

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Danate Lowe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 4, 2023

Court of Appeals Case No.
23A-CR-504

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth Hurley,
Judge

Trial Court Cause No.
71D08-2112-MR-16

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

- [1] The State charged Danate Lowe with murder and Level 5 felony battery by means of a deadly weapon after his involvement in the shooting death of Edwardo Rivera and infliction of injuries to William Hardin. The case proceeded to a jury trial, after which the jury found Lowe guilty as charged. The trial court sentenced Lowe to an aggregate fifty-three-year sentence. Lowe contends that the evidence is insufficient to support his convictions. We affirm.

Facts and Procedural History

- [2] On the afternoon of April 12, 2021, sixteen-year-old Rivera; his brother; his girlfriend, Yesenia Navarro; and Hardin were with Rivera’s dogs in an alley outside of his South Bend home when a man, later identified as Lowe, approached and fired a handgun up to seven times at Rivera. Hardin also suffered a gunshot wound. Rivera collapsed to the ground and the shooter stood over him before running back up the alley.
- [3] Navarro, who had witnessed the shooting, described the shooter as a “black[,]” “pretty tall” and “skinny” male with black “dreads[,]” a “silver gun[,]” a “white scarf looking thing wrapped around his head[,]” and “wearing a hoody and jeans.” Tr. Vol. II pp. 75–76, 78. Rivera’s neighbor testified that after having heard gunshots, he had witnessed a “thin and young[,]” “black” male “walking fast” through the alley and wearing a “dark blue or black” jacket and “a mask” that he thought was black but could not remember what he had described to

police at the time. Tr. Vol. II pp. 87–88. A third witness testified that he had “heard some gunshots” and observed a “[s]kinny, tall” “black male” wearing a “[g]ray sweater and some blue jeans” with a “black or white” mask. Tr. Vol. II pp. 125–26.

[4] Within minutes of the shooting, officers were dispatched to the scene. Upon their arrival, the officers found twelve .40-caliber cartridge casings and one spent bullet. The spent bullet was consistent with the bullets found in Rivera’s body. A holster that fit a .40-caliber handgun was found in a nearby alleyway. Lowe’s DNA was found on the holster, as well as that of his friend, Jamar Williams. Police also found a .22-caliber handgun in a trashcan close to where they had discovered Hardin; however, it appeared that this handgun had not been fired.

[5] After the shooting, Rivera and Hardin were transported to the hospital. Hardin received emergency surgery because the bullet that had hit him had struck an artery. Rivera suffered gunshot wounds to the left face, left scalp, left hand, right hand, and the right midsection. One of the bullets that had struck Rivera severely injured his brain and ultimately proved fatal.

[6] Later that day, police attempted to initiate a traffic stop of Isaiah Oliver’s vehicle, for which they had been looking based on an unrelated event. Oliver did not pull over and a chase ensued. Oliver eventually crashed his vehicle after which he, Lowe, and Williams exited the vehicle and fled. Officers apprehended Lowe and Oliver. Lowe was wearing a black sweatshirt.

- [7] Police subsequently apprehended Williams and discovered that he had a white mask in his pocket. When they searched Oliver's vehicle, police found the disassembled slide and barrel of a .40-caliber Smith & Wesson handgun underneath the front-passenger seat. Officers found the handgun's remaining piece within fifty feet of the passenger side of the vehicle. Forensics determined that the handgun found in Oliver's vehicle was the same handgun that had fired the cartridges that had been recovered near Rivera's body.
- [8] Further, investigators found Lowe's and Oliver's fingerprints on the handgun's magazine and on a box of .40-caliber ammunition also recovered from Oliver's vehicle. The State charged Lowe with murder with a firearm enhancement and Level 5 felony battery by means of a deadly weapon. At the conclusion of trial, a jury found Lowe guilty as charged and the trial court imposed an aggregate sentence of fifty-three years of incarceration.

Discussion and Decision

- [9] Lowe argues that the evidence is insufficient to support his convictions and the firearm enhancement. Our sufficiency standard is well-settled:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling.

Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). In other words, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

[10] Lowe argues that “no one was able to identify the shooter” as him. Appellant’s Br. p. 9. We, however, cannot say that the lack of a definitive identification renders the evidence insufficient. “If the evidence only inconclusively connects a defendant with the crime, this goes to weight, not the admissibility of the evidence.” *Whitt v. State*, 499 N.E.2d 748, 750 (Ind. 1986). “The identity of an accused is a question of fact”; therefore, “the weight to be given identification evidence, and any determination of whether it is satisfactory and trustworthy, is a function of the trier of fact.” *Id.* Further, “identity [...] may be proved by circumstantial evidence[.]” *Sansom v. State*, 562 N.E.2d 58, 59 (Ind. Ct. App. 1990).

[11] In *Young v. State*, 198 N.E.3d 1172, 1177–78 (Ind. 2022), the Indiana Supreme Court determined that circumstantial evidence identifying the defendant as the

shooter sufficiently supported the defendant's convictions for murder and attempted murder. In that case, surveillance footage captured Young at a gas station wearing dark pants, a white shirt, and white shoes and smoking a cigarette. *Id.* at 1174. Young then left the scene. *Id.* A few minutes later, surveillance footage, too poor in quality to identify the shooter by appearance, captured a figure, who had been wearing dark pants, a white shirt, and white shoes, running into the gas station parking lot and firing multiple gunshots before walking out of view. *Id.* at 1177. A different surveillance video, recorded around the time of the shooting, also showed someone discarding a lit object onto the ground in a nearby alleyway before running away. *Id.* at 1175. Officers found a cigarette in the immediate area where the surveillance video had shown that the lit object had fallen. *Id.* Young's DNA was found on that cigarette. *Id.*

[12] Additionally, the record revealed that Young had turned off his cell-phone location data during the time of the shooting and that his Internet-search history after the shooting included videos on cleaning a Glock .40-caliber handgun—the same weapon used in the shooting. *Id.* While the Indiana Supreme Court acknowledged that the State's case “contain[ed] conflicts and uncertainties[,]” it concluded that “the jury permissibly resolved these issues of fact against Young” and declined to reweigh the evidence. *Id.* at 1174.

[13] Likewise, we conclude that the evidence here sufficiently supports Lowe's convictions. Multiple witnesses described the shooter in a manner consistent with Lowe's appearance when the police apprehended him. For instance, one

witness described the shooter as a “[s]kinny, tall” “black male” wearing a “[g]ray sweater and some blue jeans” with a “black or white” mask. Tr. Vol. II pp. 125–26. Another witness described the shooter as a “black[,]” “pretty tall” and “skinny” male with black “dreads” all of the same color, a “white scarf looking thing wrapped around his head[,]” and “wearing a hoody and jeans.” Tr. Vol. II pp. 75–76, 78. When apprehended by the police, Lowe was wearing a “black sweatshirt” and had his hair in black “dreadlocks that weren’t very long.” Tr. Vol. II p. 200. While Williams had a build similar to Lowe’s, he did not have dreadlocks. Additionally, Oliver had dreadlocks; however, he had dreadlocks of two different colors, and Navarro testified that the shooter had dreadlocks of one color.

[14] Notably, the disassembled handgun used for the shooting, its magazine, and the box of ammunition recovered from Oliver’s car all bore Lowe’s fingerprints. Investigators also found Lowe’s and William’s DNA on the holster that police had recovered near the scene. Lowe points out that when police apprehended Williams, Williams had the white mask in his pocket; however, that mask had unidentified DNA from more than four individuals, leading to the reasonable inference that both Lowe and Williams might have had it in their possession at different times.

[15] Moreover, Lowe admitted that he had tried to run from the police after Oliver had crashed his vehicle while attempting to flee. “Flight shows consciousness of guilt.” *Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*. Further, Lowe testified that he and Oliver had been with Williams on the day of

the shooting, but the two had been separated from Williams for “minutes” and had been unsuccessfully trying to locate him before eventually reconnecting. Tr. Vol. II p. 219. Lowe also testified that he and Oliver had not separated that afternoon before they had reconnected with Williams. Tr. Vol. II pp. 219–20. However, “[i]t was entirely within the jury’s province to disregard [Lowe]’s self-serving testimony[,]” which the jury apparently did. *Fultz v. State*, 849 N.E.2d 616, 623 (Ind. Ct. App. 2006), *trans. denied*.

[16] In short, to the extent that the evidence relating to the shooter’s identity was inconclusive, the jury resolved those evidentiary issues in favor of convicting Lowe. “It is the fact-finder’s role [...] to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” *Drane*, 867 N.E.2d at 146. Because it is “not necessary that the evidence overcome every reasonable hypothesis of innocence[,]” we conclude that the evidence sufficiently supports Lowe’s convictions. *Id.* at 147 (internal quotation omitted). Lowe’s argument amounts to nothing more than an invitation for us to reweigh the evidence, which we will not do. *See Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001).

[17] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.