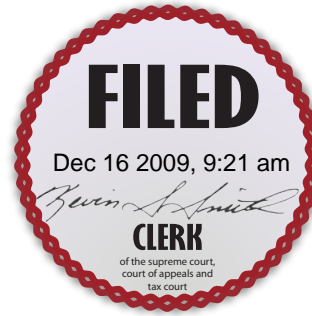


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY W. FRENCH,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 18A05-0901-CR-2

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Linda Ralu Wolf, Judge
The Honorable Robert Barnett
Cause No. 18C03-0803-MR-1

DECEMBER 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPBACK, S.J.,

Anthony French appeals his conviction by jury of murder and conspiracy to commit murder. We affirm.

French raises the following two issues for our review:

1. Whether the trial court committed reversible error in admitting evidence; and
2. Whether the trial court erred in jury instruction.

The facts most favorable to the verdict reveal that _____eresa _____-years-old. They had three children, a son born in 1979; a daughter born in 1987; and another son born in 1990. During the course of their marriage, the Frenches acquired two houses, a boat, and several vehicles. The Frenches separated in 1992, and Teresa filed a petition for dissolution. They subsequently reconciled.

_____time she saw Teresa, Teresa would be in the hospital. _____hospital with a broken nose and cheekbone caused by French punching her in the face.

As a result of these injuries, Teresa needed immediate reconstructive surgery. The _____inger Engle, that he was going to

telephoned several times and threatened to kill her.

Teresa attended a provisional hearing at the end of January 1993. Following the hearing, the trial court ordered French to pay Teresa maintenance and child support. He was also ordered to pay the mortgage and utilities for the marital residence on Cromer Street where Teresa and the children would be living until it was sold. In addition,

Shortly thereafter, French moved in with Oren Johnson, a Borg Warner co-worker.

that he would rather see her dead than live without her. Tr. at 525. French was angry that he had to move out of the marital residence, pay maintenance and support to Teresa, and sell his boat.

One evening, Johnson introduced French to Jess David Woods. French told Woods about the situation with Teresa and that the way to end his problems was to have Teresa killed. Woods, who was having similar problems, told French he could help him. French told Woods that he wanted Teresa killed in the garage at the Cromer Street residence

532. French wanted Teresa killed before all of his

Woods later showed French a .22 caliber pistol with a homemade silencer and an attached canvas bag that caught the ejected shells. French and Woods shot off the gun in would help them get away with murder. French also told Woods to lure Teresa into the garage by posing as a housing inspector who needed to look at the garage for his report.

In the spring of 1993, French told long-time friend Rick Engle and co-worker Joe Haskins that Teresa had filed a dissolution petition and that he was going to kill her. He also told Hank Roe, a neighbor at the Cromer Street residence, that he was losing his house and boat and that he was going to kill Teresa so he could have everything. French also told Roe to keep his girlfriend away from the Cromer Street house.

The closing for the sale of the Cromer Street house was scheduled for May 14, 1993, and the final dissolution hearing was scheduled for June 8, 1993. On the morning of May 13, 1993, Teresa was at home alone. Her two youngest children were out of town with her mother, and her oldest child was at school. French was at work at Borg Warner. At approximately 10:25 a.m., Teresa was talking on the phone to her friend Ginger Engle when a man wearing a suit knocked at the door. Engle overheard the man tell Teresa he was an inspector. Teresa told Ginger she would later that day in the garage. She had been shot multiple times in the head and chest with a .22. No shell casings were found at the scene.

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ome. He was able to keep all of his possessions and

He lived in the Cromer Street residence for the next fifteen years and raised his three children.

In 2007, Johnson was arrested and charged with possession of cocaine, battery,

house dressed in a suit, and that Teresa thought he was some kind of inspector. He further told Dabbs that he killed Teresa in the garage. Dabbs also testified that she and Woods subsequently visited Terry Fisher in Indianapolis who was supposed to have gotten rid of the gun for Woods. Fisher still had the gun, and Woods told him to
on

The jury convicted French of murder and conspiracy to commit murder. He appeals his convictions. Our discussion of the issues includes additional facts.

Admission of Evidence

The admission of evidence is within the sound discretion of the trial court, and the decision whether to admit evidence will not be reversed absent a showing of manifest

Simmons v. State,

760 N.E.2d 1154, 1158 (Ind. Ct. App. 2002). Moreover, a claim of error in the admission

Black's Law Dictionary 596 (8th ed.2004) cited in *Witte v. Mundy ex. rel. Mundy*, 820 N.E.2d 128, 135 (Ind. 2005).

French first argues that the trial court erred

statements. Such hearsay is not admissible at trial unless it fits within some exception to the hearsay rule. *Id.*

Evidence Rule 801(d)(2)(E), which provides that a statement made by a co

interpre
reject that which points to his guilt.

Instructing the jury is within the discretion of the trial court. *Smith v. State*, 777

reasonable doubt. The proof must be so convincing you can rely and act upon it in this matter of the highest importance. If you find there is reasonable doubt that the Defendant is guilty of the crimes, you must give the Defendant the benefit of that doubt and find the Defendant not guilty of the crimes here under consideration.

Tr. at 996-997.

Because the tendered instruction was covered by another instruction, the trial court did not abuse its discretion in refusing to give it. We find no error.

Affirmed.

BAKER, C.J., and MAY, J., concur.