

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Kristin A. Mulholland
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Alvino S. Amaya,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 23, 2022

Court of Appeals Case No.
22A-CR-1242

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-2102-MR-16

Bailey, Judge.

Case Summary

- [1] Alvino Amaya (“Amaya”) appeals his convictions for two counts of Murder.¹ He presents the sole issue of whether the trial court abused its discretion in admitting voice identification testimony. We affirm.

Facts and Procedural History

- [2] In the fall of 2020, teenagers Elijah Robinson (“Elijah”), Elijah D. Robinson (“Elijah D”), Johnny Hubbard (“Johnny”), and Max Kroll (“Max”) worked together at a fast-food restaurant in Griffith. They typically socialized together at the house in Gary where Johnny, his mother Dawn Carden (“Dawn”), and Amaya lived. Dawn, whom the teenagers called “Momma D,” sometimes provided alcohol and marijuana to her guests.
- [3] On September 28, 2020, Dawn hosted a birthday party for Elijah. Guests included Max, Elijah’s girlfriend Destiny Solich (“Destiny”), and Elijah’s sister Natalie Robinson (“Natalie”). The partygoers were drinking alcohol, smoking marijuana, and taking Ecstasy. They also passed around guns, posed with them, and posted pictures on social media sites. After the party, Dawn complained that a Glock .19 was missing.

¹ Ind. Code § 35-42-1-1.

[4] On October 15, 2020, Elijah D visited Amaya’s residence, where he heard Dawn tell Amaya that they were going to search the house for the missing gun. Elijah D did not join in the search and eventually fell asleep on the sofa. In the middle of the night, Elijah D was awakened by Amaya, who told him they were going to “go on a run.” (Tr. Vol. III, pg. 97.) Elijah D got into the backseat of Amaya’s vehicle, and Amaya explained that he and Elijah D were “about to go to Max’s house to look for this gun.” (*Id.* at 100). Amaya drove to the house where Elijah and Max lived and parked two houses away. Amaya tied a red bandana around his face before entering an unlocked door that led to the basement.

[5] Elijah D followed Amaya into the basement where Elijah and Max were sleeping. Elijah D saw Amaya put a gun against Elijah’s head to wake him and heard Amaya demand that Elijah produce the missing gun. Elijah responded that he didn’t have the missing gun, but he offered to let Amaya take a different one. Amaya grabbed the offered gun, pulled Elijah up by his collar, and forced him at gunpoint toward Max’s room. Amaya yelled at Max to wake up and again demanded the missing gun. Max pointed to a white basket. Amaya moved as if to check inside the basket but exclaimed, “Fuck this” and shot Max in the head. (*Id.* at 114.) Amaya then shot Elijah in the head.

[6] Amaya and Elijah D went back to Amaya’s vehicle, where Amaya told Elijah D that he “didn’t like rats.” (*Id.* at 119.) When they returned to Amaya’s residence, Dawn asked what had happened. Amaya responded, “I just fucking

killed them.” (*Id.* at 121.) Dawn and her father later rented a storage unit and placed the murder weapon inside it.

[7] Before Elijah had gone to sleep, he and Destiny had initiated a FaceTime call. Destiny kept her line open even after she believed Elijah to be asleep, as was their custom. During the night, Destiny heard a voice in the background, which she would later identify as Amaya’s voice, saying: “Where the fuck is the gun? Give me the gun. Where’s the Glock .19? Momma D said she left it in the car.” (Tr. Vol. II, pgs. 25-26.) The next morning, Destiny could not reach Elijah. She and Natalie got a ride and went over to check on Elijah and Max. They entered the basement and saw that both young men were dead.

[8] On February 11, 2021, the State of Indiana charged Amaya with two counts of murder. On August 16, 2021, the State added a firearm enhancement allegation. Amaya was tried before a jury in a trial that commenced on February 28 and ended on March 3, 2022. Amaya was convicted as charged and the trial court determined that a firearm enhancement was applicable. On April 29, 2022, Amaya received two consecutive sentences of sixty years, with the aggregate sentence enhanced by ten years for use of a firearm. Amaya now appeals.

Discussion and Decision

[9] At trial, Amaya moved to exclude Destiny’s voice identification testimony on grounds that her knowledge came from an “out of court source” and the source

was not subject to cross-examination. (Tr. Vol. II, pg. 7.) The trial court conducted a hearing outside the presence of the jury, at which Destiny stated that she was familiar with Amaya's voice because she had met and conversed with Amaya at Elijah's birthday party and had also heard Amaya's voice over the phone. Destiny conceded that she had first told the police only that the speaker was an older Hispanic male, and that her specific identification was also "predicated upon a conversation [she] had with Elijah Robinson and others concerning a missing weapon." (*Id.* at 8.) The trial court ruled that Destiny would be permitted to testify that she had recognized Amaya's voice and the surrounding circumstances would be relevant to "weight, not admissibility." (*Id.* at 14.) Amaya now argues that Destiny's identification should have been excluded "because it was based on hearsay rather than personal perception." Appellant's Brief at 9.

[10] Pursuant to Indiana Evidence Rule 701(a), opinion testimony from a lay witness is limited to that which is "rationally based on the witness's perception." Evidence Rule 801(c) defines "hearsay" as "a statement that (1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted."

[T]rial courts have broad discretion in ruling on the admissibility of evidence, and we review evidentiary rulings for an abuse of that discretion. *Shoda v. State*, 132 N.E.3d 454, 460 (Ind. Ct. App. 2019). An abuse of discretion occurs if the court's decision clearly contravenes the logic and effect of the facts and circumstances before it, or if the court misinterprets the law.

Kerner v. State, 178 N.E.3d 1215, 1225 (Ind. Ct. App. 2021), *trans. denied*.

[11] At the outset, we observe that the trial court excluded testimony of any specific statement Elijah may have made to Destiny concerning a missing gun. She testified only that she was aware of the allegation of theft. As such, the State did not introduce into evidence a statement by a declarant not testifying at trial to prove the truth of the matter asserted. *See* Evid. Rule 801(c).

[12] Contextually, Destiny identified Amaya’s voice after learning that Amaya, Dawn, or both of them had accused Max of stealing a gun. The words overheard related back to a missing gun. But Destiny also explained the independent bases for her voice identification. Destiny testified to the jury that she had conversed with Amaya in person, she had heard him speak multiple times, and she knew his voice. According to Destiny, she was “a hundred percent positive it was his voice.” (Tr. Vol. II, pg. 42.)

[13] Amaya contends that Destiny had little opportunity to become familiar with his voice and thus her voice identification testimony was predicated upon the rumored animosity between Amaya and some of the teenagers. However, such considerations as length of conversation or depth of interaction “goes to the weight of the evidence rather than its admissibility.” *State v. Motley*, 860 N.E.2d 1264, 1266 (Ind. Ct. App. 2007). Moreover, Destiny’s testimony that it was Amaya whom she heard demand a gun from Elijah is cumulative of the testimony of Elijah D, admitted without objection. We find no abuse of

discretion in the admission of Destiny's lay opinion that she heard Amaya's voice.

Conclusion

[14] Amaya has failed to demonstrate that the trial court abused its discretion in the admission of evidence.

[15] Affirmed.

Riley, J., and Vaidik, J., concur.