

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Iman C.L. Gregory,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 23, 2022

Court of Appeals Case No.
22A-CR-34

Appeal from the Elkhart Circuit
Court

The Honorable Michael A.
Christofeno, Judge

Trial Court Cause No.
20C01-1905-MR-2

May, Judge.

[1] Iman C. L. Gregory appeals her conviction of and sentence¹ for murder.²

Gregory presents three issues for our review, which we restate as:

1. Whether the trial court abused its discretion when it admitted testimony from two police officers regarding information relayed by a witness at the scene of the crime;
2. Whether the State presented sufficient evidence to rebut Gregory's claim of self-defense; and
3. Whether Gregory's sentence is inappropriate based on the nature of the crime and her character.

We affirm.

Facts and Procedural History

[2] In the late evening hours of May 25, 2019, and the early morning hours of May 26, 2019, Ishmael Porter and his girlfriend, Devon Harbor,³ went to a club called the Eagles Lodge and drank several alcoholic beverages. There they saw Harbor's friend, Gregory, and Gregory's girlfriend, Darnesha Tillman.

¹ Gregory's sentence includes an enhancement for use of a firearm in the commission of the crime pursuant to Ind. Code section 35-50-2-11(g).

² Ind. Code § 35-42-1-1.

³ At the time of the crime, Devon's last name was Goodwin and one of the officers on the scene referred to her as "Devon Goodwin" during trial. (*See, i.e.*, Tr. Vol. II at 39.) She has since changed her last name to Harbor. As she is listed in the witness list and referenced in the briefs as "Harbor" we will refer to her as such.

- [3] At some point during the evening, Porter and Harbor had an argument. During the argument, Porter asked for Harbor's gun, which she legally carried. Harbor refused to give the gun to Porter and placed the gun in her holster. Harbor and Porter left the Eagles Lodge and drove to their home on Sherman Street ("Sherman Street Property") in Elkhart, Indiana.
- [4] When Porter and Harbor arrived home, Porter exited the vehicle and attempted to get into another car to drive back to the Eagles Lodge. Harbor called 911 because she was concerned Porter intended to drive while intoxicated. Porter saw Harbor call the police and exited the vehicle. He threw the car keys on the ground and argued with Harbor. Harbor's gun was holstered on her hip and Porter was holding a cell phone in his hand.
- [5] Around this time, Gregory and Tillman arrived at the Sherman Street Property. Gregory attempted to intervene in Porter and Harbor's argument. Gregory positioned herself such that Harbor was located in between Porter and Gregory and Porter and Gregory began shouting at one another. At some point Gregory pulled out a gun and shot Porter. Gregory then stood over Porter and shot at him "[a]bout six or seven" more times. (Tr. Vol. II at 103.) Harbor called 911. Gregory left the scene with Tillman and later fled the state.
- [6] Multiple officers from the Elkhart Police Department, including Sergeant Daniel Mayer and Sergeant Ryan Huff, then arrived at the scene. The officers discovered Porter on the ground with Harbor kneeling next to him. Sergeant Mayer testified that when he first observed Harbor she was "very agitated, very

loud . . . very emotional[.]” (Tr. Vol. III at 4.) Sergeant Mayer and Sergeant Huff separately spoke with Harbor at the scene of the crime about what happened that night. An ambulance transported Porter to a nearby hospital, where he later died.

[7] On May 31, 2019, the State charged Gregory with murder. In September 2019, police arrested Gregory in Georgia and she was returned to Indiana. On September 24, 2021, the State amended the charging information to allege Gregory was eligible for a sentencing enhancement because of her use of a firearm in commission of the crime.

[8] Gregory’s bifurcated trial began on October 18, 2021. During trial, the State presented testimony from Sergeant Mayer and Sergeant Huff. Sergeant Mayer and Sergeant Huff both testified that, while at the scene of the shooting, Harbor identified Gregory as the shooter and provided other information about the crime. Gregory objected to these statements as inadmissible hearsay. The trial court overruled those objections and allowed Sergeant Mayer and Sergeant Huff to testify. The State presented evidence and testimony from other witnesses, including Harbor. Gregory presented testimony from another witness, Reesha Smith, and Gregory testified, admitting she shot Porter but insisting she did so in self-defense.

[9] While the jury deliberated as to the murder charge, Gregory pled guilty to the sentencing enhancement based on her use of a firearm. The jury returned a guilty verdict, and the trial court entered conviction. On November 18, 2021,

the trial court sentenced Gregory to sixty-three years with a ten-year enhancement, for an aggregate sentence of seventy-three years. The trial court ordered Gregory to serve seventy years incarcerated and three years on probation.

Discussion and Decision

1. Admission of Evidence

[10] Gregory argues the trial court abused its discretion when it admitted testimony from Sergeant Mayer and Sergeant Huff about what Harbor told them shortly after the shooting. We afford trial courts broad discretion in ruling on the admission of evidence. *Townsend v. State*, 33 N.E.3d 367, 370 (Ind. Ct. App. 2015), *trans. denied*. “Generally, we review the trial court’s ruling on the admission of evidence for an abuse of discretion. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances.” *Jones v. State*, 982 N.E.2d 417, 421 (Ind. Ct. App. 2013) (internal citation omitted), *trans. denied*.

[11] Gregory contends the trial court abused its discretion because the sergeants’ statements were hearsay and did not fall within the excited utterance exception to the rule against hearsay. Hearsay is a statement that “(1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted.” Ind. Evid. R. 801(c). Hearsay is generally not admissible unless it falls into certain exceptions. Ind. Evid. R. 802. One such exception is an excited utterance. Ind. Evid. R. 803(2).

1.1 Excited Utterance

During trial, Sergeant Mayer testified regarding what Harbor told him at the scene of the crime:

She said that they had been at – they meaning she and [Porter] were boyfriend and girlfriend. They had been at the Eagles Lodge, which is near Second and Marion. There was an event going on that night. I don't know what the event was; I wasn't invited. But there was an event going on, and they had been there, and an argument between them had occurred. They left and went back to [Sherman Street Property], which is where they lived, and were going to try to work through the argument and go back to the party because it was still going on.

She said they – when they arrived back there, [Porter] began to walk down the street and – like to cool off, and she walked down to continue it and try to resolve the issue. She said, while that was occurring, someone that he knew as a family friend, someone who had been a friend of her family for a long time, arrived; she said her name was Iman Gregory. She arrived to check on her, on [Harbor], to make sure she was okay. And [Harbor] said when [Gregory] showed up to check on her, make sure she was okay, an argument happened between [Gregory] and [Porter]; at which point, at some point during the argument, [Gregory] produced a handgun from somewhere.

And [Harbor] said she stepped between [Gregory] and [Porter] to try to calm them down, like, “Hey, stop. You know, didn't need to go to that.” And she said [Porter] made some statement along the way – along the lines of “What are you gonna do?” And then she said [Gregory] replied by shooting him. She said [Gregory] shot him, and when he went to the ground, [Gregory] stood over him and shot the rest of the rounds he had – she had in her gun before leaving in her black passenger car.

(Tr. Vol. III at 15.) Similarly, Sergeant Huff stated that, when talking to Harbor,

I think I explained to her, “You’ve got to calm down – you’ve got to calm down. You’ve got to quiet down and let us do our job, let us get – get him help.” And at some point I asked her, “Who – who did this? Let me help you. Who – tell me who did this.”

(*Id.* at 40.) He testified that, during their conversation, Harbor told him Gregory shot Porter.

[12] Gregory contends Harbor’s statements made to Sergeant Mayer and Sergeant Huff at the crime scene were not excited utterances “based on the length of time that had transpired since the shooting; the time officers and other emergency personnel had arrived on the scene; along with additional time from Porter leaving the scene[.]” (Br. of Appellant at 20.) It is well-settled that

[i]n order for a hearsay statement to be admitted as an excited utterance, three elements must be present: (1) a startling event has occurred; (2) a statement was made by a declarant while under the stress of excitement caused by the event; and (3) the statement relates to the event. This is not a mechanical test, and the admissibility of an allegedly excited utterance turns on whether the statement was inherently reliable because the witness was under the stress of the event and unlikely to make deliberate falsifications. “The heart of the inquiry is whether the declarant was incapable of thoughtful reflection.” Although the amount of time that has passed is not dispositive, a statement that is made long after the startling event is usually less likely to be an excited utterance.

Boatner v. State, 934 N.E.2d 184, 186 (Ind. Ct. App. 2010) (internal citations omitted).

[13] Sergeant Mayer testified that, when he arrived at the scene of the shooting, he saw “a woman screaming[.]” later identified as Harbor, next to a man lying on the ground. (Tr. Vol. II at 250.) He indicated when he first observed Harbor she was “very agitated, very loud . . . very emotional[.]” (Tr. Vol. III at 4.) Sergeant Mayer testified he spoke to Harbor after Porter “was loaded into the ambulance[.]” which was “15 minutes or close to that” after he arrived at the scene. (*Id.* at 13.) He said by that time “she was not calm, but she had calmed down more[.]” (*Id.*) She was “still emotional and upset” and kept “asking to leave and go to the hospital[.]” (*Id.*)

[14] Similarly, Sergeant Huff testified when he arrived at the scene Harbor was “upset and yelling . . . almost to the point of being distracting[.]” (*Id.* at 39.) Sergeant Huff indicated that, while Sergeant Mayer was “trying to render aid[.]” he “kind of led [Harbor] away a short distance” to speak to her. (*Id.*) Sergeant Huff testified he led Harbor away from Porter’s body to speak to her “within 15, 20 seconds” after he arrived on the scene. (*Id.* at 40.) Based on Harbor’s demeanor immediately prior and during the time she spoke with police and the short time between the time the sergeants observed Harbor screaming next to Porter’s body and the time the sergeants spoke with her, which was at most around fifteen minutes, we conclude Harbor’s statements were excited utterances and, thus, the trial court did not abuse its discretion when it admitted the statements. *See, e.g., Chambless v. State*, 119 N.E.3d 182,

190 (Ind. Ct. App. 2019) (victim’s labored breathing during 911 call made eighteen minutes after the attack was excited utterance), *trans. denied*.

1.2 Vouching

[15] Evidence Rule 704(b) prohibits a witness from opining regarding “the truth or falsity of allegations” and “whether a witness has testified truthfully[.]” Such testimony is generally forbidden because it “is considered an invasion of the province of the jurors in determining what weight they should place upon a witness’s testimony.” *Alvarez-Madrigo v. State*, 71 N.E.3d 887, 892 (Ind. Ct. App. 2017), *trans. denied*. Gregory contends “the testimony of both Sgt. Huff, and Sgt. Mayer, particularly Sgt. Mayer gave unfair credibility to the statements of a critical witness in the State’s case, as Gregory’s major argument was that she had acted in self-defense” and “Sgt. Mayer’s reciting statements made by Harbor improperly served as vouching for Harbor’s credibility.” (Br. of Appellant at 21.)

[16] During Sergeant Mayer’s testimony, he did not indicate whether he believed Harbor or that Harbor’s statements accurately described the scene as he observed it. Instead, he recounted what Harbor told him at the scene shortly after Gregory shot Harbor’s boyfriend multiple times. Similarly, Sergeant Huff did not opine regarding Harbor’s truthfulness when she told him Gregory shot Porter. Thus, neither of the Sergeants vouched for Harbor. *See Weis v. State*, 825 N.E.2d 896, 901 (Ind. Ct. App. 2005) (officer’s testimony regarding her interview with the victim was not vouching because she “explained the course of the investigation” after speaking with the victim and “did not specifically

state that she believed” the victim); *also see State v. Vasquez*, 944 N.E.2d 34, 46-7 (Ind. Ct. App. 2011) (grandmother’s testimony regarding child’s behavior after the child moved in with the grandmother after the child alleged molestation was not improper vouching because grandmother did not “offer an opinion to any allegations [the child] may have made, [the child’s] credibility, or the truthfulness of [the child’s] testimony”), *trans. denied*. The trial court therefore also did not abuse its discretion on this basis when admitting the evidence.

2. Sufficiency of the Evidence

[17] Gregory argues the State did not present sufficient evidence to rebut her claim of self-defense.

Sufficiency-of-the-evidence claims ... warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

Moreover, we adhere to this same standard of review when a defendant argues the State presented insufficient evidence to rebut his claim of self-defense. *Ervin v. State*, 114 N.E.3d 888, 895 (Ind. Ct. App. 2018), *trans. denied*.

[18] Indiana Code section 35-41-3-2(c) states:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, 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.

“To prevail on a claim of self[-]defense, the defendant must present evidence 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.” *Bryant v. State*, 984 N.E.2d 240, 250 (Ind. Ct. App. 2013), *trans. denied*. “Once a defendant raises a claim of self-defense, the State has the burden of negating at least one of the necessary elements.” *Quinn v. State*, 126 N.E.3d 924, 927 (Ind. Ct. App. 2019).

[19] During trial, Gregory testified that, when she arrived at the Sherman Street Property, she observed Harbor and Porter arguing. She indicated she tried “to deescalate the situation” and “Porter got aggressive” with her. (Tr. Vol. IV at 209.) Gregory then stated Porter started to approach her and Harbor “started to try to push him back towards [the Sherman Street Property].” (*Id.*) Gregory testified when Harbor pushed Porter, Porter grabbed Harbor’s gun and Harbor told Porter to give her the gun back. Gregory then testified she saw Porter raise

the gun, so she “retrieved [her] gun and shot.” (*Id.* at 210.) When asked why she shot Porter nine times, Gregory indicated she did so because she was “afraid . . . fearful” and thought she “was gonna die.” (*Id.*)

[20] Harbor testified she and Porter had been arguing but by the time they arrived at the Sherman Street Property, “the argument had died down” and she did not need help. (Tr. Vol. III at 97.) Harbor described the moments prior to the shooting:

From my knowledge, we were all – we – they [Porter and Gregory] were going back and forth. I’m in the middle. They going back and forth. And he’s mad; she’s mad. I’m trying to get her to go. I’m letting her know, like he didn’t hit me. You know, you can just get back in your car and leave. And from there, it seemed to – she pulled her gun from her waistband, and she didn’t actually shoot him when she first pulled it. But they was going back and forth, going back and forth. And as they were going back and forth, it’s like we were moving as they going back and forth.

* * * * *

And it was like [Gregory] was going to get back into the car, but something in her head told her to turn around. And as she turned around, she fired the first shot. I don’t know where she hit him at all. When she hit him, he fell. And after he fell, she stood over and let the rest of her rounds off on him.

(Tr. Vol. III at 99-100) (errors in original). Harbor testified Porter did not have a gun in his hand, but she saw a “little Android phone” in his hand. (*Id.* at 101.) Gregory’s alternate version of the events leading up to the shooting is an

invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. Thus, we conclude the State presented sufficient evidence to rebut Gregory’s claim of self-defense. *See Hobson v. State*, 795 N.E.2d 1118, 1122 (Ind. Ct. App. 2003) (holding State presented sufficient evidence to rebut defendant’s claim of self-defense and noting the defendant’s arguments “amount to an invitation that we reweigh the evidence and the credibility of witnesses, which we cannot do”), *trans. denied*.

3. Inappropriate Sentence

[21] Gregory argues her seventy-three-year aggregate sentence is inappropriate⁴ based on the nature of the 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

⁴ Gregory also argues the trial court did not give the weight she desired to some of her proffered mitigators. However, our review of a trial court’s imposition of a sentence no longer permits our review of the “weight” of aggravators and mitigators or of the balancing of those weights against one another. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Instead, we consider the aggravators and mitigators in relation to Gregory’s character and offense, as is required by the inappropriateness analysis provided by Appellate Rule 7(B). *See Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016) (Appellate Rule 7(B) analysis includes consideration of aggravators, mitigators, and other factors found in the record), *trans. denied*.

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).

[22] 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). The sentencing range for murder is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. If the factfinder determines the defendant used a firearm in the commission of an offense, the defendant's sentence can be enhanced by five to twenty years. Ind. Code § 35-50-2-11(g). The trial court sentenced Gregory to sixty-three years for murder and imposed a ten-year enhancement for the use of a firearm in the commission of the offense. Gregory's seventy-three-year sentence is above the advisory term but less than the eighty-five-year maximum term.

[23] Gregory shot Porter, who was not armed, multiple times at close range. She fired a majority of those shots while standing over a wounded Porter. Gregory then left the scene without calling 911. She also fled the state and was not apprehended until several months after the crime. We cannot say the nature of Gregory's offense makes her sentence inappropriate.

[24] We next turn to Gregory's character. "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*,

986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender's continued criminal behavior after judicial intervention reveals a disregard for the law that reflects poorly on her character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019). Gregory has an extensive list of juvenile adjudications and adult criminal convictions. As a juvenile, Gregory was adjudicated delinquent nine times for acts that, had they been committed by an adult, would constitute crimes ranging from possession of marijuana to battery and resisting law enforcement. As an adult, Gregory has been convicted of battery and burglary. Based on Gregory's character as it pertains to her criminal history, we cannot say her sentence is inappropriate.

[25] Gregory also argues her sentence is inappropriate based on her character because "she had overcome a tough path that had started on the streets[,] she was a victim of violence in the past, she had attempted to address her substance abuse issues, and she was remorseful. (Br. of Appellant at 27.) Our Indiana Supreme Court has "consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007). While it is unfortunate that Gregory was a victim of violence in the past, that experience does not overcome the aspects of her character that support her sentence. Similarly, her remorse for her crime, while admirable, also does not overshadow her extensive criminal history and flight from the scene of the current crime. Additionally, while she may have attempted to address her substance abuse issues in the past, she admitted in her pre-sentence report that, at the time of the crime, she smoked marijuana daily. Therefore,

we cannot say Gregory's sentence is inappropriate based on her character. *See Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (Robinson's criminal history outweighed any mitigators and therefore his sentence above the advisory was not inappropriate).

Conclusion

[26] The trial court did not abuse its discretion when it admitted testimony from Sergeant Mayer and Sergeant Huff regarding what Harbor told them about the crime while still at the scene of the crime because Harbor's statements were excited utterances and the sergeants' testimony recounting those statements did not constitute improper vouching. The State presented sufficient evidence to rebut Gregory's claim of self-defense. Finally, Gregory's sentence was not inappropriate based on the nature of her offense or her character. Accordingly, we affirm.

[27] Affirmed.

Riley, J., and Tavitas, J., concur.