Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

ANTHONY V. LUBER
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

FILED
Jun 22 2011, 9:38 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

ARDEN BALMER, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-1007-CR-570
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable J. Jerome Frese, Judge
Cause No. 71D03-0908-MR-18

June 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Arden Balmer, Jr. ("Balmer") appeals his convictions and sentence for Murder, a felony,[1] and Criminal Confinement, as a Class B felony.[2] We affirm.

Issues

Balmer presents two issues for review:

I. Whether the jury's determination that Balmer was guilty but mentally ill, as opposed to not guilty by reason of insanity, is contrary to law; and

II. Whether his sentence is inappropriate.

Facts and Procedural History

Balmer and Alexandra Stahly ("Stahly") had been romantically involved for approximately two years before Stahly ended the relationship in June of 2009. Stahly began to date Dave Lawton ("Lawton"), Balmer's close friend, but kept the relationship secret from Balmer. Suspicious, Balmer obtained Lawton's cell phone and forwarded photos and videos to his own cell phone. Some of the transmitted images depicted Lawton and Stahly engaged in sexual activity.

Within a few hours of this discovery, Balmer drafted a purported suicide letter. He expressed feelings of betrayal and indicated that he had bullets intended for Stahly, Lawton, and himself. Balmer sent text messages to Stahly and Lawton indicating that they should come to Balmer's home and transport him to a mental health treatment facility. Both agreed to help, and arrived at Balmer's house during the late morning hours of August 19, 2009.

---

[1] Ind. Code § 35-42-1-1.
[2] Ind. Code § 35-42-3-3.

Balmer led Stahly and Lawton into his backyard and began talking about a friend's suicide at that location some years earlier. Lawton suggested to Balmer that they should be leaving for the treatment facility. Balmer showed Lawton an image on Balmer's phone and announced to Lawton, "You betrayed me." (Tr. 337.) Lawton looked at Stahly and mouthed the word "run." (Tr. 337.) Stahly turned to leave, but saw Balmer pull a gun and point it at Lawton's chest. Lawton yelled for Stahly to run; instead, Stahly ran screaming toward Balmer and pulled at his arms. Undeterred, Balmer fired the gun several times into Lawton's body.

Stahly continued to scream at Balmer and punched him in the face. Balmer raised his gun toward Stahly but did not shoot. Stahly then picked up a pipe, struck Balmer in the back of the head, and ran for her truck. However, Balmer overcame Stahly, put his arm around her neck, and dragged her into the house. Still armed with the gun, Balmer kept Stahly in the house for half an hour before Stahly attempted to run again. As she ran through the yard, Stahly encountered St. Joseph County Police Corporal Robert Lawson, who had arrived in response to a dispatch.

Officer Lawton observed Balmer pursuing Stahly while aiming a gun at her. Officer Lawton yelled at Balmer to stop and drop his gun but Balmer fled toward a barn. Numerous officers converged and conducted a search of a nearby wooded area. At some point, officers discovered that Balmer had returned to his house. The house was surrounded and a three-hour "standoff" ensued. (Tr. 224.) When Balmer eventually exited the house, he refused to drop his weapon and began "talking about the voices in his head." (Tr. 228.) He claimed

that the voices were interfering with his ability to talk with the police negotiator. Balmer raised his weapon and was shot in the shoulder and taken into custody.

On August 20, 2009, Balmer was charged with Murder and Criminal Confinement. Balmer initially pled not guilty. On October 13, 2010, he pled not guilty by reason of insanity. The trial court appointed two experts (a psychologist and psychiatrist) to evaluate Balmer; each testified and opined that Balmer was insane at the time of the crimes. However, Balmer's long-term therapist opined that Balmer had carried out a premeditated plan and was able to appreciate the wrongfulness of his conduct. Stahly testified and offered her lay opinion that Balmer was not insane.

On April 26, 2010, a jury convicted Balmer as charged but found him to be mentally ill. He received consecutive sentences of fifty-two years for Murder, and twelve years for Criminal Confinement. On July 21, 2010, the trial court granted Balmer permission to pursue a belated appeal. This appeal ensued.

Discussion and Decision

I. Insanity Defense

Balmer admits that he killed Lawton and confined Stahly. However, he claims that he established his insanity defense by a preponderance of the evidence and the jury's determination that he is guilty but mentally ill is contrary to law.

Pursuant to Indiana Code Section 35-41-3-6, "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 the conduct at the time of the offense." A "mental disease or

defect" is defined 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 or antisocial conduct." Ind. Code § 35-41-3-6(b).

The insanity defense is an affirmative defense; thus, the defendant bears the burden of proof. Thompson v. State, 804 N.E.2d 1146, 1148 (Ind. 2004). The State must prove the offense, including mens rea, beyond a reasonable doubt but need not disprove insanity. Id. The defendant must establish the defense by a preponderance of the evidence. Id. at 1149.

Whether or not a defendant can appreciate the wrongfulness of his conduct presents a question for the trier of fact. Id. An appellant who claims that his insanity defense should have prevailed at trial is in the position of one appealing from a negative judgment. Id. A negative judgment will be reversed only when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed. Id. We do 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.

Expert opinion testimony is not conclusive, and the trier of fact is free to disregard the testimony of experts and rely upon the testimony of lay witnesses. Id. Testimony regarding behavior before, during, and after a crime may be more indicative of actual mental health at the time of the crime than mental exams conducted at a later time. Id.

Jill Uceny, who had been Balmer's mental health therapist for more than four years, testified that Balmer had a "very strong sense" of right and wrong. (Tr. 656.) She also

testified that Balmer consistently refused medication and denied having hallucinations. In Uceny's opinion, Balmer suffered from depression, alcohol abuse, and post-traumatic stress disorder, but was not unable to appreciate the wrongfulness of his conduct at the time of his crimes.

Stahly testified that Balmer sent her a series of text messages to lure her to his house. He lucidly described past events and announced that he had been betrayed. After shooting Lawton, Balmer asked Stahly to take his cell phone, hit send, and call his therapist. Stahly opined that Balmer was not then insane.

Additionally, the jury heard Balmer's conversation with an emergency dispatcher and examined the detailed letter that Balmer had drafted disposing of his personal property and indicating that he had a plan to kill himself, Balmer, and Stahly. Whether a defendant appreciated the wrongfulness of his conduct at the time of the offense presents a question for the trier of fact. Galloway v. State, 938 N.E.2d 699, 709 (Ind. 2010). Balmer's emphasis upon advisory psychiatric opinions is merely an invitation to reweigh the evidence. The evidence does not lead solely to a conclusion that Balmer was insane. Therefore, the jury's determination is not contrary to law and will not be disturbed.

II. Sentence

Upon conviction of Murder, Balmer faced a sentencing range of forty-five to sixty-five years, with the advisory sentence being fifty-five years. See Ind. Code § 35-50-2-3. Upon conviction of a Class B felony, Balmer faced a sentencing range of six to twenty years, with the advisory sentence being ten years. See Ind. Code § 35-50-2-5. Pursuant to Indiana

Code Section 35-50-1-2, the trial court had authority to order the sentences to be served concurrently or consecutively. Accordingly, Balmer faced an aggregate sentence of up to eighty-five years. He was sentenced to fifty-two years for Murder, and twelve years for Criminal Confinement, for an aggregate sentence of sixty-four years, one year less than the aggregate of the applicable statutory advisory sentences.

Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In performing our review, we assess "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). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

As for the nature of the offenses, Balmer lured his victims to his residence by making overtures for assistance. Armed with a gun, Balmer led them into the back yard and opened fire on his former close friend, Lawton. Balmer held his former girlfriend Stahly at gunpoint for an extended period of time and refused her any opportunity to summon help for Lawton. Instead, Balmer insisted that Stahly attend to his needs by getting him water and telephoning his therapist. When Stahly was finally able to flee the residence, Balmer pursued her and refused officers' orders to put down his weapon. Balmer forced a several hour standoff and was disarmed only after he raised his weapon and was shot in the shoulder by one of the

officers surrounding the residence.

As for the character of the offender, Balmer has no prior criminal history and it is undisputed that he suffers from mental illness. Nonetheless, he was less than cooperative with treatment, as he consistently refused medication.

In sum, a review of the nature of the offenses and the character of the offender does not persuade us that either the fifty-two-year sentence for Murder or twelve-year sentence for Criminal Confinement is inappropriate. Moreover, we observe that consecutive sentences are appropriate because they "seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person." Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003).

Conclusion

The jury's rejection of Balmer's insanity defense is not contrary to law. His sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.