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ATTORNEY FOR APPELLANT:

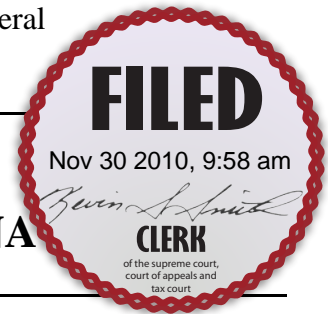
THOMAS W. VANES
Office of the Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



ANTHONY B. RIAS, II,)
)
Appellant-Defendant,)

vs.)

No. 45A03-1004-CR-182

STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0810-MR-00010

November 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Anthony B. Rias, II (“Rias”) appeals his conviction for Felony Murder.¹ We affirm.

Issue

Rias presents the sole issue of whether the trial court abused its discretion by admitting evidence, over Rias’s objection, that he was then incarcerated in the Lake County Jail.

Facts and Procedural History

In 2007, nineteen-year-old Dominique Keesee (“Keesee”) became romantically involved with Dionne Austin (“Austin”), who had dated Rias’s father for six or seven years before she ended the relationship.² Rias told a friend that “his dad was upset about the whole situation and he had had a nervous breakdown.” (Tr. 626.)

Sometime in November of 2007, Rias approached Austin’s daughter at school and told her, “after Friday you don’t have to worry about Dominique any more.” (Tr. 79.) Also, Rias’s friend Jamal Hillsman (“Hillsman”) heard Rias say that “he should have Khalid [Jackson-Bey] kill Dominique.” (Tr. 621.)

On November 16, 2007, Rias, Hillsman, Edgar Covington, Jermaine Hammonds, and Mrtyrone Metcalf visited with Khalid Jackson-Bey (“Jackson-Bey”) and his brother, Haneef, at the Jackson-Bey home. Rias asked the Jackson-Bey brothers and Metcalf if they wanted to

¹ Ind. Code § 35-42-1-1.

² According to Austin’s testimony, Anthony Rias, Sr. continuously sought reconciliation with her after she began dating Keesee, and at some point Austin began to simultaneously date Anthony Rias, Sr. and Keesee.

scope out Keesee's residence and "hit a lick" (in street terms, commit a robbery). (Tr. 607.) The group of young men, excluding Haneef, left in Hillsman's blue Ford Explorer. Jackson-Bey was armed with a small silver gun. They picked up Jamil Pirant, and Rias and Jackson-Bey explained to him "what was supposed to happen." (Tr. 610.) Pirant indicated that he had also brought a "duce-duce" (a small gun with an extended clip). (Tr. 292.)

The group proceeded to a White Castle, where Rias procured a loaner vehicle, a white Ford Explorer, from one of his friends. Rias, Metcalf, Pirant, and Jackson-Bey drove off in the white Explorer, with Hillsman, Covington, and Hammonds following in the blue Explorer. Rias, who had been driving the white Explorer, stopped the vehicle in an alley. The three occupants of his vehicle went to the apartment owned by Austin and occupied by Keesee. The blue Explorer was parked nearby.

After several minutes, Covington exclaimed that he had heard gunshots. Hammonds exited the blue Explorer and began to run. Rias drove up to Hillsman's vehicle and directed him to follow so that the white Explorer could be hidden. Once the white Explorer was parked, Rias got into Hillsman's blue Explorer and they proceeded to the alley by Keesee's apartment. Jackson-Bey, Metcalf, and Pirant came running up to the vehicle, blood-spattered and carrying black bags and a camera.

Austin found Keesee in his apartment, suffering from gunshot wounds to the head and chest. He had been shot approximately fifteen times, from two .22 caliber weapons. Medical assistance to Keesee proved futile and he died. Meanwhile, Rias and Hillsman returned the white Explorer to its owner and Covington, Jackson-Bey, Metcalf and Pirant went back to the

Jackson-Bey house. They divided up marijuana and possessions that had been taken from Keesee's apartment; some of the young men began to play a video game that had been stolen from Keesee.

Several months later, Rias, Jackson-Bey, and Metcalf were charged with Keesee's murder. Hillsman was charged with assisting a criminal. Charges against Covington and Hammonds were also filed, but then dismissed. The jury found Rias guilty of Felony Murder, and he was sentenced to forty-five years imprisonment.³ He now appeals.

Discussion and Decision

Rias claims that the State was permitted to elicit testimony "undermining the presumption of innocence to which he was entitled," Appellant's Brief at 5, when the following exchange took place:

Defense Counsel: Where do you reside, what city?

Rias: Currently in Gary, Indiana.

Defense Counsel: Okay, who do you reside there with?

Rias: My mother.

* * *

Prosecutor: Isn't it true that you're not living with your mom in Gary, Indiana, right now, but residing in Crown Point, Indiana, at the Lake County Jail?

Rias: Well, I don't live there, I'm incarcerated there at the moment.

(Tr. 764-65, 802-03.)

³ In separate trials, Jackson-Bey and Metcalf were found guilty of Keesee's murder.

The decision to admit or exclude evidence is a matter within the sound discretion of the trial court. Collins v. State, 826 N.E.2d 671, 677 (Ind. Ct. App. 2005), trans. denied. We afford the evidentiary decision great deference upon appeal and reverse only when a manifest abuse of discretion denies the defendant a fair trial. Id. An abuse of discretion has occurred when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id.

We observe that otherwise inadmissible evidence may become admissible where the defendant "opens the door" to questioning on that evidence. Jackson v. State, 728 N.E.2d 147, 152 (Ind. 2000). The evidence relied upon to "open the door" must leave the trier of fact with a false or misleading impression of the facts related. Id.

Rias first raised the matter of his residency during his direct examination by his counsel. Rias testified that, at the time of Keese's murder, when Rias was seventeen, he had been living with his father in East Chicago. He further testified that he was currently residing with his mother in Gary. It is apparent that he opened the door to further inquiry into his residence, having created the impression that he was residing with a parent when, in fact, he was incarcerated. The trial court did not abuse its discretion by permitting the State to cross-examine Rias regarding his residence in order to correct the misleading impression fostered by his direct examination testimony.

Affirmed.

RILEY, J., and KIRSCH, J., concur.