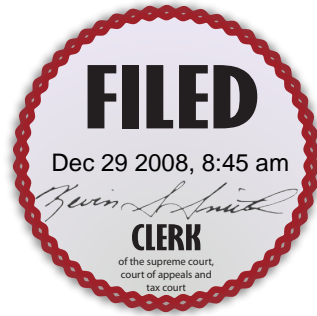


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ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO C. PUTMAN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0806-CR-526

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 4
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0705-MR-93793

December 29, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Antonio C. “Memphis” Putman (Putman), appeals his convictions for two counts of murder, felonies, Ind.Code § 35-42-1-1, and carrying a handgun without a license, a Class A misdemeanor, I.C. § 35-47-2-1.

We affirm.

ISSUE

Putman raises one issue, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Putman committed murder and carrying a handgun without a license.

FACTS AND PROCEDURAL HISTORY

Sometime in October of 2005, Putman got into a street fight with Donsha “Payday” Jones (Payday) and Theaphulus “Bug” Carter at the Hermitage Apartments in Indianapolis, Indiana. Anthony “T-Money” Williams, a friend of Putman, came around the corner and fired a gun into the air. Payday “jumped in” a black Intrepid and “sped off.” (Transcript p. 295). The police were called, but by the time that they arrived at the scene, everyone had left. After the fight, Payday left town and moved to Ohio for a period of time.

A couple of weeks later, Tiffany Farral (Tiffany), Payday’s girlfriend, and her sister, Jenesia Farral (Jenesia), saw Putman in the laundry room at the Hermitage Apartments, and Putman asked where Payday was. They told Putman that Payday was not around.

Sometime during the middle of November 2005, Valerie Gilbert, Tiffany and Jenesia’s mother, was outside Tiffany’s apartment in a car waiting to leave. She saw Putman

pull up and get out of a blue Mercury Grand Marquis. Putman ran into one of the buildings and came back out. Towards the end of the year 2005, Payday came back to Indianapolis, and moved in with Tiffany at a house on Reisner Street.

Burnnetter Adams (Adams) knew both Putman and Payday. Putman was her drug dealer, and she knew Payday through a friend of hers named Lee. On New Year's Eve, 2005, Adams received a phone call from Putman. Putman told Adams that Payday's number had changed and asked Adams where Payday was living. Adams did not know Payday's specific address, but knew where the house was on Reisner because she had been there before. Adams gave Putman directions to Payday's house. On February 7, 2006, between 6:00 p.m. and 8:00 p.m., Putman called Adams again. This time he asked Adams to tell him the color of Payday's house.

Reba Freeman (Reba) and her husband Brian Freeman (Brian) (collectively the Freemans) lived in a house with Putman and his girlfriend. On the evening of February 7, 2006, Reba saw Putman clean a black gun that "looked like an Uzi." (Tr. p. 100). After Reba had gotten ready for bed, Brian and Putman left to go out. The Freemans owned a blue Mercury Grand Marquis, but Putman drove it most of the time.

That same evening, Venitra Farral (Venitra), Tiffany's cousin, was visiting at Payday and Tiffany's home, as she did frequently. Tiffany's three children were also at the home. Sometime after 11:00 p.m., Tiffany drove Venitra home. Venitra lived about twelve minutes away. Tiffany's oldest daughter rode with them. Venitra called Tiffany's house around midnight but received no answer.

Around 11:30 p.m. or 12:00 a.m., Cheryl Samples (Samples) came home after shopping. Her house was on Reisner Street, located next door to Payday and Tiffany's home. She noticed a blue car parked in front of Payday and Tiffany's home. She had seen the blue car earlier that day, but it was not a car frequently parked outside of the house. She briefly spoke with a black male who was at Payday and Tiffany's front door. Payday and Tiffany did not often use their front door; they typically entered their home through a side door or the back door. Samples noticed that the man had a southern accent when he spoke and wore his hair in braids.

Samples heard loud rap music come on, either from a car or from a house. She hurried into her house. After entering, she heard "some pounding or something, like someone beating on something . . . and then [she] heard some pops, and [she] thought, well, it must be firecrackers." (Tr. p. 67). Samples briefly spoke with her boyfriend, who was in bed. Then she went back outside. The front door of Payday and Tiffany's house was open, and Tiffany's three-year-old daughter was outside saying, "My daddy, my daddy, my daddy dead." (Tr. p. 68). The blue car that had been parked in front of the house was gone. Samples called 911.

Someone had kicked in the front door of Payday and Tiffany's house, walked to their bedroom, and fired fourteen shots at Payday and Tiffany, who were lying in their bed. Payday died at the scene, and Tiffany died later that night after being taken to the hospital.

Putman and Brian returned home after Reba had been asleep for several hours. They woke her up asking about whether anything had happened on the news. Brian told Putman

that he was impressed because Putman did not hesitate while going into some house. Brian then began telling Reba about how it felt “to have the gun and spraying, how they sprayed the room.” (Tr. p. 108). Brian and Putman talked about kids being in the house, but not hurting them, and said that the victims were in bed. Brian told Reba that she “had to take this information to [her] grave or [] die.” (Tr. p. 109).

A firearms expert analyzed bullets and casings found at the scene. He checked the markings on the bullets and casings and determined that the majority of the rounds fired at the scene had been fired by a Norinco model M320 that IMPD officers later seized from another criminal incident. A Norinco model M320 “has the same physical features of an IMI Uzi.” (Tr. p. 257).

Sometime during the investigation of the murders, police officers went to the Freemans’ home. They questioned Reba, but she informed them that she knew nothing. Later, in May of 2007, Reba told officers about what she witnessed on the evening of February 7 and morning of February 8, 2006.

On May 29, 2007, the State filed an Information charging Putman and Brian with: Count I, murder, a felony, I.C. § 35-42-1-1; Count II, murder, a felony, I.C. § 35-42-1-1; Count III parts one and two, carrying a handgun without a license, as a Class C felony, I.C. §§ 35-47-2-1 and 35-47-2-23; and Count IV, carrying a handgun without a license, as a Class A misdemeanor, I.C. § 35-47-2-1. On April 28 and 29, 2008, the trial court held a jury trial. The jury found Putman and Brian guilty as charged on Counts I, II, and III. The State dismissed the enhancement of the carrying a handgun without a license charge. The trial

court entered convictions for two counts of murder and carrying a handgun without a license, as a Class A misdemeanor. The trial court sentenced Putman to sixty-five year sentences for each murder conviction, to be served consecutively, and one year on the carrying a handgun without a license conviction, to be served concurrently, for an aggregate sentence of one hundred thirty years.

Putman now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Putman argues that Reba's testimony was incredibly dubious and without her testimony, the evidence presented by the State was insufficient to sustain his convictions. Specifically, Putman argues that Reba's first statement to police that she did not know anything about the murders contradicted her subsequent statement to police and trial testimony, and, therefore, her testimony should be discredited.

Our standard of review with regard to sufficiency claims is well settled. In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), *trans. denied*. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Under the “incredible dubiousity rule,” we will impinge upon the jury’s responsibility to judge the credibility of the witnesses only when it has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994). “When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed.” *Newson v. State*, 721 N.E.2d 237, 240 (Ind. 1999). The application of this rule is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant’s guilt. *Id.*

Here, Reba’s testimony does not fit the incredible dubiousity rule. First addressing coercion, Reba testified that she had been warned by Brian that she “had to take this information to [her] grave or [] die.” (Tr. p. 109). As such, her previous contradictory statement that she did not know anything about the murders was coerced, not her trial testimony.

Further, Reba’s testimony was substantially corroborated. She testified that she saw Putman with a gun that looked like an Uzi, and the firearms expert determined that a gun that looked like an Uzi was used in the murders. Reba also testified that Putman and Brian had a blue car available for their use the night of the murders, and a blue car was spotted at the scene but was gone shortly after the murders. Further, Reba testified that Putman and Brian were gone from home during the time when the murders occurred. And finally, Reba testified that Brian stated they shot people while they lay in bed, but did not harm children

who were also in the house. Payday and Tiffany were shot while they lay in bed, and Tiffany's children who were in the house were not harmed.

Moreover, Putman only complains that Reba's prior out of court statement contradicted her trial testimony, not that any portion of her trial testimony was in contradiction to other trial testimony. A witness's trial testimony that contradicts that witness's earlier statements does not make such testimony incredibly dubious. *Stephenson v. State*, 742 N.E.2d 463, 498 (Ind. 2001).

For these reasons, we conclude that Reba's testimony was not inherently improbable, coerced, equivocal, or uncorroborated, and, therefore, the "incredible dubiousity rule" does not apply to Reba's testimony. Because Putman's contention that the evidence was insufficient relied upon his contention that Reba's testimony was incredibly dubious, we need not consider further whether the evidence was sufficient.

CONCLUSION

Based on the foregoing, we conclude that the "incredible dubiousity rule" does not apply to Reba's testimony, and the evidence submitted by the State was sufficient to sustain Putman's convictions.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.