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**IN THE
COURT OF APPEALS OF INDIANA**

TAMARA S. DRUMM,
Appellant-Defendant ,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 18A02-0705-CR-376

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0602-MR-01

December 17, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Tamara S. Drumm (“Drumm”) was convicted in Delaware Circuit Court of Class A felony voluntary manslaughter and sentenced to serve twenty-five years executed. Drumm appeals and argues that the evidence was insufficient to establish that she was guilty of voluntary manslaughter.

We affirm.

Facts and Procedural History

On January 30, 2006, Drumm shot Rick Kummer (“Kummer”) in the chest with a handgun. Kummer died from the gunshot wound and Drumm was charged with murder on February 2, 2006. The three-day jury trial commenced on February 26, 2007. At trial, Drumm argued that she shot Kummer in self-defense. Uncontradicted evidence presented at trial showed that on January 30, 2006, Drumm and Kummer had lived together for six years and that Kummer was in the process of moving his belongings out of Drumm’s home. During this process, an argument began and continued outside of Drumm’s home. Drumm struck Kummer several times and threw a large rock at his truck causing a large dent. There is no evidence that Kummer struck Drumm during this confrontation. A gunshot rang out which attracted the attention of a passing off-duty police officer who saw Kummer lying on the porch steps outside the front door. Kummer died and Drumm was charged with the murder of Kummer. The jury found Drumm guilty of Class A felony voluntary manslaughter and on March 29, 2007, the trial court sentenced Drumm to twenty-five years at the Department of Correction. Drumm now appeals.

Sufficient Evidence

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.

Drumm argues that the evidence was insufficient to support a conviction for voluntary manslaughter as a lesser-included offense of murder. To convict Drumm of Class A felony voluntary manslaughter, the State must prove that Drumm knowingly or intentionally killed Kummer by means of a deadly weapon while acting under sudden heat. Ind. Code § 35-42-1-3(a) (1997). Sudden heat is a mitigating factor which, if found, reduces murder to voluntary manslaughter. Ind. Code § 35-42-1-3(b) (1997)

The evidence presented at trial established that Drumm shot Kummer after engaging in an argument. Drumm struck Kummer and threw a large rock at Kummer's truck causing a significant dent. Drumm argues that her conviction should be set aside because there is no evidence to support a finding of sudden heat. In this case, the jury apparently determined that sudden heat did exist such that they could find Drumm guilty of voluntary manslaughter but not murder. Additionally, the evidence of a heated argument between Drumm and the decedent supports the presence of sudden heat. However, as noted in Gilley v. State, 560 N.E.2d 522, 523-24 (Ind. 1990), a jury may find the defendant guilty of voluntary manslaughter as a lesser included offense, even in

the absence of proof of sudden heat. The facts and circumstances before us are sufficient to support Drumm's Class A felony voluntary manslaughter conviction.

Drumm also argues that the evidence was insufficient to sustain her conviction because she acted in self-defense. The standard for reviewing a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). "A valid claim of self-defense is legal justification for an otherwise criminal act." Id. To prevail on a self-defense claim, Drumm must show that she: (1) was in a place where she had a right to be; (2) did not provoke, instigate or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. See also Ballard v. State, 808 N.E.2d 729, 732 (Ind. Ct. App. 2004); Ind. Code § 35-41-3-2 (2006). Deadly force would be justified if Drumm "reasonably believe[d] that that force is necessary to prevent serious bodily injury to [herself]." Ind. Code § 35-41-3-2(a) (2006). The State need only negate one of the necessary elements. Ballard, 808 N.E.2d at 732. The law is well settled in that the amount of force used must be proportionate to the urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1024 (Ind. Ct. App. 1999).

The evidence presented at trial established that Drumm instigated the violence by striking Kummer a number of times and throwing a large rock at Kummer's truck. Also, testimony of a neighbor, Stephen M. Bales, showed that prior to the shooting, Kummer had his hands in his pockets in an assumedly non-threatening manner. Tr. p. 159.

The evidence as presented is sufficient to find that Drumm did not validly act in self-defense and that Drumm was guilty of voluntary manslaughter. Additionally,

Drumm's arguments regarding self-defense and sudden heat are a request to reweigh the evidence and judge the credibility of the witnesses, which we will not do.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.