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IN THE
COURT OF APPEALS OF INDIANA

VERNON TEAGUE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0812-CR-705
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0807-FA-161574

June 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Vernon Teague ("Teague") appeals his conviction and sentence for Attempted Murder, a Class A felony.[1] We affirm.

Issues

Teague presents two issues for review:

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

II. Whether his sentence is inappropriate.

Facts and Procedural History

On July 4, 2008, Dennis Shipp ("Shipp") drove his grandchildren to the Pinnacle Square Apartments in Indianapolis, where they lived with their mother. When he pulled into the parking lot, Shipp saw some teenagers throwing crab apples, and he yelled and cursed at them. Shipp walked his grandchildren to their apartment and returned to his vehicle, where he was confronted by a woman "yelling at [him] for yelling at her kids." (Tr. 88.) Shipp responded by yelling at the woman to control her children.

Shipp walked back to his daughter's apartment briefly, returned to his vehicle, and began to back it up. Upon seeing a man approach "looking like he wanted to talk," Shipp shut off his vehicle and got out of it. (Tr. 91.) Shipp and the man, later identified as Glen McDowell ("McDowell"), began to converse. Meanwhile, Teague was sitting in the passenger seat of a vehicle nearby. At some point, Teague displayed a gun and told Shipp

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[1] Ind. Code §§ 35-41-5-1, 35-42-1-1. Teague does not challenge his conviction for Carrying a Handgun Without a License, a Class A misdemeanor, or his one-year concurrent sentence for that conviction. Ind. Code § 35-47-2-1.

"you best be moving on." (Tr. 96.) Shipp responded "surely you wouldn't shoot me in front of all these witnesses." (Tr. 98.)

McDowell said something to get Shipp's attention and then swung in Shipp's direction, but missed him. Shipp then used his cane to strike McDowell on his right knee. Shipp then felt a gun pressed to his left ear and tried to turn away; however, a bullet pierced Shipp's scalp.[2] McDowell and Teague began to "pound on" Shipp. (Tr. 102.) Shipp dropped to his hands and knees, but was able to return to a standing position. He took his cane and hit the windshield of the vehicle in which Teague had been a passenger. Teague's girlfriend, Teria Johnson ("Johnson"), got out of the vehicle and took the cane away. After Shipp protested that he could not walk without the cane, Johnson returned it to him.

Shipp then walked around to the back of the vehicle to take down the license plate number. He saw Teague loading his handgun. Teague turned, pointed the gun at Shipp, and fired several times. Bullets struck Shipp in his right forearm near the elbow and in his right shoulder; another bullet grazed his left leg.

On July 8, 2008, the State charged Teague with Attempted Murder and Carrying a Handgun Without a License. Teague was convicted by a jury as charged and sentenced to twenty-five years imprisonment. This appeal ensued.

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[2] Dr. Joye Carter testified: "This bullet went into the scalp and passed through the scalp without entering the skull, and passed out of the top of the head." (Tr. 328.) In Dr. Carter's opinion "[i]t was not fatal because the bullet did not make it into the skull, where it would've damaged the skull and damaged the brain." (Tr. 328.)

Discussion and Decision

I. Sufficiency of the Evidence

Teague presents two arguments challenging the sufficiency of the evidence supporting his attempted murder conviction. First, he claims that his intent when he fired upon Shipp was merely that Shipp be wounded, and that the State failed to present evidence of his specific intent to kill Shipp. Second, he argues that the State failed to disprove self-defense.

To prove attempted murder, the State must prove beyond a reasonable doubt that the defendant, with intent to kill the victim, engaged in conduct that was a substantial step toward such killing. Henderson v. State, 825 N.E.2d 983, 987 (Ind. Ct. App. 2005), trans. denied. When reviewing the sufficiency of the evidence to support a conviction, we will consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). In so doing, we will not assess witness credibility; nor will we reweigh the evidence presented. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Teague is correct in his observation that a conviction for attempted murder requires proof of specific intent to kill. See Bethel v. State, 730 N.E.2d 1242, 1245 (Ind. 2000). However, intent to kill may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily harm. Bartlett v. State, 711 N.E.2d 497, 500 (Ind. 1999). Here, there is evidence that Teague touched or struck Shipp's head with a handgun, and one shot entered behind Shipp's ear at the hairline and exited through the scalp. Thereafter, Teague

aimed a handgun at Shipp and fired additional shots. Eyewitnesses estimated that these shots were fired from a distance of ten to twenty feet. Shipp sustained four separate bullet wounds. This is sufficient to permit the jury to conclude that Teague had the specific intent to kill Shipp. See, e.g., Maxwell v. State, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000) (holding that attempted murder conviction was supported by sufficient evidence where the defendant pointed and shot his handgun at two victims at close range), trans. denied.

Teague raised a defense of self-defense or defense of others. A valid claim of self-defense is legal justification for an otherwise criminal act. Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code Section 35-41-3-2(a):

> A person is justified in using reasonable force against another 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. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

When a defendant raises a claim of self-defense, he is required to show three facts: (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 serious bodily harm. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt for the defendant's claim to fail.

Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). 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. The trier of fact is not precluded from finding that a defendant used unreasonable force even if the victim was the initial aggressor. Birdsong, 685 N.E.2d at 45. The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Wallace, 725 N.E.2d at 840.

The evidence negating Teague's claim of self-defense is as follows. Teague interjected himself into a verbal confrontation by displaying a gun and admonishing Shipp to "move on." (Tr. 96.) Teague touched or struck Shipp's head with a handgun and a close-range shot pierced Shipp's scalp as Shipp tried to turn away. After the initial shot, Teague and McDonald struck Shipp repeatedly. Shipp retreated from that altercation and attempted to take down a license plate number; at that time, Teague aimed his handgun at Shipp and fired several additional shots, from a distance of ten to twenty feet. Teague was not injured, but Shipp sustained four gunshot wounds. This evidence was sufficient to show that Teague was not without fault, as he participated willingly in the violence against Shipp. Teague's argument that he had a reasonable basis for fear of death or great bodily harm to himself or another person amounts to an invitation that we reweigh the evidence and the credibility of the witnesses, which we cannot do.

II. Appropriateness of Sentence

For a Class A felony, the advisory sentence is thirty years, while the maximum sentence is fifty years. Ind. Code § 35-50-2-4. Accordingly, Teague received a sentence of five years less than the advisory sentence.

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." Ind. Appellate Rule 7(B). 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). A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, 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. The instant offense involved Teague firing multiple shots from close range at an older, and somewhat infirm, man. Shipp was struck four times, in the head, leg, shoulder, and forearm. The shots were fired in the near vicinity of a vehicle occupied by Teague's girlfriend, who was then nine months pregnant, and her three-year-old daughter. Several other bystanders were also potentially endangered.

As to the nature of the offender, Teague has a limited criminal history consisting of

misdemeanors. He asserts that he suffers from bi-polar disorder but was not taking prescribed medication at the time of Shipp's shooting. Teague has several children, but has not maintained consistent employment so as to provide financial support for them. On the other hand, the trial court found that Teague was remorseful for his actions.

In sum, Teague received a mitigated sentence of five years less than the advisory sentence, and the nature of the offense and the character of the offender do not suggest that this sentence is unduly harsh. Teague has not persuaded us that his sentence is inappropriate.

Affirmed.

DARDEN, J., and ROBB, J., concur.