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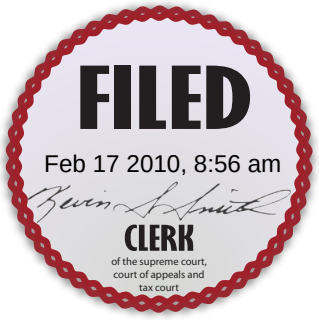

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IN THE
COURT OF APPEALS OF INDIANA

ANDREW B. WATSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0908-CR-364
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0812-MR-10

February 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Andrew Watson appeals his conviction for murder.[1] Watson raises one issue, which we revise and restate as whether the evidence is sufficient to negate the presence of sudden heat. We affirm.

The relevant facts follow. On the evening of December 24, 2008, Donna Jones, her sister Christine Jones, and Ebony Brodnax were at the home of Carla,[2] who lived two houses down from Donna and Christine, babysitting Carla's two children and Donna's son for the evening. Donna was sixteen years of age, Christine was fifteen years of age, and Ebony was twenty or twenty-one years of age. During the early part of the evening, Donna, Christine, and Ebony watched television and listened to music.

At approximately 8:00 p.m., Watson visited Carla's house for about twenty minutes. Watson was a friend of Carla and had previously visited Carla's house. Sometime after 11:00 p.m. on December 24, 2008, Watson returned to Carla's house with another man. Watson sat on the couch and the other man sat in a chair in the living room. Approximately five to ten minutes after Watson's arrival, Justin Franklin, Donna's twenty-one year old boyfriend, arrived at Carla's house to visit Donna.

Franklin and Donna went into the kitchen by themselves. Franklin and Donna began to argue, and Franklin "got mad" and "scratched [Donna] in [her] face." Transcript at 121. Christine, Ebony, and Watson heard a "scuffle in the kitchen" and a "[b]anging against the counter," and they walked into the kitchen. Id. at 192-193. At some point, Christina told Watson and Ebony to leave the kitchen, but they refused.

[1] Ind. Code § 35-42-1-1 (Supp. 2007).

[2] Carla's last name does not appear in the record.

Watson said to "[q]uit putting your hands on her." Id. at 67. Franklin then said: "Quit being disrespectful. This is between me and my girlfriend." Id. at 123. Franklin also stated to Watson: "This ain't got nothing to do with you. This is between me and my b---h." Id. at 193. Watson stated: "You done messed up my little b---h face." Id. at 194. Franklin then turned to Donna and asked her: "Is this your n----r?" Id. At first Donna did not reply, but when Franklin continued to ask her she "shook her head with a frown and said, 'No.'" Id.

Watson then went into the living room. Donna and Franklin continued to argue in the kitchen for another four to five minutes. Eventually, Donna went to the bathroom to put some ointment on her face, and Franklin went into the living room. In the living room, Franklin and Watson "began to argue" about "[g]ang relations." Id. at 197-198. Franklin "said that he was a Black Stone," and Watson "said he was a Vice Lord." Id. at 198. Watson and Franklin got "into each other's face about their gang relations." Id. at 199. Eventually Watson "sat back down" on the couch, but Franklin "was still standing and . . . had his hands in his pockets." Id. Watson asked Franklin if he had any weapons on him because "he was making him nervous," and Franklin said that he "don't have nothing on [him] but these hands." Id. After that, Watson and Franklin "didn't really say much." Id. at 200. Donna left the bathroom and stated: "Why is y'll still here? If I'm a ho, you could leave." Id. Franklin said: "You ain't got to tell me no more" and "[h]e reached for the door," which was "away" from the couch where Watson was seated. Id. at 201. As Franklin "was reaching for the door," Watson "got up and shot him." Id. at 202. Watson stated: "N----r, don't ever disrespect me." Id. Franklin fell to the ground

by the front door. While Franklin was on the ground, Watson kicked him in the face. Watson then fled the house. Franklin died of a gunshot wound to the neck.

On December 30, 2008, the State charged Watson with murder. During the jury trial, Watson moved for a directed verdict, which the trial court denied. At Watson's request, the trial court instructed the jury on the lesser included offenses of voluntary manslaughter and involuntary manslaughter. On May 28, 2009, the jury convicted Watson of murder. On July 2, 2009, Watson was sentenced to sixty-five years.

The sole issue is whether the evidence is sufficient to negate the presence of sudden heat. Watson argues that the evidence was insufficient to sustain his conviction for murder and that the jury should have found him guilty of voluntary manslaughter instead. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

A person commits murder when the person "knowingly or intentionally kills another human being." Ind. Code § 35-42-1-1. On the other hand, a person commits voluntary manslaughter when the person knowingly or intentionally kills another human being "while acting under sudden heat." Ind. Code § 35-42-1-3(a) (2004). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. I.C. § 35-42-1-3(b). Thus, "[t]he element distinguishing murder from

voluntary manslaughter is 'sudden heat,' which is an evidentiary predicate that allows mitigation of a murder charge to voluntary manslaughter." Dearman v. State, 743 N.E.2d 757, 760 (Ind. 2001). The Indiana Supreme Court has defined "sudden heat" as "anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection." Id.

"To obtain a conviction for murder, the State is not required to negate the presence of sudden heat because '[t]here is no implied element of the absence of sudden heat in the crime of murder.'" Crain v. State, 736 N.E.2d 1223, 1238 (Ind. 2000) (quoting Earl v. State, 715 N.E.2d 1265, 1267 (Ind. 1999)). "However, once a defendant places sudden heat into issue, the State then bears the burden of negating the presence of sudden heat beyond a reasonable doubt." Id. The State "may meet this burden by rebutting the defendant's evidence or affirmatively showing in its case-in-chief that the defendant was not acting in sudden heat when the killing occurred." Id. "Although it is the State's burden to disprove sudden heat once it becomes an issue, its presence is a question of fact for the jury." Carroll v. State, 744 N.E.2d 432, 434 (Ind. 2001); Boone v. State, 728 N.E.2d 135, 139 (Ind. 2000) ("Existence of sudden heat is a classic question of fact to be determined by the jury."), reh'g denied.

The Indiana Supreme Court has noted that "[w]ords alone cannot generate sudden heat." Perigo v. State, 541 N.E.2d 936, 939 (Ind. 1989). Further, "evidence that the defendant was 'angry' does not, standing alone, show sudden heat; there must be evidence that the victim provoked the defendant." Matheney v. State, 583 N.E.2d 1202,

1205 (Ind. 1992), cert. denied, 504 U.S. 962, 112 S. Ct. 2320 (1992). Indeed, "insults or taunts alone are not sufficiently provocative to merit a conviction for voluntary manslaughter instead of murder." Watts v. State, 885 N.E.2d 1228, 1233 (Ind. 2008); see also Jackson v. State, 709 N.E.2d 326, 329 (Ind. 1999) ("Insulting or taunting words alone are not sufficient provocation to reduce murder to manslaughter.").

Watson argues that "[t]he evidence presented showed that the atmosphere in the house that night was highly charged." Appellant's Brief at 9. Watson argues that "[t]here were two men interested in the same young woman," that Franklin "was angry and abusive with Donna," that Watson and Franklin "argued over the way that [Franklin] had assaulted [Donna]," that "[t]he altercation escalated with the added element of gang rivalries," and that "[a]ll of these components led to an explosive atmosphere which rendered [Watson] incapable of cool deliberation before he acted." Id. Watson also argues that "the evidence showed that [Franklin] was facing the person who shot him." Id. at 10-11. Watson argues that "[c]onsidering the evidence and inferences, a reasonable jury could not find that the State had proven beyond a reasonable doubt that [Watson] was not acting under sudden heat." Id. at 11. Watson's arguments are merely a request that we reweigh the evidence, which we will not do. See Jordan, 656 N.E.2d at 817.

Here, the record reveals that Watson entered the kitchen of the house and told Franklin to "[q]uit putting your hands on her." Transcript at 67. After an exchange with Donna and Franklin, Watson went back into the living room. Approximately four to five minutes later, Franklin entered the living room, and Franklin and Watson "began to argue" and "get into each other's face" about "[g]ang relations." Id. at 197, 199. It does

not appear that any evidence was presented of a physical struggle between Watson and Franklin. Watson did not immediately shoot Franklin after their argument in the kitchen or their later argument in the living room regarding their gangs. Rather, Watson "sat back down" on the couch and asked Franklin if he had any weapons, and Franklin said that he "don't have nothing on [him] but these hands." Id. at 199. After that, Watson and Franklin "didn't really say much." Id. at 200. Franklin was reaching for the front door and walking away from Watson when Watson stood up and shot him. At trial, both Donna and Ebony testified that Franklin was walking "away from" Watson as "he was walking to the door" when Watson shot Franklin. Id. at 124, 201.

Based upon the record, we conclude that there exists evidence of probative value from which a reasonable jury could have found beyond a reasonable doubt that Watson was guilty of murder and was not acting under sudden heat. See, e.g., Jackson, 709 N.E.2d at 329-330 (concluding that the facts were sufficient to support the jury's conclusion that the defendant was not acting in "sudden heat" where the defendant did not immediately shoot the victim after a physical struggle); Horan v. State, 682 N.E.2d 502, 507 (Ind. 1997) (holding that the evidence was insufficient to support a determination that the defendant acted in sudden heat where sufficient time had elapsed affording the defendant time for cool reflection), reh'g denied.

For the foregoing reasons, we affirm Watson's conviction for murder.

Affirmed.

MATHIAS, J., and BARNES, J., concur.