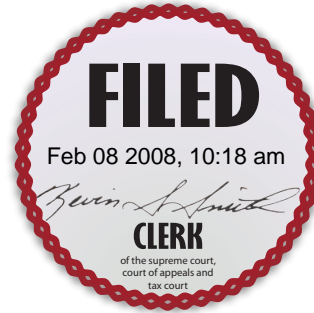


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

KIMBERLY A. JACKSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

SHAWN M. SIENER,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
) No. 28A01-0707-CR-318
)
)
)

APPEAL FROM THE GREENE SUPERIOR COURT
The Honorable David Holt, Judge
Cause No. 28D01-0608-MR-436

February 8, 2008

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

BARNES, Judge

We grant Shawn Siener’s petition for rehearing following our decision in Siener v. State, No. 28A01-0707-CR-318 (Ind. Ct. App. Oct. 23, 2007). Specifically, Siener has asked this court to view his interrogation by police following the shooting of Jana Moore. We stated in our original opinion, “Unfortunately, Siener’s videotaped statement to police was not transmitted to this court on appeal, although it was introduced as an exhibit below. Nevertheless, the parties appear to be largely in agreement as to what Siener said and what police asked him.” Siener, slip op. at p.3 n.1. Siener contends that our actually viewing the interrogation would lend to support to his claims that he expressed remorse for killing Moore, that he cooperated with police, and that he is mentally ill, and that these claims warrant a reduction of his aggregate seventy-year sentence.

Pursuant to Siener’s request, we obtained the videotapes of his police interrogation, State’s Exhibit 3A and 3B, from the trial court. After viewing the interrogation in its entirety, which lasts approximately three hours, we fully adhere to our original decision not to reduce Siener’s sentence. First, we note that Siener faults the trial court for stating, “As those of us who are present here today saw during the interview, you were a little too matter of fact. You were a little too calm, disturbingly calm, eerily calm, as if a human life meant nothing to you.” Tr. p. 193. After viewing the interrogation, we find ourselves in complete agreement with this statement. For the vast majority of the interview, Siener appears to be cool, calm, rational, and matter-of-fact about the crimes he committed, including Moore’s murder. This only reinforces the conclusion we reached in our original opinion that the trial court, both by viewing the

videotape and observing Siener first-hand in the courtroom, “was in a far better position that this court to gauge the sincerity of Siener’s purported remorse.” Siener, slip op. p. 8.

As for any statements of remorse during the interrogation, they can fairly be construed as Siener being regretful that Moore showed up and was killed by him, instead of Moore’s sons being there and being killed instead as Siener had intended. Near the end of the interview, as Siener began unfolding a fantastic tale that there was some kind of all-out gang war at the Moore home and Moore had been caught in the crossfire, Siener said of her, “She’s a Moore. She’s a methhead. F*** her.” He also said, “You should do an autopsy on that b****.” An officer also asked Siener directly whether he was remorseful for what he had done, and Siener said, “Nope.” In the context of the entire interrogation, any expressions of remorse Siener might have made for Moore’s death are minimal.

We also conclude that the interrogation at best only marginally supports Siener’s claim that he cooperated with police. As we noted in our original opinion, Siener did not turn himself in to police, but was attempting to conceal his commission of these crimes when he was apprehended. After being apprehended, Siener was deceptive on numerous occasions with the officers questioning him, on matters large and small. Among other things, Siener at first told police that he had never been to the Moore house and that he owned no firearms. He also originally told police that he only intended to beat up Moore’s sons when he went to their house, but later admitted he intended to kill all of them and went to the house because “I decided to take vengeance.”

About two-thirds of the way into the interrogation, one of the questioning officers began probing the possibility that some of Siener's friends may also have been present at the Moore house at the time of these crimes. The officer admittedly lied and told Siener that one of his friends said he watched Siener from a vehicle. Rather than denying the truthfulness of this question, Siener instead took the opportunity to tell a lengthy and detailed story of how several of his friends had helped him commit these crimes. Siener told the officer that this was the "f***ing truth," that "everybody was there, everybody saw it," and that "if I'm gonna go down, everybody's going down." As Siener later admitted, however, this was not the truth and he acted alone in committing these crimes. Given Siener's repeated lies to police, we cannot say the interrogation clearly establishes his "cooperation" with law enforcement.

Finally, we conclude the interrogation does not support Siener's claim that he suffers from a mental illness debilitating enough to warrant a reduction of his sentence. Siener is completely coherent throughout the interrogation, and as already noted appears to be calm and rational for most of it. Towards the end, Siener does become agitated when discussing his friends' purported involvement in the crimes and after the questioning officer accuses Siener of repeatedly lying. However, we do not believe evidence of a temper on Siener's part establishes that he suffers from a mental illness that warrants mitigating weight. Instead, the interrogation reveals that Siener carefully and remorselessly planned to go to the Moore house intending to kill several people. As for Moore herself, Siener may not originally have planned to kill her, but had no reluctance to do so when she appeared at the house. As he told the questioning officer, he

approached her only after holstering his .357 revolver and taking out his .40 caliber semi-automatic handgun, cocked and loaded, because “he didn’t want to miss” if he felt that he had to shoot her. We reiterate our holding from our original opinion that this behavior is inconsistent with “an assertion that Siener’s shooting of Jana was impulsive and a result of his being unable to control his behavior, rather than being calculated and in cold blood.” Siener, slip op. at 12.¹

In sum, after viewing Siener’s police interrogation in its entirety, we have no qualms with the trial court’s characterization of it. Additionally, we remain confident that no reduction of Siener’s aggregate seventy-year sentence is warranted. Thus, although we grant rehearing, we reaffirm our original decision in all respects.²

KIRSCH, J., and ROBB, J., concur.

¹ We also reject Siener’s argument that his mental illness can be inferred because he told an officer that he wanted to pursue a career in law enforcement, despite his admission to killing Moore. What Siener omits from his brief is that before saying he had thought about entering law enforcement, he said, “I know it probably won’t happen now” Also, the fact that Siener is recorded wondering aloud whether he will go to jail for killing Moore after admitting shooting her is not necessarily evidence of a delusional mental illness, as opposed to naivety.

² We summarily reject Siener’s rehearing argument regarding consecutive sentencing.