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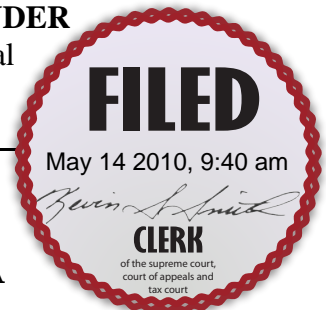
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**IN THE
COURT OF APPEALS OF INDIANA**

SHANNON DOCKERY,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 71A04-0911-CR-672

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No. 71D02-0807-MR-10

May 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Following a jury trial, Shannon Dockery was convicted of murder. Dockery claims the evidence is insufficient to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On the evening of July 9, 2008, Shannon Dockery, Andrew Harvey, and Hosey Whitmore gambled at an illegal gambling house owned by Johnnie Duke. After losing money, the three men left the gambling house and went to the home of Jeffrey Winston, a friend of Whitmore and an acquaintance of the other two men.

At Winston's house, Whitmore suggested returning to the gambling house and robbing it. Winston and Harvey agreed to help; Dockery remained silent. Before leaving, Harvey retrieved a .45 caliber handgun that Dockery had placed on Winston's coffee table. The four men left in Whitmore's car, which stalled a few blocks from the gambling house. They pushed the car to the side of the road and the four men walked the rest of the way.

By the time the men arrived at Duke's gambling house, it was the early hours of July 10, 2008. Dockery and Whitmore entered Duke's gambling house first, followed shortly thereafter by Winston and Harvey. Duke and Earl Richmond were present. Harvey pointed Dockery's gun at Duke. While Harvey and Duke were struggling over the gun, Winston pulled out a gun and shot Duke in the head and abdomen. During the scuffle and ensuing shots, Dockery and Whitmore ran out of the house. Winston demanded money from Duke and Richmond, and obtained \$800 or \$900. The four men then fled the scene. Dockery and Winston went to Dockery's home, and then Dockery drove Winston home. The following

day, the four men met at Winston's house to split the stolen money between Harvey, Winston, and Whitmore. Duke later died from the gunshot wound to his abdomen.

All four men were later arrested and charged with murder and robbery. Dockery was charged with both crimes as an accomplice, and a jury found him guilty of both. The trial court entered judgment of conviction for only murder and pronounced a forty-five year sentence.

DISCUSSION AND DECISION

In reviewing sufficiency of the evidence claims, we

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 favorable to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder 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. [T]he 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) (citations and quotations omitted) (emphasis in original).

The murder charge alleged Dockery "kill[ed] another human being while committing or attempting to commit . . . robbery" Ind. Code § 35-42-1-1(2) (known as "felony murder"). A person commits robbery when he knowingly takes property from another person

by force or threat of force. Ind. Code § 35-42-5-1. To prove felony murder, the State need prove only an intent to commit the underlying felony, not the intent to kill. *Glenn v. State*, 884 N.E.2d 347, 355 (Ind. Ct. App. 2008). Because Dockery was not the shooter, the State alleged he committed these crimes as an accomplice, which means he “knowingly or intentionally aid[ed], induce[d], or cause[d] another person to commit” the crimes. Ind. Code § 35-41-2-4.

Dockery argues there is insufficient evidence to convict him under the theory of accomplice liability. In determining whether a defendant aided another, a fact-finder may consider: (1) presence at the scene of the crime; (2) companionship with another engaged in criminal activity; (3) failure to oppose the crime; and (4) conduct before, during, and after the crime. *Wieland v. State*, 736 N.E.2d 1198, 1202 (Ind. 2000).

There was ample evidence of Dockery’s participation in the robbery that culminated in Duke’s death: he was present at the scene of the crime; he was a close friend of Harvey and had grown up with Winston; he did not oppose the crime; he let Harvey carry his gun; and he met the other three men the day after the robbery. *See Hopper v. State*, 539 N.E.2d 944, 947 (Ind. 1989) (Stating, “any evidence that the accomplice acted in concert with other persons who actually committed the elements of the crime is sufficient to support a conviction on the accessory theory”).

Nevertheless, Dockery argues he lacked knowledge of the other men’s intent to commit the robbery, and therefore he did not have an opportunity to oppose it. Dockery

claims he could not hear what was being discussed when the other three men were planning the robbery because the background music was loud and he was intoxicated. Once it was apparent a robbery was taking place, Dockery asserts, he was unable to oppose it because he was unarmed. Finally, Dockery notes Winston's statement in a deposition that Dockery said "Y'all trippin'" when Winston began shooting at Duke, (Tr. at 441-442), and argues that statement indicates he did not know the others intended to rob Duke.

Dockery's actions before and after the robbery and murder undermine his claim that he had no knowledge of the plan. Dockery provided a gun for use in the robbery. He continued walking to Duke's gambling house with the other three men even after Whitmore's car broke down. After the robbery, he drove Winston home and met Winston, Whitmore, and Harvey the following day. Dockery's statement at the crime scene about Winston "trippin'" could have indicated his surprise only that shots were being fired; it does not necessarily indicate he lacked knowledge of the planned robbery.

Finally, Dockery argues the only evidence supporting his conviction was the conflicting testimony of Winston and Harvey, both of whom had reached a plea agreement with the prosecution for reduced sentencing in return for their testimony against Dockery and Whitmore, and who therefore should be considered inherently unreliable. Dockery's argument is a request that we assess witness credibility, which we will not do. *See Drane*, 867 N.E.2d at 146.

The evidence is sufficient to support a finding that Dockery knowingly and

intentionally aided and induced a robbery that resulted in murder. As a result, we affirm Dockery's conviction of felony murder.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.