



Appellant-defendant Jerry Edward Pelfree appeals his convictions for two counts of Murder,<sup>1</sup> a felony, challenging the sufficiency of the evidence. Specifically, Pelfree argues that the convictions must be set aside because the State did not introduce any physical evidence at trial establishing his guilt and the testimony of a witness that linked him to the murders was not credible. Finding the evidence sufficient, we affirm.

### FACTS

On July 26, 2007, Detective Cody Forston of the Bloomington Police Department began investigating a missing person report involving Doug Brown, who was last seen with Everett Shaw, Pelfree, and an individual named “Hardiman.” Tr. p. 306. Detective Forston later learned that Shaw had also been reported missing.

On September 10, 2007, Detective Forston traveled to Troy Harden’s home in Brown County because he was informed that Brown and Shaw had visited him shortly before their disappearance. Although the men were not at the residence, a Brown County Sheriff’s deputy telephoned Detective Forston three days later, indicating that he was planning to interview Harden, who was incarcerated in the Brown County jail.

On September 14, Detective Forston and other police officers interviewed Harden. Harden told the officers that if they “dropped” a petition to revoke his probation, he would tell them “what they wanted to know.” Id. at 584. Detective Forston indicated that he would “see what he could do.” Id. at 586.

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<sup>1</sup> Ind. Code § 35-42-1-1.

At some point during the interview, Harden told the police officers that Pelfree had shot and killed Brown and Shaw. Harden explained that he, Pelfree, and Luke Jackson stuffed the bodies into two barrels, and that the barrels might still be on Pelfree's Ison Road property in Monroe County.

Brown, Pelfree, and some other individuals manufactured methamphetamine on Pelfree's property and frequently "partied together." Tr. p. 642. At some point, Brown began dating Michelle, one of Pelfree's daughters, who lived on other Monroe County property that Pelfree owned. Brown used drugs, was violent, and sometimes threatened to kill himself or Michelle.

On one occasion, Pelfree went to the residence during an argument between Brown and Michelle. Pelfree did not like Brown and told him to "take a break" from Michelle and to stop using methamphetamine. Id. at 513. In March 2007, Harden reported to Pelfree that Brown had threatened to kill Michelle. Pelfree also discovered that Brown had stolen some anhydrous ammonia from Pelfree. Following these events, Pelfree told another acquaintance that he was going to kill Brown and "make a display out of him." Id. at 774.

Shaw also manufactured methamphetamine and obtained pseudoephedrine pills for Pelfree, Harden, and Brown that were used in the manufacturing process. On March 27, 2007, Shaw brokered a deal between Pelfree, Brown, Harden, and three others to purchase an all-terrain vehicle in exchange for \$300 and a quarter-ounce of methamphetamine. Thereafter, Pelfree and Brown picked up Shaw to retrieve the vehicle. When the men arrived to pick up the vehicle, Brown told Harden to tell the others that the vehicle belonged to him

and that they were there to take it back. As a result, Brown and Pelfree loaded the vehicle and drove back to Shaw's residence. When Shaw returned home, his wife indicated that he was "not acting right" and assumed that something had gone wrong with the exchange. Id. at 361.

Also in March 2007, Harden was at Pelfree's and Brown and Shaw drove up in a red Cavalier automobile that they had purchased from a friend. Brown wanted to remove a radio that he had previously purchased for Michelle's vehicle. While Harden and Shaw worked on the radio, Pelfree and Brown proceeded to Pelfree's trailer to "get high" on methamphetamine. Id. at 527. At some point, Pelfree came out of the trailer alone, armed with a rifle. Harden, Shaw, and Pelfree—who was still carrying the rifle—walked toward the trailer. As they approached the carport, Pelfree shot Shaw in the head. Pelfree instructed Harden to say "nothing," and to keep his "mouth shut." Id. at 533. Approximately forty-five minutes later, Pelfree called Jackson and told him to bring a large "barrel" to the property. Id. at 532-33. Jackson did not think much of the request because Pelfree was always asking for "something weird." Id. at 647-48.

Pelfree then noticed that Shaw was lying on the ground, making noises, with blood coming out of his mouth and ear. As a result, Pelfree shot Shaw two more times in the head. When Jackson arrived, he saw Pelfree pressure washing his gravel driveway. Jackson also walked into the carport and observed Shaw's bloody body. Harden and Pelfree carried a barrel into the trailer and when they came out, Jackson noticed that Brown's body was inside the barrel with the "feet sticking out." Id. at 652. Pelfree attempted to make Brown's body,

which was six feet four inches, fit inside the barrel by using a splitting maul to beat the body down into the barrel. Pelfree also used a meat saw to cut off part of Brown's leg.

Thereafter, Pelfree took the rifle apart, burned the stock, and placed the barrel in a red box truck. The next day, Jackson returned to the residence and noticed that Pelfree was burning his living room couch in a fire pit. Jackson and Harden then helped Pelfree remove two barrels from the truck.

After interviewing Harden, the police officers obtained a search warrant for Pelfree's two Monroe County properties. During the course of the search, Monroe County Deputy Sheriff Shawn Karr discovered two barrels that were located approximately 120 feet from Pelfree's trailer on Ison Road. As Detective Karr unpackaged the barrels, he discovered a badly decomposed body in each barrel. The bodies were later identified as those of Brown and Shaw. The officers also found a red van or truck on the property that matched Harden's description of the vehicle in which the barrels were initially placed.

During an autopsy that was conducted at the Terre Haute Regional Hospital, the attending physician found one small caliber lead bullet and numerous bullet fragments in the barrels. It was also determined that Brown's left leg had been "sawed off near the ankle," Id. at 738, 862, and that Brown had been shot in the head at least four times from at least two different directions. Shaw had also been shot in the head at least eight times from two directions.

On September 17, 2007, the State charged Pelfree with both murders. When Pelfree was booked into the jail, he told the correctional officer that he "kills people" when he gets

angry. Id. at 636. At some point during Pelfree’s incarceration, he spoke with Michelle on the telephone and told her that if it were not for her, he would not be in jail.

Almost eleven months after Pelfree’s arrest, Detective Karr interviewed Jackson about the murders. Jackson admitted that he had provided one of the barrels and that he had assisted Pelfree in removing both of them from the truck.

In September 2008, Detective Karr again interviewed Harden. Harden explained that Brown remained on a couch after Pelfree shot him, and that he and Pelfree eventually burned the couch. Harden also stated that he saw Pelfree remove Brown’s leg with a hacksaw. Moreover, he told Detective Karr that Pelfree shot Shaw “multiple times.” Id. at 463.

Following the conclusion of a jury trial on February 27, 2009, Pelfree was found guilty as charged. Thereafter, the trial court sentenced Pelfree to sixty-five years on each count, to be served consecutively, with credit for 565 actual days served. Pelfree now appeals.

### DISCUSSION AND DECISION

Pelfree argues that his convictions must be vacated because the State failed to prove beyond a reasonable doubt that he murdered Brown and Shaw. Pelfree also maintains that his convictions must be reversed pursuant to the “incredible dubiousity doctrine” because the State relied exclusively on Harden’s “inherently improbable” testimony. Id. at 18.

In addressing Pelfree’s challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Williams v. State, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment

together with the reasonable inferences to be drawn therefrom. Id.; Robinson v. State, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. Williams, 873 N.E.2d at 147. Reversal is warranted only when reasonable persons would not be able to form inferences as to each material element of the offense. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009).

We recognize that convictions may be based on circumstantial evidence and that a witness's testimony need not be entirely consistent. Davenport v. State, 749 N.E.2d 1144, 1152 (Ind. 2001). The fact-finder must determine whom to believe and what portions of conflicting testimony to believe. In re J.L.T., 712 N.E.2d 7, 11 (Ind. Ct. App. 1999). And the jury is free to believe or disbelieve witnesses as it sees fit. McClendon v. State, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996).

Although we will impinge upon the fact-finder's credibility judgments when confronted with testimony of inherent improbability, or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity, this exception applies only where a single witness testifies and there is a complete lack of circumstantial evidence of guilt. Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000). However, a witness's trial testimony that contradicts his or her prior statements does not render such testimony incredibly dubious. Stephenson v. State, 742 N.E.2d 463, 498 (Ind. 2001).

To convict Pelfree of murder, the State was required to prove that he knowingly or intentionally killed Brown and Shaw. I.C. § 35-42-1-1(1). As discussed above, Harden

testified that he and Shaw were working on a car radio while Pelfree and Brown were inside the trailer. Tr. p. 527. At some point, Pelfree came out of the trailer, alone, carrying his rifle. Id. at 528. After Pelfree told Shaw and Harden that they should go “get high,” Harden unequivocally testified that Pelfree shot Shaw in the head as the men walked through the carport. Id. at 532. Harden also witnessed Pelfree cut off a portion of Brown’s leg with a saw. Id. at 539-40.

Jackson testified at trial and corroborated various aspects of Harden’s version of the events. Specifically, he saw Pelfree dismember Brown’s corpse with a splitting maul so it would fit inside the barrel. Id. at 654. Jackson also testified that Pelfree burned the gun stock and the couch that was removed from his trailer. Id. at 655, 657. Moreover, Jackson helped Pelfree move the barrels from the truck. Id. at 658-59. Thus, Jackson’s testimony regarding the circumstances before and after the murders was corroborative of Harden’s testimony as well as other witness testimony.<sup>2</sup>

After considering all the evidence most favorable to the verdict as well as drawing all reasonable inferences therefrom, the jury could have reasonably concluded beyond a reasonable doubt that Pelfree committed the two murders. In essence, Pelfrey’s arguments are simply a request that we reweigh the evidence, which we will not do.<sup>3</sup>

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<sup>2</sup> As we pointed out above, the forensic anthropologist testified that his examination of the bodies revealed that both men had been shot multiple times in the head. Tr. p. 865-66, 872, 883-84. It was also determined during the autopsy that Brown’s leg had been sawed off near the ankle. Id. at 738, 862.

<sup>3</sup> To the extent that Pelfree relies on the incredible dubiosity rule as a basis for setting aside the convictions, Jackson’s testimony corroborating that of Harden and the circumstantial evidence discussed above regarding the murders exempts this case from the incredible dubiosity rule. See Bowles, 737 N.E.2d at 1152 (holding that the

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.

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incredible dubiousity rules apples only were a sole witness testifies and there is a complete lack of circumstantial evidence of the defendant's guilt).