

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jaelynn Billups,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 4, 2022

Court of Appeals Case No.
21A-CR-2890

Appeal from the Tippecanoe
Superior Court

The Honorable Thomas J. Busch,
Senior Judge

Trial Court Cause No.
79D02-2009-MR-000005

May, Judge.

[1] Jaelynn Billups appeals following her convictions of murder,¹ felony murder,² Level 6 felony theft,³ and Class A misdemeanor carrying a handgun without a license.⁴ The trial court also found Billups qualified for a firearm sentencing enhancement because she used a handgun in the commission of murder.⁵

Billups raises two issues, which we revise and restate as:

1. Whether the State presented sufficient evidence to prove beyond a reasonable doubt Billups did not act in self-defense; and
2. Whether Billups’s sentence is inappropriate given the nature of her offense and her character.

We affirm.

Facts and Procedural History

[2] On August 31, 2020, seventeen-year-old Billups was absent from high school due to illness, and she spent most of the day at home with her boyfriend, Alberto Vanmeter. At 10:47 p.m., Billups called a Domino’s Pizza store and placed an order for delivery. She gave her name as “Rebecca” and requested

¹ Ind. Code § 35-42-1-1(1) (2018).

² Ind. Code § 35-42-1-1(2) (2018).

³ Ind. Code § 35-43-4-2(a)(1)(B) (2019).

⁴ Ind. Code § 35-47-2-1 (2017).

⁵ Ind. Code § 35-50-2-11 (2016).

the pizza be delivered to 1900 North 16th Street in Lafayette, which was a vacant house up the street from Billups's house. (State's Ex. 3.) Billups also indicated she intended to pay for the pizza using cash. Joshua Ungersma, a Domino's employee, volunteered to make the delivery.

[3] Shortly after 11:00 p.m., Patrick Gibson was playing a videogame in his house across the street from 1900 North 16th Street when he heard gunshots outside. Gibson went out his front door to investigate, and he saw Ungersma standing in the middle of the street. Gibson described Ungersma as "like in panic mode or something like that." (Tr. Vol. II at 147.) Gibson also saw Vanmeter lying on the ground near a fence, and Billups was near Vanmeter's body, crying. Gibson asked Ungersma if he was okay, and Ungersma responded: "no, they are trying to, like, rob me." (*Id.* at 148.) He also told Gibson to call the police.

[4] Ungersma then began walking along the middle of the street with his back toward Billups and Vanmeter. At that point, Gibson saw Billups pick up a gun that was on the ground near Vanmeter and shoot at Ungersma multiple times. The bullets struck and killed Ungersma, and he fell to the ground. Billups then continued to cry over Vanmeter's body. Other neighbors who walked outside after hearing the gunshots described Billups as "hysterical" and "screaming and crying[.]" (*See id.* at 159, 166, 168, & 171.) One of the neighbors testified that she heard Billups say Ungersma and Vanmeter shot each other. Several people called 911 regarding the shooting, including Billups. Billups was crying and screaming during the call, and the 911 operator had trouble understanding her.

[5] The first two Lafayette Police Department officers to arrive on the scene were Officer Michael David and Officer David Mead, and Billups flagged the officers down as they arrived. Officer David spoke with Billups. He noted she was crying and only making short statements, but she did say Ungersma and Vanmeter shot each other. Officer Mead observed Billups squatting down near Vanmeter, and she “tossed a gun from in front of her out behind her onto the sidewalk, at which point [Officer Mead] immediately recognized the gun and stood on top of the gun, making sure that nobody could get a hold of it.” (*Id.* at 192.) Officer David detained Billups at the scene and took her to the police station. At the station, officers took photographs of the clothes Billups was wearing at the time of the shooting. Even though it was late at night, Billups was wearing dark clothing.

[6] Forensic investigators also arrived at the scene, including Officer Kevin Cooney of the Lafayette Police Department. Officer Cooney found a .38 special revolver in Ungersma’s pocket, and a 9-millimeter semiautomatic pistol on the sidewalk near Vanmeter’s body. Based on the gun’s serial number, Officers determined the 9-millimeter semiautomatic pistol recovered from the scene had been reported stolen in June 2020. The gun’s owner was an acquaintance of Vanmeter, and the owner testified the gun was stolen from his car shortly after he left it parked at a house Vanmeter was visiting. An autopsy revealed Vanmeter died from a gunshot wound to the chest. Vanmeter also had a bullet graze wound on his left flank. An autopsy of Ungersma revealed he sustained

several gunshot wounds with the fatal bullet entering the back of his head and severing his brain stem.

[7] On September 8, 2020, the State charged Billups with murder, two counts of felony murder, Level 3 felony conspiracy to commit armed robbery,⁶ Level 3 felony armed robbery,⁷ Class A misdemeanor theft,⁸ Level 6 felony pointing a firearm,⁹ and Class A misdemeanor carrying a handgun without a license. The State later amended the charging information to include a charge of Level 6 felony theft and allege Billups was eligible for an enhanced sentence because she used a firearm in the commission of murder. The trial court held a four-day jury trial beginning on October 26, 2021.

[8] Billups testified at trial that she ordered the pizza under an alias and used an address down the street from where she lived because she was concerned Domino's would refuse to deliver the order if she gave her real name and address. Billups explained she and Vanmeter walked to 1900 North 16th Street to await the pizza delivery, but Vanmeter returned to Billups's house to retrieve money to pay for the pizza. She then testified that Ungersma came to deliver the pizza while Vanmeter was walking back to the delivery address. She

⁶ Ind. Code § 35-42-5-1 (2017) & Ind. Code § 35-41-5-2 (2014).

⁷ Ind. Code § 35-42-5-1 (2017).

⁸ Ind. Code § 35-43-4-2 (a) (2019).

⁹ Ind. Code § 35-47-4-3 (2014).

described Ungersma as starting to act “a little paranoid and nervous” when he saw Vanmeter walking toward them. (Tr. Vol. III at 96.)

[9] Billups testified Ungersma shot Vanmeter twice when Vanmeter attempted to retrieve money from his pants pockets to pay for the pizza. She also testified that she used Vanmeter’s gun to shoot Ungersma as he walked back to his car because: “if I don’t do anything now, there is still a huge chance that he could potentially come back and—that he could potentially come back and—and do the same thing to me that he had just done to [Vancouver].” (*Id.* at 102-03.) On cross-examination, Billups testified that, even after having a moment to assess the situation and think about what she was doing, she still feared for her life and shot Ungersma in self-defense. In rebuttal, the State put forth several witnesses who had known Ungersma for years, and each witness testified regarding his character for peacefulness. Celesse Smedley, the Domino’s store manager, testified Ungersma was in a good mood right before making the delivery to Billups.

[10] The jury returned a verdict of guilty on all counts. Billups waived her right to a jury trial on the firearm enhancement, and the trial court found the enhancement applied to Billups. To avoid double jeopardy concerns, the trial court entered judgment of conviction on only the charges of murder, one count of felony murder, Level 6 felony theft, and Class A misdemeanor carrying a handgun without a license.

[11] The trial court held a sentencing hearing on December 3, 2021. The victim's wife, Jenny Ungersma, spoke at sentencing regarding the pain she and her children experience because of Ungersma's death. She also testified to the family's resulting financial troubles and explained they moved out of state because of rumored threats against them. The State also played a video of Billups making an obscene gesture toward a television news camera as she was being escorted back to jail after the verdict was read, and the State argued this behavior demonstrated a lack of remorse. Moreover, the State noted that, even though Billups had never been adjudicated delinquent, petitions alleging delinquency were pending against Billups at the time of the instant offense, and the State moved to dismiss those petitions after Billups was charged with murder. The State also pointed to Billups's several conduct violations while she was incarcerated in the jail. Billups did make a statement in allocution in which she acknowledged the pain caused by the deaths of Ungersma and Vanmeter. She also noted her own young age and difficult childhood.

[12] The trial court found Billups's lack of remorse and the overall seriousness of the crime, including that she shot the victim multiple times, to be aggravating factors. The trial court also found Billups's youthful age, difficult childhood, and lack of criminal history or juvenile adjudications to be mitigating factors. The trial court imposed a fifty-year sentence for murder and enhanced the sentence by five years based on Billups's unlawful use of a firearm. The trial court also sentenced Billups to a fifty-year-term for felony murder, one year for Class A misdemeanor carrying a handgun without a license, and one year for

Level 6 felony theft. The trial court ordered the sentence for theft served consecutive to Billups's sentence for murder, but the trial court ordered the remaining sentences served concurrently. The trial court also suspended five years of Billups's sentence to probation. Thus, Billups received an aggregate sentence of fifty-six years, with fifty-one years served in the Indiana Department of Correction and five years served on probation.

Discussion and Decision

1. Sufficiency of the Evidence

[13] Billups asserts the State failed to present sufficient evidence to rebut her self-defense claim beyond a reasonable doubt.

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. We neither reweigh the evidence nor judge the credibility of witnesses. We will reverse a conviction only if no reasonable person could say that the State negated the defendant's self-defense claim beyond a reasonable doubt.

Hughes v. State, 153 N.E.3d 354, 361 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. Indiana Code section 35-41-3-2(c) provides a person:

(1) is justified in using deadly force; and

(2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony.

Yet, subsection (g) of the statute clarifies:

Notwithstanding subsections (c) through (e), a person is not justified in using force if:

(1) the person is committing or is escaping after the commission of a crime;

(2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or

(3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

“To assert a successful claim of self-defense, a defendant must show that he (1) was in a place he 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.” *Orozco v. State*, 146 N.E.3d 1038, 1040 (Ind. Ct. App. 2020), *trans. denied*. “When the defense is raised and supported by the evidence, the State bears the burden of negating one of the elements.” *Id.*

[14] Billups contends she was justified in using force against Ungersma. She maintains that she was not trying to commit a crime against Ungersma, and she

reasonably feared for her life after Ungersma shot Vanmeter because she did not know if Ungersma also intended to shoot her. Billups asserts the State's theory she and Vanmeter intended to rob Ungersma "was based entirely on speculation and a single statement made by Ungersma that Billups or Vanmeter were trying to 'rob' him[.]" (Appellant's Br. at 14.) However, we disagree with this characterization of the State's evidence.

[15] Shortly before the Domino's store closed, Billups called to place an order for delivery. She gave a false name, asked for the pizza to be delivered to a vacant house, and indicated she would pay with cash. Both Billups and Vanmeter were dressed in black clothes even though it was dark outside. In addition, investigators found a gun and cash on the ground near Vanmeter's body. It is certainly a reasonable inference from these actions that Billups and Vanmeter intended to rob Ungersma and that Ungersma shot Vanmeter when Ungersma realized he was being robbed. Moreover, while Billups argues she reasonably feared serious bodily injury when she shot Ungersma because "Ungersma was still armed and was standing only a few feet away from Billups," (*id.* at 14), other evidence indicated Ungersma's back was turned to Billups when she shot him. Ungersma had walked away from Billups and asked a neighbor to call 911 before he was shot. Billups's alternate version of the facts is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Hughes*, 153 N.E.3d at 361 ("We neither reweigh the evidence nor judge the credibility of witnesses."). The State presented sufficient evidence to rebut Billups's claim of self-defense because it presented evidence Billups was

engaged in an armed robbery when she used deadly force and she did not reasonably fear serious bodily injury or death. *See Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000) (holding evidence from State’s witnesses, which conflicted with defendant’s version of events, was sufficient to rebut claim of self-defense).

2. Inappropriate Sentence

[16] Billups also claims her aggregate fifty-six-year sentence is inappropriate given the nature of her offense and her character. Our standard of review regarding such claims is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court’s decision, and our goal is to determine whether the appellant’s sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted). “We focus our review on the aggregate sentence.” *Vasquez v. State*, 174 N.E.3d 623, 634 (Ind. Ct. App. 2021), *trans. denied*.

[17] When considering the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Because of the multitude and seriousness of Billups’s crimes, she faced an incredibly lengthy maximum sentence. Indiana

Code section 35-50-2-3 provides: “A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.” Likewise, Indiana Code section 35-50-2-7 provides: “A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year.” While the Indiana Code does not provide advisory sentences for misdemeanors, a Class A misdemeanor is punishable by a fixed term of imprisonment of not more than one year. Ind. Code § 35-50-3-2. In addition, the firearm enhancement allows the court to impose an additional fixed term of between five and twenty years onto the defendant’s sentence for the underlying crime. Ind. Code § 35-50-2-11(g). The trial court sentenced Billups to below the advisory term on each of her two murder charges, and the trial court imposed the minimum additional sentence allowed under the firearm enhancement. The trial court imposed the advisory sentence for Billups’s Level 6 felony theft offense, and while the trial court imposed the maximum sentence allowed for Billups’s Class A misdemeanor carrying a handgun without a license, the trial court also ordered that sentence served concurrent with her murder sentence. Billups faced a maximum aggregate sentence of 133 ½ years imprisonment, but she received only a fifty-six-year term.

[18] Billups nonetheless contends her sentence is inappropriate given the nature of her crimes. Evidence of restraint, regard, and lack of brutality may portray the nature of an offense in a positive light, *Stephenson v. State*, 29 N.E.3d 111, 122

(Ind. 2015), and Billups characterizes her murder of Ungersma as “far from an act of cool, premeditated cruelty.” (Appellant’s Br. at 11.) She notes it was Vanmeter, not her, who brought a stolen handgun to the scene, and she shot Ungersma in the aftermath of Vanmeter being shot. However, Billups lured Ungersma to a vacant house late at night and lied about her name when giving the pizza order. Billups was very emotional in the aftermath of the shootings, but as the State notes, she “was sufficiently in her right mind that she lied to witnesses and law enforcement, telling them that Vanmeter and Ungersma shot each other, so that she could avoid responsibility for their deaths.” (Appellee’s Br. at 21.) Thus, we cannot say Billups’s sentence is inappropriate in light of the nature of her offenses. *See Miller v. State*, 138 N.E.3d 314, 318 (Ind. Ct. App. 2019) (holding nature of the offenses did not warrant a lesser sentence when defendant killed a gas station attendant during one robbery and committed second robbery shortly thereafter), *trans. denied*.

[19] Billups also notes her young age, difficult childhood, and lack of criminal history to contend her sentence is inappropriate in light of her character. However, while Billups had not been convicted of a crime or adjudicated delinquent, she does have a history of arrests and violation of jail rules. *See Stokes v. State*, 947 N.E.2d 1033, 1039 (Ind. Ct. App. 2011) (holding arrests for charges that did not result in conviction and defendant’s pattern of violating jail rules reflected poorly on his character), *trans. denied*. In addition, our Indiana Supreme Court “has ‘consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.’” *Hudson v. State*, 135 N.E.3d 973, 979

(Ind. Ct. App. 2019) (quoting *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007)). Thus, while Billups was raised by a single mother and “lost a plethora of people in [her] lifetime,” (Tr. Vol. IV at 30), these facts do not excuse her criminal behavior. Moreover, her youthful age and short history of employment at a fast-food restaurant before committing the instant offenses do not render her sentence inappropriate. Therefore, we hold Billups’s sentence is not inappropriate in light of her character. *See Miller*, 138 N.E.3d at 318 (holding defendant’s sentence was not inappropriate despite his youth and history of employment).

Conclusion

[20] The State presented sufficient evidence to rebut Billups’s self-defense claim beyond a reasonable doubt by presenting evidence she used deadly force in the course of an armed robbery and she did not reasonably fear serious bodily injury when she shot Ungersma. Billups’s fifty-six-year sentence, which exceeds the advisory sentence for murder by only one year, is not inappropriate given the nature of her offense and her character. She shot Ungersma multiple times in the back, and while she does not have an adult criminal history or juvenile adjudications, she has a history of arrests and misconduct while incarcerated in the jail. Therefore, we affirm the trial court.

[21] Affirmed.

Riley, J., and Tavitias, J., concur.