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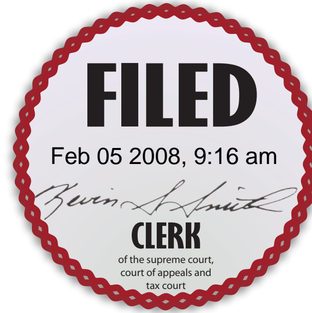

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IN THE COURT OF APPEALS OF INDIANA

EARL E. WILSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0705-CR-229
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-0601-MR-1

February 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Earl E. Wilson appeals his conviction, after a jury trial, of voluntary manslaughter, a class A felony.

We affirm.

ISSUE

Whether sufficient evidence supports Wilson's conviction.

FACTS

By late 2005, Earl Wilson and Antonise Gaines had been in a turbulent and sometimes violent relationship for some seventeen years. On December 23, 2005, Gaines was living with their three children at 1325 Chase Street in Gary. Wilson came to the front door, knocked, and yelled that he needed his clippers. Wilson then went to his car in the driveway. Gaines put the clippers on the front porch and closed the door.

Shortly afterward, their 12-year-old daughter R. and 10-year-old son E. heard glass breaking outside the front door. The front door was kicked in, and Wilson entered. R., who was in the room immediately inside the front door, saw that Wilson had a handgun. As Wilson was "dragging [her] mom on the floor," R. got E. (who had by then seen that Wilson was brandishing a 9 mm. handgun) and both hid in the back bedroom closet. (Tr. 74). Both children heard "clicking sounds" and yelling. (Tr. 77, 101). When Gaines told them it was safe to come out, the children emerged from the closet. Wilson was gone. The glass in the front storm door had been broken out, and the front door had been forced in – such that it could no longer be closed.

Gary Police Officer Marvin Bankhead was dispatched to the residence that day, in response to a report of a disturbance. Bankhead observed that the glass on the storm door had been broken out and that the front door had sustained damage to its frame. Bankhead described Gaines as "upset" and "crying" when she repeatedly told the officer, "He's going to kill me." (Tr. 121, 126). When asked by Bankhead who, she responded that it was Wilson, and that he had "forced his way into her residence, put a gun to her head, . . . threatened to kill her, . . . put it to her head by pulling the slide back and ejecting a round." (Tr. 127). Gaines handed Bankhead a 9 mm. live round, which he secured and placed in the department's property locker.

That same day, Gaines moved with the children to her mother's house. Eight days later, on the afternoon of December 31, Gaines and her sister Shirena went to the 1325 Chase Street house for Gaines to collect some of the family's belongings. Again, Wilson knocked on the front door and said that he needed his clippers. Gaines told Wilson to leave, or she would call the police. Wilson went to his car and drove away. Soon thereafter, Shirena "heard the big boom" of the back door being kicked in. (Tr. 178). Shirena saw Wilson coming from the kitchen with "a gun in his hand," "a silver .38 revolver." (Tr. 178, 189). Shirena heard Wilson say to Gaines, "I told you," as he followed her into E.'s bedroom. (Tr. 181). Shirena heard a gunshot and saw Gaines fall to the floor. As Shirena ran toward the back door, she heard Gaines say, "Oh, Eagle Beak [pet name for Wilson], don't shoot me," and heard another shot. (Tr. 183). Shirena ran from the house, screaming for help. Someone called the police and gave the phone to Shirena, who reported that her sister had been shot.

Gary Police Officer Christopher Stark was the first to respond. He found a crying Shirena, screaming that her sister had been shot inside the house. Stark observed a muddy shoe print on the back door, which had been "kicked in" such that it was "shattered," with the deadbolt lying on the floor. (Tr. 269). He found Gaines' dead body and called for additional assistance.

Approximately two and a half hours after the shooting, Wilson went to the Gary Police Department. Wilson was advised of his Miranda rights and signed a written waiver thereof. Wilson then provided information for a statement that he signed, stating that "the events that occurred on the night of December 31, 2005," were as follows:

> I kicked open the back door and ran into the house. I chased Dove[1] into E.[]'s bedroom[,] this is my son['s] room. When I got to the door of the bedroom Dove was holding a black revolver with a white handle. She was pointing the gun at me[.] I grabbed the gun out of her hand[.] [A]s I was grabbing the gun Dove fell to the ground. I now shot Dove in the thigh[,] inside of her thigh. As she was still on the ground trying to get up I shot her in the head. I think I shot her on the right side of the head[.] I am not sure. I ran out of the room [and] dropped the gun in the hallway[.] I ran out the back door and got into my car and left. I then stopped at a liquor store in Hammond[,] bought four beers and drank them[.] I wanted to do the right thing so I turned myself in.

(State's Ex. 48) (footnote added). Also, according to the signed statement, when the detective specifically asked "how many times [Wilson] shot," he answered,

> Two shots[.] [T]he first shot was when she fell to the ground[.] I shot her in the thigh[.] [T]he second shot she was trying to get up[.] I shot her again it [sic] the head.

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[1] "Dove" was Gaines' nickname, according to both her mother and Wilson. (Tr. 33, 518).

Id. Wilson concluded with the statement that he and Gaines "had problems for a long time," and he was "glad this whole thing [wa]s over." *Id.*

Police found no weapon at the Chase Street residence. However, two .38 Special bullets were recovered in a search of Wilson's vehicle.

On January 1, 2006, the State charged Wilson with murder. A jury trial commenced on March 12, 2007. Testimony of the foregoing facts was heard. In addition, the forensic pathologist testified that Gaines died from a gunshot wound to the head. The pathologist further testified that it was likely that a single bullet had traveled through Gaines' wrist – fired from "very close," two inches or less – "and then into [her] head." (Tr. 374, 375). According to the pathologist, Gaines also suffered gunshot wounds to her thighs – wounds that were likely inflicted by another single bullet. An expert in firearms testified that the two bullets recovered from Gaines' body were .35 caliber, a size used as ammunition for a .38 Special. The jury returned a verdict finding Wilson guilty of voluntary manslaughter, a class A felony.

DECISION

The standard of review we apply when considering an appellant's claim that the conviction is not supported by sufficient evidence has been recently summarized by Indiana's Supreme Court as follows:

> When reviewing the sufficiency of the evidence to support the conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling.

> Appellate courts affirm the conviction unless no reasonable fact-finder *could* find the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted, emphasis in original).

Indiana Code section 35-42-1-3 provides in pertinent part as follows:

> (a) A person who knowingly or intentionally kills another human being; . . . while acting under sudden heat commits voluntary manslaughter, a class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.
> (b) The existence of sudden heat is a mitigating factor that reduces what would otherwise be murder . . . to voluntary manslaughter.

"Sudden heat" is not an element of voluntary manslaughter. *Boesch v. State*, 778 N.E.2d 1276, 1279 (Ind. 2002) (citing *Isom v. State*, 651 N.E.2d 1151, 1152 (Ind. 1995)).

Wilson argues "that there is insufficient evidence as a matter of law to support the jury's verdict convicting [him] of the criminal offense of voluntary manslaughter," asserting the lack of "eye-witness testimony as to who fired the shots which killed the victim," and directing our attention to Wilson's own testimony "that he was attempting to disarm the victim . . . when the gun discharged and the victim was fatally shot." Wilson's Br. at 5. We find Wilson's argument to be a request that we assess witness credibility and reweigh the evidence adduced at trial. This we cannot do. *See Drane*, 867 N.E.2d at 146-47.

With respect to eye-witness testimony, in Wilson's own statement, he admitted that he "shot" the victim two times -- once "in the head," and once "in the thigh" -- after

he had “grabb[ed] the gun” from Gaines and she lay on the floor. (Ex. 48). Further, Shirena’s eyewitness testimony was that Wilson held a revolver in his hand as he entered the house and moved toward Gaines. According to the pathologist, Gaines suffered a fatal gunshot wound to her head, *i.e.*, Gaines was killed by means of a deadly weapon. Wilson’s statement supports the reasonable inference that he knowingly or intentionally fired the gunshot that killed Gaines. Evidence of the incident eight days earlier and that Wilson, while armed with a handgun, kicked in the back door immediately prior to the shooting of Gaines is evidence to support the reasonable inference that sudden heat existed with respect to Wilson’s shooting of Gaines. Therefore, we find that sufficient probative evidence and reasonable inferences support the jury’s conclusion that the State had proven beyond a reasonable doubt that Wilson committed the offense of voluntary manslaughter.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.