ATTORNEY FOR APPELLANT:

KATHERINE A. CORNELIUS
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

QUINCY WOODARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0603-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0408-FA-147775

November 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Quincy Woodard ("Woodard") appeals his conviction for voluntary manslaughter as a Class A felony. Specifically, Woodard contends that the trial court erred by admitting several photographs of the victim's body at the crime scene into evidence, that the prosecutor committed prosecutorial misconduct by insinuating to the jury during closing argument that she possessed information that the jurors did not have, and that the evidence is insufficient to prove that he acted knowingly. Finding no error in the admission of the photos, that the prosecutor did not engage in misconduct, and that the evidence is sufficient to prove that Woodard acted knowingly, we affirm.

Facts and Procedural History

The facts most favorable to the verdict reveal that on August 12, 2004, Ronnell Lancaster ("Ronnell"), Jerail Woodard ("Jerail"), Evans Harvey ("Evans"), and Scott Dixson ("Scott") went to Woodard's house on West 27th Street in Indianapolis to play the new 2005 Madden football videogame. Woodard's girlfriend and one-year-old son were also there. The group of men, except Scott, had played basketball together the day before. While getting ready to play the videogame in the living room, the group discussed how each of them had played the previous day. An argument erupted between Woodard and Ronnell—who, along with Jerail, were cousins—regarding who had played the best. Ronnell offered to play Woodard one-on-one for money to settle the dispute, but Woodard declined.

At this point, the argument became heated. Woodard called Ronnell names, such as "bi*ch," "ho," and "f*g," and told him that he was "waiting to make an example out of

a ni**er like you" and that he was "like these other ni**ers out [t]here on the street." Tr. p. 97. Woodard eventually asked everyone to leave his house, but no one left. Woodard then went to his bedroom, retrieved a forty caliber Glock semi-automatic handgun, cocked the gun before re-entering the living room, pointed it at Ronnell's chest, and said, "[Y]ou thought I was playing huh[?]" *Id.* at 103. Ronnell, who was sitting on the couch, reached toward the gun but did not make contact with it. Woodard then shot Ronnell in the chest from close range. Ronnell stood up, grabbed his chest, walked to the front door, and collapsed on the threshold. Woodard then exited his house by stepping over Ronnell's body, threw the gun into his front yard, and fled. Ronnell died at the scene from the gunshot wound to his chest. Woodard turned himself in to the police three days later after his picture was broadcast on local media. According to forensic pathologist Steven Radentz, the gun was approximately one-half inch from Ronnell's chest when it was fired. *Id.* at 179-80. And according to Cole Goater, an expert in firearms forensics, the only way to make the Glock fire was to pull the trigger. *Id.* at 158, 165.

The State charged Woodard with voluntary manslaughter as a Class A felony and aggravated battery as a Class B felony. At Woodard's jury trial, the defense theory was that Woodard was waving the gun around in the air when it discharged. Following trial, the jury found Woodard guilty as charged. Finding that the convictions merged, the trial court sentenced Woodard to the presumptive term of thirty years for voluntary

manslaughter[1] with five years suspended and two years of probation. Woodard now appeals his conviction.

Discussion and Decision

Woodard raises three issues on appeal. First, he challenges the admission of several photographs of the victim. Second, he contends that the prosecutor committed prosecutorial misconduct. Last, he contends that the evidence is insufficient to support his conviction. We address each issue in turn.

I. Photographs

First, Woodard contends that the trial court erred by admitting State's Exhibits 10, 11, and 13. Exhibit 10 is a close-up photo of Ronnell's body lying in the front doorway of Woodard's house. Exhibits 11 and 13 are also photos of Ronnell's body lying in the doorway; however, they are not close-up photos and show some of Woodard's front yard. Exhibit 13 also shows the gun in the front yard. All of the photos depict pooling blood. At trial, Douglas Boxler, a crime scene specialist, testified that the photos accurately depicted the area when he arrived on the scene. Woodard objected to the photos on grounds that they did not accurately depict the scene because paramedics had worked on Ronnell and because the photos were cumulative of each other. The trial court admitted Exhibits 10, 11, and 13 because they showed the scene when Boxler arrived, not when the first responding officers arrived.

[1] Ind. Code § 35-42-1-3(a).

The State then moved to admit State's Exhibit 19, a videotape of the crime scene. Defense counsel said "[n]o objection," and the trial court admitted the videotape. *Id.* at 72. Neither the photos nor the videotape were published to the jury when they were admitted into evidence. Shortly before a recess, the prosecutor informed the trial court that he was ready to publish the exhibits and play the videotape. After the recess, the trial court asked the prosecutor if he wanted to "display the rest of your exhibits and have the jury examine them" after the videotape was played. *Id.* at 80. The prosecutor responded, "At this time all I want to do is do the videotape, given the hour I would just as soon we hold those until closing or closer toward the end of the trial so that we can go ahead and get some more witnesses on today." *Id.*

At this point, the trial court questioned its earlier ruling that State's Exhibits 10, 11, and 13 were admissible. The trial court said that it was going to revisit the issue of whether the exhibits were cumulative after the videotape was played. The videotape was then played, which showed, among other things, close-up images of Ronnell's body and pooling blood as well. After the videotape was played, the trial court informed the parties that it had reconsidered Woodard's objection to State's Exhibit 10, 11, and 13 and decided that Exhibits 11 and 13 were inadmissible because they were cumulative but that Exhibit 10 was admissible. *Id.* at 167. The trial court then published most of the exhibits from the trial, specifically including the photos, to the jury.[2] *See id.*

[2] In his reply brief, Woodard argues that the prosecutor showed the photos to the jury before the videotape was played. Appellant's Reply Br. p. 1 (citing Tr. p. 78). However, based on all of the exchanges between the prosecutor and the trial court and the trial court's later publication of the exhibits,

On appeal, Woodard challenges the admission of State's Exhibits 10, 11, and 13. The admission of photographic evidence is within the trial court's sound discretion and is reviewed only for an abuse of that discretion. *Prewitt v. State*, 819 N.E.2d 393, 415 (Ind. Ct. App. 2004), *trans. denied*. Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally. *Id.* Photographs that depict a victim's injuries are generally relevant and admissible. *Id.* As for Exhibits 11 and 13, the trial court initially admitted them into evidence but never showed them to the jury. The court then reconsidered its ruling and sustained Woodard's objection to them. As such, there was no harm in admitting and then excluding Exhibits 11 and 13 because the jury never saw them.

As for Exhibit 10, which is a close-up photo of Ronnell's body lying in the doorway, we note that it is cumulative of Exhibit 19, the videotape of the crime scene, which was admitted into evidence without objection and also showed close-up images of Ronnell's body and pooling blood.[3] Any error in the admission of evidence is harmless error for which we will not reverse a conviction if the erroneously admitted evidence was cumulative of other evidence appropriately admitted. *Candler v. State*, 837 N.E.2d 1100, 1105 (Ind. Ct. App. 2005), *reh'g denied*. Therefore, any error in admitting Exhibit 10 was harmless.

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which specifically included "primarily pictures," we find that the photos were not shown to the jury before the videotape was played. Tr. p. 167.

[3] The only argument Woodard makes on appeal regarding Exhibit 19, to which he did not object at trial, is that it is cumulative of the photos and therefore should have been excluded. However, as discussed above, the videotape was shown to the jury *before* the photos.

II. Prosecutorial Misconduct

Next, Woodard contends that the prosecutor committed prosecutorial misconduct by insinuating to the jury during closing argument that she possessed information that the jurors did not have. During closing argument, defense counsel argued to the jury that the State had called only one witness out of several it had subpoenaed and who were present at trial because only one witness would provide testimony in support of the State's version of events. The prosecutor then responded:

> But you know what, the State has to make a decision and Mr. Poindexter told you about that decision. Who do we put on that stand in front of you. Do you hold it against us if we put someone on that stand who is clearly not telling you the truth? That's the dilemma that the State of Indiana is in. When we put a person on that stand you should expect that these people are telling you the truth. But you know what, if we put someone on that stand who has lied, who has a bias or an interest and we're not clear of whether or not they're telling you the truth, are you going to hold that against the State of Indiana if we've chosen not to . . . .

Tr. p. 439. At this point, defense counsel objected on grounds that the prosecutor was giving her personal belief and asked the trial court for an admonishment. The trial court gave the following admonishment:

> Ladies and gentlemen, I was an advocate for twenty-seven years before I started sitting up here. An attorney cannot suggest to a jury that he or she has knowledge the jury doesn't have. It's up to the jury to make certain decisions, who[m] you believe, who[m] you don't believe. The fact that an attorney has made a decision is not to be considered by you. I think that Ms. Rasheed's going to clarify something she just said and so that's all we need to say on this topic for right now. Ms. Rasheed, please continue.

Id. at 440-41. The prosecutor resumed:

> I am not for one minute trying to tell you that there is information you know different than what you heard in this courtroom. You saw these witnesses being impeached of a prior statement. You heard them say that

> they weren't completely truthful to some of them, not completely truthful on another occasion . . . . I'm not trying to mislead you. . . . You have a right to consider whether or not you believe their testimony here today. . . . And I apologize if I mislead by my statement, that's not my intention.

Id. at 441.

When reviewing a properly-preserved claim of prosecutorial misconduct, we determine: (1) whether the prosecutor engaged in misconduct; and if so, (2) whether the misconduct, under all of the circumstances, placed the defendant in a position of grave peril to which he or she should not have been subjected. *Booher v. State*, 773 N.E.2d 814, 817 (Ind. 2002). "The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct." *Id.* "A defendant waives appellate review of the issue of prosecutorial misconduct when he fails to immediately object, request an admonishment, and then move for mistrial." *Reynolds v. State*, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003); *see also Dumas v. State*, 803 N.E.2d 1113, 1117 (Ind. 2004) ("When an improper argument is alleged to have been made, the correct procedure is to request the trial court to admonish the jury. If the party is not satisfied with the admonishment, then he or she should move for mistrial. Failure to request an admonishment or to move for mistrial results in waiver.") (internal citations omitted).

Here, defense counsel objected to the prosecutor's comments and asked for an admonishment. However, after the trial court admonished the jury, defense counsel—apparently satisfied with the court's admonishment and prosecutor's clarification—did not move for mistrial. Because defense counsel failed to move for mistrial, Woodard's

claim of prosecutorial misconduct is procedurally foreclosed and reversal on appeal requires a showing of fundamental error. *See Brown v. State*, 799 N.E.2d 1064, 1066 (Ind. 2003). For prosecutorial misconduct to constitute fundamental error, it must "make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process [and] present an undeniable and substantial potential for harm." *Booher*, 773 N.E.2d at 817 (quotation omitted).

Here, the prosecutor's statements did not place Woodard in a position of grave peril or make a fair trial impossible. This is especially so given the trial court's admonishment to the jury that an attorney cannot suggest that she has information that the jurors do not, that the jury should not consider the prosecutor's opinion, and that it is up to the jurors to decide whom to believe. The prosecutor also told the jurors that she was not trying to mislead them and that she was not implying that she knew something that they did not. In addition, prosecutors are entitled to respond to allegations and inferences raised by the defense even if the prosecutor's response would otherwise be objectionable. *Dumas*, 803 N.E.2d at 1118. Here, the prosecutor was responding to defense counsel's suggestion that the State presented the only witness who would testify in support of its theory of the case. Woodard has failed to establish prosecutorial misconduct.

III. Sufficiency of the Evidence

Last, Woodard contends that the evidence is insufficient to support his conviction for voluntary manslaughter. Specifically, he argues that the evidence shows that he acted recklessly, not knowingly, and therefore his conviction should be reversed. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or

judge the credibility of witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id*. We will uphold the conviction if there is substantial evidence of probative value to support it. *Id*.

In order to prove that Woodard was guilty of voluntary manslaughter as a Class A felony, the State was required to prove that he knowingly or intentionally killed Ronnell with a deadly weapon while acting under sudden heat. Ind. Code § 35-42-1-3(a)(1). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). In arguing that the evidence is insufficient to prove that he acted knowingly, Woodard claims that Jerail's testimony is "inherently inconsistent," "suspect," "dubious," and "unsubstantiated." Appellant's Br. p. 17-19. Although Woodard does not cite the incredible dubiosity rule, we find that he is nevertheless invoking this rule. The incredible dubiosity rule provides that a court may "impinge on the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002). The application of this rule is limited to where the sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt. *James v. State*, 755 N.E.2d 226, 231 (Ind. Ct. App. 2001), *trans. denied*. Our Supreme Court has recognized that "application of this rule is

rare and that the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001) (citation omitted).

At trial, Jerail testified that Woodard and Ronnell were arguing about who was the best basketball player and that the argument became heated when Woodard refused Ronnell's challenge to play one-on-one for money. Woodard called Ronnell various names and then went to his bedroom to retrieve his gun. Woodard cocked the gun before re-entering the living room, stood over Ronnell, pointed the gun at his chest, and said, "[Y]ou thought I was playing huh[?]" Tr. p. 103. According to Jerail, Woodard was not waving the gun around the room and his finger was on the trigger. Ronnell reached out for the gun but did not touch it. Woodard then shot Ronnell in the chest from close range.

In challenging Jerail's testimony, Woodard essentially argues that other witnesses presented a different version of events and that Jerail originally told the police a slightly different story. However, Jerail explained his earlier statements to the police and what he meant by them, and the jury heard his explanation.[4] In addition, there was expert

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[4] For example, Woodard argues on appeal that although Jerail testified at trial that Woodard pointed the gun at Ronnell, he originally told the police that Woodard was not necessarily pointing the gun at Ronnell. When confronted with this alleged inconsistency at trial, Jerail told defense counsel that he was "misunderstood." Tr. p. 128. Jerail then explained:

> How [Woodard] brought it was in a pointing manner, he did point sideways, but how he was swinging it up and how he was brin[g]ing it up at first it looked like he was going to smack him with it but it pointed sideways. . . . His aim wasn't perfect but it was aimed basically.

Id. Such "inconsistencies" do not merit application of the incredible dubiosity rule.

testimony that the Glock handgun that Woodard used could only be fired by pulling the trigger, not by being hit or dropped, and that the gun was approximately one-half inch from Ronnell's chest when it was fired. Given the above evidence, Woodard has failed to prove that Jerail's testimony is incredibly dubious. As such, Woodard's arguments are merely an invitation for us to reweigh the evidence, which we will not do. The evidence is sufficient to prove that Woodard acted knowingly; therefore, we affirm his conviction for voluntary manslaughter.

Affirmed.

BAKER, J., and CRONE, J., concur.