

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

John Cushionberry Collins, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 14, 2024

Court of Appeals Case No.
23A-CR-2562

Appeal from the
Lake Superior Court

The Honorable
Natalie Bokota, Judge

Trial Court Cause No.
45G02-2203-MR-11

Memorandum Decision by Senior Judge Robb.
Judges Vaidik and Bradford concur.

Robb, Senior Judge.

Statement of the Case

- [1] John Cushionberry Collins, Sr., appeals his conviction of felony murder. He claims the State failed to present sufficient evidence to sustain the conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] Mary Krill, aged ninety-two, lived alone on the sixth floor of a senior citizens' apartment building in Gary, Indiana. Krill used a wheeled walker to assist her as she walked around the building and the neighborhood. She kept her mobile phone in a small cross-body bag on her person. In addition, Krill kept her apartment key and mailbox key on a lanyard around her neck. Residents of the building receive one key to their apartment upon moving in, and they are not supposed to copy them or lend them to others.
- [3] Dona Armstrong, another resident of the building, saw Krill "every day," talking with other residents in the community room or walking around. Tr. Vol. 3, p. 82. Helen Brandt was also Krill's friend. She did not live in the building, but they spoke by telephone almost daily. Brandt took Krill to the grocery store and to doctor's appointments. Krill did not have a bank account.

When she received a Social Security check, Brandt took her to the grocery store to cash it. Krill often kept cash in a compartment in her walker.

- [4] Collins, aged sixty-five, lived in an apartment near Krill's, separated by a stairway. Collins had previously worked in the building as a janitor, but his employment had ended involuntarily. Due to his job, he was familiar with the building's security system, including the video cameras that were placed in the hallways on each floor. During the relevant time period, Collins owed back rent to the company that managed the building.
- [5] In March 2022, Brandt left town on vacation. During her absence, Claudia Kelly, a frequent visitor to the apartment building, spoke with Krill in the lobby. Krill opened up a compartment in her walker and took out a large quantity of cash, "almost \$3,000." Tr. Vol. 4, p. 64. Krill explained to Kelly that her friend was out of town, and she wanted to have extra money on hand. Kelly noted that Collins was also in the lobby, standing about ten feet away. She left the lobby and never saw Krill again.
- [6] Several days later, Kelly heard Collins speaking with another person in the building. The unknown person said Collins owed him money. Collins said, "Yeah, I got you." *Id.* at 87.
- [7] On Tuesday, March 15, 2022, Brandt called Krill four times, but she did not answer. On March 17, Brandt called Armstrong, concerned about Krill's failure to answer her phone over the previous two days. Earlier that day, Armstrong had knocked on Krill's door, but Krill had not responded.

- [8] Armstrong asked Jerry Clinton, the building's maintenance worker, to check on Krill. Clinton had a pass key for all of the apartments. Clinton unlocked Krill's door, and he and Armstrong entered. They found Krill's dead body on her bedroom floor, next to her bed, covered in two blankets. Clinton called 911.
- [9] Medics and police officers were dispatched to the apartment. The officers concluded the door had not been forced open. After the medics removed Krill's body, Clinton and several officers searched for her keys. They could not find Krill's keys, identification card or money, but they found her cell phone. Clinton changed the lock on the door when everyone left.
- [10] Next, officers canvassed neighboring apartments to see if anyone had information about Krill. Collins answered his door and stated he last saw her "several days" prior to March 17. Tr. Vol. 3, p. 231.
- [11] Later on March 17, an officer obtained and reviewed security camera recordings of the hallway outside Krill and Collins' apartments. The recordings showed that on Monday, March 14, at around 9 a.m., Krill returned to her apartment, unlocked the door, and entered. She was wearing the same clothes she was wearing when her body was found on March 17. Krill did not exit the apartment again. Later that morning, Collins knocked on her door three separate times, but she did not respond. A subsequent review of Krill's cell phone records revealed that someone using her phone spoke with an unidentified person for twenty-two minutes on March 14, beginning at 11:43 a.m.

- [12] At about 1 p.m. that same day, Collins left his apartment, empty-handed. He knocked on Krill's door and entered when the door opened. Collins left Krill's apartment around twenty minutes later, carrying a white plastic bag. The recording does not reveal the contents of the bag. Collins locked Krill's apartment door with a key and returned to his apartment.
- [13] The officer also reviewed security camera footage for March 15 and 16. No one entered or exited Krill's apartment on those days.
- [14] On March 18, a forensic pathologist performed an autopsy on Krill. Krill was five feet tall, weighed sixty pounds, and had fragile bones due to osteoporosis. The pathologist noted signs of blunt force trauma and smothering on her neck and face. An internal examination revealed deep internal bleeding in Krill's neck. In addition, Krill's hyoid bone was fractured, and her spine was fractured at the lowest part of her neck. The pathologist determined someone had attacked her from behind and inflicted all of the injuries just before death. Krill's injuries were consistent with manual strangulation resulting in death by asphyxiation. The pathologist concluded she died by homicide. Based on the progression of decomposition, the pathologist determined Krill was killed forty-eight to seventy-two hours before the discovery of her body.
- [15] On March 19, several officers arrested Collins, and Officer Eric Green transported him to jail. Officer Green did not question Collins or explain the reasons for the arrest, but Collins volunteered, "I know this ain't about Miss Mary. I didn't kill that woman. She was my friend." Tr. Vol. 4, p. 37.

[16] During police questioning, Collins claimed to have seen Krill for the last time on Tuesday, March 15, at the building's elevators. He conceded he had been in Krill's apartment on Monday, March 14, but he stated he had entered at her request to reprogram her televisions and take out her trash. Collins also insisted that Krill had not been in her apartment at the time. Instead, he claimed Krill had been downstairs in the lobby and had merely given him her key. Finally, Collins told the officers he had heard someone had beaten Krill and robbed her of \$5,000 in cash on a prior occasion.

[17] While Collins was in jail, he had a phone call with an unidentified person. He claimed he had been in Krill's apartment for only five minutes to take out her trash.

[18] The State charged Collins with murder, a felony; felony murder; Level 2 felony robbery; and Level 2 felony burglary. Collins testified at trial. In contrast to his prior statement to the police, Collins told the jury Krill was present when he entered the apartment on Monday, March 14. He also said he saw Krill twice on Tuesday, March 15: once at the elevators, and once in the building's laundry room.

[19] The jury determined Collins was guilty of felony murder, robbery, and burglary. At sentencing, the trial court entered judgment on the felony murder count and sentenced Collins to sixty years. This appeal followed.

Discussion and Decision

[20] Collins argues there is insufficient evidence to support his conviction of felony murder.¹ When an appellant challenges the sufficiency of the evidence, our job “is to decide whether the facts favorable to the verdict represent substantial evidence probative of the elements of the offenses.” *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022) (quoting *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007)). “It is not our role as an appellate court to assess witness credibility or to weigh the evidence.” *Sage v. State*, 114 N.E.3d 923, 929 (Ind. Ct. App. 2018). We will affirm the judgment “unless ‘no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.’” *Young*, 198 N.E.3d at 1176 (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).

[21] Collins notes the State’s case against him is based on circumstantial evidence. Circumstantial evidence alone can be sufficient to support a conviction and “need not overcome every reasonable hypothesis of innocence.” *Ward v. State*, 138 N.E.3d 268, 277 (Ind. Ct. App. 2019). It is enough if an inference may be reasonably drawn from the circumstantial evidence to support the verdict beyond a reasonable doubt. *Peacock v. State*, 126 N.E.3d 892, 896 (Ind. Ct. App. 2019). “[T]he identity of a perpetrator of an offense may be established solely

¹ Collins also argues the evidence is insufficient to sustain the jury’s determination that he is guilty of burglary. But the trial court declined to enter judgment on that charge “by agreement of the parties.” Appellant’s App. Vol. 2, p. 220. “A verdict is the jury’s finding of guilt, but such finding carries no legal consequences unless the trial court enters a judgment of conviction on the verdict.” *Haddix v. State*, 827 N.E.2d 1160, 1165 (Ind. Ct. App. 2005), *trans. denied*. Further, as we discuss below, the felony murder charge cited robbery, not burglary, as the predicate offense. We need not further address this argument.

by circumstantial evidence.” *Shepherd v. State*, 157 N.E.3d 1209, 1218 (Ind. Ct. App. 2020), *trans. denied*.

[22] To convict Collins of felony murder as charged, the State was required to prove beyond a reasonable doubt that (1) Collins (2) killed Krill (3) while committing or attempting to commit (4) robbery. Ind. Code § 35-42-1-1(2) (2018); Appellant’s App. Vol. 2, p. 114. And to obtain a conviction of Level 2 felony robbery as the predicate offense, the State was required to prove beyond a reasonable doubt that (1) Collins (2) knowingly or intentionally (3) took money or a key (4) from Krill or in Krill’s presence (5) by using or threatening the use of force against Krill (6) resulting in serious bodily injury to Krill. Ind. Code § 35-42-5-1 (2017); Appellant’s App. Vol. 2, p. 114.

[23] Collins does not dispute Krill was robbed and murdered. He instead claims the State failed to prove he attacked Krill and took her property. We disagree. Although motive is not an essential element of the offense, the record shows Collins had financial challenges when he learned Krill had a substantial amount of cash. He also knew Krill was over ninety years old and frail, and she had been robbed in the past.

[24] In addition, the security camera recordings show Krill entering her apartment on the morning of March 14, wearing the same clothes in which she was later found dead. Collins was the last person to enter Krill’s apartment before her body was found, and he stayed there for twenty minutes. When he left, he used a key to lock the door and took it with him. He also carried a full plastic bag

back to his apartment, although he had been empty-handed before. Later, Claudia Kelly overheard Collins telling an unidentified person he had the money to pay off a debt.

[25] Clinton and the officers searched Krill's apartment after her death, but they did not find her keys, her wallet, her identification, or any cash; they found only her cell phone.

[26] When Collins was arrested, he spontaneously denied any involvement in Krill's death. He also claimed Krill was not present when he entered her apartment on March 14, and he denied he had repeatedly knocked on her door earlier that day. Collins stood by those statements even after the officers told him the security camera recordings contradicted him.

[27] In a recorded phone call from jail, Collins told an unidentified person he was in Krill's apartment for only five minutes, contradicting what he had told the officers. And when Collins testified at trial, he told yet another version of events, asserting that Krill was at her apartment on Monday, March 14. He also provided a different version of having seen Krill on March 15, claiming he saw her twice that day, rather than once.

[28] Collins argues that he had the opportunity to rob and kill Krill, but the evidence does not show he committed those offenses. We agree that a defendant's "mere presence" at the crime scene, with the opportunity to commit offenses, would be insufficient to support a conviction. *Watkins v. State*, 766 N.E.2d 18, 22 (Ind. Ct. App. 2002), *trans. denied*. But a defendant's "presence at the scene in

connection with other circumstances tending to show participation may be sufficient to sustain a conviction.” *Id.* In Collins’ case, considering the evidence set forth above, there are sufficient circumstances beyond his mere presence in Krill’s apartment to demonstrate beyond a reasonable doubt that he killed Krill while taking her money and keys. *See id.* at 22 (evidence sufficient to sustain Watkins’ convictions of murder and robbery; no one saw Watkins kill victim in victim’s apartment, but a witness saw him leave apartment building just before body was found, Watkins’ palmprint was found inside, and victim’s property was missing).

[29] Collins challenges Claudia Kelly’s memory, noting she testified that Krill showed her the \$3,000 in the lobby on the night of March 14, which would have been hours after Collins left Krill’s apartment. But the jury, as the finder of fact, was free to accept portions of Kelly’s testimony and reject others. *See Young*, 198 N.E.3d at 1181 (jury could have rejected some of police witness’s statements while accepting others).

[30] Collins further notes the prosecution did not present any security camera recordings from March 15, because the building’s security contractor did not give the prosecution those recordings. But a police officer testified that on March 17 and 18, he reviewed the security camera recordings from March 15, and no one entered or left Krill’s apartment on that date.

[31] Finally, Collins argues the police did not find any of Krill’s property in his apartment, and the State did not present any DNA evidence linking him to the

crimes. But the State was not required to catch Collins in possession of the stolen goods at the time of arrest or to present DNA evidence linking him to Krill. In sum, Collins’ arguments are requests to reweigh the evidence, which our standard of review forbids. *See Davis v. State*, 743 N.E.2d 751, 754 (Ind. 2001) (evidence sufficient to sustain felony murder conviction; Davis argued evidence failed to show he broke into victim’s residence, but Court declined to rely on “the version of events proposed by Davis” and instead considered evidence favorable to judgment).

Conclusion

[32] For the reasons stated above, we affirm the judgment of the trial court.

[33] Affirmed.

Vaidik, J., and Bradford, J., concur.

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