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ATTORNEY FOR APPELLANT:

MICHAEL D. GROSS
Lebanon, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

JAMES E. PORTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DENNIS MULLENDORE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A01-0902-CR-98
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE CIRCUIT COURT
The Honorable Rebecca S. McClure, Special Judge
Cause No. 06C01-0701-MR-8

JULY 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

After a four-day jury trial, Dennis Mullendore was convicted of murder, stalking, intimidation, false reporting and attempted intimidation. He was sentenced to sixty-five years for murder, eight years for stalking, one year for intimidation, one hundred and eighty days for false reporting, and one and one-half years for attempted intimidation. The first two sentences were to be served consecutively to each other, and the latter three sentences were to be served concurrently with the murder and stalking sentences and concurrently with each other, for a total sentence of seventy-three years.

Mullendore's appeal asserts the sentence is inappropriate and the evidence is insufficient to sustain the murder conviction.

On the evening of January 5, 2007, Beth Mullendore (hereinafter "Beth") was driving on I-865 in Boone County when she was shot in the head with a shotgun. Her murder occurred less than three weeks before the scheduled final hearing in her divorce from Mullendore.

Beth had filed for dissolution in November, 2005. At that time, she secured a restraining order against Mullendore. Restraint was repeated in a provisional order entered in 2006 and again after an emergency petition for a restraining order about two months before her death. Despite these orders, Mullendore continued to harass Beth. He left at least fifty-one voice messages on her phone during the six months prior to her death. These variously expressed that he loved her, was watching her (this was repeated over and over), that she would never get rid of him, she could not escape, and that her vehicle was rigged.

After filing for dissolution Beth frequently expressed concern for her safety to friends, co-workers and her attorneys. She was employed as a nurse at St. Vincent's Hospital in Indianapolis. While at work someone "keyed" her vehicle. She had the vehicle repaired, and it was "keyed" again on the same night it was repaired. After the car was vandalized, Mullendore left a voice message saying, "I see you got your car back." There were also occasions where her tires were slashed and a side window was forced down and "items" were thrown into the vehicle. She believed Mullendore was the culprit. A security officer at St. Vincent's encountered Mullendore in the parking lot and issued him a criminal trespass, a trespass warning and a barring notice.

Beth was afraid of mice and believed Mullendore left two live rats in her apartment. Mullendore told his supervisor that he went to Beth's work and would see if she was working and would make sure she was at home. One of Beth's co-workers saw Mullendore in the hospital and he left when the co-worker approached him. While on a date Mullendore asked his companion to enter the hospital and see what Beth was doing.

Mullendore told friends and co-workers that he would spy on Beth, break into her apartment and go through her mail. He bought a bicycle to ride around and check up on Beth because he thought the police were following him.

About 5:30 p.m. on January 5, 2007 Mullendore called a woman he was dating and told her he had to work late. Then Mullendore had his son and three of his son's friends come to his house in Lebanon. Mullendore told the young men that he believed the police were following him and he wanted them to drive his cars around town. Those

four drove off in their assigned vehicles about 5:30 – 5:45. Mullendore told them not to return until 7:00 p.m. Mullendore drove off in a white GMC Sonoma that belonged to one of his son's friends. At approximately 6:30 p.m. Beth was killed by a shotgun blast while she was driving on I-865 northwest of Indianapolis.

The person driving Mullendore's Buick received a call from Mullendore around 7:00 p.m. telling him to return to the house. At 6:53 p.m. Mullendore made a call on his cell phone that originated on one cell phone tower and concluded on another one, thus indicating that the caller was moving. The towers were identified and are in the vicinity of I-865. After arriving home Mullendore exchanged vehicles and left in his Buick. An empty shotshell was later found in the Buick.

Later that night Mullendore told investigators that he had arrived home about 5:00 p.m. and played a game with his son's friends called "chase" where they would all drive around Lebanon. Mullendore told investigators that he did not kill Beth but he knew who did. He said an unidentified female called him and said that she wanted Beth dead. He said that he provided the woman with a white vehicle, the route Beth would take to work, and the kind of vehicle Beth would be driving. He said that he waited in a ditch by I-65 and State highway 39 until the woman returned, then "got in his vehicle and left."

Mullendore is experienced with firearms, a pretty good shot and owns shotguns. He once told a friend that if you had to shoot someone then "a shotgun would probably be the weapon of choice" because it was difficult to do any ballistics verifications on a shotgun. This friend stated that he was a little afraid of Mullendore.

Two shotguns were retrieved from Mullendore's mother's house on the night of the homicide. A third shotgun owned by Mullendore was given to an individual by a member of Mullendore's family and was subsequently turned over to police. All the shotguns were functional. Shotgun ammunition was also found while searching Mullendore's property and vehicles. After the state rested its case, the defense rested without presenting evidence.

Our standard for reviewing the sufficiency of the evidence is well established. We neither reweigh evidence nor re-judge credibility of witnesses. *Henley v. State,* 881 N.E.2d 639, 652 (Ind. 2008). We consider only the evidence supporting the judgment and any reasonable inferences that may be drawn from it. *Id.* We will affirm a conviction if there is substantial evidence of probative value such that a reasonable juror could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

The history of Mullendore's relationship the the victim after she filed for dissolution, Mullendore's access to weapons and ammunition of the kind used in the killing, Mullendore being placed at or near the scene of the murder at the time in question, and his conflicting stories concerning what occurred and what he did that evening could persuade a reasonable jury that he was guilty beyond a reasonable doubt. This evidence is sufficient to support the conviction.

Mullendore also argues that his sentence is inappropriate in light of the nature of the offense and his character. He contends that in view of the testimony regarding his good character and lack of criminal record, it was error to impose the maximum sentence.

The court in its sentencing order recognized and gave weight to both of those factors. It, however, determined that these were far outweighed by the aggravating circumstances it found to exist. The court found that the nature and circumstances and character of Mullendore went beyond the mere elements of the crimes of murder and stalking:

> As to the crime of murder, this was not just a killing of another human being. There was very clear evidence of premeditation….The evidence presented was that Dennis Mullendore planned, calculated the murder of Beth Mullendore. He despicably used his own son and his son's teenage friends to create what he believed would be his alibi. The evidence supports a finding of a cold blooded, calculated, premeditated murder in this case.
>
> As to the stalking offense…[t]he Court … refers specifically to the language, the tone, and the threats used in at least fifty-three (53) messages left by Dennis Mullendore …plus the acts of breaking into her home, damaging her vehicle, going onto the floor of the hospital where she worked, and other acts as presented in evidence of this case.

Appellant's App. at 137-38. The court further found that lack of remorse was an additional aggravating factor.

Counsel appears to argue that the court should have given more weight to the mitigating circumstances. Pursuant to *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), the relative weight of aggravators and mitigators which have been found by the court is not subject to review for abuse of discretion.

As the *Anglemeyer* court stated, "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion….An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances

before the court, or the reasonable, probable and actual deductions to be drawn therefrom." *Id.* at 490.

The *Anglemeyer* decision was expanded upon by the court in *Cardwell v. State,* 895 N.E.2d 1219 (Ind. 2008). Reviewing the gist of the appellate review granted through Ind. Appellate Rule 7(B), the court explained, "And whether we regard a sentence as appropriate at the end of the day turns on our sense of 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." *Id.* at 1224. The court, also, noted that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Id.* at 1222. Having carefully reviewed the materials in this case we cannot say that Mullendore's sentence is inappropriate.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.