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IN THE COURT OF APPEALS OF INDIANA

DAVID DOZIER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 75A04-0608-CR-457
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Kim Hall, Judge
Cause No. 75C01-0506-MR-1

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

David Dozier appeals his conviction for murder, a felony, and his sixty-five year sentence. Dozier raises four issues, which we expand and restate as: 1) whether the State introduced sufficient evidence to rebut Dozier's self-defense claim; 2) whether the State violated Dozier's due process rights by not informing Dozier that it had sent his clothing to a lab for testing but had canceled the tests; 3) whether Dozier received ineffective assistance of counsel; 4) whether the trial court abused its discretion in sentencing Dozier; and 5) whether Dozier's sixty-five year sentence is inappropriate given his character and the nature of the offense. Concluding that sufficient evidence exists to rebut Dozier's self-defense claim, that Dozier's due process rights were not violated as the evidence of Dozier's clothing was merely potentially useful and the State did not act in bad faith, that Dozier did not receive ineffective assistance of counsel, that the trial court acted within its discretion in sentencing Dozier, and that his sentence is not inappropriate given the nature of the offense and his character, we affirm.

Facts and Procedural History

On June 2, 2005, Dozier and his father began arguing over the sale of a van. Both had been drinking. Several people from the neighborhood visited the Dozier residence that day, one of them being T.S., who was fourteen years old at the time. At some point, Dozier's father told T.S. to go home, and Dozier and his father entered a pole barn near their residence. The argument was heated enough that Dozier's mother called 911 and stated that her husband and son were "going to get in a fist fight." Transcript at 601. While she was on

the phone, Dozier picked up a .12 gauge shotgun and shot his father four times, in the front of the arm, the back of the arm, the back of the leg, and the back of the neck. Dozier then got on the phone, identified himself to the 911 dispatcher, stated that he had shot his father, and requested the police come to the residence to arrest him.

Officer Bret Hansen, of the Starke County Sheriff's Department, arrived on the scene and encountered Dozier, who was standing outside the residence drinking a beer. Dozier told Officer Hansen that he had shot his father. Officer Hansen told Dozier that he would have to handcuff him, and Dozier requested permission to finish his beer. Hansen denied this request and handcuffed Dozier. Sergeant Kelly Fisher transported Dozier to jail and tested his blood alcohol content, which registered a .18. Sergeant Fisher had Dozier change clothes, and inspected him for injuries. She found none, but discovered blood on Dozier's palms. Dozier explained that the blood came from a turkey he had been butchering for a meal the next day. Later, Dozier complained of chest pains and claimed that his father had struck him with a pipe wrench prior to the shooting.

The State charged Dozier with murder, and the case proceeded to trial. At trial, Dozier testified that he had shot his father, but claimed that his father had struck him with a pipe wrench, and that Dozier acted in self-defense. Police officers testified that Dozier had not complained of any pain or injuries at the time of his arrest, and that they had not observed any injuries. The jury found Dozier guilty of murder.

The trial court conducted its sentencing hearing on July 10, 2006. That same day, the trial court issued a sentencing order, stating:

The Court being duly advised finds that the aggravating circumstances

> outweigh the mitigating circumstances. The aggravating factors include that the Defendant has a history of criminal or delinquent behavior, that the victim was at least sixty-five (65) years of age at the time of the offense[1] and that the Defendant committed a crime of violence and knowingly committed the offense within the presence or within the hearing of a person under eighteen (18) years of age and that the person was not the victim of the offense. The Court finds that this was a heinous crime in that the Defendant shot his father four (4) times with a shotgun, three (3) of the shots being fired at close range. Furthermore, the Defendant did not appreciate the value of life and gravity of the offense, inasmuch as he casually drank a beer, even after law enforcement officers arrived. The Court finds the only mitigating factor is that the crime was a result of circumstances unlikely to reoccur.

Appellant's Appendix at 52. The trial court sentenced Dozier to the maximum sentence of sixty-five years. Dozier now appeals his conviction and sentence. More facts will be supplied as needed.

Discussion and Decision

I. Sufficiency of the Evidence

In order to establish a claim of self-defense and justify the commission of an otherwise criminal act, a defendant must show that he: "1) was in a place where he had a right to be; 2) did not provoke, instigate, or participate willingly in the violence; and 3) had a reasonable fear of death or great bodily injury." Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). If the defendant raises such a claim and supports it with evidence, the burden then falls on the State to negate at least one of the three elements. Id. "The State may carry its burden either by rebutting the defense directly or by relying on the sufficiency of evidence in its case-in-chief." Milam v. State, 719 N.E.2d 1208, 1210 (Ind. 1999).

[1] Dozier's father was sixty-eight years old, and would have turned sixty-nine the day after his murder.

"The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard of any sufficiency of the evidence claim." Randolph v. State, 755 N.E.2d 572, 575 (Ind. 2001). Our supreme court has recently summarized our standard of review when assessing claims of insufficient evidence.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

Dozier testified that his father had been abusive of him on several occasions in the past, and that earlier in the day of the shooting, his father had thrown a wrench at him. He also testified that when they were in the garage, his father hit him in the chest with a pipe wrench, and that this blow caused Dozier to fall onto a table with enough force to break it. Dozier testified that his father then hit him again with the pipe wrench and that after Dozier managed to move around the table, his father approached him with the wrench and said he was "going to beat [his] brains out." Transcript at 468. Dozier testified that at this point he feared for his life, and "just picked up the gun and closed my eyes, and started shooting." Id. at 467. This testimony is sufficient to raise a claim of self-defense and shift the burden to the

State to rebut Dozier's claim.

The State points to the following evidence, introduced in its case-in-chief, and argues that it is sufficient to rebut Dozier's claim. Officer Hansen testified that Dozier never mentioned to him that his father had been an aggressor. The evidence detective who processed the evidence from the scene testified that there were no signs of a struggle. He also testified that he had no indication that Dozier had been injured, and that he requested that the jail staff inquire into whether Dozier was injured and that "[t]here was no injuries on the defendant." Id. at 356. Also, Sergeant Fisher, who transported Dozier to police headquarters, testified that Dozier never mentioned that his father had attacked him, and that Dozier told him he was hurt over the way his father treated his mother and asked whether Indiana had the death penalty. Sergeant Fisher also testified that she inspected Dozier for injuries and found none.

Dozier's argument that insufficient evidence exists to rebut his claim of self-defense boils down to a request that we reweigh the evidence. Although Dozier did introduce evidence that his father had attacked him and that he feared for his life, "[i]t is within the province of the jury to determine whether the defendant's evidence was believable, unbelievable, or sufficient to warrant the use of force." Howard v. State, 755 N.E.2d 242, 247 (Ind. Ct. App. 2001); see also Randolph, 755 N.E.2d at 576 (recognizing that the jury is free to disbelieve a defendant's testimony that he acted in self-defense). We decline the invitation to reweigh the evidence and conclude that sufficient evidence exists to rebut Dozier's claim of self-defense.

II. Exculpatory Evidence

At trial, Detective Anderson testified that he had collected the clothing worn by Dozier during the murder and submitted it to the Indiana State Police Lab, but that he did not believe that testing was ever conducted to determine whether the clothes contained blood, and, if so, to whom the blood belonged. Dozier argues that the State therefore suppressed exculpatory evidence and violated his due process rights under Brady v. Maryland, 373 U.S. 83 (1963).

Under Brady, "[d]ue process requires the State to disclose to the defendant favorable evidence which is material to either his guilt or punishment." Stephenson v. State, 742 N.E.2d 463, 491 (Ind. 2001), cert. denied, 534 U.S. 1105 (2002) (citing Brady). Here, the State did disclose to Dozier the fact that his shirt was collected, submitted to the State Police, and not analyzed. Dozier claims, "[t]he fact that the defense became aware of the evidence during trial did not cure the Brady violation." Appellant's Brief at 14. Dozier is incorrect, as Brady applies only to situations where the defendant discovers favorable evidence after trial, and not to situations where the defendant discovers the evidence during trial. Overstreet v. State, 783 N.E.2d 1140, 1154 (Ind. 2003), cert. denied, 540 U.S. 1150 (2004); Lowrimore v. State, 728 N.E.2d 860, 867 (Ind. 2000). Because Dozier discovered this evidence during trial, he has no claim under Brady.

Although Dozier's Brady claim is without merit, we think it judicious to reframe his argument as one relating to the State's failure to retain[2] and analyze the apparent blood spots

[2] Although the record does not specifically indicate that the State had somehow disposed of Dozier's clothes before the trial, we will assume that the State had done so for purposes of addressing this argument.

on his shirt to determine if they belonged to him. Dozier asserts that "[h]ad the prosecution disclosed that Dozier's clothing appeared to contain blood and testing established that the blood was Dozier's this would have substantiated his claim of self-defense." Appellant's Br. at 13. We conclude that Dozier's claim in this regard must also fail.

Criminal defendants have a constitutional right to examine physical evidence possessed by the State. Terry v. State, 857 N.E.2d 396, 406 (Ind. Ct. App. 2006), trans. denied. This right does not mean that the State has "an undifferentiated and absolute duty to retain and preserve all material that might be of conceivable evidentiary significance in a particular prosecution." Arizona v. Youngblood, 488 U.S. 51, 58 (1988). A panel of this court recently explained our analysis of whether the State's failure to preserve evidence violated a defendant's due process rights.

> When determining whether [the defendant's] due process rights were violated by the State's failure to preserve the [evidence], we must first determine whether the [evidence] was potentially useful evidence or materially exculpatory evidence. Evidence is materially exculpatory if it possesses an exculpatory value that was apparent before the evidence was destroyed, and is of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. Evidence is exculpatory if it is clearing or tending to clear from alleged fault of guilt; excusing. When the State fails to preserve materially exculpatory evidence a due process violation occurs regardless of whether the State acted in bad faith. On the other hand, evidence is merely potentially useful if no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant. When the State fails to preserve potentially useful evidence, a due process violation occurs only if the defendant shows the State acted in bad faith.

Terry, 857 N.E.2d at 406 (quotations and citations omitted).

Here, the evidence was clearly not materially exculpatory, and was merely potentially

useful. The most that can be said is that had tests indicated that Dozier's shirt had his own blood on it, such a fact would have assisted his self-defense claim. See Land v. State, 802 N.E.2d 45, 51 (Ind. Ct. App. 2004), trans. denied (evidence was merely potentially useful where additional tests were necessary to determine whether an individual's shoes contained accelerant, thereby assisting arson defendant's claim that that individual had started the fire); Chissell v. State, 705 N.E.2d 501, 504 (Ind. Ct. App. 1999), trans. denied (lost tapes of defendant's sobriety tests were merely potentially useful because this court "cannot assume that the destroyed evidence contained exculpatory material when the record is devoid of such indication"). Even if testing revealed that Dozier's blood was on the shirt, such evidence would not have conclusively established that Dozier was justified in shooting his father four times. In light of the evidence indicating that a struggle had not occurred prior to the shooting, that Dozier did not complain of injuries, and the circumstances of the shooting, even with evidence that Dozier's shirt had small amounts of his own blood on it, the jury could still have rationally concluded that Dozier was not justified in shooting his father four times. Cf. Terry, 857 N.E.2d at 407 (recognizing that even if destroyed evidence had supported defendant's theory that he had not been at the crime scene, other evidence existed that did link the defendant to the scene, and therefore the destroyed evidence did not tend to free defendant from guilt).

Granting that the evidence was potentially useful to Dozier's defense, Dozier has failed to demonstrate that the State acted in bad faith in failing to preserve the evidence. A showing of bad-faith requires that the defendant show more than simple bad judgment or

negligence by the State. Terry, 857 N.E.2d at 408. Instead, the defendant must show that the State acted with a "conscious doing of wrong because of dishonest purpose or moral obliquity." Land, 802 N.E.2d at 51. In his appellate brief, Dozier claims that the State did not analyze Dozier's clothing because it "was afraid the results would substantiate Dozier's claim of self-defense." Appellant's Br. at 14. However, "the mere assertion that the circumstances suggest bad faith is not sufficient to establish that the State acted in bad faith." Terry, 857 N.E.2d at 408. Not only has Dozier provided no support for this bald assertion, but also, a review of the record clearly indicates reasonable and good-faith reasons for the State to believe that preserving and testing the clothing was unnecessary.

Tony Bailey, a jail officer with the Starke County Sheriff's Department, was with Dozier while he changed clothes after being arrested. Bailey testified Dozier had blood on his hands, but that an inspection of Dozier's hands revealed no injuries, and that he observed no injuries or marks on any other part of Dozier. Dozier explained to Officer Bailey that he had been butchering a turkey earlier in the day. Sergeant Fisher also testified that she had inspected Dozier for cuts or scratches and had found none, and that Dozier had explained that blood on his hands had come from a turkey. Sergeant Fisher also testified that Dozier told him that he had no marks or injuries. Also, Detective Anderson testified that he declined to analyze blood drippings found at the scene of the crime because he had observed no injuries on Dozier. Based on the fact that multiple police officers had observed Dozier for cuts or injuries and found none, and Dozier's own statements indicating that the blood on him came from a turkey, the State's decision to not analyze the apparent blood spots on Dozier's shirt

seems reasonable, and in no way indicates a bad-faith attempt to cover up evidence that could have assisted Dozier. Cf. Jewell v. State, 672 N.E.2d 417, 425 (Ind. Ct. App. 1996) (decision not to analyze blood at murder scene was reasonable where police had no reason to believe that murder victim had drawn blood from his attacker); Everroad v. State, 570 N.E.2d 38, 46-47 (Ind. Ct. App. 1991), aff'd in relevant part, 590 N.E.2d 567, abrogated on other grounds, Cook v. State, 810 N.E.2d 1064 (Ind. 2004) (State's decision not to test evidence for fingerprints did not violate defendant's due process rights where defendant failed to establish bad faith and it was mere speculation that fingerprint testing would have aided defendant).

We conclude that the State's failure to preserve or test Dozier's clothes did not deprive Dozier of his due process rights.

III. Ineffective Assistance of Counsel[3]

When reviewing ineffective assistance of counsel claims, Indiana courts use the two-pronged test set forth in Strickland v. Washington, 466 U.S. 668 (1984). Wentz v. State, 766 N.E.2d 351, 360 (Ind. 2002). Under the first prong, the petitioner must establish that counsel's performance was deficient by demonstrating that his representation "fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the 'counsel' guaranteed by the Sixth Amendment." McCary v. State, 761 N.E.2d 389,

[3] The State argues that Dozier has waived this argument by failing to cite any authorities or present a cogent argument. We agree that we could deem Dozier to have waived this argument, as he has cited no cases supporting his claim, and has not even stated facts sufficient to meet the two-prong test for ineffective assistance claims. See Ind. Appellate Rule 46(A)(8)(a) ("Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ."); Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), trans. denied ("A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority . . . ."). However, we will address Dozier's argument, given our strong preference for deciding issues on the merits where possible. See Collins

392 (Ind. 2002). Under this prong, we will assume that counsel performed adequately, and will defer to counsel's strategic and tactical decisions. Smith v. State, 765 N.E.2d 578, 585 (Ind. 2002). "Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective." Douglas v. State, 800 N.E.2d 599, 607 (Ind. Ct. App. 2003), trans. denied. Under the second prong, the petitioner must show that the deficient performance resulted in prejudice. A petitioner must show prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Wieland v. State, 848 N.E.2d 679, 681 (Ind. Ct. App. 2006), trans. denied, cert. denied, 127 S.Ct. 595 (2006). We will find a reasonable probability exists if our confidence in the outcome is undermined. Douglas, 800 N.E.2d at 607. If we can resolve a claim of ineffective assistance of counsel based on lack of prejudice, we need not address the adequacy of counsel's performance. Wentz, 766 N.E.2d at 360.

Dozier claims that his trial counsel was ineffective for failing to move for a mistrial or request a continuance upon discovering that the State had failed to test Dozier's shirt. We disagree.

To show that his counsel was ineffective for failing to move for a mistrial, Dozier must show that a mistrial was warranted. See Bouye v. State, 699 N.E.2d 620, 624 (Ind. 1998) (holding that because a mistrial would not have been granted, defendant failed to show prejudice). "A mistrial is an extreme remedy that is warranted only when less severe

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v. State, 639 N.E.2d 653, 655 n.3 (Ind. Ct. App. 1994), trans. denied (although party cited no authority in support of his argument, court addressed issue based on "strong preference to decide issues on their merits").

remedies will not satisfactorily correct the error." Banks v. State, 761 N.E.2d 403, 405 (Ind. 2002). "A mistrial should be granted where the accused, under all the circumstances, has by such trial proof been placed in a position of grave peril to which he should not have been subjected." Conn v. State, 535 N.E.2d 1176, 1180 (Ind. 1989). The State's failure to preserve or test Dozier's clothes did not put Dozier in this grave peril. Dozier had, and took advantage of, the opportunity to cross-examine the State's witnesses as to the failure to test the shirt. Dozier's trial counsel also elicited testimony on cross-examination that un-tested blood at the scene of the murder could have been Dozier's. Therefore, Dozier's counsel put the possibility that Dozier had been bleeding before the jury. As discussed above, Dozier himself told police officers that the blood on his hands came from a turkey, supplying the police with a reasonable reason to assume that any blood-like substance on Dozier's shirt was also from the turkey. We conclude that the State's failure to preserve or analyze Dozier's shirt did not leave him in a position of grave peril so as to warrant a mistrial. Therefore, Dozier can show no prejudice resulting from his counsel's failure to request a mistrial.

In regard to counsel's not requesting a continuance, even if the trial court had granted a continuance, Dozier had been able to analyze his shirt,[4] and tests had revealed his blood on the shirt, we are confident that such evidence would not have changed the outcome of the trial. As discussed above, significant and substantial evidence existed to negate Dozier's self-defense claim. Thus, Dozier cannot establish prejudice based on his counsel's failure to request a continuance. Also, had Dozier's counsel received a continuance and tests revealed that Dozier's blood was not on his shirt, Dozier would have been left in a worse position. As

it was, Dozier's counsel had elicited testimony indicating that the State had not analyzed Dozier's shirt or blood spots at the scene of the crime and an admission that blood at the scene could have been Dozier's. Therefore, trial counsel's decision to not request a continuance to perform testing can be viewed as a strategic choice that we will not second-guess on appeal. See Terry, 857 N.E.2d at 403-04 (counsel's decision to cross-examine police as to lack of investigation instead of conducting further investigation was a legitimate trial strategy). We conclude that Dozier did not receive ineffective assistance of counsel.

IV. Aggravating and Mitigating Circumstances

Dozier argues that the trial court found aggravating circumstances not supported by the record and that it afforded Dozier's criminal history too much weight. Dozier committed the crime and was sentenced after the recent amendment to Indiana's sentencing statutes, clearly putting this case under the "advisory" sentencing statutes that became effective on April 25, 2005. See Gibson v. State, 856 N.E.2d 142, 146 (Ind. Ct. App. 2006). Under the "advisory" sentencing scheme, a trial court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). However, the trial court is required to enter a sentencing statement whenever it sentences a defendant for a felony. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). We will review the trial court's sentencing decision for an abuse of discretion. Id. A trial court can abuse its discretion by finding aggravating circumstances not supported by the record, omitting mitigating circumstances clearly supported by the record, or by finding circumstances that are improper as a matter of law. Id. at 490-91. In order to conclude that

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[4] As stated above, the record is not clear as to whether the shirt was still available for testing.

the trial court abused its discretion, the trial court's decision must be "'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 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)).

For aggravating circumstances, the trial court found: 1) Dozier had a criminal history; 2) the victim was over sixty-five; 3) the crime was committed in the presence of a person under the age of eighteen; and 4) and the crime was heinous in that Dozier shot his father four times with a shotgun at close range. Dozier does not challenge the trial court's findings that the victim was over sixty-five or that the crime was heinous. Both of these factors are valid aggravating circumstances that the trial court may consider when sentencing a defendant. See Ousley v. State, 807 N.E.2d 758, 760, 765 (Ind. Ct. App. 2004) (court may consider nature and circumstances of crime when sentencing defendant); Ind. Code § 35-38-1-7.1(a)(3) (court may consider as an aggravating factor that the victim was over sixty-five years old).

A trial court may consider as an aggravating circumstance that the defendant knowingly committed a crime of violence within the hearing of a person under the age of eighteen who was not the victim of the offense. Ind. Code § 35-38-1-7.1(a)(4). Dozier argues that the record does not support this aggravating circumstance. However, T.S., who was fourteen years old at the time of the murder, testified that she was at the Dozier residence just prior to the shooting. T.S. testified that Dozier's father told her to go home, and that Dozier and his father then entered the garage and Dozier shut the garage door. As she was

riding her bike away, she heard four shots fired. From this evidence, the trial court could reasonably have found that Dozier knew someone under the age of eighteen was on or had just left his property by bicycle at the time he shot his father. The record supports the trial court's finding that Dozier knowingly committed this crime within the hearing of someone under the age of eighteen, and the trial court acted within its discretion in finding this aggravating circumstance.

Dozier also argues that his criminal history should not have been considered a significant aggravating circumstance. The pre-sentence report ("PSR") is somewhat ambiguous in describing his criminal history. It indicates that in 1979, Dozier was charged with burglary, a Class C felony, and contributing to the delinquency of a minor, and was sentenced to four days in jail. The PSR does not indicate of what he was convicted. In 2000, Dozier pled guilty to resisting law enforcement, a Class D felony, and operating a vehicle while intoxicated, a Class A misdemeanor. The PSR also indicates that Dozier was charged in Tulsa, Oklahoma, with "Possession of Dangerous Drugs, Family Offense, Drunk, Obstruction, and Driving Under the Influence of Liquor," but that no information relating to the disposition of these charges was available. The PSR also indicates that a revocation of probation has been filed against Dozier, and that a bench warrant was issued for failure to appear, but does not indicate the disposition or reasoning behind the revocation filing or issuance of the warrant. In its sentencing order, the trial court found that Dozier also had convictions for operating while intoxicated from 1980, 1981, and 1993, and driving while suspended from 1980 and 1993. We agree that this criminal history is not the most serious

that we have seen, but decline to conclude that a history of at least eight convictions, and at least six additional charges,[5] is not a significant aggravating circumstance. To the extent that Dozier argues the trial court afforded his criminal history too much weight when it balanced the mitigators and aggravators, this claim is not available for appellate review. Anglemyer, 868 N.E.2d at 491.

Dozier also argues that the trial court improperly failed to find the fact that Dozier was provoked by his father to be a mitigating circumstance. However, the only support for this mitigating circumstance was Dozier's testimony claiming that he acted in self-defense. Clearly, the jury did not believe this testimony, and circumstantial evidence indicated that Dozier's father did not attack him prior to Dozier firing the shots. It was within the trial court's discretion to decline to find provocation to be a significant mitigating circumstance, as the circumstance was not clearly supported by the record.

We conclude that the trial court acted within its discretion in finding the aggravating and mitigating circumstances.

IV. Appropriateness of Dozier's Sentence

Dozier next argues that his sentence is inappropriate given the nature of the offense and his character. When reviewing a sentence imposed by the trial court, we "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

[5] Although arrests and charges do not constitute evidence of criminal history, "[a] record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). "Such information may

character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006).

"A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years." Ind. Code § 35-50-2-3. The trial court here sentenced Dozier to the maximum sentence of sixty-five years.[6]

We recognize that were we to believe Dozier's version of the events, the nature of the offense might render a maximum sentence inappropriate, as Dozier claims he acted in self-defense. However, the jury apparently did not believe Dozier's version of events, and we are left with a crime in which a son shot his father four times with .12 gauge shotgun, three times from close range while his father was not facing him. Although Dozier's father may have been hostile towards Dozier during the day, the jury found that this hostility did not justify Dozier's actions. Given these circumstances, along with the facts that Dozier's father was sixty-eight years old, and that Dozier shot him immediately after a teenage girl left the residence, we cannot conclude that the nature of the offense renders the maximum sentence

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be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime." Id.

[6] Under Indiana Code section 35-50-2-9, the State may seek a death sentence or life imprisonment by alleging that one of a number of aggravating circumstances is present. The State did not seek the death penalty or a life sentence, and it does not appear that any of the statutory aggravating circumstances was present.

inappropriate.

Dozier's actions after shooting his father also provide insight into his character. All officers involved indicated that Dozier did not seem upset or remorseful. Instead, Dozier continued to drink beer when officers arrived. As the trial court noted, "[t]hat act is so far removed from [how] a . . . person [who] valued life and understood the gravity of what just happened" would have acted. Sentencing Tr. at 24. As discussed above, Dozier's criminal history also comments negatively on his character.

We conclude that, given the nature of the offense and Dozier's character, as evidenced by his criminal history and actions surrounding the murder of his father, his maximum sentence of sixty-five years is not inappropriate.

Conclusion

We conclude that sufficient evidence supports Dozier's conviction. We also conclude that Dozier's constitutional rights were not violated as the State did not act in bad faith in failing to preserve potentially helpful evidence and Dozier's counsel was not ineffective. Finally, we conclude that the trial court did not abuse its discretion in sentencing Dozier and that his sentence is not inappropriate.

Affirmed.

VAIDIK, J., concurs.

SULLIVAN, J., concurs as to parts I, II, III and V, concurs in result as to part IV.