

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Roger Lee Lollis, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 27, 2023
Court of Appeals Case No.
22A-CR-1286

Appeal from the
St. Joseph Superior Court

The Honorable
Elizabeth C. Hurley, Judge

Trial Court Cause No.
71D08-2110-F6-917

Memorandum Decision by Judge Foley
Judges Robb and Mathias concur.

Foley, Judge.

[1] After Roger Lee Lollis, Jr. (“Lollis”) struck a young girl on her bicycle with his car, the State charged him with leaving the scene of an accident.¹ Lollis was convicted by a jury. On appeal, he contends that the State failed to negate his necessity defense. We disagree. Accordingly, we affirm.

Facts and Procedural History

[2] On April 6, 2021, Lollis struck Giana Newport as she rode her bicycle along Western Avenue in South Bend.² Lollis got out of his car to attend to Newport and offered to take her to the hospital. Several bystanders became hostile towards Lollis, “yelling at him and screaming at him and telling him don’t touch the little girl” Tr. Vol. II p. 55. Newport’s companion, who was also riding a bicycle, phoned Newport’s mother. Lollis overheard Newport’s mother on the phone making threats towards Lollis. As bystanders continued to scream at Lollis, he left the scene.

[3] Approximately twenty minutes later, Lollis called 911 and reported the accident. When he spoke to police, Lollis used an alias. Police eventually tracked Lollis down, relying on information from the mother of Lollis’s son. On October 11, 2021, the State charged Lollis with leaving the scene of an accident, a Level 6 felony. A jury trial commenced on March 23, 2022. There was conflicting testimony regarding the atmosphere at the scene of the accident.

¹ Indiana Code Section 8-2-4-1.

² One witness testified that Newport actually hit the car with her bicycle and that the witness believed that Lollis “didn’t see the girl.” Tr. Vol. II p. 55.

Lollis and his girlfriend testified that the assembled crowd was tense and angry. But another witness testified that there was no tension and that nobody was yelling or screaming at any time. Newport's mother contested the claims that she was yelling on the phone. And officers responding to the scene did not observe any tension or raised voices. Lollis raised a necessity defense, arguing that—essentially—he had no choice but to leave the scene as he was being threatened and felt that he was in danger. The jury convicted Lollis. This appeal followed.

Discussion and Decision

[4] Lollis argues that the State failed to present sufficient evidence to refute his necessity defense.

In order to prevail on a claim of necessity, the defendant must show (1) the act charged as criminal must have been done to prevent a significant evil, (2) there must have been no adequate alternative to the commission of the act, (3) the harm caused by the act must not be disproportionate to the harm avoided, (4) the accused must entertain a good faith belief that his act was necessary to prevent greater harm, (5) such belief must be objectively reasonable under all the circumstances, and (6) the accused must not have substantially contributed to the creation of the emergency. *Toops v. State*, 643 N.E.2d 387, 390 (Ind. Ct. App. 1994). In order to negate a claim of necessity, the State must disprove at least one element of the defense beyond a reasonable doubt. *See Pointer v. State*, 585 N.E.2d 33, 36 (Ind. Ct. App. 1992) (discussing State's burden in the context of an analogous self-defense claim). The State may refute a claim of the defense of necessity by direct rebuttal, or by relying upon the sufficiency of the evidence in its case-in-chief. *Id.* The decision whether a claim of necessity has been disproved is entrusted to

the fact-finder. *Id.* Where a defendant is convicted despite his claim of necessity, this court will reverse the conviction only if no reasonable person could say that the defense was negated by the State beyond a reasonable doubt. *Id.*

Belton v. State, 6 N.E.3d 1043, 1045–46 (Ind. Ct. App. 2014) (quoting *Dozier v. State*, 709 N.E.2d 27, 29 (Ind. Ct. App. 1999)).

When reviewing whether the State presented sufficient evidence to negate a defendant’s claim of necessity, we apply the same standard of review used for all sufficiency of the evidence questions. We neither reweigh the evidence nor judge the credibility of witnesses. *Johnson v. State*, 671 N.E.2d 1203, 1209 (Ind. Ct. App. 1996), *trans. denied*. Rather, we examine only the evidence most favorable to the State along with all reasonable inferences to be drawn therefrom. *Id.* If there is substantial evidence of probative value to sustain the conviction, then it will not be set aside. *Id.*

Id.

[5] The State claims it presented sufficient evidence to disprove all six of the elements of a necessity defense. We need not examine all six. One will suffice. We find the second factor dispositive here. Namely, there were an array of alternative courses of action available to Lollis. He could have stayed in his truck with the doors locked. He could have called 911 immediately while still at the scene. He could have parked nearby rather than fully leaving the area. In short, leaving the scene in the manner in which he did was not a *necessary* course of action. There was testimony that the atmosphere at the scene was not

nearly so dire as Lollis contends, and the jury was entitled to credit that testimony. We do not reweigh the evidence. Accordingly, we affirm.

[6] Affirmed.

Robb, J., and Mathias, J., concur.