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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY RODRIGUEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-307
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0505-MR-078281

October 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Jeffrey Rodriguez appeals his convictions for Voluntary Manslaughter,[1] a class A felony, Battery,[2] a class C felony, and Criminal Recklessness,[3] a class C felony. Specifically, Rodriguez claims that the trial court erred in rejecting his self-defense claim, that his right to a fair trial was violated because he wore jail clothing at his bench trial, that the evidence was insufficient to support his conviction for voluntary manslaughter, and that the trial court improperly identified Rodriguez's criminal history as an aggravating circumstance. Finding no error, we affirm the judgment of the trial court.

FACTS

At approximately 10:00 p.m. on May 6, 2005, Hassan Echols, Jeff Lilly, and Jeff's brother, Josh, were walking near an Indianapolis South State Street neighborhood when a group of "dudes" approached them. Tr. p. 33, 54, 57, 59, 136-37. Echols believed that Rodriguez was among the members of the group. At some point, one of the individuals in the group asked Echols and the Lilly brothers if they knew Elliot Johnson. A fight erupted and Jeff Lilly was hit in the back of the head with a handgun, which caused some bleeding.

The next day, a vehicle that was occupied by Johnson, Jeff Lilly, and others, went to Rodriguez's residence and someone from the vehicle fired a weapon at the house. Approximately thirty minutes later, Robert McAnalley and Arthur Kelso walked toward the nearby Village Pantry and passed a residence on South State Street. A group of at least ten

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[1] Ind. Code § 35-42-1-3.

[2] I.C. § 35-42-2-1.

[3] I.C. § 35-42-2-2.

individuals exited the porch of that residence and began chasing McAnalley and Kelso. Two of those individuals included Josh Lilly and Cletus Tyler, who were both carrying baseball bats. McAnalley and Kelso eventually arrived at the Village Pantry. Thereafter, Kelso called his brother-in-law—who lived next to Rodriguez—for a ride. The brother-in-law sent two vehicles from Spruce Street to retrieve the boys, including a red pickup truck driven by Brian Showecker. Rodriguez was a passenger in the pickup truck.

When the truck arrived at the Village Pantry, McAnalley climbed into the bed of the truck and Showecker started driving toward Spruce Street. As the truck proceeded down State Street, McAnalley pointed to the residence at 1447 South State Street and stated "there's the people that . . . [w]as trying to jump him." Id. at 188-89, 194. Showecker slowed the vehicle and "some people came out of the yard with ball bats." Id. at 38, 65, 117, 140, 190, 194. However, no one at the State Street residence had a gun. Rodriguez and Showecker each produced guns and fired approximately five or six shots towards the residence. Rodriguez fired a .357 magnum handgun from the passenger side window and Showecker shot a .32 semi-automatic weapon from the truck's sliding back window.

Bullets struck two individuals who were standing on the porch of 1447 South State Street. Specifically, Tyler was shot in the left upper thigh and received medical treatment for his wound. Thaddius Purnell was shot in the left upper chest and the bullet traveled through his heart and lungs before exiting his right shoulder. Purnell subsequently died from his injuries. During an investigation, the police recovered two bullets from the porch. One of

the bullets was a .38 caliber, which could have been fired from a .357 handgun, while the other bullet was a .32 caliber.

On May 11, 2005, Rodriguez was charged with the murder of Purnell, the attempted murder of Tyler, battery as a class C felony for the shooting of Tyler, and criminal recklessness as a class C felony for creating a substantial risk of bodily injury to Jeffrey and/or Joshua Lilly. Showecker was charged with several offenses, and he subsequently pleaded guilty to reckless homicide in exchange for his testimony against Rodriguez. The State dismissed all other charges against Showecker.

Rodriguez waived his right to a jury trial, and when a bench trial commenced on February 26, 2007, he appeared in jail clothing. Rodriguez was ultimately convicted of voluntary manslaughter, battery, and criminal recklessness. At the March 9, 2007, sentencing hearing, the trial court identified Rodriguez's criminal history as an aggravating circumstance and found that Rodriguez's remorse and the fact that Purnell's mother did not ask "to enhance the sentence past the presumptive" as mitigating factors. Id. at 261. As a result, Rodriguez was sentenced to twenty-five years for voluntary manslaughter, four years for battery, and four years for criminal recklessness. The trial court ordered the sentences to run concurrently with each other, and Rodriguez now appeals.

DISCUSSION AND DECISION

I. Self-Defense Claim

Rodriguez first claims that he "is not guilty of any crime" because the evidence established that he acted in self-defense. Specifically, Rodriguez contends that the evidence

supported the reasonable inference that "the use of deadly force was necessary to protect himself and his companions." Appellant's Br. p. 10.

In resolving this issue, we note that a valid claim of defense of oneself or another person is a legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a); see also Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002). In order to prevail on a claim of self-defense when deadly force is used, 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 harm. I.C. § 35-41-3-2; Wilson, 770 N.E.2d at 800. An individual is justified in using deadly force only if he or she "reasonably believes that that force is necessary to prevent serious bodily injury to [the individual] or a third person." I.C. § 35-41-3-2(a); see also Harmon v. State, 849 N.E.2d 726, 730 (Ind. Ct. App. 2006). The amount of force that an individual may use to protect himself or herself must be proportionate to the urgency of the situation. Harmon, 849 N.E.2d at 730-31. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. Id. at 731. Finally, we note that when a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id.

In this case, the State presented evidence from which the trial court, as the fact-finder, could find that Rodriguez provoked, instigated, or willingly participated in the confrontation. Specifically, the evidence established that Rodriguez had a particular grudge against the individuals connected with the South State Street residence based on his suspicion that they

burglarized his house, shot at the residence, and chased his friends. Tr. p. 50, 78, 81, 88, 95, 139, 183. Following these incidents, Rodriguez and Showecker approached the South State Street residence, slowed their vehicle, and began firing at the house. Id. at 38, 41-43, 65, 98-100, 117, 140-41, 189-91. The evidence established that the incident was a drive-by shooting rather than a situation in which Rodriguez resorted to violence because he had an immediate fear for his life. Although a defendant does not have a duty to retreat prior to defending himself, the evidence presented at trial consistently demonstrated that Rodriguez and Showecker were safely driving past the house and affirmatively chose to slow down and engage in violence. Id. at 38, 65, 117, 194.

We acknowledge that McAnalley's testimony suggested that Rodriguez and Showecker were forced into the confrontation by a vehicle blocking their path and a gunshot that allegedly came from the South State Street residence. Id. at 98. However, McAnalley's testimony was contradicted by Showecker and the persons who were present at the residence. Moreover, while the evidence shows that individuals from the State Street residence approached the truck with baseball bats, Rodriguez and Showecker were likely aware of that possibility before they drove by the residence because McAnalley had recently been chased by the individuals who carried the bats. Moreover, Showecker never suggested that the shooting started because he feared being attacked. Hence, in light of the evidence presented at trial that Rodriguez and Showecker provoked, initiated, and willingly participated in the violence by perpetrating a drive-by shooting, the State disproved the claim of self defense. See Butler v. State, 547 N.E.2d 270, 272 (Ind. 1989) (recognizing that as the aggressor, the

defendant was not acting without fault).

II. Sufficiency of the Evidence—Voluntary Manslaughter

Rodriguez argues that the evidence was insufficient to support his conviction for voluntary manslaughter. Specifically, Rodriguez argues that because the trial court rejected his claim of self-defense, he could not have "knowingly" killed Purnell. Appellant's Br. p. 19.

When reviewing sufficiency of the evidence claims, this court considers only the probative evidence and reasonable inferences supporting the judgment, without weighing the evidence or assessing witness credibility. Miller v. State, 770 N.E.2d 763, 774 (Ind. 2002). This court must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

To prove the offense of voluntary manslaughter, the State was required to show that Rodriguez knowingly killed Purnell while acting under sudden heat. I.C. § 35-42-1-3; Hawkins v. State, 748 N.E.2d 362, 363 (Ind. 2001). Conduct is done "knowingly" if, when a person engages in the conduct, he is aware of a high probability that he is doing so. I.C. § 35-41-2-2(b). A knowing killing may be inferred from a person's use of a deadly weapon in a way that is likely to cause death. Kiefer v. State, 761 N.E.2d 802, 805 (Ind. 2002). A defendant can also be found guilty of voluntary manslaughter as an accomplice, but the State must prove that the defendant possessed the required intent. McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998) (holding that an accomplice is criminally responsible for all acts

committed by a confederate which are a probable and natural consequence of their concerted action).

In this case, Rodriguez's intent to engage in activity involving the risk of death could be inferred from the surrounding facts because Rodriguez held a grudge against the individuals associated with the South State Street residence and he shot towards the occupied porch. Tr. p. 50, 78, 81, 88, 95, 139, 160-61, 175-76, 183. Although it was not clearly established which bullet killed Purnell, a bullet from each gun was recovered from the porch. Id. at 160-61, 175-76. As a result, the jury could reasonably infer from the facts presented that either Rodriguez knowingly killed Purnell when he shot toward the porch of the South State Street residence or, if Purnell was in fact shot by Showecker, Rodriguez was an accomplice. See Dunlap v. State, 761 N.E.2d 837, 839 (Ind. 2002) (observing that the "knowing" element may be satisfied from a person's use of a deadly weapon). When considering the location of the shooting and observing that a deadly weapon was used, we conclude that the trial court could have reasonably found that Rodriguez was aware of the high probability that his actions would result in a death. I.C. § 35-41-2-2(b); see also Dunlap, 761 N.E.2d at 839 (holding that a "knowing killing" may be inferred from the use of a deadly weapon in a manner likely to cause death). Thus, we conclude that the evidence was sufficient to support Rodriguez's conviction for voluntary manslaughter.

III. Jail Clothing

Rodriguez next argues that his convictions must be reversed because he was compelled to wear a jail uniform at trial. Specifically, Rodriguez argues that although he

made no objection at trial, wearing jail attire at trial amounted to fundamental error because his right to a fair trial was violated.

The fundamental error doctrine is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. Mathews v. State, 849 N.E.2d 578, 587 (Ind. 2006). In addressing Rodriguez's contention, we note that a defendant cannot be compelled to appear before a jury in identifiable prison clothing during his trial, as the presumption of innocence may be impaired. Estelle v. Williams, 425 U.S. 501, 502-05 (1976); see also French v. State, 778 N.E.2d 816, 821 (Ind. 2002). However, Rodriguez was tried by the court, and trial judges are presumed to be impartial. Pier v. State, 446 N.E.2d 985, 988 (Ind. Ct. App. 1983). Moreover, if the defendant is in custody, the trial judge is already aware of that fact. As noted in French, "prison clothing cannot be considered inherently prejudicial when the [fact-finder] already knows, based upon other facts, that the defendant has been deprived of his liberty." 778 N.E.2d at 821.

In this case, the same trial judge who presided at trial had previously ordered Rodriguez to be held in jail without bond. Moreover, Rodriguez has failed to demonstrate that the trial court did not act in an impartial manner at trial. Therefore, Rodriguez cannot successfully claim that he was denied the right to a fair trial when he appeared for trial in jail clothing.

IV. Sentencing

Finally, Rodriguez argues that even if we determine that his convictions may stand,

his sentence must be set aside because the trial court improperly identified his criminal history as an aggravating circumstance. Rodriguez's sole contention is that this factor should not have been considered because "a jury did not find beyond a reasonable doubt that [he] had prior criminal convictions." Appellant's Br. p. 14. In other words, Rodriguez argues that the trial court's identification of his prior criminal history from "a pre-sentence report compiled by a probation officer" was erroneous. Id. at 26. Hence, Rodriguez claims that he is entitled to the minimum sentence on each conviction.

In resolving this issue, we note that our Supreme Court has determined that certain documents, such as police reports, are not proper documents for establishing criminal history. Ryle v. State, 842 N.E.2d 320, 322-23 (Ind. 2005). However, the Ryle Court also held that a trial court may rely on a pre-sentence report in determining a defendant's criminal history. Id. at 324. Rodriguez acknowledges that this is what occurred here. Appellant's Br. p. 26. Thus, his claim fails.[4]

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.

[4] As an aside, we note that our Supreme Court has determined that even under the prior sentencing scheme, which involved the imposition of presumptive, rather than advisory, sentences, a trial court's use of a defendant's criminal history as an aggravating factor does not violate the Sixth Amendment rights implicated in Blakely v. Washington, 542 U.S. 296 (2004). Mitchell v. State, 844 N.E.2d 88, 91 (Ind. 2006).