

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Ryan Gardner
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

Joseph Ross
Certified Legal Intern

IN THE COURT OF APPEALS OF INDIANA

David N. Carwile II,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2022

Court of Appeals Case No.
22A-CR-118

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2103-MR-5

Pyle, Judge.

Statement of the Case

[1] David Carwile II, (“Carwile”) appeals his conviction by jury of murder¹ and the sentence imposed thereon. He argues that there is insufficient evidence to support his conviction and that his aggregate eighty-year sentence is inappropriate. Concluding that there is sufficient evidence to support Carwile’s murder conviction and that his sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether there is sufficient evidence to support Carwile’s murder conviction.
2. Whether Carwile’s sentence is inappropriate.

Facts

[3] The facts most favorable to the judgment reveal that in March 2021, fifty-six-year-old Carwile lived in Fort Wayne with his fifty-nine-year-old wife, Joyce (“Joyce”), and their nineteen-year-old disabled daughter, Patty (“Patty”). Patty has a severe case of Down Syndrome, heart issues, and low oxygen levels and “has a hard time taking care of herself.” (Tr. Vol. 3 at 73). Carwile and Joyce

¹ IND. CODE § 35-42-1-1.

had recently discussed dissolving their marriage. Joyce wanted a divorce, but Carwile did not.

[4] On the morning of March 19, while Patty was in the home, Carwile shot Joyce in the chest as she walked into the living room. When Joyce turned around and headed to the back door, Carwile shot her again in the back. Joyce ran out the back door and called for her neighbor, Tracy Flye (“Flye”). Flye opened her front door and found Joyce lying in Flye’s front yard. When Flye asked Joyce what had happened, Joyce responded, “[m]y husband shot me.” (Tr. Vol. 2 at 203). Joyce then lost consciousness. While Flye was calling 911, Flye noticed Carwile standing by his car. Carwile did not say anything. Thereafter, Flye saw Carwile put Patty into the car. Carwile and Patty then drove past Joyce and Flye but did not stop. An ambulance arrived on the scene and transported Joyce to the hospital, where she died shortly after her arrival. Her cause of death was gunshot wounds.

[5] That same morning, Fort Wayne Police Department Detective Alan Garriott (“Detective Garriott”) and other officers performed a search of the Carwiles’ home. Detective Garriott noticed a “large survival style knife oddly enough sitting straight up on th[e] sofa.” (Tr. Vol. 3 at 11). Detective Garriott discovered the knife’s sheath in a box with several other knives in the cargo area of a car parked in the Carwiles’ driveway. In addition, Detective Garriott found a handgun on the floor near a sliding glass door.

[6] Also, that morning, Fort Wayne Police Department Officer Shane Carrier (“Officer Carrier”) initiated a stop of Carwile’s car. Patty was still in the car with Carwile. Officer Carrier placed Carwile in the back of his police vehicle, turned on the vehicle’s in-car camera, and returned to Carwile’s vehicle to stay with Patty while he made arrangements for her to be transported to a safe location. While Carwile was waiting in the police vehicle by himself, Carwile said, “I hope she just fucking dies.” (State’s Ex. 11). Carwile also said, “[s]he’s crazy as a loon[,]” and “[a] person gets tired of that shit.” (State’s Ex. 11).

[7] After Officer Carrier had made arrangements for Patty, the officer transported Carwile to the police station to be interviewed. While Carwile was waiting by himself in an interview room, Carwile stated, “[y]ou’re divorced now.” (State’s Ex. 46). When an officer entered the room, Carwile asked for a drink of water or a cup of coffee. Carwile told the officer that the only thing that Carwile regretted was that he had not had his first cup of coffee that morning. After the officer had left the room to get Carwile a beverage, Carwile stated, “[y]ou fucking bitch. You had to be a fucking asshole bitch all the time.” (State’s Ex. 47).

[8] Two days later, the State charged Carwile with murder and an enhancement for the use of a firearm during the murder. At the October 2021 trial, the jury heard the facts as set forth above. In addition, forensic pathologist Dr. Scott Wagner testified that the manner of Joyce’s death was a homicide.

[9] Further, Carwile testified that on the morning of the offense, he had been sitting in the living room on the couch when Joyce had unexpectedly lunged at him with the knife that the police officers had found sitting upright on his couch. Carwile further testified that as Joyce was lunging at him, he had grabbed the gun that was next to him on the couch and had shot her because he had thought she was going to stab him. Carwile explained that the knife that Joyce had used was one of the knives that he displayed at shows, and he did not know how the knife had gotten into the house when its sheath had been found in a box in the car. Carwile also testified that Joyce had thrown the knife after he had shot her, and the knife had landed upright on the couch.

[10] Carwile further testified that he had not intended to shoot Joyce in the back. Rather, according to Carwile, after he had shot Joyce in the chest, Joyce had turned and headed to the back door. Carwile had followed Joyce and had set the gun down on the kitchen counter. According to Carwile, when he had set the gun down, “it [had gone] off[,]” and a bullet had struck Joyce in the back. (Tr. Vol. 3 at 82). Carwile later testified that his ring finger had accidentally pulled the trigger as he was setting the gun down, and the gun had fired. Carwile also testified that he had followed Joyce out the back door and shouted that he would take her to the hospital. However, Joyce had not responded to his offer. Carwile further testified that he had gone back into the house, placed the gun on the floor, written a note with instructions regarding Patty’s care, put Patty in the car, and driven away. According to Carwile, he had been “heading to the police station” when Officer Carrier had stopped his car. (Tr. Vol. 3 at

87). Carwile explained that he had not called 911 because he had not been able to find his cell phone.

[11] Following the three-day trial, the jury convicted Carwile of murder. In a separate proceeding, the jury found that the State had proved the elements of the use-of-a-firearm enhancement beyond a reasonable doubt.

[12] At the December 2021 sentencing hearing, Carwile's sister, Michelle Smith ("Smith"), explained that she had taken care of Patty immediately after Joyce had died. According to Smith, following Joyce's death, Patty had had "emotional crying spells[,] where she would say "mom, mom, mom, mom." (Tr. Vol. 3 at 194). Smith explained that because of Patty's disability, "it was hard to explain to her that mom was not coming back." (Tr. Vol. 3 at 194). Smith further explained that Patty had initially been placed in a group home and was then placed in an "SFC home, which is like a foster care. It's more of a family setting." (Tr. Vol. 3 at 194). Smith asked the trial court to impose the maximum sentence on Carwile because, even though she loves her brother, "wrong is wrong." (Tr. Vol. 3 at 195).

[13] Also at the sentencing hearing, the trial court reviewed Carwile's Pre-Sentence Investigation Report ("the PSI"), which revealed that Carwile had been convicted of two misdemeanors in 1999. The PSI also revealed that Carwile had stated that he was "deeply sorry for the events that ha[d] happened." (Tr. Vol. 3 at 199).

- [14] At the end of the sentencing hearing, the trial court found the following aggravating factors: (1) the extraordinary impact of the crime on Carwile’s disabled daughter; (2) the nature and circumstances of the offense, which included shooting Joyce in the back; and (3) Carwile’s minor criminal history. The trial court also found the following mitigating factors: (1) “the age of Carwile’s criminal history[;]” and (2) Carwile’s remorse as stated in the PSI. Thereafter, the trial court sentenced Carwile to an aggregate eighty (80) year sentence, which included sixty (60) years for murder, enhanced by twenty (20) years for the use of a firearm during the murder.
- [15] Carwile now appeals the murder conviction and the sentence imposed thereon.

Decision

- [16] Carwile argues that there is insufficient evidence to support his murder conviction and that his aggregate sentence is inappropriate. We address each of his contentions in turn.

1. Sufficiency of the Evidence

- [17] Carwile first argues that there is insufficient evidence to support his murder conviction. Specifically, he contends that the State failed to rebut his claim that he had shot and killed Joyce in self-defense. We disagree.
- [18] The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Cole v. State*, 28 N.E.3d 1126, 1136-37 (Ind. Ct. App. 2015).

We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 1137. Additionally, if there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*

[19] A valid claim of self-defense is legal justification for an otherwise criminal act. *Id.* “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.” IND. CODE § 35-41-3-2(c). In order to prevail on a claim of self-defense, a defendant must show that: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or great bodily harm. *Cole*, 28 N.E.3d at 1137.

[20] When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Id.* The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. *Id.* Whether the State has met its burden is a question of fact for the factfinder. *Id.*

[21] Here, Carwile argues that the evidence was insufficient to rebut his claim of self-defense. Specifically, Carwile contends that he had a right to be in his own home, he acted without fault, and he had a reasonable fear of great bodily harm when Joyce lunged at him with a knife.

[22] However, our review of the evidence reveals that, after Carwile had fired the first shot, Joyce turned around and headed for the back door. Carwile then shot

Joyce in the back. When the danger of death or great bodily harm ceases, the right of self-defense ceases with it. *Fuentes v. State*, 952 N.E.2d 275, 279 (Ind. Ct. App. 2011), *trans. denied*. See also *Schlegel v. State*, 238 Ind. 374, 383, 150 N.E.2d 563, 567 (1958) (explaining that “[e]ven if the first shot had been fired in self-defense, the second would not have been if it were fired when not necessary for the appellant to further defend himself”). Thus, a reasonable factfinder could have found that, when Joyce turned around and attempted to leave the house, Joyce did not pose a risk of great bodily harm to Carwile, and Carwile’s second shot was not fired in self-defense.

[23] We further note that Carwile’s conduct after shooting Joyce was not consistent with that of an innocent man. Specifically, Carwile did not call for medical assistance for Joyce or contact law enforcement. Instead, Carwile fled the scene, driving past Joyce as she lay dying in Flye’s front yard. See *Seeley v. State*, 547 N.E.2d 1089, 1092 (Ind. 1989) (“A jury may consider evidence of flight of the accused immediately after the commission of the crime as evidence of his consciousness of guilt.”).

[24] Lastly, we note that the only evidence that Carwile’s reaction was reasonable was contained in Carwile’s testimony. The jury, however, had no obligation to credit this evidence and did not. See *McCullough v. State*, 985 N.E.2d 1135, 1139 (Ind. Ct. App. 2013), *trans. denied*. Ultimately, Carwile’s argument is nothing more than an invitation to reweigh the evidence and judge the credibility of the witnesses, which we will not do. See *Cole*, 28 N.E.3d at 1137. There is

sufficient evidence to rebut Carwile's claim of self-defense, and, therefore, to support Carwile's murder conviction.

2. Inappropriate Sentence

[25] Carwile also argues that his eighty (80) year sentence, which includes a sixty (60) year sentence for murder, enhanced by twenty (20) years for the use of a firearm, was inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on the "culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[26] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, Carwile was convicted of murder, and he was found to have knowingly or intentionally used a firearm during the commission of the offense. The sentencing range for murder is from forty-five (45) to sixty-five (65) years, with an advisory sentence of fifty-five (55) years. I.C. § 35-50-2-3. In addition, if a person knowingly or intentionally uses a firearm during the commission of

certain offenses, including murder, the trial court may impose an additional fixed term of imprisonment between five (5) and twenty (20) years. I.C. § 35-50-2-11. Here, the trial court imposed a sixty (60) year sentence for Carwile's murder conviction, enhanced by twenty (20) years for his use of a firearm during the commission of the offense, resulting in an aggregate sentence of eighty (80) years.

[27] With regard to the nature of the offense, Carwile shot Joyce in the chest as she walked into the living room. When Joyce attempted to flee out the back door, Carwile shot her again in the back. Patty, the Carwiles' nineteen-year-old disabled daughter who has a severe case of Down Syndrome and heart issues, was in the house at the time of the shooting. Following the shooting, Carwile did not call for medical assistance for Joyce or contact law enforcement. Rather, Carwile put Patty into the car and drove past Joyce, who lay dying in Flye's front yard. We further note, as did the trial court, the extraordinary impact of the crime on Patty, who lost both parents and her home.

[28] With regard to Carwile's character, we note that after the shooting, while Carwile was sitting by himself in the back of a police car, Carwile stated that he hoped that Joyce died. Later, while sitting by himself in an interview room at the police station, Carwile stated that Joyce, who had wanted to dissolve her marriage to Carwile, was divorced now. He also called her a "fucking bitch" and said that she was "a fucking asshole bitch all the time." (State's Ex. 47). In addition, although Carwile had just shot Joyce, the only thing that he regretted that day was not having had his first cup of coffee that morning.

Based on the nature of the offense and his character, Carwile has failed to persuade this Court that his aggregate eighty (80) year sentence is inappropriate.

[29] Affirmed.

Robb, J., and Weissman, J., concur.