  
Court

The Honorable Angela Dow  
Davis, Judge

Trial Court Cause No.  
49D27-2006-F3-19525

**Altice, Judge.**

## Case Summary

- [1] Reginald Smith appeals his conviction for attempted murder, a Level 1 felony. His sole challenge is to the sufficiency of the evidence regarding his identity as the individual who shot the victim.
- [2] We affirm.

## Facts & Procedural History

- [3] On the evening of June 15, 2020, Chineka Smith (Chineka) drove to a neighborhood on the eastside of Indianapolis to visit with her aunt, Brandy Samuels (Brandy). She parked across the street with the car positioned facing Brandy's vehicle a few car lengths away. Chineka remained in her car, as Brandy stood outside talking to a female friend. There were others gathered outside that evening too.
- [4] At some point, Chineka observed Smith drive up in a blue Impala, which she had previously sold to him, and park nearby, but she "didn't think nothing of it." *Transcript Vol. 2* at 201. Chineka returned her attention to something she was doing in her car. Shortly thereafter, she heard a gunshot and immediately looked up to see Smith walking down the middle of the street in her direction and holding a rifle, which she described as "a AK." *Id.* at 178. She then observed Smith return to the blue Impala and drive away, passing Brandy's body in the street.

- [5] Realizing that Brandy had been shot, Chineka ran to her and, along with others, called 911 at about 9:20 p.m. During the frantic call, Chineka repeatedly indicated that her aunt had been shot and, regarding the shooter, stated, “I don’t know his name but I know him.” *Id.* at 186. At trial, Chineka explained that she was not friends with Smith and did not really know him but that she “kn[e]w of him” from a nearby auto shop where she had seen him and sold the blue Impala. *Id.* at 179.
- [6] IMPD officers responded to the scene, and Brandy was taken by ambulance to the hospital where she had emergency surgery. The bullet had traveled through her abdomen and out her back, lacerating her liver and fracturing her spinal column, causing paralysis and other serious complications. Due to her dire condition, Brandy was unable to speak with the police after the shooting.
- [7] IMPD Detective Bryan Sosbe arrived on the scene and spoke with Chineka around 10:20 p.m. Chineka, who was still not in a “right state of mind” following the shooting of her aunt, could not initially provide Detective Sosbe with a name for the suspect. *Id.* at 199. She did, however, provide some details of the shooting, including that the suspect started talking to Brandy and Brandy then put her hands up as the suspect shot her. Though there were other witnesses on the scene, no one else cooperated with police.
- [8] About thirty minutes after their first discussion, Chineka approached Detective Sosbe with additional information. She identified the suspect as “Reggie Smith” and indicated that he lived “near 46<sup>th</sup> and Keystone near the

fairgrounds.” *Transcript Vol. 3* at 61. With this information, Detective Sosbe obtained a photo array, which contained six individuals, including Smith.

Detective Sosbe presented Chineka with the photo array at approximately 2:15 on the morning following the shooting, and she identified the picture of Smith, indicating that he was the person who shot Brandy.<sup>1</sup>

[9] Smith was located and arrested on the afternoon following the shooting. He was driving the blue Impala at the time of his detention. Thereafter, on June 19, 2020, Smith was charged with Level 3 felony aggravated battery (Count I) and Class A misdemeanor unlawful possession of a firearm by a domestic batterer (Count II). The State later added a charge of Level 1 felony attempted murder (Count III) and included a firearm enhancement.

[10] At his jury trial, which commenced on April 6, 2021, Smith’s defense was based on lack of adequate identification of him as the shooter. Specifically, defense counsel relied upon Brandy’s inability to identify Smith from a photo array at her deposition on September 30, 2020, as well as certain inconsistencies between Brandy’s and Chineka’s accounts of the events leading up to the shooting and Brandy’s description of the shooter at the deposition.<sup>2</sup> Counsel

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<sup>1</sup> Chineka had also informed Detective Sosbe that Smith drove a blue Impala and that the suspect had a bald head and a beard. It is not clear from the record when she provided each of these details at the scene.

<sup>2</sup> At the deposition, Brandy apparently described the shooter as having “a low afro” and “a wild beard.” *Id.* at 86. At trial, Brandy indicated for the first time that the shooter, whom she now positively identified as Smith, was wearing a hat at the time of the shooting. The record establishes that Smith was, in fact, bald, and Detective Sosbe testified that Smith’s beard did not appear “wild” in his booking photo taken the day after the shooting. *Id.* at 83.

also noted that Chineka failed to provide a name for the suspect when she initially spoke with Detective Sosbe.

[11] Despite Smith’s direct challenge to the evidence regarding identification, the jury determined that he was the shooter and found him guilty as charged. Smith then waived his right to a jury trial on the firearm enhancement. At the sentencing hearing on May 17, 2021, the State dismissed Count II, and the trial court vacated the conviction on Count I to avoid a double jeopardy violation and rejected the firearm enhancement. The trial court then sentenced Smith on Count III to thirty-five years, with five years suspended. Smith now appeals his conviction.

## **Discussion & Decision**

[12] When addressing sufficiency of the evidence claims, our standard of review is well settled: we do not reweigh the evidence or judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Rather, we consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017). We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009); *see also T.H. v. State*, 92 N.E.3d 624, 626 (Ind. 2018) (“Convictions should be affirmed unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.”).

[13] Smith presents the same arguments on appeal that he did, unsuccessfully, to the jury. He contends that the evidence was insufficient to prove beyond a reasonable doubt that he was the shooter. Specifically, he notes that the victim could not identify him before trial, “[t]he State’s witnesses differed significantly in their descriptions of the shooter’s appearance and gave descriptions that did not describe the defendant,” and there was no physical evidence tying Smith to the crime. *Appellant’s Brief* at 7.

[14] While Chineka could not initially provide Smith’s name, her statements regarding the identity of the shooter remained consistent. In the 911 call, she frantically stated that she knew the shooter but did not know his name. Indeed, she had previously sold a car to him, which was the car she saw him drive to and from the scene. Chineka did not provide the shooter’s name when she initially spoke with Detective Sosbe, as she was still shaken from the shooting of her aunt, but she was cooperative with the investigation. Shortly thereafter, she returned to Detective Sosbe with the name of the shooter, Reggie Smith, and details regarding where he might live. She also described him as bald with a beard. Hours later, when presented with a photo array of bald men with beards, Chineka quickly and positively identified Smith as the shooter. And she remained unequivocal at trial that Smith, whom she knew from a prior encounter, was the shooter.

[15] We acknowledge that (months after the shooting and after a long hospital stay) Brandy was unable to identify Smith from the photo array and her description of the shooter’s hair and beard was inconsistent with Smith’s actual appearance

and Chineka's description. Moreover, Brandy's eventual identification of Smith at trial was questionable, and her relatively brief trial testimony, in general, was difficult to follow.

[16] Despite Brandy's equivocal and inconsistent testimony and the lack of physical evidence tying Smith – or anyone – to the shooting, we conclude that a reasonable trier of fact could find beyond a reasonable doubt that Smith was the shooter. In other words, Chineka's eyewitness testimony was sufficient to establish identity.<sup>3</sup> Accordingly, we reject Smith's invitation to reweigh the evidence, as we must respect the jury's exclusive province to weigh conflicting evidence. *See McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

[17] Judgment affirmed.

Bailey, J. and Mathias, J., concur.

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<sup>3</sup> Smith attempts to liken this case to *Webb v. State*, 147 N.E.3d 378 (Ind. Ct. App. 2020), *trans. denied*, in which we reversed on the basis of insufficient evidence establishing a shooter's identity. In that case, however, neither of the victims was able to identify the defendant and they both provided descriptions of the shooter's car and hair that widely varied from that of the defendant. Unlike in *Webb*, here we have a positive identification by Chineka shortly after the shooting and at trial, and her description of the shooter matched that of Smith. She also gave a description of the vehicle he was driving at the time of the shooting, which matched the car he was driving when arrested the following day.