



## Phillips v. State

909 N.E.2d 516 (2009) | Cited 0 times | Indiana Court of Appeals | June 30, 2009

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.

### MEMORANDUM DECISION

### NOT FOR PUBLICATION

### STATEMENT OF THE CASE

Jarrode E. Phillips appeals his convictions for Murder and Attempted Murder, as a Class A felony, following a jury trial. Phillips presents a single issue for review, namely, whether the evidence is sufficient to support his convictions. We affirm.

### FACTS AND PROCEDURAL HISTORY

On August 10, 1995, Weldon Jeffries was walking through his South Bend neighborhood when he saw his neighbor Ada Hamilton, working in her front yard. After Jeffries greeted Hamilton, he was approached by his friend Spencer Johnson. The two men were talking on the sidewalk when a "dirty blue or a dirty gray late Chevy . . . four[-]door" approached. Transcript at 209. One of the occupants fired several shots at Jeffries and Johnson, then the car left. Jeffries was shot twice and died as a result of his chest wound. Johnson was shot in the foot and hip and was treated and released from the hospital that day.

An officer interviewed Johnson immediately following the shooting. In that interview, Johnson said three "dudes in a gray car" were responsible for the shooting. Transcript at 214. Officer David Michael Beaty was on patrol on the southeast side of South Bend that evening. After searching forty-five minutes, Officer Beaty found a car that matched the description Johnson had given. After obtaining back-up, Officer Beaty impounded the car. Officer Beaty learned that the car belonged to Phillips.

The day following the shooting, Johnson again spoke with an officer and identified Phillips as the driver and shooter from a photo lineup. Officers also found a shell casing inside the car during their search conducted pursuant to a warrant. The shell casing found in Phillips car matched the shell casings taken from Jeffries body, and both sets of casings were fired from the same gun.



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The gun was later located in a stolen vehicle.

The State charged Phillips for the shootings. Johnson was incarcerated for another matter when the trial date neared, and he conditioned his agreement to testify for the State in Phillips case on the States agreement to release him from prison. When the State declined to seek Johnsons release, Johnson refused to testify. As a result, the State dropped the charges against Phillips.

In 2007, Johnson agreed to testify against Phillips.<sup>1</sup>

As a result, the State charged Phillips on January 20, 2008, with murder and attempted murder, a Class A felony. Following a trial on August 25 through 27, a jury convicted Phillips as charged. The trial court entered judgment of conviction accordingly. Following a hearing, the court sentenced Phillips to consecutive terms of sixty years for murder and thirty years for attempted murder, with credit for time served. Phillips now appeals.

### DISCUSSION AND DECISION

Phillips contends that the State presented insufficient evidence to support his convictions for murder and attempted murder. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.* If there is substantial evidence of probative value to support the conviction, it will not be set aside. *Id.*

Initially, we observe that Phillips has not supported the contentions in the argument section of his brief with citations to the record. "The argument must contain the contentions . . . supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." Ind. Appellate Rule 46(A)(8)(a). Phillips failure to provide citations to the Appendix or the Record of Appeal has hindered our review. As a result, his contention that the evidence is insufficient to support his convictions is waived. See *id.*

Waiver notwithstanding, we will consider the merits of Phillips argument. Phillips contends that the evidence is insufficient to support his convictions because that evidence came from a "dubious witness." Appellants Brief at 3. "The "incredible dubiousity doctrine applies "where a 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 defendants guilt." *Baber v. State*, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007) (quoting *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2002)). ""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." *Id.* (quoting *Krumm v. State*, 793 ne2 1170, 1177 (Ind. Ct. App. 2003)).



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Here, Johnson, one of Phillips victims, identified Phillips as the shooter from a photo lineup the day after the shooting. Johnson never wavered in his identification of Phillips as the perpetrator, although he initially refused to testify when he was refused leniency in another matter pending against him. And Phillips points to no evidence in the record that contradicts Johnsons identification of Phillips as the perpetrator. Thus, Phillips has not shown that Johnsons testimony was contradictory. Moreover, Phillips car matched the description that Johnson provided of the shooters vehicle. And the shell casing found in Phillips car matched the shell casings taken from Jeffries body were fired from the same gun. Thus, Phillips has not shown that there was a complete lack of circumstantial evidence to support Phillips guilt. We conclude that the incredible dubiousity rule does not apply and bar Phillips convictions.

Although cloaked in terms of the incredible dubiousity rule, Phillips contention appears to challenge Johnsons credibility. Phillips makes much of the fact that Johnson initially refused to testify and later agreed to testify in the hope that he would receive leniency in another case pending against him. But Johnsons credibility was a matter for the jury, and we cannot and will not reweigh it. See Jones, 783 N.E.2d at 1139. As such, Phillips contention must fail.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.

1. Johnson agreed to testify in hopes that he we would receive some leniency in the case of an unrelated drug charge.

