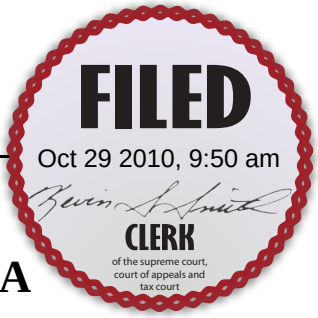
ATTORNEY FOR APPELLANT:

DAVID P. FREUND
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

CHARLES HUNTLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1004-CR-401
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0810-MR-241490

October 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

A jury convicted Charles Huntley of murdering Joshua Plummer and of carrying a handgun without a license. On appeal, Huntley contends that the State failed to prove beyond a reasonable doubt that he did not kill Plummer in sudden heat and asks us to vacate his murder conviction and enter judgment of conviction for the lesser included offense of voluntary manslaughter. We disagree with Huntley's contention and affirm his murder conviction.

Facts and Procedural History[1]

The facts most favorable to the jury's verdict indicate that on September 12, 2008, Joshua Plummer invited friends and coworkers to his apartment for drinks and games. That evening, Plummer picked up Huntley and Huntley's girlfriend, Stephanie Taylor, and drove them to Plummer's apartment. Before Plummer picked them up, Huntley gave Taylor a .44-caliber revolver and drugs to keep on her person. At Plummer's apartment, Plummer and Huntley consumed alcohol and played video games. Several of Plummer's guests arrived, and Huntley and Taylor went upstairs to talk on the apartment's flattop roof. Additional guests arrived, and all of them but Ashley Graves and John Moore left the apartment to purchase beverages. Graves and Moore went downstairs to Plummer's outdoor patio.

At some point, Huntley and Taylor began arguing in Plummer's kitchen. Plummer told Huntley to calm down. Huntley asked if Plummer wanted to fight about it. Plummer

[1] We remind Huntley's counsel that an appellant's statement of facts "shall be stated in accordance with the standard of review appropriate to the judgment … being appealed" and "shall be in narrative form and shall not be a witness by witness summary of the testimony." Ind. Appellate Rule 46(A)(6).

rushed Huntley, and they began wrestling. As they did so, Taylor hit Plummer several times. Eventually, Huntley and Plummer pushed away from each other. Huntley told Taylor to give him the revolver. Taylor pulled the handgun out of her waistband, and Huntley "snatched it out of [her] hand." Tr. at 84. Huntley twice told Plummer, "I'll f***ing burn you[,]" and then fired two shots in rapid succession. *Id*. at 43-44.

Graves and Moore overheard much of the foregoing and then heard Plummer scream. Taylor left the apartment and walked past them. Huntley followed, with a handgun in his waistband, and told Graves and Moore, "Everything is fine. Y'all can go back upstairs." *Id*. at 147. Moore ran upstairs and found Plummer lying in a pool of blood. Plummer told Moore, "He shot me. You need to go get him." *Id*. at 149. Plummer had been struck by a bullet that entered his left groin and exited through his buttocks. He died three weeks later from complications resulting from the gunshot wound. Police recovered Huntley's revolver from a trash can near Plummer's apartment. The five-shot revolver contained three live cartridges and two spent cartridges.

The State charged Huntley with murder, a felony, and class A misdemeanor carrying a handgun without a license, which was enhanced to a class C felony due to a prior conviction. At trial, Huntley testified that Taylor shot Plummer.[2] The court instructed the jury on the lesser included offenses of class A felony voluntary manslaughter and class C felony

[2] Huntley testified that he fired a shot from a Glock semiautomatic handgun toward the floor and that Taylor shot Plummer with the revolver. Police did not find a bullet hole in the floor or recover any shell casings that would have been ejected from a semiautomatic handgun, and Huntley testified that he did not retrieve any casings. Huntley also acknowledged that prior to trial, he had told police that a third person named "Nut-T" had shot Plummer.

involuntary manslaughter. On March 2, 2010, the jury found Huntley guilty of murder and the class A misdemeanor handgun charge, and the trial court found Huntley guilty of the class C felony enhancement. Huntley now appeals.

Discussion and Decision

The jury convicted Huntley of murder, which is the knowing or intentional killing of another human being. Ind. Code § 35-42-1-1. A lesser included offense of murder is class A felony voluntary manslaughter, which is the knowing or intentional killing of another human being by means of a deadly weapon while acting under sudden heat. Ind. Code § 35-42-1-3(a).[3] "The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder … to voluntary manslaughter." Ind. Code § 35-42-1-3(b).[4] Sudden heat "is characterized 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." *Dearman v. State*, 743 N.E.2d 757, 760 (Ind. 2001). "[T]he defendant bears no burden of proof with respect to the mitigating factor of sudden heat, only the burden of placing the issue in question where the State's evidence has not done

[3] Class C felony involuntary manslaughter, on which the jury in this case was also instructed, is defined in pertinent part as the killing of another human being while committing or attempting to commit battery. Ind. Code § 35-42-1-4(c)(3).

[4] The sentencing range for murder is forty-five to sixty-five years. Ind. Code § 35-50-2-3. The sentencing range for a class A felony is twenty to fifty years. Ind. Code § 35-50-2-4.

so.[5] The State then assumes the burden of disproving the existence of sudden heat beyond a reasonable doubt." *Adkins v. State*, 887 N.E.2d 934, 938 (Ind. 2008) (emphasis added) (citation omitted). "It 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." *Crain v. State*, 736 N.E.2d 1223, 1238 (Ind. 2000).

Huntley contends that the State failed to carry its burden of negating the presence of sudden heat and asks us to vacate his murder conviction and enter judgment of conviction for voluntary manslaughter. *See Neville v. State*, 802 N.E.2d 516, 519 (Ind. Ct. App. 2004) ("When a conviction is reversed because of insufficient evidence, we may remand for the trial court to enter a judgment of conviction upon a lesser-included offense if the evidence is sufficient to support the lesser offense."), *trans. denied*. Huntley argues that "the State's evidence established [that he] shot Plummer in the heat of passion, anger, rage, and sudden resentment engendered by his fight with Plummer, that was sufficient to obscure the reason of an ordinary person, prevented deliberation and premeditation, and rendered [him] incapable of cool reflection." Appellant's Br. at 21.

When reviewing a murder conviction to determine sufficiency of the evidence regarding whether murder or voluntary manslaughter was committed, we treat the issue as we do all sufficiency issues. *Sears v. State*, 494 N.E.2d 1286, 1286 (Ind. 1986). "In addressing

[5] Because the State's evidence did put sudden heat in question, the State's observation that Huntley "did not raise the issue of sudden heat at trial" is largely beside the point. Appellee's Br. at 6. Although Huntley did not specifically argue sudden heat before the jury, the court instructed the jury on voluntary manslaughter and sudden heat without objection from the State, and the jury asked for a "more definitive" or "an alternate definition" of sudden heat during its deliberations. Tr. at 465.

the issue of sufficiency of evidence, we will affirm the conviction if, considering only the probative evidence and reasonable inferences supporting the verdict, without weighing evidence or assessing witnesses' credibility, a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt." *Id*.

The evidence most favorable to the jury's verdict indicates that Huntley and Plummer became involved in a physical tussle. They pushed away from each other, and Huntley told Taylor to give him the .44-caliber revolver, which he snatched out of her hand. Huntley twice told Plummer that he would "f***ing burn" him before he fired the fatal shot. Clearly, as the State observes, "[t]here is no indication that [Huntley] was incapable of rational reflection, especially considering that he warned Plummer he would kill him." Appellee's Br. at 7. Under these circumstances, we conclude that the State disproved the existence of sudden heat beyond a reasonable doubt. Therefore, we affirm Huntley's murder conviction.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.