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ATTORNEY FOR APPELLANT:

**ELIZABETH A. GABIG**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**J. T. WHITEHEAD**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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VICTOR GLENN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0808-CR-678

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Tanya Walton-Pratt, Judge  
Cause No. 49G01-0702-MR-032069

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**April 9, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Victor Glenn appeals his convictions for murder, robbery, and intimidation and his sentence of 120 years executed in the Department of Correction. Specifically, he contends that he established his insanity defense by a preponderance of the evidence, that the trial court abused its discretion by denying his request for a mistrial after a spectator's outburst, and that his sentence is inappropriate. Because we conclude that Glenn's insanity argument is an improper request for us to reweigh the evidence, that the trial court's decision to admonish the audience instead of grant a mistrial is not an abuse of discretion, and that his sentence is not inappropriate in light of the nature of the heinous offenses and his character, we affirm.

## **Facts and Procedural History**

On February 23, 2007, Glenn went to the Indianapolis home of Jason Myers and Doneka Ratcliff. Glenn was a drug dealer, and he went to the Myers-Ratcliff home to purchase drugs to sell. Glenn purchased 126 grams of cocaine from Myers. Glenn then returned to the home of Elizabeth and Michael Baker, where he was staying at the time. When Glenn arrived, Michael used some of the drugs Glenn had purchased from Myers and soon discovered that the product Glenn had purchased was not cocaine. Glenn became angry because Myers had sold him bad drugs, and he left to return to Myers's home, carrying with him a duffel bag containing a carbine rifle.

Meanwhile, Asia Ratcliff, Doneka's teenage daughter and Myers's step-daughter, returned with some friends to the Myers-Ratcliff home after visiting with her aunt, Darlene Harris, who lived nearby. Harris also accompanied Asia back to the home.

When Glenn arrived at the home, Asia and her friends were upstairs and Harris was in the kitchen with her seven-year-old niece, Jasmine. Myers and Doneka let Glenn inside. Glenn began demanding money, and Glenn and Myers began arguing about whether Myers sold Glenn bad cocaine. Harris observed the encounter from the kitchen. Myers asked Glenn to leave, but Glenn refused, demanding that Myers give him money.

Glenn removed the rifle from the duffel bag. Glenn started shooting at Myers, firing at least eight times. Several of these shots struck Myers. When Doneka screamed, Glenn shot her multiple times as well. Asia heard the loud noises and went to the top of the stairs to observe. She saw Glenn standing over her step-father demanding money, and she saw that Myers was lying in blood. When Glenn looked up the stairs and saw Asia there, he told her to go back upstairs or he would shoot her. Asia pretended to go all the way up the stairs, but she instead remained where she could see the events in the living room. She saw her step-father take money from his back pocket and give it to Glenn. After taking money and drugs from Myers, Glenn fled the scene with the rifle hidden again in the duffel bag. Asia and her friends then went downstairs, where Asia discovered her mother was dead. Myers was still alive, and Harris left to call for help. By the time the police arrived, Myers was dead. Detectives arrived at the Baker home and found Glenn, who told them that this was a case of mistaken identity and that there were no weapons in the home. The detectives arrested Glenn and discovered the murder weapon inside the home in Glenn's duffel bag. Later, Detective Chuck Benner interrogated Glenn. During the interview, Glenn told Detective Benner that Myers had pulled a gun on him after he went to the home to confront Myers about the bad drugs.

Glenn gave an extensive account of his actions before, during, and after the shootings. At one point during Glenn's statement, which was later reduced to a forty-five page document, Glenn said that he was born to be God. Detective Benner believed, according to his experience with street vernacular, that Glenn's reference to God was a boastful statement: "You know, I'm a God on the street. I'm a drug dealer. I can do what I want." Tr. p. 301.

The State charged Glenn with two counts of murder,<sup>1</sup> two counts of felony murder,<sup>2</sup> robbery as a Class A felony,<sup>3</sup> intimidation as a Class C felony,<sup>4</sup> and intimidation as a Class D felony.<sup>5</sup> Glenn's three-day jury trial began on June 16, 2008. Near the conclusion of the State's case, the jury was viewing a crime scene video when an audience member interrupted with an outburst. The trial court removed the audience member and the jury. Glenn's counsel made a motion for a mistrial, and the trial court heard argument. The trial court found that the incident did not place Glenn in grave peril, denied the motion, and admonished the audience that such interruptions were punishable by contempt and could result in a mistrial.

Glenn presented an insanity defense. Glenn produced evidence that he had a history of hearing voices and that he believed he was "God reincarnated as Jesus Christ to live the life of Victor Glenn." Tr. p. 322. The jury heard evidence from three expert

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<sup>1</sup> Ind. Code § 35-42-1-1(1).

<sup>2</sup> I.C. § 35-42-1-1(2).

<sup>3</sup> Ind. Code § 35-42-5-1.

<sup>4</sup> Ind. Code § 35-45-2-1(b)(2).

<sup>5</sup> I.C. § 35-45-2-1(b)(1).

witnesses regarding Glenn's mental health. The first, Dr. Ned Masbaum, testified that in his opinion Glenn was malingering, or faking, his mental illness symptoms and that he could appreciate the wrongfulness of his conduct. Next, Dr. Roger Perry's deposition was played for the jury. In his deposition, Dr. Perry opined that Glenn was unable to appreciate the wrongfulness of his conduct. Finally, Dr. George Parker testified that, although he diagnosed Glenn with paranoid schizophrenia, he found that Glenn was able to appreciate the wrongfulness of his conduct. Dr. Parker also stated that he believed it was more likely than not that Glenn was malingering.

At the trial's conclusion, the jury found Glenn guilty but mentally ill as to all the charges. At his sentencing hearing, the trial court made the following statement:

[T]he Court, sir, is going to find it's aggravating the fact that you do have a history of delinquent and adult criminal activity. As a juvenile you have a true finding in 1992 for child molesting which would have been a B felony had you been an adult, and also in 1993 you have a true finding for public indecency. In May of 1995, you have a true finding for auto theft which would have been a D felony had you been an adult. As an adult in 1997, you have a felony conviction for auto theft. In 1996 you have a battery conviction. In 1997 you have a disorderly conduct conviction. In 1996, criminal conversion, and in October of 1998 you were convicted of your—of a felony possession of cocaine, a Class C felony. In January of 2000, you were convicted of possession of cocaine. This is—looks like this was also a D felony. You have a conviction—another cocaine conviction felony, a C—which is a C felony—in November of 2002, and you have the driving while license suspended in January of 2007. The Court will find it's aggravating the fact that you have behaved very poorly while in the jail for this—for this case. You do have seven jail incident reports which include unruly inmate, jail rule violation, assault, and on one occasion it is alleged that you had in your possession a shiv which is a—considered a weapon, a homemade weapon. The Court will consider as aggravating the nature and circumstances of the offense. The Court does believe this is a particularly heinous crime. It was a multiple homicide in the presence of children. There was a 7-year-old in the kitchen when you killed these people in the living room. There was a—and the testimony is that you pointed the gun at the people—the child in the kitchen. This murder was

performed in the presence of a child, a teenage child. There were several children in the home at the time of the shooting, and you shot multiple times. I believe the evidence is that there were at least 13 shots from the— from your weapon that you carry around with you in your duffel bag. So it was a particularly heinous crime. The Court will consider it's mitigating the fact that the defendant does suffer from mental illness. I believe that the defendant's mental illness is clearly documented, and there is sufficient medical evidence. So the Court will give considerable weight to the defendant's mental illness. The Court will give minimal weight to the fact that your incarceration will be a hardship on your dependents, and the Court will give minimal weight to your remorse that you've expressed today. The Court is going to find that the aggravating circumstances outweigh the mitigators.

*Id.* at 583-85. The trial court merged the felony murder convictions with the murder convictions and sentenced Glenn to sixty years on the first murder count and sixty years on the second murder count, to be served consecutively. The trial court sentenced Glenn to eight years on robbery as a Class C felony reduced from a Class A felony, eight years on intimidation as a Class C felony, and three years on intimidation as a Class D felony, all to be served concurrently to the murder sentences. As a result, Glenn's total aggregate sentence is 120 years executed in the Department of Correction. Glenn now appeals.

### **Discussion and Decision**

On appeal, Glenn raises three issues, which we reorder as follows. First, Glenn argues that he should have been found not guilty by reason of insanity because he proved his insanity defense. Next, Glenn argues that the trial court abused its discretion by denying his request for a mistrial after a spectator's outburst. Finally, Glenn argues that his sentence is inappropriate in light of the nature of the offenses and his character.

#### **I. Insanity**

First, Glenn argues that he should have been found not guilty because he proved his insanity defense. A convicted defendant who claims his insanity defense should have prevailed below is in the position of one appealing from a negative judgment. *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004). We will reverse only if the evidence is without conflict and leads only to the conclusion that the defendant was insane at the time of the crimes. *Id.* We will not reweigh the evidence or assess witness credibility but will consider only the evidence most favorable to the judgment and the reasonable and logical inferences drawn therefrom. *Id.*

The insanity defense is an affirmative defense which the defendant must prove by a preponderance of the evidence. Ind. Code § 35-41-4-1. The State must prove the elements of the offense beyond a reasonable doubt but has no obligation to disprove the insanity defense. *Thompson*, 804 N.E.2d at 1148. To prove the defense, the defendant must show that he was unable, as a result of mental disease or defect, to appreciate the wrongfulness of his conduct at the time of the offense. Ind. Code § 35-41-3-6. 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.” I.C. § 35-41-3-6(b). In insanity defense cases, the fact-finder may consider both the testimony of expert witnesses and lay witnesses as to the defendant’s behavior before, during, and after the crime to determine the defendant’s actual mental health at the time of the crime. *See Thompson*, 804 N.E.2d at 1149.

Turning now to the evidence favorable to the verdict, we conclude that there is copious evidence from which the jury could find that Glenn was sane at the time of the crime. As for the expert witnesses, Dr. Masbaum and Dr. Parker both believed that Glenn was able to appreciate the wrongfulness of his conduct at the time of the crime. Dr. Masbaum, a psychiatrist, examined Glenn and his medical records. Dr. Masbaum opined that Glenn was malingering and that he suffered from antisocial personality disorder but no mental disease or defect that would affect his ability to appreciate the wrongfulness of his conduct. Dr. Parker, another psychiatrist, diagnosed Glenn with paranoid schizophrenia because of his history of visual and auditory hallucinations and delusions but believed it was more likely than not that Glenn was malingering. Dr. Parker, like Dr. Masbaum, believed that Glenn was able to appreciate the wrongfulness of his conduct, noting that Glenn had expressed that it was wrong to be involved with marijuana and that Glenn's actions after the crime—threatening witnesses, hiding evidence, and lying to the police—indicated that Glenn was aware of the wrongfulness of his conduct. Only Dr. Perry opined that Glenn was mentally ill and unable to appreciate the wrongfulness of his conduct.

Evidence of Glenn's actions before, during, and after the crime also support the jury's conclusion that Glenn was not insane at the time of the crime. Glenn was angry about the bad drugs, so he took a weapon back to the Myers-Ratcliff home to confront Myers about the drugs. Glenn threatened the witnesses to the shooting, including Asia, who saw Glenn shoot her step-father and was the first to discover her mother was dead. Glenn fled the scene of the crime, and he falsely told the detectives who arrived at the

Baker home that this was a case of mistaken identity and there were no weapons inside. As Dr. Parker also noted, this evidence tends to show that Glenn was aware of the wrongfulness of his conduct. Taking the facts most favorable to the verdict, the jury could find that Glenn was sane at the time of the crimes. Thus, Glenn's argument in this regard is an invitation for us to reweigh the evidence, which we cannot do. *See id.* at 1150.

## II. Mistrial

Next, Glenn argues that the trial court abused its discretion by denying his request for a mistrial without admonishing the jury after an audience member made an outburst while the crime scene video was being played for the jury. "On appeal, the trial judge's discretion in determining whether to grant a mistrial is afforded great deference because the judge is in the best position to gauge the surrounding circumstances of an event and its impact on the jury." *McManus v. State*, 814 N.E.2d 253, 260 (Ind. 2004), *reh'g denied*. We therefore review the trial judge's decision solely for abuse of discretion. *Id.* "After all, a mistrial is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation." *Id.* (quotation omitted). To succeed on appeal from the denial of a motion for mistrial, a defendant must demonstrate that the conduct complained of was both error and had a probable persuasive effect on the jury's decision. *Hale v. State*, 875 N.E.2d 438, 443 (Ind. Ct. App. 2007), *trans. denied*.

First, we note that the content of the outburst is not apparent from the record and Glenn did not make an offer to prove. After the outburst, the trial court immediately stopped the proceedings and had the audience member removed from the courtroom. At

the conclusion of the tape, the trial court excused the jury. Tr. p. 307. Glenn then made a motion for a mistrial. At that point, the trial court heard argument on the motion and denied it, finding that the outburst did not put Glenn in a position of grave peril. The trial court then admonished the audience members, warning them that if they were unable to control themselves during the presentation of evidence they needed to wait outside. The trial court warned also that unruly behavior was punishable and that disruptive individuals would not be allowed to return to the courtroom.

Glenn argues that the trial court abused its discretion because it did not admonish the jury. However, although Glenn made a motion for a mistrial, Glenn failed at trial to make a motion to admonish the jury. When misconduct has occurred, the objecting party should request an admonishment, and if the party is still not satisfied, the proper procedure is to move for a mistrial. *See Robinson v. State*, 693 N.E.2d 548, 552 (Ind. 1998). Glenn's failure to make a motion for admonishment results in the waiver of this issue. *See id.* (finding that defendant's failure to request admonishment for prosecutor's improper argument meant trial court had no opportunity to strike the remark and deflate any possible prejudicial effect).

Waiver notwithstanding, we see no indication from the circumstances that Glenn was placed in a position of grave peril which would have required the trial court to grant a mistrial. *See Adkins v. State*, 524 N.E.2d 1274, 1275 (Ind. 1988). The trial court's admonition to the audience was a reasonably curative measure, and the motion for a mistrial was properly denied. *See Underwood v. State*, 535 N.E.2d 507, 518 (Ind. 1989). The trial court did not abuse its discretion in this regard.

### III. Inappropriate Sentence

Finally, Glenn argues that his sentence is inappropriate in light of the nature of the offenses and his character.<sup>6</sup> Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Regarding the nature of the offenses, the trial court stated, and we agree, that these crimes were heinous. Glenn shot and killed Myers and Doneka because of a drug deal gone wrong. Children and other family members were present in the home and observed the double homicide. Glenn threatened to shoot Asia, a teenager, if she did not return upstairs. He took money and drugs from Myers and left the home. Asia then discovered that her mother was dead and watched as Myers died. Nothing about the nature of these offenses persuades us that Glenn’s sentence is inappropriate.

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<sup>6</sup> Glenn frames his argument solely as whether his sentence is inappropriate. The State construes Glenn’s argument as including the contention that the trial court abused its discretion by failing to give more weight to the mental illness and remorse mitigators. Whether a trial court has abused its discretion by improperly recognizing aggravators and mitigators when sentencing a defendant and whether a defendant’s sentence is inappropriate under Indiana Appellate Rule 7(B) are two distinct analyses. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Because Glenn frames his argument as one made under Indiana Appellate Rule 7(B), we so confine our discussion.

Regarding the character of the offender, as the trial court observed, Glenn has an extensive criminal history. The Presentence Investigation Report (“PSI”) indicates that as a juvenile, Glenn had true findings for child molesting as a Class B felony in 1992, public indecency in 1993, and auto theft in 1995. Glenn participated in gang activity as a juvenile. As an adult, Glenn had convictions for auto theft as a Class D felony in 1997, battery as an A misdemeanor in 1996, disorderly conduct as a Class B misdemeanor in 1997, criminal conversion as a Class A misdemeanor in 1996, cocaine possession as a Class C felony in 1998, cocaine possession as a Class D felony in 2000, cocaine possession as a Class C felony in 2002, and driving while license suspended as a Class A misdemeanor in 2007. Glenn has also been arrested multiple times for domestic battery. The PSI reveals that Glenn has no more respect for rules and authority when he is incarcerated; indeed, he has threatened and assaulted other inmates, been unruly, and possessed homemade weapons. Until his arrest, Glenn was drinking, smoking marijuana, and using cocaine daily. As for Glenn’s statement of remorse at his sentencing hearing, we note that Glenn acknowledged that his own father was murdered in 1996. Glenn was well aware of murder’s consequences on families but nonetheless killed Myers and Doneka in front of their own family. As for Glenn’s mental illness, the trial court found that it was significantly mitigating but that Glenn’s criminal history and the nature of the offenses justified his sentence. We agree. In sum, Glenn has not carried his burden of persuading this Court that his sentence is inappropriate based upon the nature of the offenses and his character.

Affirmed.

RILEY, J., and DARDEN, J., concur.