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**IN THE  
COURT OF APPEALS OF INDIANA**

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LINDA E. SHIMER, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 30A01-0507-CR-298  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE HANCOCK SUPERIOR COURT  
The Honorable Larry G. Amick, Supreme Court Pro Tem  
Cause No. 30D01-0409-MR-125

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**September 12, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Linda E. Shimer appeals her conviction for murder<sup>1</sup> following a jury trial.

We affirm.

### ISSUE

Whether the State presented sufficient evidence to convict Shimer.

### FACTS

Shimer and Nancy Dobbins had been friends for approximately twenty-five years. Shimer, however, did not get along with Nancy's husband, Brett Dobbins. Shimer had said of Brett that she and Nancy "need[ed] to get rid of him." (Tr. 658). During the summer of 2004, Shimer had asked Nancy, "if something happened to Brett, what would you do with all these cars," referring to the Cadillacs owned by Brett and Nancy. (Tr. 650).

Kenneth Kelly was a friend of the Shimer family and spent a lot of time at the Shimer residence. One day, after he was admiring a Cadillac on the television, Shimer told him, "I could get one of those Cadillacs for you should you, you know, be willing to knock [Brett] off for me." (Tr. 1127). Kelly later agreed to kill Brett in return for a Cadillac since he would no longer have a vehicle available to him once his girlfriend, Jennifer Brundage, went to college.

After Kelly agreed to murder Brett, he, Brundage and Shimer drove to the Dobbins' residence in Greenfield so Shimer could show Kelly where Brett lived. Shimer

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<sup>1</sup> Ind. Code § 35-42-1-1.

also told Kelly “what time [Brett] went to work, where he worked at, things like that.” (Tr. 1133).

On July 27 or 28 of 2004, Brundage drove Kelly and Kelly’s cousin, Tristian Armstrong, to the Dobbins’ residence. “[T]hey took baseball bats out there and they were gonna beat [Brett] with that” because they did not have a gun. (Tr. 1081). Kelly and Armstrong, however, were unable to carry out their plan.

Subsequently, Kelly obtained a gun—a “40 caliber Smith and Wesson”—from another cousin, Alesondro Armstrong. (Tr. 1143). On July 30, 2004, Kelly and Brundage went to Pop’s Guns to purchase ammunition for the gun. Kelly, however, was not old enough to purchase ammunition. Therefore, he telephoned Shimer and asked her to buy the ammunition for him.

When Shimer received the telephone call from Kelly, she told David McKenzie, her daughter’s boyfriend, “that she was gonna go to Pop’s Guns cause she needed to buy—meet [Kelly] and buy bullets for him because of the age thing, too young.” (Tr. 915). Shimer and McKenzie drove to Pop’s Guns, where Kelly gave Shimer money to purchase the ammunition, which she did.

In the early morning of August 10, 2004, Brundage drove Kelly to the Dobbins’ residence. Kelly had some marijuana Shimer had given him, which Shimer told him to “plant . . . on [Brett] . . . [s]o it would look like a drug deal went bad.” (Tr. 1088). While Brundage stayed in the car, Kelly waited by the Dobbins’ garage “before [Brett] came out.” (Tr. 1151). Kelly then “shot him in the back.” (Tr. 1151). Kelly started to walk away, but “[Brett] started to scream. So [Kelly] came back around the car and hit him

one more time in the back and he stopped screaming.” (Tr. 1151). Kelly and Brundage left the Dobbins’ residence, got something to eat and then took a nap.

At approximately 7:30 a.m. on August 10, 2004, Nancy discovered Brett lying face down in their driveway. Brett had died from “two gunshot wounds to the back.” (Tr. 720).

During the afternoon of August 10, 2004, Kelly and Brundage went to Shimer’s residence. Kelly described the shooting to Shimer, to which she said, “get ‘er done.” (Tr. 1153).

Kelly was arrested for Brett’s murder on August 27, 2004. On September 2, 2004, Kelly entered into a plea agreement with the State. Kelly agreed to plead guilty to murder, and the State agreed to recommend “a sentence of fifty-five (55) years executed.” (App. 265). Pursuant to the plea agreement, Kelly agreed to do the following:

1. Provid[e] specific information as to any and all individuals who have information concerning the murder of Brett E. Dobbins . . . .
2. Suppl[y] specific information concerning all involvement of any and all coconspirators concerning the murder of Brett E. Dobbins.

\* \* \* \* \*

[T]estify truthfully under oath before a Grand Jury and/or in open court concerning the Defendant’s involvement or knowledge of other person’s involvement with regard to the murder of Brett E. Dobbins . . . .

(App. 265-66).

Subsequently, the State charged Brundage with murder and conspiracy to commit murder. On January 31, 2005, the State and Brundage entered into a plea agreement,

whereby Brundage agreed to plead guilty to assisting a criminal, a class C felony, and the State agreed to recommend a sentence of eight years in the Department of Correction.

Brundage agreed to the following:

[T]o give a complete and truthful statement regarding her involvement and the involvement of others in the death of Brett E. Dobbins, further she will testify truthfully in the case against Linda Shimer and any other persons involved in the murder of Brett E. Dobbins. She will give a complete and truthful deposition subject to cross examination . . . Defendant shall urge Kenny Kelly to testify truthfully in any and all trials or hearings which may occur against Linda Shimer or any other persons involved in the murder of Brett E. Dobbins.

(App. 262).

Following its investigation, the State charged Shimer with felony murder and conspiracy to commit murder, a class A felony, on September 1, 2004. The State tried Shimer before a jury from April 11, 2005 through April 18, 2005. Kelly and Brundage testified during Shimer's trial. Both the State and Shimer's counsel elicited extensive testimony from Brundage and Kelly regarding their relationship with each other and their respective plea agreements. Brundage's testimony included admissions that she and Kelly were able to communicate while they were incarcerated in the Hancock County Jail. Kelly admitted that he originally did not intend to testify when he signed his plea agreement but changed his mind once Brundage "got her plea." (Tr. 1167).

The jury found Shimer guilty as charged. The trial court entered judgment on the conviction for murder but took "the jury's verdict of a conviction for the offense of Conspiracy to Commit Murder, as a Class A Felony, under advisement pending the

sentencing hearing.” (App. 62). During the sentencing hearing on May 17, 2005, the trial court

refuse[d] to sentence the Defendant on the jury conviction for the offense of Conspiracy to Commit Murder for two (2) reasons:

1. The State of Indiana did not allege and therefore did not prove an overt act as required by the mandatory non-discretionary statute of the State of Indiana.
2. In any event because the underlying facts and circumstances constituting the evidence of Conspiracy to Commit Murder and the offense of Aiding, Causing or Inducting [sic] Murder were the same facts and circumstances that law of the State of Indiana required any conviction for conspiracy merge into the conviction for murder.

(App. 18-19). The trial court sentenced Shimer to the Department of Correction for fifty-five years.

#### DECISION

Shimer asserts the evidence is insufficient to support her conviction. Our standard of review for sufficiency of the evidence is well settled. We will neither reweigh the evidence nor judge the credibility of witnesses. Snyder v. State, 655 N.E.2d 1238, 1240 (Ind. Ct. App. 1995). We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. Altes v. State, 822 N.E.2d 1116, 1121(Ind. Ct. App. 2005), trans. denied.

Shimer asserts the “incredible dubiousity” rule should apply in this case. “Under the incredible dubiousity rule, a court will impinge on the jury’s responsibility to judge the

credibility of the witness only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” Id. at 1122. We will reverse a conviction where a “sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence . . . .” Id. The application of the “incredible dubiousity” rule is rare “and is limited to cases where the sole witness’ testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.” Id.

Although an accomplice’s testimony is subject to high scrutiny, such testimony is by itself sufficient to sustain a conviction. Herron v. State, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), trans. denied. “The fact that the accomplice may not be completely trustworthy goes to the weight and credibility of his testimony, something that is completely within the province of the jury and cannot be reviewed on appeal.” Id.

Shimer argues that “Kelly and Brundage should be considered as if one (1) witness” because they were “so intertwined with each other that they were able to pass notes and talk to each other on a daily basis at the Hancock County Jail.” Shimer’s Br. 15. Shimer also argues that Brundage’s and Kelly’s plea agreements influenced their testimony. Essentially, Shimer seeks to expand the “incredible dubiousity” rule, which we will not do. Even if we were to expand the rule, it would not be applicable to this case. Neither Brundage’s nor Kelly’s testimony was inherently contradictory, improbable or equivocal. Shimer’s counsel cross-examined both Kelly and Brundage, and the jury was able to independently evaluate their testimony. Furthermore, McKenzie corroborated Kelly’s and Brundage’s testimony regarding Shimer meeting Kelly at Pop’s Guns.

Shimer is asking this Court to reweigh the evidence and judge Kelly's and Brundage's credibility, which we will not do. The evidence presented at trial is sufficient to support Shimer's conviction.

Affirmed.

RILEY, J., and VAIDIK, J., concur.