MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Romello McGee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 6, 2022

Court of Appeals Case No. 21A-CR-2023

Appeal from the Marion Superior Court

The Honorable James B. Osborn, Judge

Trial Court Cause No. 49D21-2101-MR-2941

Altice, Judge.

Case Summary

[1] Romello McGee appeals his conviction for Level 2 felony voluntary manslaughter. His sole claim is that the State presented insufficient evidence to establish that he acted in sudden heat and not in self-defense when he shot the victim multiple times.

[2] We affirm.

Facts & Procedural History

[3] On the evening of January 11, 2021, McGee and his girlfriend, Malshavia Campbell, went to the Indianapolis home of Campbell's mother, Tomkima Brown. Brown lived there with her longtime boyfriend, James Lewis, and her younger children, T.L. and J.L. While the family was visiting in the kitchen, seventeen-year-old T.L. confronted Lewis about a recording he had recently made of T.L. playing loud music in her room. Campbell sided with T.L. during the ensuing discussion. Lewis became angry and started yelling and cussing because he felt he was being disrespected in his own home.

[4] When Lewis stormed to the master bedroom, Brown followed to attempt to calm him down. T.L. and Campbell then came into the bedroom and a verbal argument ensued between them and Lewis concerning the recording and other grievances. McGee stayed in the hallway just outside the bedroom. Eventually, Lewis made sarcastic apologies to each of the individuals in the home. McGee indicated that he did not require an apology, but then brought

up another issue with Lewis, which the two had discussed previously. McGee and Lewis exchanged words.

[5] At some point, Lewis, who was "tired of being disrespected," grabbed a 12-gauuge shotgun from behind his dresser. *Transcript Vol. III* at 63. He waved the shotgun around but did not point it at anyone. Everyone, except Brown and Lewis, then rushed out of the room as Brown closed the bedroom door and wrestled the shotgun away from Lewis, returning it to behind the dresser. Thereafter, Lewis sat on the bed, still angry, and Brown attempted to calm him down for a couple minutes.

[6] In the meantime, the other individuals in the home went to the front door and put on their shoes to leave. McGee handed car keys to Campbell and, at some point, removed the safety cable from the handgun he was carrying in a hip holster and loaded it. Campbell yelled from the hallway to make sure her mother, Brown, was okay. Brown responded, "yeah, just go ahead and leave. I'm fine." *Id*. at 65. Although Campbell, who was panicking, did not hear the reply, she left the home and went to the car parked out front to wait for the others so that they could leave together. T.L. and J.L. were in the front yard, and McGee, with his loaded gun, stood just off the front porch and to the side of the door to ensure everyone's safety.

[7] At some point while in the bedroom with Brown and as the others were leaving the house, Lewis called his son on the phone and could be heard by all present yelling, "come over here now, before I kill me a M-F-er." *Id*. at 91. About a

minute after getting off the phone with his son, Lewis grabbed his car keys from the dresser and walked out of the bedroom, indicating to Brown that he was "about to just go for a ride," which Brown indicated that Lewis typically did when he was mad. *Id*. at 66.

[8] Lewis walked out the open front door with his keys in one hand and his cellphone in the other hand. As Lewis crossed the threshold, McGee, whose back was initially toward the door, turned around and immediately began shooting at Lewis. McGee quickly fired seven shots, with at least five bullets striking Lewis about the head, chest, arm, and hand. Lewis collapsed and died at the scene from the multiple gunshot wounds. At the time of the shooting, it was dark outside, but there was a porch light on.

[9] On January 28, 2021, the State charged McGee with murder. A jury trial was held on August 2-4, 2021, at which McGee claimed self-defense. McGee testified that he was scared that he was "gonna die" that night, especially after hearing Lewis, who had been armed with a shotgun, yelling that he was going to "kill this motherf***er." *Id*. at 201, 202. McGee explained that he was "scared beyond scared." *Id*. at 202. He indicated that he was "out of [his] mind" and "terrified." *Id*. at 217. McGee acknowledged that he had not heard any shots from inside the house and that, before shooting Lewis, he did not have a chance to see whether Lewis was still armed with the shotgun.

[10] The trial court instructed the jury on voluntary manslaughter and murder, as well as self-defense. The jury ultimately found McGee not guilty of murder but

guilty of voluntary manslaughter. On September 8, 2021, the trial court sentenced McGee to ten years, with seven years suspended and the remaining three years served on community corrections.

Discussion & Decision

[11] McGee does not dispute that he knowingly or intentionally killed Lewis. He argues, however, that the State failed to prove that he was acting in sudden heat[1] at the time rather than in self-defense.[2] That is, McGee contends that his mental state of terror did not obscure his reason nor render him incapable of deliberation or cool reflection and that he acted rationally in defense of himself and others when he shot Lewis.

[12] When addressing sufficiency of the evidence claims, our standard of review is well settled: we do not reweigh the evidence or judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Rather, we consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct.

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[1] Pursuant to Ind. Code § 35-42-1-3(b), sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. It exists when a defendant is "provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection." *Isom v. State*, 31 N.E.3d 469, 486 (Ind. 2015).

[2] Ind. Code § 35-41-3-2(c) provides, in relevant part, that a person is justified in using deadly force "if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person." Reasonable belief, under the statue, requires both the defendant's subjective belief that the force was necessary and an objective determination that the defendant's belief was one that a reasonable person would have under the circumstances. *Hood v. State*, 877 N.E.2d 492, 495 (Ind. Ct. App. 2007), *trans. denied*.

App. 2017). We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009); *see also T.H. v. State*, 92 N.E.3d 624, 626 (Ind. 2018) ("Convictions should be affirmed unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.").

[13] Claims of self-defense and killing in sudden heat are not fundamentally inconsistent and, in appropriate circumstances, a jury may properly consider both theories. *Brantley v. State*, 91 N.E.3d 566, 573 (Ind. 2018), *cert. denied*, 139 S. Ct. 839 (2019). Thus, where there is evidence presented that a defendant acted in either sudden heat or self-defense when knowingly or intentionally killing another, "the jury [is] presented with a classic question of fact." *Id.* at 569. Our Supreme Court explained in *Brantley*:

> As with most cases, the jury here was faced with two stories: one where Brantley acted irrationally out of sudden heat, the other where Brantley acted rationally in self-defense. These explanations for Brantley's actions are not conflicting since the nature of each defense is different, and it was within the province of the jury to weigh the evidence and assess witness credibility in arriving at its verdict.
>
> Indeed, common to both defenses is terror. A defendant acts in self-defense when confronted with real danger of death or great bodily harm, or in such apparent danger as caused him, in good faith, to fear death or great bodily harm. The danger need not be actual, but the belief must be in good faith and the reaction must

> be reasonable. Similarly, sudden heat, which is sufficient to reduce murder to voluntary manslaughter, requires evidence of anger, rage, sudden resentment, or terror that is sufficient to obscure the reason of an ordinary man. *Thus, terror sufficient to establish the fear of death or great bodily harm necessary for self-defense could be equally sufficient to invoke sudden heat. In other words, the same evidence can either mitigate murder or excuse it altogether. It's the jury's call.*

Id. at 573-74 (internal citations and quotations omitted) (emphasis supplied).

[14] Here, it is undisputed that Lewis's actions provoked terror in McGee and precipitated the shooting. We do not disagree that the evidence established that McGee objectively feared for his life as he stood outside the home ushering loved ones to safety. But the evidence also showed that Lewis was unarmed at the time McGee rapidly shot him at least five times and that McGee immediately turned and fired seven times without looking to see whether Lewis was even still armed with the shotgun. Though certainly a close call, it was well within the jury's province to determine that McGee's actions as Lewis walked out of the home were impulsive and unreasonable and resulted from terror and a sudden impetus to kill. Accordingly, we affirm the conviction for voluntary manslaughter.

[15] Judgment affirmed.

Bailey, J. and Mathias, J., concur.