

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 20, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP2167-CR

Cir. Ct. No. 2006CF70

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VINCENT DARNELL COSEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

Before Brown, C.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. A jury convicted Vincent Darnell Cosey of first-degree intentional homicide and possession of a firearm by a felon. It is well established that a finding of guilt may rest upon evidence that is entirely

circumstantial. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We conclude that the circumstantial evidence was more than sufficient to convict him. We affirm the judgment.

¶2 Cosey was charged with first-degree intentional homicide for shooting and killing his girlfriend, Stefnee Goines, and with possession of a firearm by a felon. There were no eyewitnesses to the shooting and no weapon was found. The testimony of eighteen witnesses over three days placed Cosey and Goines in Cosey's car around the time and near the spot where Goines' body was found. Cell phone records, ballistic and forensic evidence and Cosey's family members' statements to police added to the circumstantial case the State built against Cosey. Despite the lack of direct evidence, the jury convicted him of both counts. The court sentenced him on the homicide conviction to life imprisonment without the possibility of extended supervision and on the firearm conviction to a concurrent five-year sentence of four years' initial confinement and one year extended supervision.

¶3 Cosey raises only one challenge on appeal. He contends the evidence was insufficient to show that he shot and killed Goines and therefore was insufficient to support the guilty verdicts. We disagree.

¶4 The following evidence was adduced at the five-day jury trial. Around 9:00 p.m. on January 14, 2006, a passerby found Goines' lifeless but still-warm body lying at the side of 4 Mile Road in Racine county. She had been shot seven times, three times in the back of the head. The medical examiner opined that the shots were fired in rapid succession and that Goines died within minutes of being shot. Nothing suggested she had been shot elsewhere and moved to that location. A ballistics expert testified that three of the .38/.375-caliber bullets

recovered from Goines' body were fired from the same gun. Two similar unfired cartridges were found in a 1991 Chevrolet van Cosey sometimes drove¹; more cartridges were found at his mother's house. No gun was recovered.

¶5 Felicia Jones, Goines' best friend, told police that at about 7:30 p.m. she declined Goines' invitation to join Goines and Cosey. When Jones called Goines' cell phone around 8:30 p.m., Goines said she was in a car. During the fifteen-minute conversation, Jones heard Goines and Cosey arguing, with Cosey getting "louder and more demanding." She heard Goines tell Cosey to "[l]et me out the damn car, take me home; smoking that stuff, you know I got asthma." She also heard Cosey tell Goines to "get off the damn phone." The phone call abruptly ended, without Goines saying good-bye.

¶6 An investigating officer testified about conversations he had with Cosey's sister, Titania Cosey, his brother, Ernest Cosey, and his mother, Sonja Blake. Titania told the officer she had spoken to Cosey on the telephone in the early morning hours of January 15. Cosey was upset and crying and told her he had accidentally shot Goines outside of his car near his grandmother's house on 4 Mile Road, and he did not want to go to jail for the rest of his life and was going to shoot himself. The officer also testified that Ernest said he spoke to Cosey during the same phone call and Cosey likewise said he wanted to kill himself because he did not want to spend the rest of his life in jail. Similarly, Cosey's mother told the officer that Cosey called her early on January 15 saying he was

¹ The van was registered to a "Ray Simmons," whose whereabouts were unknown. Information from police interviews with Cosey's sister, nephew and brother's girlfriend indicated that Cosey somehow had possessory control of the van. Also, a police officer testified that police department records indicated that Cosey had been stopped in the past while driving the van.

sorry for what he had done and that she knew Cosey “did it.” At trial, however, all three family members either denied giving the officer this information or testified that they could not recall if they did.

¶7 Testimony also established that Brian Smith and his wife were driving on 4 Mile Road hurrying to get home for a 9 p.m. television program when they came upon a blue Chevrolet Celebrity stopped on the road near where Goines’ body later was found. Smith, the manager of an auto parts store, judged from the car’s taillights that it was a “mid- to late-’80s” vehicle because he had owned three Celebrities of similar vintage. The car had front fender damage near the headlight. The Smiths slowed but did not stop. Smith’s wife testified that she turned to look as they passed and could see the silhouettes of two people in the car. Because it was dark, she could not tell their age, gender or race.

¶8 Police later observed a blue 1985 Chevrolet Celebrity, with similar front-end damage, parked across the street from Cosey’s residence. An investigating officer testified that Cosey’s nephew, Kevin Tye, told police that he thought he saw his uncle leave the residence in the blue Celebrity at about 8:15 p.m. At trial, Tye denied making that statement. Pursuant to a search warrant, police recovered the Celebrity and the van. Police found a marijuana blunt in the Celebrity and two .38/.375-caliber bullets in the van.

¶9 Joyce Ward, Cosey’s former girlfriend, testified that Cosey called her at work at 8:47 p.m. Cell phone records confirmed Ward’s testimony that she called Cosey back a minute later. They also showed that the call was routed from a tower located less than three miles from where Goines’ body was found.

¶10 Seizing on weaknesses in the proof and suggesting alternate inferences that might have been drawn, Cosey contends the evidence is

insufficient to convict him. He underscores that the State produced no eyewitnesses and no weapon; no bullets were found in his car; the bullets that were found were of a common type and were recovered from a van registered to someone else; Jones heard no shots or sounds of physical struggle when she conversed with Goines; family members denied under oath that they had made incriminating statements to police; Smith's observations are suspect because he did not stop when he came upon the car alleged to be Cosey's; Smith's wife saw only "shadows" of two people inside the car; and neither Smith nor his wife caught the car's license plate number. Cosey also points out that in a taped telephone conversation with his sister while he was in jail, Titania asked if he would plead guilty and he responded, "Why would I do that? ... I ain't did shit."

¶11 The test on appeal for the sufficiency of the evidence is not whether we are convinced of the defendant's guilt beyond a reasonable doubt, but whether we can conclude that the jury, acting reasonably, could be so convinced by evidence it had a right to believe and to accept as true. *Poellinger*, 153 Wis. 2d at 503-04. We must view the evidence in the light most favorable to the verdict. *Id.* at 504. If the evidence permits more than one reasonable inference to be drawn, we must accept the one the jury drew unless the underlying evidence is incredible as a matter of law. *See id.* at 506-07.

¶12 The State's case, although circumstantial, was substantial and allowed for strong inferences to address gaps in the evidence. It is within the realm of possibility that some as-yet unidentified person killed Goines, but we need not concern ourselves in any way with evidence which might support other theories of the crime. *See id.* at 507-08. Rather, we need decide only whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered. *Id.* at 508.

¶13 Here, it certainly was reasonable for the jury to infer that it was Cosey who shot Goines. Jurors could infer from the evidence that Goines was in a car with Cosey; that a car matching the description of his car was observed near where Goines' body was found; that bullets from Goines' body matched bullets within Cosey's sphere of accessibility; that police found a blunt in Cosey's car and Goines was heard complaining about Cosey smoking "that stuff"; that Cosey's cell phone made calls from that area in the relevant time frame; that the time of Goines' shooting could be narrowed to an approximately fifteen-minute window; and that she was found shortly after being shot because her body still was warm. And while it also is possible, as the police investigators claim Cosey's sister and mother said, that Cosey accidentally shot Goines as she got out of the car, the fact that she was shot multiple times—three times in the back of the head—supports the reasonable inference of an intent to kill.

¶14 Cosey also stresses that his family members' testimony contradicted their alleged earlier statements to police. Inconsistencies and contradictions in the witnesses' testimony are part of the jury's credibility determinations. *Kohlhoff v. State*, 85 Wis. 2d 148, 154, 270 N.W.2d 63 (1978). The jury may accept or reject any part or all of a witness's testimony. See *State v. McAllister*, 153 Wis. 2d 523, 533, 451 N.W.2d 764 (Ct. App. 1989). There was ample circumstantial evidence here to support the jury's verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

