

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Anthony Wolfe, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 8, 2022

Court of Appeals Case No.
21A-CR-1839

Appeal from the Warrick Circuit
Court

The Honorable Greg A. Granger,
Judge

Trial Court Cause No.
87C01-1905-MR-232

Bailey, Judge.

Case Summary

- [1] Anthony Wolfe (“Wolfe”) challenges his convictions, following a jury trial, of Murder, a felony;¹ Abuse of a Corpse, as a Level 6 felony;² and Obstruction of Justice, as a Level 6 felony.³
- [2] We affirm.

Issues

- [3] Wolfe raises four issues which we consolidate and restate as the following three issues:
- I. Whether the trial court abused its discretion when it refused to give Wolfe’s proffered jury instruction regarding a “reasonable theory of innocence.”
 - II. Whether the trial court abused its discretion when it admitted surveillance video footage into evidence.
 - III. Whether the State provided sufficient evidence to support Wolfe’s convictions.

¹ Ind. Code § 35-42-1-1(1).

² I.C. § 35-45-11-2(1).

³ I.C. § 35-44.1-2-2(a)(3).

Facts^[4] and Procedural History

[4] In 2019, Valarie Ruark (“Ruark”) was living with Wolfe, Wolfe’s mother, and another individual on Fares Avenue in Evansville, Vanderburgh County.

Ruark and Wolfe’s mother were both selling methamphetamine supplied to them by Tommy Hester (“Hester”). In April of 2019, Ruark was in a drug rehabilitation center in Evansville. While Ruark was residing in the rehabilitation center, Wolfe located a copy of a plea agreement that Ruark had entered into with the State regarding a charge of dealing in methamphetamine. Wolfe showed the plea agreement to others and told others he believed Ruark was a “snitch,” i.e., police informant. Tr. v. II at 232; Tr. v. IV at 19.

[5] On April 20, 2019, Ruark called Wolfe and asked him to pick her up from the rehabilitation center. Wolfe and his friend, Brian Baumgartner (“Baumgartner”), picked Ruark up from the rehabilitation facility and drove her to Baumgartner’s residence located on East Shelton Road in Boonville, Warrick County, Indiana. At Baumgartner’s residence, Wolfe told Ruark to lie down and smile, then he shot her in the face. Wolfe and Baumgartner then drove with Ruark’s body to a wooded area and burned and discarded her body.

⁴ We consider the evidence most favorable to the verdict. *See, e.g., Baker v. State*, 968 N.E.2d 227, 229 (Ind. 2012) (noting we consider only the evidence most favorable to the verdict when reviewing the sufficiency of the evidence).

Wolfe and Baumgartner later cleaned the scene of the murder and disposed of the murder weapon.

[6] Approximately two days later, Wolfe told Hester that no one had to worry about Ruark anymore because Wolfe had “handled it.” Tr. v. IV at 25. Wolfe told Hester that Wolfe had instructed Ruark to lie down, told her to “look at him and smile,... shot her in the face,” and then burned her body. *Id.* at 27. Hester was subsequently arrested for illegal possession of a firearm. He was offered immunity from additional charges in exchange for his statements regarding his drug dealings. Hester was not charged by the federal government for possession of a firearm, and his state charge of possession of a firearm was dismissed.

[7] On April 26, 2019, Ruark’s burned remains were discovered. Ruark was identified through dental records. Her blood was discovered on several items in Baumgartner’s residence. In May 2019, police interviewed Wolfe. Wolfe admitted to driving Ruark to Baumgartner’s residence and to being present when she was murdered. However, he denied shooting Ruark and claimed that Baumgartner shot her. Wolfe admitted that, in the days following the murder, he helped Baumgartner clean the murder scene and destroy evidence, but he denied being present when Ruark’s body was burned.

[8] The State charged Wolfe with Count I, Murder, a felony. The State also alleged in Count II that Wolfe is a Habitual Offender. On June 24, 2019, the State amended the charges to add Count III, Abuse of a Corpse, as a Level 6

felony, and Count IV, Obstruction of Justice, as a Level 6 felony. Wolfe filed a motion to exclude the testimony of Baumgartner, without objection by the State, and the court subsequently granted that motion.

[9] Wolfe’s jury trial was held in May of 2021. The jury found Wolfe guilty as charged, and Wolfe admitted to being a habitual offender. The trial court sentenced Wolfe accordingly. This appeal ensued.

Discussion and Decision

Jury Instruction

[10] At trial, Wolfe tendered his Proposed Final Jury Instruction No. 1, which stated as follows: “In determining whether the guilt of the accused is proven beyond a reasonable doubt, you should require that the proof be so conclusive and sure as to exclude every reasonable theory of innocence.” App. v. III at 38. The State objected to the proposed instruction and the trial court refused the instruction. Wolfe now challenges that refusal.

[11] Instructing the jury is a matter within the sound discretion of the trial court. *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016).

[W]e will reverse a trial court’s decision to tender or reject a jury instruction only if there is an abuse of that discretion. *Washington v. State*, 997 N.E.2d 342, 345 (Ind. 2013). We determine whether the instruction states the law correctly, whether it is supported by record evidence, and whether its substance is covered by other instructions. *Id.* at 345-46. “Jury instructions are to be considered as a whole and in reference to each other; error in a

particular instruction will not result in reversal unless the entire jury charge misleads the jury as to the law in the case.” *Whitney v. State*, 750 N.E.2d 342, 344 (Ind. 2001) (quoting *Edgecomb v. State*, 673 N.E.2d 1185, 1196 (Ind. 1996)).

Id.

[12] A “reasonable theory of innocence” instruction, such as that proposed by Wolfe, should be given to the jury only when the conduct of the defendant constituting the commission of the crime—i.e., the *actus reus*—is exclusively circumstantial. *Hawkins v. State*, 100 N.E.3d 313, 316 (Ind. Ct. App. 2018) (citing *Hampton v. State*, 961 N.E.2d 480, 491 (Ind. 2012)); *see also* 2 Indiana Judges Association, *Indiana Pattern Jury Instructions—Criminal*, 4th Ed., 13.1000 (Matthew Bender). Direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Hampton*, 961 N.E.2d at 489 (quoting *Black’s Law Dictionary* 636 (9th ed. 2009)). Conversely, circumstantial evidence is “[e]vidence based on inference and not on personal knowledge or observation.” *Id.* (quoting *Black’s Law Dictionary* 636 (9th ed. 2009)). It is the trial court’s duty to determine whether the evidence of the *actus reus* is solely circumstantial such that the reasonable theory of innocence instruction should be given. *Id.* at 490.

[13] Here, the trial court determined that the evidence of Wolfe’s conduct constituting the crime—the *actus reus*—was not solely circumstantial. That determination is supported by direct evidence that Wolfe confessed to Hester

that Wolfe murdered Ruark⁵ and confessed to law enforcement that he was present during the murder and helped clean the murder scene.⁶ *See Thompson v. State*, 728 N.E.2d 155, 158 (Ind. 2000) (stating a “direct confession of a crime to a third person is direct evidence that obviates the need to give th[e] tendered instruction” regarding reasonable theory of innocence (quotation and citation omitted)); *Ivory v. State*, 141 N.E.3d 1273, 1383 (Ind. Ct. App. 2020) (“A defendant’s confession of guilt to another person is direct evidence.” (citing *Carr v. State*, 728 N.E.2d 125, 131 (Ind. 2000)), *trans. denied*).

[14] The trial court did not abuse its discretion when it refused to give Wolfe’s proffered final jury instruction regarding a reasonable theory of innocence because there was direct evidence of the *actus reus*.

Admission of Surveillance Video

[15] Wolfe challenges the trial court’s admission, over his foundation objection, of State’s Exhibits 136, 137, and 138, which are DVRs containing surveillance camera footage of Baumgartner’s residence, and State’s Exhibit 153, which contains video clips of the same surveillance footage. Where alleged error in

⁵ Wolfe alleges that Hester’s testimony was “incredibly dubious.” Appellant’s Br. at 25, 35. However, as we note in more detail below, the “incredible dubiousity” rule is inapplicable here.

⁶ The trial court also observed that the substance of the requested reasonable theory of innocence instruction was already contained in Final Jury Instruction No. 10, which defined direct and circumstantial evidence and stated, in relevant part, “When circumstantial evidence is the only evidence[,] it must exclude every reasonable hypothesis of innocence.” App. v. III at 48. *See, e.g., Hanson v. State*, 704 N.E.2d 152, 156 (Ind. Ct. App. 1999) (stating any error in omitting a proffered instruction was harmless where the substance of the instruction was included in other jury instructions given).

the admission of evidence is properly preserved by a timely objection, we review the admission for abuse of discretion. *E.g., Hoglund v. State*, 962 N.E.2d 1230, 1237 (Ind. 2012). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

[16] Surveillance footage may be admitted as a “silent witness” for substantive purposes where there is “a strong showing of authenticity and competency, including proof that the evidence was not altered.” *McCallister v. State*, 91 N.E.3d 554, 561 (Ind. 2018). The foundational requirements for substantive “silent witness” evidence “are vastly different [than] the foundational requirements for demonstrative evidence.” *Knapp v. State*, 9 N.E.3d 1274, 1282 (Ind. 2014). For silent witness evidence such as security camera footage, “[t]he witness is not required to testify that the [footage] is an accurate representation of the scene as it appeared[;]” rather, witnesses through which the evidence is admitted “must give identifying testimony of the scene that appears in the [surveillance footage] sufficient to persuade the trial court ... of their competency and authenticity to a relative certainty.” *Id.*; *Wise v. State*, 26 N.E.3d 137, 141-42 (Ind. Ct. App. 2015) (same).

[17] In this case, State’s witness Deputy Sheriff Mike Backer (“Dep. Backer”), an evidence clerk with the Warrick County Sheriff’s Department (“Sheriff’s Dep’t”), identified State’s Exhibit 136 as a DVR that contained recorded footage that was taken by a surveillance camera located at the corner of Fares Avenue and Walnut in Evansville, was collected by law enforcement, and was

received by him as evidence. Dep. Backer also identified State's Exhibits 137 and 138 as two DVRs that contained recorded footage that was taken by two surveillance cameras located on Shelton Road in Boonville, were collected by law enforcement, and were received by him as evidence. Dep. Backer testified that he completed "chain of custody property receipt[s]" for the DVRs. Tr. v. III at 148, 149. Keisha Rickett, an employee of the cybercrimes and investigative technologies unit of the Sheriff's Dep't, also testified about the chain of custody of Exhibits 136 through 138 and how law enforcement viewed and copied the footage from the DVRs.

[18] Detective Jared West ("Det. West") of the Sheriff's Dep't identified State's Exhibit 153 as video clips taken from the recorded footage contained in the DVRs in Exhibits 136-138. Det. West testified regarding how law enforcement collected the cameras and DVRs in Exhibits 136—138 that contained the surveillance footage, and he testified about the type of security systems used by those cameras. He testified that there was a fifty-one-minute time discrepancy in the Shelton Road footage from one of the cameras, but the footage from the other Shelton Road camera had no such discrepancy and was accurate. Det. West also testified that he was able to observe himself and other officers on the surveillance footage of Fares Avenue and Shelton Road taken from Exhibits 136—138. He compared the officers' arrival on the video with the officers' official duty log to verify the accuracy of the time and date stamp on the footage. Det. West testified that he observed no indication of any alteration in any of the video footage in the exhibits.

- [19] Det. West further testified that the surveillance footage from Fares Avenue shows Wolfe and Baumgartner together leaving Wolfe’s residence on Fares Avenue on the evening of April 20, 2019, prior to Ruark checking out of the rehabilitation facility. The footage also shows Wolfe, Baumgartner, and other individuals arriving and leaving the Wolfe residence in the days following Ruark’s murder. Det. West further testified that footage of the Shelton Road address shows Wolfe and Baumgartner, among others, at Baumgartner’s residence on multiple occasions in the days following Ruark’s murder. Specifically, the footage in State’s Exhibit 153 shows Wolfe, Baumgartner, and two women burning various objects—including full black trash bags and pieces of wood from inside a building—in a fire in the yard of Baumgartner’s residence. The DVRs and video clips were admitted over Wolfe’s foundational objections, and the clips of video in Exhibit 153 were played for the jury.
- [20] Given the extensive testimony of law enforcement regarding the security systems used by the surveillance cameras, the accuracy of the time and date stamps on most of the footage taken from the cameras, the chain of custody of the DVRs containing the footage, and the procedures used to view and copy the footage, we cannot say the trial court abused its discretion when it admitted the challenged exhibits over Wolfe’s foundation objections. *See McCallister*, 91 N.E.3d at 561-62.
- [21] Moreover, even assuming there was any error in the admission of the challenged exhibits, it was subject to harmless error analysis. “Generally, errors in the admission of evidence are to be disregarded unless they affect the

substantial rights of a party.” *Hoglund*, 962 N.E.2d at 1238 (citation omitted); *see also* Ind. Appellate Rule 66(A) (regarding “Harmless Error”).

In viewing the effect of the evidentiary ruling on a defendant’s substantial rights, we look to the probable impact on the fact finder. The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. Moreover, any error in the admission of evidence is not prejudicial, and is therefore harmless, if the same or similar evidence has been admitted without objection or contradiction.

Hoglund, 962 N.E.2d at 1238 (quotations and citations omitted); *see also, e.g.*, *Garber v. State*, 152 N.E.3d 642, 646 (Ind. Ct. App. 2020) (citation omitted) (Generally, “even the improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.”).

[22] Wolfe points out that none of the State’s witnesses had any control over the recording of the surveillance footage, none could attest to the accuracy of the footage, none could state with certainty that the footage had not been altered prior to its discovery and confiscation by law enforcement, and there was some evidence of discrepancies in time stamps on some of the footage. However, all of the challenged surveillance footage was cumulative of Wolfe’s own recorded admission to law enforcement that he assisted Baumgartner in cleaning up the murder scene and destroying evidence of the murder. Thus, the probable impact of the video clips on the jury was slight, as it was merely cumulative of

Wolfe’s own admissions, and any error in the admission of the challenged evidence would have been harmless because it did not prejudice Wolfe’s substantive rights. *See, e.g., McCallister*, 91 N.E.3d at 562 (holding any error in admission of DVD evidence was harmless as the evidence was cumulative and therefore not prejudicial). Moreover, as we discuss below, there was sufficient evidence of Wolfe’s guilt independent of the challenged exhibits and, therefore, no substantial likelihood that the challenged evidence contributed to the conviction. *See Hoglund*, 962 N.E.2d at 1238.

Sufficiency of the Evidence

[23] Wolfe challenges the sufficiency of the evidence to support his convictions of Murder, Abuse of a Corpse, and Obstruction of Justice.

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. *Harrison v. State*, 32 N.E.3d 240, 247 (Ind. Ct. App. 2015), *trans. denied*. We instead respect the exclusive province of the trier of fact to weigh any conflicting evidence. *Id.* We consider only the probative evidence supporting the verdict and any reasonable inferences that may be drawn from this evidence. *Id.* 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. *Id.*

Merriweather v. State, 128 N.E.3d 503, 514-15 (Ind. Ct. App. 2019), *trans. denied*; *see also McCarthy v. State*, 749 N.E.2d 528, 538 (Ind. 2001) (“If the testimony believed by the trier of fact is enough to support the verdict, then the reviewing

court should not disturb it.”). In addition, “[w]e may, and ordinarily do, uphold findings of guilt beyond a reasonable doubt supported only by the uncorroborated testimony of a single witness, even the victim’s.” *C.S. v. State*, 71 N.E.3d 848, 851 (Ind. Ct. App. 2017) (citing *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012)).

[24] To support a conviction of Murder, the State was required to prove beyond a reasonable doubt that: (1) Wolfe; (2) knowingly or intentionally; (3) killed; (4) Ruark. *See* I.C. § 35-42-1-1(1). To support a conviction of Abuse of a Corpse, the State was required to prove beyond a reasonable doubt that: (1) Wolfe; (2) knowingly or intentionally; (3) mutilated; (4) a corpse. *See* I.C. § 35-45-11-2(1). To support a conviction of Obstruction of Justice as a Level 6 felony, the State was required to prove beyond a reasonable doubt that: (1) Wolfe; (2) altered, damaged, or removed; (3) any record, document, or thing; (4) with intent to prevent it from being produced or used as evidence in any legal proceeding or administrative or criminal investigation. *See* I.C. § 35-44.1-2-2(a)(3).

[25] Here, the State produced, among other evidence, Hester’s testimony that Wolfe confessed to Hester that Wolfe killed Ruark and burned her body. That is, Wolfe confessed to Hester that Wolfe murdered Ruark and then abused her corpse and destroyed evidence of the crime by burning Ruark’s body. That was direct and sufficient evidence supporting the jury’s verdicts that Wolfe was guilty as charged. *See C.S.*, 71 N.E.3d at 851. Moreover, Wolfe confessed to cleaning up the murder scene and destroying evidence of the murder, which is sufficient to support the conviction of obstruction of justice.

[26] However, Wolfe contends that Hester’s testimony was insufficient to support his convictions because the testimony was “incredibly dubious.” In the rare instance where testimony is “so ambiguous, inconsistent, convoluted, or contrary to human experience that no reasonable person could credit it,” we will disregard such testimony as “incredibly dubious.” *Id.* “An appellant seeking application of the incredible dubiousity rule must show that the judgment against him was based on the testimony of a single witness, unsupported by any circumstantial evidence, [and] inherently improbable or inherently contradictory, equivocal, or coerced.” *Id.*

[27] The incredible dubiousity rule is inapplicable here. The judgment against Wolfe was not based on the testimony of a single witness but multiple witnesses, and it was supported by circumstantial evidence, including cellphone data, photographs, and surveillance footage (in addition to the footage Wolfe challenges on appeal). Moreover, Hester’s testimony was not inherently improbable, contradictory, equivocal, or coerced.

[28] Nor does the fact that Hester may have received favorable treatment from law enforcement in exchange for his testimony render his testimony incredibly dubious. As the Indiana Supreme Court has held, the fact that a witness has received favorable treatment does not render the witness’s testimony incredibly dubious where the jury was made aware of the favorable treatment and had the opportunity to judge the credibility of the witnesses in light thereof. *White v. State*, 706 N.E.2d 1078, 1080 (Ind. 1999). Wolfe’s counsel cross-examined Hester extensively regarding possible favorable treatment, and Hester

maintained that his testimony was not influenced by any such treatment. Thus, the jury had the opportunity to determine Hester’s credibility in light of the favorable treatment he may have received. “It is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve.” *McCarthy*, 749 N.E.2d at 538. Where, as here, the testimony believed by the trier of fact is enough to support the verdict, we will not disturb it. *Id.*

[29] We will not reassess the jury’s credibility determinations, as Wolfe invites us to do. The evidence was sufficient to support the jury’s verdict.

Conclusion

[30] The trial court did not abuse its discretion when it refused to give Wolfe’s proffered final jury instruction regarding a reasonable theory of innocence. Nor did the court abuse its discretion when it admitted video clips of surveillance footage, and, even if the admission was error, it was harmless because the challenged evidence was cumulative of Wolfe’s own admissions. And the jury’s verdicts were supported by sufficient evidence.

[31] Affirmed.

Mathias, J., and Altice, J., concur.