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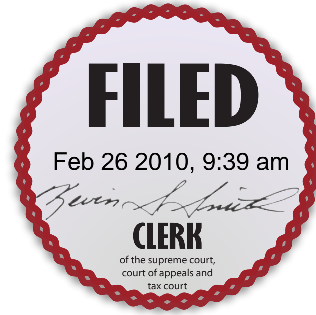

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IN THE
COURT OF APPEALS OF INDIANA

JAMES JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0907-CR-640
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0805-MR-104070

February 26, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

James Johnson ("Johnson") was convicted in Marion Superior Court of Class B felony aggravated battery. The trial court sentenced Johnson to a term of nine years. Johnson appeals and argues that the evidence was insufficient to support a conviction for Class B felony aggravated battery and that his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On May 5, 2008, Johnson brandished a knife and threatened to kill Robert Maxwell ("Maxwell") at Phyllis Parker's house. This was part of an on-going dispute during which they verbally insulted and threatened each other. Maxwell fled and Johnson was driven home by a friend. Johnson was upset after the incident.

Maxwell wanted to fight Johnson and tried to acquire a gun but failed. Instead he called a friend, Ryan Holloway ("Holloway"), and told him what had happened. Holloway became upset because Johnson had threatened Maxwell at Phyllis Parker's, Holloway's aunt's house. Maxwell picked up Holloway and drove to Johnson's house. The two parked the van in Johnson's driveway and got out. When Johnson saw the men exit the vehicle, he grabbed his mother's revolver. Neither Maxwell nor Holloway was armed until Maxwell picked up a nearby brick.

Johnson emerged from the house and came through the enclosed porch shooting the revolver. Maxwell dropped the brick and ran past Holloway who was backing away with hands raised. Johnson shot Holloway in the leg as Holloway ran away. Holloway

fell to the ground. Johnson approached Holloway and shot him as he lay on the ground. Johnson also kicked Holloway in the head and neck while yelling at him.

When police arrived, Holloway was found lying unresponsive in the driveway. Johnson was taken into custody. He claimed that Holloway and Maxwell had come into his house and he told an officer that "a good defense is a good offense." Tr. p. 133.

Holloway died from a gunshot wound to his left shoulder that passed through his lungs and perforated the blood vessels to his heart. This wound was consistent with a shot fired by someone standing over him while he was lying on his right side on the ground. Holloway also had a deep bruise on his left temple and a wound on the left side of his neck. In addition his body had a gunshot entry wound to the back of his left thigh and an attendant exit wound indicating the bullet passed through his leg. Holloway did not know Johnson and had never met him before.

On May 7, 2008, the State charged Johnson with murder. The three-day jury trial began on June 8, 2009. During the trial, Johnson claimed that he had acted in self-defense. The jury found Johnson guilty of the lesser-included offense of Class B felony aggravated battery. On June 24, 2009, the trial court sentenced Johnson to a term of nine years executed. Johnson now appeals.

I. Sufficiency of the Evidence

Johnson initially argues that the evidence is insufficient to support his conviction for Class B felony aggravated battery, specifically that the State failed to show that the gunshot wound which formed the basis of the conviction created a substantial risk of death. When we review a claim of sufficiency of the evidence, we do not reweigh the

evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-42-2-1.5 (2004), "[a] person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes serious permanent disfigurement [or] protracted loss or impairment of the function of a bodily member or organ . . . commits aggravated battery, a Class B felony."

Johnson contends that the jury concluded that the fatal shot was fired on his porch based on the comments of the trial court during sentencing. We will not speculate on the jury's thought process. See Hodge v. State, 688 N.E.2d 1246, 1249 (Ind. 1997). We concluded in Paul v. State, 888 N.E.2d 818, 824 (Ind. Ct. App. 2008), that "death can be a consequence of the offense of aggravated battery--where the 'substantial risk' has been realized." The uncontroverted evidence presented at trial was that Johnson shot Holloway twice, once in the leg and once in the left shoulder, and that Holloway died as a result of these wounds. This evidence is sufficient to support Johnson's conviction for Class B felony aggravated battery.

II. Inappropriate Sentence

Johnson also argues that his nine-year sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In Anglemyer, our supreme court explained:

> It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

868 N.E.2d at 494. "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Id.

First, it must be noted that Johnson received a nine-year sentence which is one year less than the advisory sentence for a Class B felony. The nature of the crime easily supports the nine-year sentence. Johnson shot a man twice causing the man's death. While Johnson did present a colorable claim of self-defense, that circumstance is reflected in the trial court's decision to impose a sentence that is less than the advisory sentence.

Johnson's character also supports the nine-year sentence. His criminal history includes two felony convictions and eight misdemeanor convictions. At the time of sentencing, Johnson had pending charges for Class B felony and Class D felony possession of cocaine and Class A misdemeanor resisting law enforcement. Johnson's

nine-year sentence was not only appropriate but remarkably lenient considering his criminal history and his course of action which led to the shooting.

Under these facts and circumstances, we cannot conclude that Johnson's nine-year sentence for Class B felony aggravated battery is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The evidence presented at trial is sufficient to support Johnson's conviction for Class B felony aggravated battery. Johnson's nine-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

BARNES, J., and BROWN, J., concur.