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IN THE
COURT OF APPEALS OF INDIANA

SAYBURT HUFF,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-1006-CR-392
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable J. Jerome Frese, Judge
Cause No. 71D03-0902-MR-8

February 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Sayburt Huff[1] was convicted following a jury trial of voluntary manslaughter[2] as a Class A felony. He appeals contending that the evidence presented was insufficient to support his conviction.

We affirm.[3]

FACT AND PROCEDURAL HISTORY

On February 5, 2009, Audrey Anderson ("Audrey") was in her one-bedroom apartment with her son, Gabriel, and her "boyfriend," Fredrick Hart, looking at a photo album. *Tr*. at 353, 506. Huff, a friend of Audrey's, knocked on the door, and Audrey told him to come in. Soon thereafter, Huff and Hart began arguing over an incident that had happened between the two men a few days earlier. A fistfight erupted, and as Huff was leaving the apartment, Hart picked up a small knife from the kitchen counter, pointed it at Huff, and told him not to come back.

Audrey telephoned her daughter, Toccara Anderson Bigsbee ("Toccara"), to tell her about the fight. The conversation prompted Toccara and her husband, Eugene Bigsbee ("Bigsbee"), to go to Audrey's, where they saw Huff pacing outside the apartment building. As Toccara parked across the street from Audrey's apartment, Huff approached her car and seemed all "hyped" up as he told her about the fight. *Tr*. at 560.

Toccara and Bigsbee went into the apartment. A few minutes later, Hart left the

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[1] The record before us spells the first name of defendant as both "Saybert" and "Sayburt." Because the defendant's name is listed as "Sayburt" on both the information and the guilty verdict, we use that spelling.

[2] *See* Ind. Code § 35-42-1-3.

[3] In his brief, Huff also challenges the sentence imposed by the trial court after it found Huff in contempt during sentencing. On November 3, 2010, the trial court issued an order vacating the contempt order. *Appellee's App.* at 1. Finding that the issue is moot, we do not address that issue.

apartment and passed Huff, who was at that point entering the apartment. Huff then entered the apartment. About five minutes later, Hart returned to the apartment and went into the bedroom, but left the door open. Huff then followed Hart into the bedroom. Audrey testified that, when she heard raised voices, she went to the bedroom to see what the men were fighting about. There, she saw Hart holding up a blanket in an effort to defend himself from Huff, who was swinging a knife at him. Bigsbee also went to the bedroom, and he and Hart told Huff to put down the knife. Huff stabbed wildly and cut Hart's throat. Hart's injuries proved to be fatal. As the occupants of the home rushed to Hart's aid, Huff washed up and left the apartment.

Huff later turned himself in to the South Bend Police Department, and the State charged him with murder.[4] Following a three-day jury trial, Huff was convicted of the lesser-included offense of voluntary manslaughter and was sentenced to a term of fifty years to be served at the Indiana Department of Correction. Huff now appeals contending that the evidence was insufficient to support his conviction.

DISCUSSION AND DECISION

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Parahams v. State*, 908 N.E.2d 689, 691 (Ind. Ct. App. 2009). We look only to the probative evidence supporting the judgment 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

[4] In Count II of the information, the State also alleged that Huff was an habitual offender. However, the State dismissed that count on the day of trial, prior to voir dire.

substantial evidence of probative value to support the conviction, it will not be set aside. *Id*. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Yowler v. State*, 894 N.E.2d 1000, 1002 (Ind. Ct. App. 2008).

Huff contends that the evidence presented by the State was insufficient to support his conviction for voluntary manslaughter because the State failed to prove the required mens rea to support his conviction. As such, Huff contends that the evidence was only sufficient to support a conviction for the lesser-included offense of reckless homicide. Contrary to Huff's assertion, this court need not look at whether the jury could or should have found him guilty of reckless homicide. Instead, the issue before us is whether the probative evidence and inferences drawn from that probative evidence were sufficient to have allowed a reasonable jury to find Huff guilty of voluntary manslaughter beyond a reasonable doubt.

Indiana's voluntary manslaughter statute provides:

> (a) A person who knowingly or intentionally:
> (1) kills another human being
> . . .
>
> while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.
>
> (b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

Ind. Code § 35-42-1-3.

Huff was charged with murder but introduced evidence of sudden heat. "Sudden

heat" is characterized as anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection. *Dearman v. State*, 743 N.E.2d 757, 760 (Ind. 2001). The statute specifies that sudden heat is not an element of voluntary manslaughter; instead, it is a mitigating factor that reduces what otherwise would be murder into voluntary manslaughter. *Watts v. State*, 885 N.E.2d 1228, 1231 (Ind. 2008). With this in mind, our Supreme Court has previously held that voluntary manslaughter is a lesser-included offense of murder. *Id*.

The State offered the testimony of four eyewitnesses to the crime—Audrey, Toccara, Bigsbee, and Gabriel—who gave the following account. On February 5, 2009, Huff went to Audrey's apartment where he found Audrey, Gabriel, and Hart looking at a photo album. *Tr*. at 355, 506. Huff and Hart soon began arguing and a fistfight erupted. *Id*. at 359, 509-10. As Huff was leaving the apartment, Hart picked up a small knife from the kitchen counter, pointed it at Huff, and told him not to come back. *Id*. at 524.

When Toccara and Bigsbee arrived at Audrey's apartment, they saw Huff pacing outside the apartment building. As Toccara parked, Huff approached her car. At trial, Toccara testified that Huff was "hyped" and "charged up" as he told her about his fight with Hart; "You could tell that something happened." *Id*. at 560.

Toccara and Bigsbee went into the apartment. A few minutes later, Hart left the apartment and passed Huff, who was at that point entering the apartment. At trial, Toccara testified that the two men paused as they passed, and Hart said to Huff, "I whopped [sic] your ass -- you know what I'm saying? Take your ass whopping [sic] like

a man. We cool." *Id*. at 565. Huff responded, "[Y]ou ain't whopped [sic] me -- you know what I'm saying? – but it's cool." *Id*. Huff then entered the apartment.

Hart returned to the apartment and went into the bedroom, but left the door open. Huff, who followed Hart into the bedroom, was overheard saying to Hart, "[W]hat's up now?" and "[W]ho got the knife now?" *Id*. at 433-34. Huff was acting "tough" and "hyped" up. *Id*. at 568-69. Audrey testified that she went to the bedroom to see what the men were fighting about. There, she saw Hart holding up a blanket in an effort to defend himself from Huff, who was swinging a knife at him. *Id*. at 518-21. Audrey testified that Huff struck at Hart "out of rage," but initially just cut the blanket. *Id*. at 521. Hearing the commotion, Toccara and Bigsbee joined Audrey at the bedroom door and heard Hart tell Huff to "put down the knife." *Id*. at 577.

Bigsbee testified, "both of them was talking crazy to each other." *Id*. at 440. Both Hart and Bigsbee told Huff to put down the knife, but Huff walked toward Hart still swinging the knife. Bigsbee testified, "I saw [Huff] swinging the knife. [Hart] trying to grab [Huff]. And then I just saw a whole bunch of blood." *Id*. at 442. Bigsbee testified that he saw Huff "slice [Hart] in the neck." *Id*. at 443. Hart's injuries proved to be fatal.

There was sufficient evidence for the jury to have reasonably found that Huff' acted knowingly and therefore committed murder. The jury, however, recognized that in addition to the evidence of guilt there was mitigating evidence that Huff acted in sudden heat. We find sufficient evidence to support Huff's conviction for voluntary manslaughter. Affirmed.

CRONE, J., and BRADFORD, J., concur.