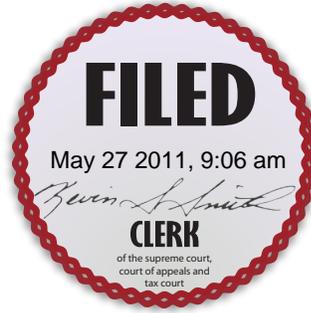


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

QUINCY ENGLISH,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A03-1009-CR-527

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0907-FA-42

May 27, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Quincy English appeals his conviction for Aggravated Battery,¹ a class B felony, arguing that the evidence was insufficient. Finding sufficient evidence, we affirm.

FACTS

On June 28, 2009, Hilton Morris and Cameron Pennington went to The Men's Club in Fort Wayne, where they saw English with Byron Driver. Pennington and Driver were acquaintances. Pennington observed that English and Driver appeared to be drunk and were arguing.

Later, after Morris had already walked to the parking lot, English made a derogatory comment about Morris to Pennington. Pennington asked English what he meant because Morris was his cousin, and English repeated the disparaging comment. Driver, after hearing the comment, stood in between English and Morris, and Morris left the club.

After leaving the club around 4:00 a.m., Morris and Pennington picked up DeTanja Stephens, who is the mother of English's children. Stephens rode with Morris to drop off Pennington at his home and then Morris and Stephens went to her mother's house, where she was staying for the night. When they arrived, they parked in the driveway to talk.

A short time later, both of them noticed a vehicle on a nearby road that Morris recognized as the one that English and Driver were in at the club. Stephens said, "let's

¹ Ind. Code § 35-42-2-1.5.

go,” but English, who was driving, pulled in behind Morris, blocking him in the driveway. Tr. p. 354. English and Driver exited the vehicle, and English tried to punch Morris through the window. When this failed, English attempted to break the window, first with his fist and then with the butt of his gun. Stephens went into the house to find her brother.

When English could not break through the glass, he fired his gun through the window. Morris and Stephens heard multiple shots. Morris realized he had been shot and managed to drive away from the scene, eventually crashing into a building a few blocks away after he had blacked out. Morris told responding Fort Wayne Police Officer, Chris Hoffman, that English had shot him. Morris was transported to a nearby hospital where he received treatment for three gunshot wounds.

On July 6, 2009, the State charged English with Count I, attempted murder, a class A felony; Count II, Part I, aggravated battery, a class B felony; Count II, Part II, use of a firearm during the commission of a crime;² Count III, Part I, carrying a handgun without a license, a class C felony; and Count III, Part II, carrying a handgun without a license within fifteen years of a previous felony conviction, a class C felony. English’s jury trial commenced on August 3, 2010, and on August 5, the jury found him not guilty of attempted murder but guilty of aggravated battery, use of a firearm during the

² Ind. Code § 35-50-2-11 (providing for “an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense”).

commission of a crime, and carrying a handgun without a license. The State dismissed the remaining charge.

On September 13, 2010, the trial court held a sentencing hearing during which it merged Count III with Count II, Part II and entered a judgment of conviction on both parts of Count II. Additionally, the trial court sentenced English to an aggregate term of twenty years in the Department of Correction. English now appeals.

DISCUSSION AND DECISION

English's sole argument on appeal is that the evidence was insufficient to convict him of aggravated battery. Specifically, English contends that there is no evidence that he is the person who shot Morris and that "[i]t is a stretch to assume from these facts that [he] aided, induced or caused Driver to shoot Morris." Appellant's Br. p. 11.

The standard of review for sufficiency claims is well settled; this Court will neither reweigh the evidence nor judge the credibility of witnesses. Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010). Rather, we will consider only the evidence favorable to the trial court's verdict and all reasonable inferences therefrom. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009).

Here, the State alleged that English was guilty of aggravated battery under accomplice theory liability. Appellant's App. p. 120. Because Indiana law does not distinguish between a principal and one who aids, the jury could have convicted English on proof that he aided or was the principal. McNeil v. State, 936 N.E. 358, 360 (Ind. Ct. App. 2010). Accordingly, to convict English of aggravated battery, the State was

required to show that he knowingly or intentionally inflicted injury on Morris, or that he caused Driver to knowingly or intentionally inflict injury on Morris that created a substantial risk of death or caused serious permanent disfigurement or protracted loss or impairment of the function of a bodily member of organ. See Ind. Code § 35-42-2-1.5.

This Court considers four factors when determining whether the defendant aided another in the commission of a crime: (1) defendant's presence at the scene of the crime; (2) his companionship with another engaged in criminal activity; (3) his failure to oppose the crime; and (4) his conduct before, during, and after the occurrence of the crime. McNeill, 936 N.E.2d at 360.

Initially, we observe that Morris testified that he realized he had been shot immediately after he saw English fire a gun because he "seen [sic] the blood on [his] shirt." Tr. p. 289. Additionally, Morris told Officer Hoffman that English had shot him. Furthermore, the crime scene technician found glass in the proximate location of the driver's side window in the driveway, and Morris testified that English shot through the driver's side window of his vehicle. State's Ex. 10, Tr. p. 295. From these facts, the jury could reasonably conclude that English shot Morris and caused his injuries.

Even assuming solely for argument's sake that the jury was not convinced that English was directly responsible for Morris's gunshot wounds, English does not dispute his presence at the scene of the crime. In addition, English and Driver had been together at The Men's Club and later arrived at the crime scene together, indicating companionship between them. Tr. p. 278-79, 286.

Moreover, English had made a very derogatory statement about Morris earlier that evening. Id. at 342. Later, English used the vehicle he was driving to block Morris's exit from the driveway and initiated a confrontation with Morris by attempting to punch him through the driver's side window. Id. at 284-86. When this failed, English tried to break the window by hitting it with his fist and gun. Id. at 286. Morris testified that English shot through the driver's side window, shattering the glass. Id. at 295. Once multiple shots were fired, English fled the scene. Id. at 358-59. Under these facts and circumstances, it is clear that English did not oppose the crime. Indeed, his conduct before, during, and after the crime, indicates that, at the very least, he aided Driver in the commission of aggravated battery. Consequently, this argument fails, and we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.