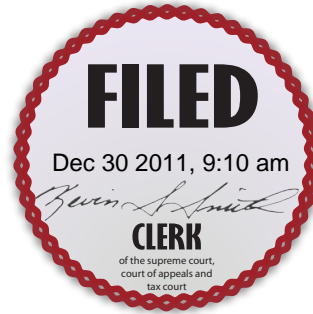


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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SHAWN WILLIAMS, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 71A04-1106-CR-491  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D01-1008-MR-6

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**December 30, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Shawn Williams appeals his conviction for murder. Williams raises one issue which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The relevant facts follow. In 1996, Williams, Williams's cousin Aaron Cross, Rodney Johnson, and Lyman Diggins sold drugs. Approximately a month or two prior to November 6, 1996, Diggins received an insurance settlement. Less than two months before November 6, 1996, Cross, Williams, Johnson, and Kukay Groves went to Diggins's apartment in South Bend. Diggins was not home, and they kicked in the door and looked for money and drugs. After the burglary, Diggins gave Williams some drugs. Williams and Johnson were supposed to give the drugs back, but they sold them. Diggins wanted payment or return of the drugs and would come around every week "looking to be repaid." Transcript Vol. III at 77. Diggins told Williams and Johnson that if they did not have his money "he was going to do something to them." *Id.* at 78.

Williams and Johnson told Diggins that they would give him his drugs at a storage area. Williams went into a storage unit, grabbed a bag and his pistol, exited the storage unit, and shot Diggins in the face. Johnson also fired shots into Diggins's body. Williams and Johnson left Diggins at the storage unit, returned later and drove Diggins to Mishawaka, where they burned his body inside his vehicle.

On the morning of November 6, 1996, police and firefighters responded to a burning vehicle and discovered Diggins's body crumpled on the floorboard of the passenger side of the burned vehicle. Investigators found a plastic nozzle from a fuel container on the ground several feet to the south of the vehicle and a gas cap. Diggins

died as a result of multiple gunshot wounds, including one to the head and neck area and three in the right chest or right thorax area, and any of the wounds could have killed him. Bullets were recovered which were consistent with being fired from a single firearm from the “.38 family,” which includes nine millimeter firearms, and a single firearm from the “.45 family.” Transcript Vol. II at 163, 166. A latent print from the fuel filler ring was later determined to be made by the right index finger of Johnson.

After the murder, Cross recognized Diggins’s vehicle in the newspaper, called Williams, and went to talk to Williams. Williams told Cross “that after [they] went to [Diggins’s] house, that [Diggins] scared or something, and [Diggins] gave [Williams] some dope. And they didn’t have his money for his dope when he came to get it. So when he came to get his money for his dope, they killed him.” Transcript Vol. III at 14. Williams also told Cross that they killed Diggins at a storage area and later drove him to Mishawaka and burned the body. Williams’s demeanor was “[c]ool, calm and collected” when he first told Cross about the murder. Id. at 20. Williams “always bragged” about the murder. Id. at 19.

Three weeks after the murder, Williams’s cousin Shawann Dickens was riding with Williams, and Williams told him that he killed Diggins because Williams owed Diggins money for drugs. Williams told Dickens that the murder occurred at the storage place and that he had told Diggins that he had his money and could meet him there. Williams also said that he shot Diggins with a “.45” first and then told Johnson that they were “both in it together,” and Johnson then shot Diggins. Id. at 81-82. Williams also

stated that they then went to “get a gas can and filled it up, and took [Diggins] out on Day Road and set him on fire.” Id.

In December 2004, Cross talked to Timothy Corbett, the Commander of the St. Joseph County Metro Homicide Unit, when Cross was incarcerated. Cross provided details about the murder that were not public at that time. At some point after Cross started talking, Takeisha Jacobs, the mother of Cross’s children, received a phone call from Williams in which he stated: “Aaron is going to get you and your kids hurt, with all this talking that he’s doing.” Id. at 60.

In late 2005, Williams called Jamel Farmer, discussed Diggins, and told Farmer that he felt like “his cousin did him bogus” and offered Farmer nine ounces of dope to kill Cross. Id. at 179. Williams also stated that “he had a detective that was on his ass” by the name of Tim Corbett and that Williams “needed him out of the way.” Id. at 180. Williams told Farmer that if he “[got] rid of” Cross and Corbett that he would give Farmer a kilo of dope. Id. at 181.

In 2006, Williams told his cousin Andre Forbes that Williams owed Diggins some money, that he did not plan on paying Diggins, and that he killed Diggins and burned the body. Williams also told Forbes that he and Johnson had broken into Diggins’s house looking for drugs and money. Williams asked for Forbes’s help to “get at [Cross].” Id. at 145. Williams later told Forbes that he “got [the house of Cross’s girlfriend] burned up.” Id. at 148.

In 2007, Williams told Lawrence Lusk, another cocaine dealer, about the murder. Williams told Lusk that Diggins had “fronted him and [Johnson] some coke to sell for

him,” and “in the midst of him selling the coke, he ended up sacking off some of the money, and he didn’t have the money to pay [Diggins].” Id. at 112. Williams told Lusk that “they ended up going out to [Diggins’s] house to break in, and take some more drugs and money.” Id. Williams also stated that he had told Diggins that he had his money and wanted to meet him, that he shot Diggins, and that he then told Johnson “he know what he got to do.” Id. at 113. Williams stated that they burned Diggins after the murder. Williams also told Lusk that Cross had been “running his mouth” and that he wanted to kill Cross. Id.

On August 5, 2010, the State charged Williams with murder. During the jury trial, Cross, Dickens, Lusk, Farmer, and Forbes testified regarding what Williams had told them. Cross testified on direct examination that he thought that the kind of gun Williams carried was a “nine.” Id. at 18. Cross also testified that he talked to law enforcement about Williams only after he was charged, that he gave information in hopes of obtaining a better outcome in his federal case, and that he eventually received a better deal because of the information that he provided. Dickens testified on direct examination that he was charged with possession of cocaine, was facing a maximum sentence of twenty years, and provided information because he wanted a better outcome for his case, but that the police had not offered any promises of leniency. Lusk testified on direct examination that he had a DUI case that had not been resolved yet. On direct examination, Forbes testified that he was hoping for a sentence modification. Farmer testified on direct examination that no part of his plea negotiations in a case against him involved his agreement to provide testimony against Williams. Farmer also testified that he did not know Cross,

Forbes, Lusk, or Johnson. Williams's counsel cross-examined the witnesses regarding their potential sentences, possible benefits from testifying, and when they were incarcerated together.

Williams's attorney called Mario McGrew as a defense witness, and McGrew testified that he was in custody with Cross, Forbes and Dickens. McGrew discussed "jumping on somebody's case" in which "you get information or find out about somebody [sic] case, you make allegations up, to try to get your time dropped." Transcript Vol. IV at 55. McGrew also testified that he asked Cross whether it was true "about him trying to lie on [Williams]. And he said . . . he told me yeah, he said 'F' [Williams], because [Williams] slept with [Cross's] girl when he was locked up." *Id.* at 59. McGrew also testified that Lusk asked him what McGrew thought about Lusk "jumping on the boat and trying to lie on [Williams], so he can get out." *Id.* at 64. On cross-examination, McGrew testified that he communicated with Cross through "hand language and stuff like that" because a glass wall separated them. *Id.* at 76. The jury found Williams guilty as charged. The court sentenced Williams to sixty-five years.

The issue is whether the evidence was sufficient to sustain Williams's conviction for murder. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

Williams “challenges the sufficiency of the evidence and argues his conviction is based solely on the incredibly dubious testimony of a parade of jailhouse witnesses.” Appellant’s Brief at 7. Williams argues that “the issue is not the testimony of an actual eyewitness to the offense, but rather the identity of Williams as the person who killed Diggins based on his alleged admissions to four jailhouse witnesses who then testified it was Williams who killed Diggins based only on what Williams told them.” Id. at 8. Williams argues that the evidence was “motivated by the coercive influence of each witness who knew they had to keep the prosecutor happy with their testimony in order to obtain help for lighter sentences on their own cases” and with respect to Cross “was further motivated by retribution . . . .” Id. Williams also argues that there is a lack of circumstantial evidence. Id. Williams “asks this court to consider all the testimony of the jailhouse witnesses as suspect under the ‘incredible dubiousity’ rule since there is a complete lack of any other circumstantial evidence of his guilt and their testimony is the only evidence supporting his conviction.” Id. at 9.

The State argues that “[t]hree of the bullets were fired from the same weapon and were from a weapon of the .38 caliber/9 mm group of weapons,” that “[t]wo of the bullets were fired from the same .45 caliber weapon,” and that Williams carried such weapons. Appellee’s Brief at 5. The State also argues that “[a]t various times between the time he murdered Diggins and was tried for the crime, [Williams] related his reasons for committing the murder and how he carried out the murder to Aaron Cross, Shawann Dickens, Andre Forbes, and Lawrence Lusk.” Id. The State contends that the incredible dubiousity rule is inapplicable to this case and that, even if the rule did apply, Williams

does not show contradiction in the testimony of the witnesses that meets the standard of the incredible dubiousity rule.

To the extent that Williams raises arguments related to his identification, we note that elements of offenses and identity may be established entirely by circumstantial evidence and the logical inferences drawn therefrom. Bustamante v. State, 557 N.E.2d 1313, 1317 (Ind. 1990). Inconsistencies in identification testimony impact only the weight of that testimony, because it is the jury's task to weigh the evidence and determine the credibility of the witnesses. Gleaves v. State, 859 N.E.2d 766, 770 (Ind. Ct. App. 2007) (citing Badelle v. State, 754 N.E.2d 510 (Ind. Ct. App. 2001), trans. denied). As with other sufficiency matters, we will not weigh the evidence or resolve questions of credibility when determining whether the identification evidence is sufficient to sustain a conviction. Id. Rather, we examine the evidence and the reasonable inferences therefrom that support the verdict. Id.

With respect to Williams's arguments regarding the possible motivations of the witnesses, we observe that if there is an existing agreement between the State and one of its witnesses, a prosecutor has a duty to reveal it. Whatley v. State, 908 N.E.2d 276, 283 (Ind. Ct. App. 2009) (citing Rubalcada v. State, 731 N.E.2d 1015, 1024 (Ind. 2000) (“A prosecutor must disclose to the jury any agreement made with the State's witness, such as promises, grants of immunity, or reward offered in return for testimony.”)), trans. denied. The purpose of this rule is to assist the jury in assessing the witness's credibility. Id. (citing McCorker v. State, 797 N.E.2d 257, 266 (Ind. 2003)). On the other hand, the State is not required to disclose a witness's hope of leniency. Id. Here, Williams does



not argue or point to the record to show that the State failed to disclose to the jury that the witnesses who testified for the State had received agreements under which they received some degree of leniency in exchange for their testimony against Williams. The jury heard testimony from Cross, Dickens, Lusk, Farmer, and Forbes, and each of those witnesses were questioned before the jury regarding their reasons for testifying. The jury was able to assess the credibility of the witnesses in light of their hopes for leniency or receipt of leniency in exchange for their testimony against Williams. Williams's arguments regarding why the witnesses should not be believed amount to an invitation that we reweigh the evidence, which we cannot do. See Jordan, 656 N.E.2d at 817.

To the extent Williams asserts that the incredible dubiousity rule requires reversal of his convictions, we note that the rule applies only in very narrow circumstances. See Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). The rule is expressed as follows:

If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity. Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.

Fajardo v. State, 859 N.E.2d 1201, 1208 (Ind. 2007) (quoting Love, 761 N.E.2d at 810), superseded in part by statute on other grounds. Williams fails to show that the testimony of the witnesses was inherently contradictory or internally inconsistent. The function of weighing witness credibility lies with the trier of fact, not this court. Whited v. State, 645 N.E.2d 1138, 1141 (Ind. Ct. App. 1995). We cannot reweigh the evidence and judge the credibility of the witnesses. See Jordan, 656 N.E.2d at 817. Further, we cannot say that

the testimony of the witnesses was so inherently improbable that no reasonable person could believe it.

Based upon our review of the evidence as set forth in the record and above, we conclude that sufficient evidence exists from which the jury could find Williams guilty beyond a reasonable doubt of murder.

For the foregoing reasons, we affirm Williams's conviction for murder.

Affirmed.

MAY, J., and CRONE, J., concur.