ATTORNEYS FOR APPELLANT:

JAMES A. GOTHARD
JASON W. BENNETT
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ERROL D. BEUMEL, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A04-0601-CR-18
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0304-MR-1

DECEMBER 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-appellant Errol Beumel, Jr., appeals his conviction by jury of murder and using a firearm in the commission of an offense as well as the 70-year sentence imposed thereon. We affirm.

Defendant raises three issues, which we consolidate and restate as:

I. Whether there is sufficient evidence to support his convictions; and

II. Whether the trial court erred in sentencing him.

The facts most favorable to the verdict reveal that Errol Beumel, Sr., and his wife, Janet, had three children. Defendant, their only son, was born on April 21, 1978. After graduating high school, defendant attended Purdue University, where his father taught mathematics. Defendant was an outgoing and friendly A-B student until his girlfriend of five years broke up with him in 2001. After the break-up, defendant became withdrawn and began to associate with drug users. One of these associates told defendant how to trick Lafayette psychiatrist Dr. Aldo Buonanno into prescribing him Adderall, an amphetamine and schedule II controlled substance.

At a March 2001 appointment with Dr. Buonanno, defendant told the doctor that he had difficulty concentrating and sleeping and had taken Adderall in the past. Dr. Buonanno referred defendant to Dr. Jill Salem for psychological testing. Dr. Salem concluded that defendant's test results were consistent with attention deficit disorder, and Dr. Buonanno prescribed defendant 5 milligrams of Adderall twice daily. By September 2001, the doctor had increased defendant's Adderall to the maximum dose of 20 milligrams three times per day. Further, defendant frequently called the doctor and requested additional Adderall. For example, defendant told the doctor his pills had been

stolen from his truck, he had washed his pants with the pills in the pocket, and the pharmacy had not given him enough pills when it filled the prescription.

During the summer of 2002, defendant met Brandi Maddox on the internet and invited her to stay with him at his parent's home. The Beumels did not approve of Maddox, who at some point returned to her home in Kentucky and was subsequently incarcerated. This disapproval became an ongoing source of tension for the defendant and his parents. At some point, defendant apparently learned that his parents were not giving him Maddox's daily love letters.

In October 2002, defendant was admitted to the hospital with an irregular heartbeat, which was related to defendant's use of Adderall. Although defendant stopped taking the drug while he was in the hospital, he began taking it again shortly after his discharge. The following month, defendant met Pearl Turner, his sister's mother-in-law. Pearl was a Pentecostal Minister who belonged to a church in West Virginia. After meeting Pearl, defendant began listening to religious tapes and reading the Bible for days at a time without sleeping.

Over the course of the next few months, the tension between defendant and his parents escalated. In addition to their conflict about Maddox, defendant believed his parents were withholding money from him. He was also angry that his parents confiscated his gun collection. On January 26, 2003, defendant demanded money from his parents and threatened to kill them. The following day, he attacked his father in his father's car, took his father's wallet, and pushed his father out of the car. That night, the Beumels left their home to stay in a hotel because they were scared of defendant.

On January 28, 2003, defendant went to his parents' house demanding his guns. Defendant ran over his parents' mailbox, damaged their yard, and threatened to kill them several times. The police were dispatched to the Beumels' home and arrested defendant, who was subsequently charged with intimidation. After this incident, the Beumels contacted Dr. Buonanno, who signed an emergency detention order and helped arrange defendant's admission to Methodist Hospital in Indianapolis.

At Methodist, defendant was diagnosed with a drug-induced psychosis consistent with Adderall abuse. After five days at Methodist, defendant began eating, sleeping, and thinking clearly again. When defendant's psychosis cleared, he was discharged to Home Hospital in Lafayette under Dr. Buonanno's care. When defendant was released from Home Hospital, Dr. Buonanno told defendant that he no would longer prescribe him Adderall. Defendant discarded the Adderall that he still had and considered having his name placed on a DEA list so he could no longer have access to Adderall. Further, in an effort to alleviate the tension between him and his parents, defendant moved out of his parents' home and into his own house.

Concerned about the pending intimidation charge for which he was out on bond, defendant asked Dr. Buonanno to provide him with a written statement that he was unable to appreciate the wrong of his actions on January 28, 2003, when he damaged his parents' yard and threatened to kill them. Doctor Buonanno complied with defendant's request and sent defendant's attorney a note stating that at the time of the offense defendant was "suffering from a mental illness and could not appreciate the wrongfulness of his actions. He was mentally unstable." State's Exhibit 52.

At some point after Dr. Buonanno wrote this note and refused to prescribe Adderall for defendant, defendant asked his primary care physician for a prescription for Adderall. When the doctor refused to give defendant a prescription, defendant went to another doctor as a new patient and got a 30-day supply of the drug. Eleven days later, defendant called the new doctor's office to report that he had washed his pants with the Adderall in his pockets and needed more of the medication. The doctor gave him an additional 30-day supply as well as another refill the following month.

On his April 21, 2003, birthday celebration at his parents' home, defendant was agitated and confrontational. He told his parents he could burn down their house and kill them. Four days later, on April 25, 2003, the Beumels went to defendant's house to check on him because they were concerned about his recent behavior. Mr. Beumel went to the front door while his wife waited in the car. Defendant, who had been taking Adderall all day, opened the front door with a gun in his hand and asked his father for money. Defendant then told his father to get on his knees and fired six shots at him. Mr. Beumel turned and ran across the road and fell into a ditch. His wife, a critical care nurse, ran to his side and began performing first aid while she called 911.

While his mother was attempting to save his father's life, defendant ran into the house to find a flashlight and more bullets. He went back outside, approached the ditch where his father had fallen, told his mother to move out of the way, and shot his father six more times. Mrs. Beumel watched as her husband raised his hand to block the final shot. Defendant then turned and walked back to his house.

When Tippecanoe County Sheriff's Department deputies arrived at the scene, defendant was cooperative, calm, and compliant. He recognized one of the deputies who had transported him to Methodist Hospital in January and remembered that the deputy had refused defendant's request to stop at White Castle during the trip to Indianapolis.

Defendant was transported to the Tippecanoe County jail where he was interviewed an hour after the shooting. During the interview, the defendant remained calm and cooperative. He joked around with the deputy that interviewed him and exhibited no mental impairment. He was able to clearly recall the shooting and told the deputy that he had had problems with his father for years. When the deputy later told defendant that his father had died, defendant responded that "shit happens." Transcript at 729. Defendant was still calm and cooperative the following day when another deputy interviewed him.

Defendant was charged with murder and using a firearm in the commission of an offense. He raised an insanity defense. At trial, the evidence revealed that six hours after the shooting, defendant had 331.4 nanograms of amphetamines per milliliter of blood in his system. This is eight times the prescribed dosage of Adderall. Psychiatric Clinical Pharmacy Specialist Dr. Carol Ott testified that at the time of the shooting, the concentration of Adderall in the defendant's system was probably even higher. She further explained that 200 nanograms of amphetamines per milliliter of blood is a toxic level, and that 500 to 1000 nanograms of amphetamines per milliliter of blood can cause death.

Dr. Ott also explained that symptoms of Adderall abuse include agitation, irritability, anxiety, tremors, hallucinations, paranoia, and insomnia. According to Dr. Ott, the addictive qualities relate to the euphoric effects that the drug provides, and when patients stop taking Adderall in excessive doses, their psychotic symptoms clear up relatively rapidly.

Also at trial, Dr. John Pless testified that Mr. Beumel died from multiple gunshot wounds. Specifically, Dr. Pless testified that ten gunshots hit the victim. Eight of the ten bullets passed through Mr. Beumel's body and two grazed him. In addition, the State admitted into evidence the following letter that defendant wrote to Dr. Buonanno after the shooting:

> Hello, Dr. B. I was needing a letter written for me stating I was not in my right mind during the time of the shooting of my dad. Like the letter you wrote me in January of 2003. I would greatly appreciate it. I don't know when my court dates are for murder, but during the shooting incident I was overdosed on . . . Adderall, and also hearing demonic voices in my mind. Thank you. . . . . Please send your letter to me at Tippecanoe County Jail . . . .

State's Exhibit 53. Dr. Buonanno refused to write this letter.

In support of his insanity defense, defendant testified that he had not slept the week before he killed his father because he was taking so much Adderall. He further testified that at the time of the murder he was "overpowered by a Satanic Force." Transcript p. 1496. In the State's rebuttal, Dr. Michael Welner, a forensic psychiatrist who is board certified in psychiatry, forensic psychiatry, and clinical psychopharmacology, testified that he reviewed 95 sources of information and spent more than 20 hours with defendant. As a result of his document reviews and interviews

with defendant, Dr. Welner concluded that defendant's conflict with his parents over Brandi Maddox, finances, and his gun collection, intensified by defendant's dependency on Adderall, led defendant to kill his father. According to Dr. Welner, at the time defendant killed his father, defendant appreciated the wrongfulness of his actions and was legally sane. Dr. Welner further explained that defendant was demonstrating the effects of an acute Adderall intoxication at the time of the offense, and that no mental illness manifested itself until defendant had been incarcerated for some time.

In contrast, court-appointed expert Dr. Martin Abbert, who spent four hours with defendant and did not review any of his medical records, testified that defendant suffered from paranoid schizophrenia and was legally insane at the time of the offense. In addition, the second court-appointed expert, Dr. Stephen Berger, who spent two and one-half hours with defendant, also testified that defendant was legally insane at the time of the offense. Specifically, Dr. Berger explained that defendant suffered from substance-induced psychosis resulting from six years of drug abuse.

The jury rejected defendant's insanity defense and convicted him of murder and use of a firearm in the commission of an offense. The jury also found sixteen aggravators beyond a reasonable doubt. In its eight-page written sentencing order, the trial court noted that several of the aggravating factors found by the jury were related to each other. The court then found three aggravating factors and used several of the jury's factors in support of its three aggravators. For example, the court first found that the nature and circumstances of the crime was an aggravating factor. The court then explained that the following aggravators found by the jury supported this factor: the brutality of the crime,

Mr. Beumel was unarmed and attempted to flee, defendant violated the trust in the parent-child relationship, the murder was a premeditated execution, defendant followed his father to the ditch with a flashlight that he used to illuminate the victim and shot him again, and the victim's wife and defendant's mother was attempting to give first aid to the victim when the defendant fired the final shots.

The court next found that the defendant's drug abuse and related conduct was the second aggravating factor. In support of this aggravating factor, the court pointed to the following aggravating factors found by the jury: defendant's willful and purposeful abuse of Adderall, defendant refused to take steps to deal with his drug problems, and defendant exploited one or more physician/patient relationships. The court further pointed out that defendant had a prior arrest and heart problems related to his Adderall abuse but continued to fraudulently obtain Adderall, showing that he knew his drug use was self-destructive but continued with it anyway.

Lastly, the court found that defendant's history of criminal activity was the third aggravating factor. In support of this aggravating factor, the court pointed to the following aggravating factors found by the jury: defendant murdered his father while on bond for the intimidation of both parents, defendant had a history of police contacts because of his violent and unruly behavior, and defendant had a history of threatening his parents.

The court stated that it gave the greatest weight to Dr. Welner's testimony and rejected the defendant's age, lack of criminal convictions, and mental illness as

mitigating factors. After finding that the aggravating factors outweighed the mitigating factors, the court sentenced defendant to the maximum sentence of 65 years for murder and 5 years for using a firearm in the commission of the offense. The court ordered the two sentences to run consecutively for a total sentence of 70 years.

Defendant first argues that there is insufficient evidence to support his convictions. Specifically, he contends that his convictions cannot be upheld because the evidence supports the conclusion that he was legally insane at the time of the offense. Because defendant admits committing the offense, the only issue before us is whether the record of the proceedings supports the jury's verdict that the defendant was guilty rather than not guilty by reason of insanity.

Pursuant to Ind. Code Section 35-41-3-6(a), "[a] person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of his conduct at the time of the offense." This section defines "mental disease or defect" as "a severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful conduct or antisocial conduct." Ind. Code § 35-41-3-6(b).

The "insanity defense" is an affirmative defense for which the burden of proof is on the defendant. *Thompson v. State*, 804 N.E.2d 1146, 1148 (Ind. 2004). The State must prove the offense, including the *mens rea*, beyond a reasonable doubt but need not disprove insanity. *Id.* (citing Ind. Code § 35-41-4-1). To avoid responsibility for the crime proven by the State, the defendant must establish the insanity defense by a

preponderance of the evidence. *See* Ind. Code § 35-41-4-1(b). The question of whether a defendant can appreciate the wrongfulness of his conduct is one for the trier of fact. *See Thompson*, 804 N.E.2d at 1149. A defendant who claims that his insanity defense should have prevailed at trial is in the position of one who is appealing from a negative judgment, and we will reverse when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed. *Id.* As such, we will not reweigh the evidence or assess the credibility of witnesses but will consider only the evidence most favorable to the judgment and the reasonable and logical inferences to be drawn therefrom. *Id.*

Here, defendant's sole contention is that "the incredibly dubious testimony of a single expert witness was insufficient to rebut [defendant's] insanity defense and justify a guilty verdict." Appellant's Brief, p 22. Under the incredible dubiosity rule, a court will impinge on the jury's responsibility to judge the credibility of witnesses only when it is confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity. *White v. State*, 846 N.E.2d 1026, 1032 (Ind. Ct. App. 2006), *trans. denied*, (citing *Stephenson v. State*, 742 N.E.2d 463, 497 (Ind. 2001), *cert. denied*.) When a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. *Stephenson*, 742 N.E.2 at 497-98. However, we have recognized that the application of this rule is rare and is limited to cases where the sole witness' testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Id.*

In support of his argument, defendant focuses this court's attention on the contradictions between Dr. Welner's testimony and that of Drs. Abbert and Berger as well as the inherent probability that any reasonable person could believe Dr. Welner's conclusion that defendant was legally sane at the time he killed his father. Nevertheless, we find the incredible dubiosity rule to be inapplicable. As we have previously clarified, the standard for incredibly dubious testimony is inherent contradiction in the testimony of one witness, not contradiction between the testimony of two or more witnesses. *See Stephenson*, 742 N.E.2d at 499. By claiming inconsistent and contradictory testimony between witnesses rather than inherent contradictions within one witness' own testimony, defendant is actually asking us to reweigh the evidence and assess witness credibility. This we cannot do. *See Thompson*, 804 N.E.2d at 1149.

We further note that pursuant to the Indiana Supreme Court's decision in *Barany v. State*, 658 N.E.2d 60, 64 (Ind. 1995), even if the medical experts were to have unanimously agreed that defendant was insane at the time of the offense, the jury's guilty verdict would still be proper on these facts. In *Barany*, the Supreme Court upheld a conviction notwithstanding unanimous expert opinion that the defendant was insane at the time he killed his live-in companion. *Id.* There, neighbors saw Barany sitting naked on the end of a pier. When his companion placed a blanket on him, Barany bit off her finger. Barany then followed her back to the house, shot her eight times, struck her with a splitting maul, and destroyed several household appliances with the maul.

At trial, three court-appointed psychiatrists testified that at the time of the murder, Barany was unable to understand the wrongfulness of his conduct. However, a police

detective testified that a few hours after the crime, Barany told him that the victim nagged and complained. In addition, one of Barany's friends testified that the Barany "seemed O.K." to him, and Barany's sister testified Barany told her he believed his companion was calling the police at the time he killed her. *Id.* The jury found Barany guilty but mentally ill. *Id.* On appeal, the Indiana Supreme Court upheld the conviction, finding the jury could have decided the lay testimony about Barany's behavior was more indicative of his actual mental health at the time of the killing than medical examinations. *Id.*

Here, defendant asked his father for money, told him to get on his knees, and shot him. As his father ran across the road, defendant went back into the house to find a flashlight and more bullets. He went back outside, approached the ditch where his father had fallen, told his mother to move out of the way, and shot his father six more times. Defendant then turned and walked back to his house. When Tippecanoe County Sheriff's Department deputies arrived at the scene, defendant was cooperative, calm, and compliant. He recognized one of the deputies who had transported him to Methodist Hospital a few months before and remembered that the deputy had refused his request to stop at White Castle. During an interview an hour after the shooting, defendant remained calm and cooperative. He joked around with the deputy that interviewed him and exhibited no mental impairment. He was able to clearly recall the shooting and told the deputy that he had had problems with his father for years. When the deputy later told defendant that his father had died, defendant responded that "shit happens." Transcript at 729. Defendant was still calm and cooperative the following day when another deputy

interviewed him. Here, as in *Barany*, the jury could have decided the lay testimony about defendant's behavior was more indicative of his actual mental health at the time of the killing than medical examinations. There is sufficient evidence to support defendant's convictions.

Defendant further argues that the trial court erred in sentencing him. Sentencing decisions are within the trial court's discretion, and will be reversed only upon a showing of abuse of discretion. *Loyd v. State*, 787 N.E.2d 953, 960 (Ind. Ct. App. 2003). The trial court's sentencing discretion includes the determination of whether to increase presumptive penalties, impose consecutive sentences for multiple offenses, or both. *Haggard v. State*, 771 N.E.2d 668, 676 (Ind. Ct. App. 2002), *trans. denied*. In so doing, the court determines which aggravating and mitigating circumstances to consider, and is solely responsible for determining the weight to accord each of these factors. *Loyd*, 787 N.E.2d at 960. The sentencing statement must: 1) identify significant aggravating and mitigating circumstances; 2) state the specific reason why each circumstance is aggravating and mitigating; and 3) demonstrate that the aggravators outweigh the mitigators. *Id.* We examine both the written sentencing order and the trial court's comments at the sentencing hearing to determine whether the trial court adequately explained the reasons for the sentence. *Id.*

Here, defendant first contends that he "was improperly sentenced based on twenty-one purported aggravators, when at least nine of them were derivative of three basic aggravators . . . ." Appellant's Brief p. 24. However, our review of the trial court's written order reveals that the trial court found three aggravating factors: 1) the nature and

circumstances of the offense; 2) defendant's drug abuse and related conduct; and 3) defendant's history of criminal activity. Further, the trial court noted that the sixteen aggravating factors found by the jury were related to the court's three factors as well as to each other. The court then used several of the jury's factors to support its three aggravators. For example, the court cited the following factors in support of the nature and circumstances of the offense aggravator: the brutality of the crime, Mr. Beumel was unarmed and attempted to flee, defendant violated the trust in the parent-child relationship, the murder was a premeditated execution, defendant followed his father to the ditch with a flashlight that he used to illuminate the victim and shot him again, the victim's wife and defendant's mother was attempting to give first aid to the victim when the defendant fired the final shots.

In addition, the court found that the defendant's drug abuse and related conduct was an aggravating factor. In support of this aggravating factor, the court pointed to the following aggravating factors found by the jury: defendant's willful and purposeful abuse of Adderall, defendant refused to take steps to deal with his drug problems, and defendant exploited one or more physician/patient relationships. The court further pointed out that defendant had a prior arrest and heart problems related to his Adderall abuse but continued to fraudulently obtain Adderall, showing that he knew his drug use was self-destructive but continued with it anyway.

Lastly, the court found that defendant's history of criminal activity was an aggravating factor. In support of this aggravator, the court pointed out the following aggravating factors found by the jury: defendant murdered his father while on bond for

the intimidation of both parents, defendant had a history of police contacts because of his violent and unruly behavior; and defendant had a history of threatening his parents. Clearly, defendant was not improperly sentenced based on twenty-one aggravators. His argument therefore fails.[1]

Lastly, defendant contends that his sentence is inappropriate because he is not one of the worst offenders and his is not one of the worst offenses. This court has the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude that the sentence is inappropriate in light of the nature of the offense and character of the offender. *Gornick v. State*, 832 N.E.2d 1031, 1034 (Ind. Ct. App. 2005), *trans. denied.* (citing Ind. Appellate Rule 7(B)). We have previously explained as follows regarding the worst offense and worst offender principle:

> There is a danger in applying [this principle because] [i]f we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense. In order to determine whether an offense fits that description, we would be required to compare the facts of the case before us with either those of other cases that have been previously decided, - or more problematically – with hypothetical facts calculated to provide a "worst-case scenario" template against which the instant facts can be measured. If the latter were done, one could always envision a way in which the instant facts could be worse. In such case, the worst manifestation of any offense would be hypothetical and not real, and the maximum sentence would never be justified.
>
> This leads us to conclude the following with respect to deciding whether a case is among the very worst offenses and a defendant among the very worst offenders, thus justifying the maximum sentence: We should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity

[1] Defendant does not challenge the three aggravating factors found by the trial court or the trial court's balancing of aggravating and mitigating factors. Further, we fail to see jury prejudice where the court imposed defendant's sentence.

> of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied.*

Here, with regard to the character of the offender, defendant has a long history of willfully and purposely abusing Adderall despite medical, emotional, and legal consequences and the efforts of his family to help him. These consequences include heart problems, an involuntary commitment to Methodist Hospital for a drug-induced psychosis, and an arrest for intimidation after destroying his parents' property and threatening to kill them. Defendant knew his drug use was both self-destructive and harmful to others but continued to abuse Adderall anyway. *See Bryant v. State,* 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), *trans. denied*, (stating that Bryant's substance abuse was a proper aggravating factor where defendant was aware of the problem but did not take any steps to treat it). Defendant also lied to physicians to obtain large quantities of Adderall and had a history of violent and unruly behavior. Lastly, defendant murdered his father while out on bond for intimidation charges, showing a lack of respect for the law.

With regard to the nature of the offense, we note that defendant's father went unarmed to defendant's house out of love and concern for his son. When he knocked on the front door, defendant opened it with a gun in his hand. Defendant demanded money from his father, told him to get on his knees, and fired six shots at him. Mr. Beumel turned and ran across the road and fell into a ditch. While his mother was administering first aid to his father and calling for assistance, defendant returned to his house to find a

flashlight and more bullets. Defendant went back outside, approached the ditch where his father had fallen, told his mother to move out of the way, and shot his father six more times. Mrs. Beumel watched as her husband raised his hand to block the final shot. Defendant then turned and walked back to his house to wait for the police.

Based upon our review of the evidence, we see nothing in the character of this offender of the nature of this offense that would suggest that defendant's 70-year sentence for murder and using a firearm in the commission of an offense is inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.