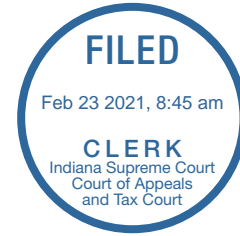


MEMORANDUM DECISION

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

Damon J. Lewis, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2021

Court of Appeals Case No.
20A-CR-1528

Appeal from the Marion Superior
Court

The Honorable Grant W.
Hawkins, Judge

Trial Court Cause No.
49G05-1902-MR-4791

Brown, Judge.

[1] Damon J. Lewis, Jr., appeals his convictions and sentence for murder and attempted murder. He raises two issues which we revise and restate as:

I. Whether the evidence is sufficient to disprove his claim of self-defense; and

II. Whether his sentence is inappropriate based on the nature of the offenses and the character of the offender.

We affirm.

Facts and Procedural History

[2] Approximately one week prior to February 4, 2019, Lewis and some of his family members were involved in a physical altercation at church with Leonard Cook. At about 10:30 p.m. on February 4, 2019, Lewis and one of his cousins went to Skateland in his cousin's vehicle, and they socialized with other friends and relatives inside. Cook and his cousin Justin Anderson, and Anderson's fiancée, went to Skateland in Cook's vehicle. Indianapolis Metropolitan Police Officer Demetric Smith was off duty and working as security at Skateland and walked around inside and outside the building. At some point, Lewis and others with him passed Cook and Anderson, and Lewis stated "Come outside. Come outside" to Cook. Transcript Volume II at 128. Another person in Lewis's group also said "Come outside."¹ *Id.* Cook did not leave at that time. Lewis and his group exited the building, and a few minutes later some in the

¹ Cook testified that "Come outside" meant "we're about to shoot you" and that Lewis and the other person were being aggressive and looked angry. Transcript Volume II at 177.

group reentered the building. At some point after he exited the building, Lewis retrieved his bookbag, which contained his gun, from the vehicle in which he had arrived, entered the passenger seat of a different vehicle which belonged to another of his cousins, and rolled down the window.

[3] Lewis observed Cook, Anderson, and Anderson's fiancée as they left the Skateland building and approached Cook's vehicle. Officer Smith was standing on the sidewalk watching the parking lot and observed a vehicle pass by him and saw that Lewis was in the passenger seat with the window rolled down. Cook entered the driver's seat of his vehicle while Anderson and his fiancée were still walking toward his vehicle. Officer Smith observed the vehicle in which Lewis was seated stop. While Cook was seated in the driver's seat of his vehicle and Anderson was about five feet from Cook's vehicle and walking toward the vehicle, Lewis pointed his gun outside the passenger side window and started shooting toward Cook's vehicle.² Lewis fired multiple shots,³ emptying the clip or magazine of his gun, in the direction of Cook and Anderson. Anderson turned around and pushed his fiancée, and one of the shots struck Anderson, the bullet entering his back and exiting his chest. Other bullets struck the hood and windshield of Cook's vehicle. The vehicle occupied

² Cook testified that he shut the car door, saw the reaction of Anderson and his fiancée to the gunshots, and jumped out of the car. Anderson's fiancée testified that, when she heard the gunshots, Cook was sitting in the vehicle and that the interior light of the vehicle was on.

³ Officer Smith testified he heard rapid gunshots, saw Lewis firing, and heard at least ten or twelve gunshots. Eleven fired cartridge cases were found at the scene.

by Lewis sped away. Cook and Anderson's fiancée did not see where the shots had originated.⁴ Cook grabbed his gun from his door console, exited his vehicle, located Anderson, and called 911. Officer Smith entered his police vehicle and attempted but was unable to locate the vehicle containing Lewis. Anderson died as a result of his injuries. Cook met with officers at the scene and later with a detective. Lewis took the slide off of his gun and threw each piece into a creek. The following morning, Lewis went with his family to the police station and spoke with the detective.

- [4] The State charged Lewis with murder and attempted murder. At trial, the jury heard testimony from, among others, Cook, Anderson's fiancée, Officer Smith, Lewis's cousins, and Lewis. Lewis testified that he did not see Cook at Skateland until he was leaving, he saw Cook pointing in his direction, and he asked Cook why he was there. He testified that he was in his cousin's vehicle and they started driving toward the entrance, he received a message that "they was coming out," "we made eye contact with them," and "once we made eye contact, we see him sprintin' towards here to his car." Transcript Volume III at 172. He testified that he observed Cook run to his vehicle, open the door, bend down "like he was reaching for some, searchin' for some," *id.* at 174, and "peek[] back up . . . like, he was gonna shoot. *Id.* at 172. He indicated that he

⁴ When asked if she saw a vehicle at the time of the gunshots, Anderson's fiancée stated "No. There was no light or anything, none behind us or for us to move over or anything like that 'cause we were walkin' pretty much in the middle of the parking lot to get to the car." Transcript Volume II at 217. Cook testified that he did not see where the shots came from and did not see what type of vehicle the shots came from.

could not see Cook's hands, he did not see a gun, he thought Cook had a gun and felt Cook was going to start shooting, and "[s]o . . . I started shootin' first." *Id.* at 175. When asked why he shot, Lewis testified: "In fear of my life. Feel like if I didn't shoot first, I was gone [sic] get . . . shot at." *Id.* at 176. He testified that he saw Anderson fall but thought that he had tripped. Lewis's cousin who was driving testified that he saw Cook standing behind his car door, saw him bend down into the car, and saw him pointing in their direction although he could not say whether he was pointing a gun.

- [5] Lewis's defense counsel argued that Lewis acted in self-defense. The court instructed the jury on the defense of self-defense. The jury found Lewis guilty of murder and attempted murder as a level 1 felony. The court found that "the number of shots fired and the number of people in the target range, target area is the deciding aggravating factor" and stated "I don't fail to recognize his age, his lack of criminal history." Transcript Volume IV at 31. The court sentenced Lewis to concurrent terms of sixty years for murder and thirty years for attempted murder.

Discussion

I.

- [6] The first issue is whether the evidence is sufficient to negate Lewis's claim of self-defense. Lewis asserts that he subjectively believed force was necessary and that his belief was objectively reasonable. He maintains "[i]t is unreasonable to conclude that [he] would stop shooting just because Anderson was accidentally

hit when Anderson was not the individual believed to be armed” and he “had to react with a split second judgment to prevent death to himself and his family based on the facts available to him at that moment.” Appellant’s Brief at 11.

- [7] Self-defense is governed by Ind. Code § 35-41-3-2. A valid claim of self-defense is legal justification for an otherwise criminal act. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). In order to prevail on such a claim, a defendant must show that he: was in a place where he had a right to be; did not provoke, instigate, or participate willingly in the violence; and had a reasonable fear of death or great bodily harm. *Id.* The self-defense statute requires both a subjective belief that force was necessary to prevent serious bodily injury and that a reasonable person under the circumstances would have such an actual belief. *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013). The amount of force a person may use to protect himself or herself must be proportionate to the urgency of the situation. *Harmon v. State*, 849 N.E.2d 726, 730-731 (Ind. Ct. App. 2006). However, when a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id.* at 731. The Indiana Supreme Court has stated that firing multiple shots undercuts a claim of self-defense. *Mayes v. State*, 744 N.E.2d 390, 395 n.2 (Ind. 2001); *Randolph v. State*, 755 N.E.2d 572, 576 (Ind. 2001). When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Wilson*, 770 N.E.2d at 800. If a defendant is convicted despite a claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a

reasonable doubt. *Id.* at 800-801. A mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. *Id.* at 801. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Id.* We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*

- [8] The jury heard extensive testimony regarding the relationships and prior interactions between Lewis, Cook, and Anderson and the events culminating in the shooting on February 4, 2019. The evidence revealed that Lewis passed Cook, stated “Come outside,” exited the building, retrieved his bookbag and gun, entered the passenger seat of his cousin’s vehicle, and rolled down the window. Transcript Volume II at 128. Lewis saw Cook, Anderson, and Anderson’s fiancée approach Cook’s vehicle. The vehicle occupied by Lewis traveled toward the parking lot entrance and stopped, and Lewis pointed his gun outside the passenger side window and shot multiple times toward Cook’s vehicle, killing Anderson. The vehicle occupied by Lewis then sped away. Lewis later took the slide off of his gun and threw each piece into a creek. While Lewis testified that it looked like Cook was reaching for something, he thought Cook had a gun, and he was in fear for his life, Cook and Anderson’s fiancée testified that Cook was seated in the car when they heard the gunshots and they did not see Lewis or his vehicle. The jury heard the testimony of,

among others, Cook, Anderson's fiancée, Officer Smith, and Lewis, and each of them were thoroughly cross-examined. The jury was able to consider the extent to which the testimony of each witness was consistent or inconsistent with the testimony of the other witnesses and the other evidence and was able to assess the demeanor and credibility of the witnesses and weigh their testimony. The jury also heard arguments by the prosecutor and defense counsel regarding the evidence and testimony related to Lewis's claim of self-defense.

- [9] Based upon the evidence, the jury could infer that Lewis participated willingly in the violence, that he did not have a reasonable fear of death or great bodily harm, or that the amount of force he used was unreasonable under the circumstances. We conclude based upon the record that the State presented evidence of a probative nature from which a reasonable trier of fact could have determined beyond a reasonable doubt that Lewis did not validly act in self-defense and that he was guilty of murder and attempted murder. *See Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000) (affirming the defendant's convictions for murder and attempted murder, noting the defendant claimed that he acted in self-defense, observing the trial court gave the jury a self-defense instruction and the jury nonetheless convicted the defendant, declining to reweigh the evidence, and holding that the State presented sufficient evidence to negate the defendant's claim of self-defense); *Rodriguez v. State*, 714 N.E.2d 667, 670-671 (Ind. Ct. App. 1999) (noting that the defendant's version of events differed from

other testimony, declining to reweigh the evidence, and holding that sufficient evidence existed to rebut the defendant's claim of self-defense), *trans. denied*.

II.

[10] The next issue is whether Lewis's sentence is inappropriate in light of the nature of the offenses and his character. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[11] Lewis asserts "this was not a planned or sought out murder" and "this is a situation in which [he] validly believed himself to be acting in self-defense, even if [he] concedes for argument's sake that it was not legal self-defense." Appellant's Brief at 13. He argues he was nineteen years old, had no prior criminal history, had significant family support, had a high school diploma, was employed at the time of the offense, and expressed remorse. He contends his sentence should be closer to forty-five years.

[12] Ind. Code § 35-50-2-3 provides that a person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years with the advisory sentence being fifty-five years. Ind. Code § 35-50-2-4 provides that a person who commits a level 1 felony shall be imprisoned for a fixed term of between twenty and forty years with the advisory sentence being thirty years.

[13] Our review of the nature of the offenses reveals that Lewis was seated in his cousin's vehicle outside of Skateland, saw Cook, Anderson, and Anderson's fiancée leave the building and approach Cook's vehicle, and shot at them repeatedly and killed Anderson. He took the slide off of his gun and threw each piece into a creek, and the following morning he went to the police station and spoke with the detective. Our review of Lewis's character reveals that he was nineteen years old at the time of the offenses, did not have prior criminal convictions, graduated from high school, and was employed as an assembler at the time of his arrest. Lewis stated that he was sorry for his actions. The trial court noted Lewis's age and lack of prior criminal history. After due consideration, we conclude that Lewis has not sustained his burden of establishing that his concurrent sentences are inappropriate in light of the nature of the offenses and his character.

[14] For the foregoing reasons, we affirm Lewis's convictions and sentence.

[15] Affirmed.

Vaidik, J., and Pyle, J., concur.