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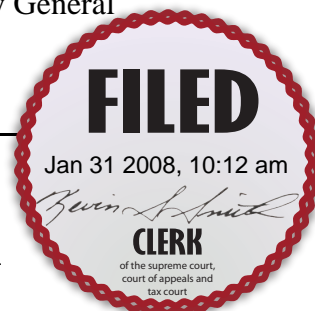
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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER M. FANCHER,)

Appellant-Defendant,)

vs.)

No. 49A02-0610-CR-926)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0604-MR-71643

January 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Christopher M. Fancher appeals his convictions for murder,¹ unlawful possession of a firearm by a serious violent felon,² a Class B felony, and carrying a handgun without a license³ as a Class C felony.⁴ On appeal, he raises the following issues:

- I. Whether there was sufficient evidence to support Fancher's convictions.
- II. Whether the jury's verdicts were fatally inconsistent so as to warrant a new trial.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of April 21, 2006, Officer Ann Rivir of the Indianapolis Police Department ("IPD")⁵ arrived at the Hawthorne Apartments in response to a report that gunshots had been fired. At the scene, Officer Rivir found Shane Lasley on the ground and called an ambulance. Lasley was pronounced dead at Wishard Hospital. During an autopsy, a pathologist recovered the fragments of four bullets.

That same morning, Detective Brady Ball of the IPD's Criminal Interdiction section was on duty near a liquor store at the corner of 30th and Arlington—a known site for criminal activity. A black Grand Am automobile attracted Detective Ball's attention, and he initiated

¹ See IC 35-42-1-1.

² See IC 35-47-4-5.

³ See IC 35-47-2-1.

⁴ This handgun conviction was enhanced from a Class A misdemeanor to a Class C felony because Fancher had an unrelated felony conviction for robbery within the previous fifteen years. See IC 35-47-2-23.

⁵ On January 1, 2007, the Indianapolis Police Department merged with the law enforcement division of the Marion County Sheriff's Department to establish the Indianapolis Metropolitan Police Department. However, because these events occurred before that date, we reference the IPD.

a traffic stop for the infraction of “excessive window tint.” *Tr.* at 40. When the Grand Am came to a stop, the rear left passenger door opened and a black male wearing a black baseball cap, jeans, and a black shirt exited the vehicle and ran. Detective Ball’s vehicle was equipped with a digital video camera, which recorded the man fleeing from the car.

Detective Ball shouted for the suspect to stop, but noting that others remained in the car, he abandoned the chase and focused his attention on the Grand Am’s remaining three occupants. The driver of the car was later identified as David; his girlfriend, Lee, was in the passenger seat, and David’s friend, Stacy, sat behind Lee. The man who fled from the back seat on the driver’s side was later identified as Fancher.

During the investigation at the scene of the traffic stop, Detective Ball walked the path by which Fancher had fled and discovered a silver .38 caliber Taurus Ultra Light revolver (“.38 Taurus”), with the serial number obliterated, hidden in bushes about seventy feet from the Grand Am. Tests revealed that two of the bullets recovered from Lasley’s body were shot from the .38 Taurus. The remaining two bullets had similar characteristics but could not positively be excluded or matched to the .38 Taurus. Four shell casings were found in the Grand Am and a fifth casing dropped onto the ground during the stop. Of these five shells, four were positively identified as having been fired from the .38 Taurus, the fifth shell could neither be identified nor eliminated as being from the .38 Taurus.

Prior to Fancher’s apprehension, 911 dispatch received two calls, both of which reported a shooting at 30th and Arlington. *State’s Ex.* 31. Fancher later admitted that he had made these calls to lead police in the opposite direction from where he was fleeing. *State’s*

Ex. 44. Meanwhile, officers used both traditional search techniques and a helicopter with thermal imaging capability to locate Fancher. Once caught, Detective Ball went to the scene of the arrest and identified Fancher as the man he had seen fleeing from the Grand Am.

The State charged Fancher with murder, unlawful possession of a firearm by a serious violent felon, possession of a handgun with an obliterated serial number, and carrying a handgun without a license.⁶ One month later, the State filed an habitual offender information. Prior to trial, the parties agreed to proceed only on the counts of murder, possession of a handgun with an obliterated serial number, and carrying a handgun without a license as a Class A misdemeanor. The parties also agreed that if Fancher were found guilty of any qualifying offenses, the trial would proceed to a second phase to address the serious violent felon charge, the habitual offender count, and the enhancement of the handgun charge to a Class C felony.

At trial, Lee testified that she and David drove the black Grand Am to the Hawthorne Apartments on the night in question. David parked the car and got out while Lee stayed in the car. About ten minutes later, Lee heard five gunshots. Within seconds, David returned to the driver's seat and his friend, Stacy, entered the car behind Lee. Another male, who Lee did not recognize, got in the car behind David. This man was Fancher. Lee testified that she heard David ask Fancher what happened, and Fancher responded, that "[t]hey had an altercation" and Fancher had "[done] something to him." *Tr.* at 229-30. Lee further testified that when Detective Ball stopped the car, Stacy told Fancher, "Run. Run." *Id.* at 239.

⁶ Although Fancher was also charged with and convicted of resisting law enforcement, a Class A misdemeanor, we do not address that count because Fancher does not appeal that conviction.

The jury found Fancher guilty of murder and carrying a handgun without a license, but acquitted him of possession of a handgun with an obliterated serial number. At the enhancement and sentencing phase, for which Fancher waived his right to trial by jury, the State admitted, without objection, certified copies of Fancher's prior felony convictions. The trial court found Fancher guilty on all enhancements, but changed the Class C felony handgun enhancement finding from guilty to "proven" due to double jeopardy implications. *Appellant's App.* at 182-83. The trial court sentenced Fancher to sixty years for murder, enhanced by thirty years for the habitual offender finding, for a total sentence of ninety years. Fancher now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Fancher first contends that there was insufficient evidence to support his conviction for murder, possession of a firearm by a serious violent felon, and carrying a handgun without a license. Specifically, he contends that the evidence was insufficient to prove that he *possessed* the murder weapon—a finding that was key to each of his convictions. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Agilera v. State*, 862 N.E.2d 298, 306 (Ind. Ct. App. 2007), *trans. denied*. We will 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.* A conviction

may be based upon circumstantial evidence alone. *Id.* Reversal is only appropriate when reasonable persons would not be able to form inferences as to each material element of the offense. *Abney v. State*, 822 N.E.2d 260, 264 (Ind. Ct. App. 2005), *trans. denied*, 831 N.E.2d 743 (Ind. 2005), *disapproved on other grounds by Ryle v. State*, 842 N.E.2d 320 (Ind. 2005).

As part of his argument of insufficient evidence, Fancher contends that the witness testimony must be weighed in light of David's admission that he is "a liar," and Lee's statement that she was "untruthful" with the police. *Appellant's Br.* at 9. Fancher also asserts that the jury heard, but failed to consider, that fingerprints did not tie Fancher to the murder weapon or to its shell casings, and no blood or gunpowder residue was found on Fancher's person. *Id.*

Fancher's arguments ask us to reweigh the evidence, which we will not do. *Starks v. State*, 846 N.E.2d 673, 680 (Ind. Ct. App. 2006), *trans. denied*. It is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve. *Marshall v. State*, 621 N.E.2d 308, 320 (Ind. 1993). Here, the evidence revealed that Fancher got into David's car at the Hawthorne Apartments just seconds after the gunshots were heard. Lee heard Fancher state that he was involved in an altercation and had done something to another man. When police stopped the Grand Am, Fancher ran. While on the run, Fancher made two phone calls to 911 dispatch to provide false information in an attempt to evade capture.

Ballistics testimony revealed that the bullets found in Lasley's body matched those from the .38 Taurus, which was found just seventy feet from the Grand Am and in the path of Fancher's flight. Further, shell casings found in the Grand Am, which were located on the

floor just under where Fancher had been sitting, were determined to have come from the .38 Taurus. Testimony revealed that unlike the shell casings of a semi-automatic weapon, which are ejected as the weapon is fired, the shell casings of a revolver like the .38 Taurus are not ejected until the gun is manually opened and the shell casings are dumped out. This fact supported the inference that the murder weapon was brought into the car at the Hawthorne Apartment after the shooting, and that shells were emptied out of the weapon while David drove. Finding the gun in the path of Fancher's flight supported the inference that Fancher possessed the gun as he left the car and fled from the police. The jury could also have taken Fancher fleeing into consideration. "This Court has repeatedly held that flight of an accused or other related conduct calculated to hide a crime or escape from the scene of a crime is admissible as evidence of guilt. It is for the trier of fact to determine what weight and value should be given to such evidence." *Turner v. State*, 255 Ind. 427, 429, 265 N.E.2d 11, 12 (1970). The jury had sufficient evidence to reasonably conclude that Fancher possessed the murder weapon and murdered Lasley.

II. Consistency of the Verdicts

Fancher next contends that his acquittal on the charge of possession of a handgun with an obliterated serial number is fatally inconsistent with his having been convicted of murder. We disagree. IC 34-47-2-18(2) makes it illegal to "possess any handgun on which the ... manufacturer's serial number, or other mark of identification has been changed, altered, removed, or obliterated" "[W]e have interpreted this statute as requiring the State to prove that the accused knew that the serial number of the gun had been altered." *Robles v. State*, 758 N.E.2d 581, 583 (Ind. Ct. App. 2001), *trans. denied*; *see Wagerman v. State*, 597

N.E.2d 13, 16 (Ind. Ct. App. 1992), *trans denied*. Furthermore, the jury was instructed that in order to convict on this count, the State had to prove that the “defendant knew of the obliteration.” *Appellant’s App.* at 154.

In *Wagerman*, the defendant, who was carrying his valid handgun license and his pistol, went to a gun show. *Wagerman*, 597 N.E.2d at 14. Wagerman and five other members of a motorcycle club drove together in a van and parked across the street from the show. *Id.* A brawl at the entrance to the show caused Wagerman and thirteen others to flee the scene in the van. *Id.* As the van began to pull away, plain-clothes officers drew their weapons and ordered the van to stop. The driver complied, and all the occupants, on police orders, left the van one at a time. *Id.*

During the pandemonium, two handguns were thrust upon Wagerman, one literally into his trousers, and the other into his hands. *Id.* He put the second weapon in his trousers, and he had them both on his person several seconds later when he got out of the van and lay spread-eagle in the street to be searched. *Id.* The arresting officer discovered all three weapons, and the two that had been given to Wagerman were found to have altered serial numbers. *Id.*

During the bench trial, the State made no attempt to show that Wagerman knew that the handguns had altered serial numbers. *Id.* The trial court convicted Wagerman of one count of possession of a handgun with an altered serial number. *Id.* at 15. Our court reversed. Noting that the guns had been thrust into Wagerman’s hands just prior to exiting the van, and that there was no evidence that Wagerman either noticed or had a chance to notice the alterations, our court concluded that the evidence was insufficient to find that

Wagerman had knowledge of the guns' altered serial numbers. *Id.* at 16. While the evidence was insufficient to convict Wagerman of possessing a handgun with an obliterated serial number, the evidence was clear that Wagerman had the guns in his possession.

Likewise, Fancher's convictions for carrying a handgun without a license, being a serious violent felon in possession of a handgun, and murder are not inconsistent with his acquittal of possessing a handgun with an obliterated serial number. It was not inconsistent for the jury to find that Fancher possessed the .38 Taurus and used it to kill Lasley, yet still did not possess the requisite knowledge of the serial number obliteration to be convicted of that charge. Viewed in this light, the verdicts are not inconsistent, and Fancher is not entitled to relief.

Affirmed.

ROBB, J., and BARNES, J., concur.