

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Ramon Ramos,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 27, 2023

Court of Appeals Case No.
22A-CR-2804

Appeal from the
Marion Superior Court

The Honorable
Cynthia L. Oetjen, Judge
Anne M. Flannelly, Magistrate

Trial Court Cause No.
49D30-2205-F5-14563

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Michael R. Ramos (“Ramos”) appeals his conviction, after a jury trial, for Level 6 felony domestic battery¹ and raises two issues for our review:

- I. Whether Ramos’s conviction for domestic battery is supported by sufficient evidence because the State failed to disprove claims of self-defense and defense of property; and
- II. Whether there was prosecutorial misconduct resulting in fundamental error.

We affirm.

Facts and Procedural History

[2] Ramos and R.H. were in a romantic relationship and co-habited. The two of them had been together for about five years and they have a son.² On May 27, 2022, the two of them got into a verbal argument. At some point in the argument, Ramos managed to take a video of R.H. waving an object that appears to be a small sculpture while threatening to damage Ramos’s personal property. R.H. put the object down and stated that she will damage Ramos’s property once he stops filming; she then began looking through some items with her back turned away from Ramos and the video recording ended. After some time, R.H. retreated to the bedroom “to cool[] down for a minute.” Tr. Vol. II

¹ Ind. Code § 35-42-2-1.3(a)(1), (b)(1).

² Ramos has four other children from previous relationships.

p. 114. While R.H. was lying in bed, Ramos “threw a cell phone at [her].” *Id.* In response, R.H. got up and hit Ramos on the shoulder while screaming that “he should never hit a woman.” *Id.* Ramos then hit R.H. “on the side of the head or the neck,” which caused R.H. to fall on the ground facedown. *Id.* at 116. While R.H. was on the ground, Ramos put his knee on her back. Then, Ramos put R.H. “in a choke hold [with] his arm around [her] neck” and pulled her up by the neck until she blacked out. *Id.* When R.H. regained consciousness, she called the police. The responding officer spoke with R.H. and observed blood on her face, an injury to her chin, scratches on her neck, and petechiae on her cheeks and eyeballs. Ramos had no visible injuries. Ramos was arrested.

[3] On May 31, 2022, the State charged Ramos with: Count I, strangulation as a Level 5 felony;³ Count II, domestic battery as a Level 6 felony; and Count III, interference with the reporting of a crime as a Class A misdemeanor.⁴ A jury found Ramos guilty of domestic battery and not guilty of strangulation and interference with the reporting of a crime. Ramos was sentenced to two years in the Marion County Jail with 408 days suspended. This appeal ensued.

³ I.C. § 35-42-2-9(c)(1).

⁴ I.C. § 35-45-2-5(1).

Discussion and Decision

I. Sufficiency of the Evidence

[4] In challenging the sufficiency of the evidence, Ramos does not dispute that the State proved each element of the offense. Rather, he claims the State failed to present sufficient evidence disproving his claims of self-defense and defense of property. Indiana Code section 35-41-3-2(c) provides: “A person is justified in using reasonable force against any other person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force.”

When a defendant raises the claim of self-defense, he is required to show three facts: 1) he was in a place where he had a right to be; 2) he acted without fault; and 3) he had a reasonable fear of death or great bodily harm. The issue on appellate review is typically whether the State presented sufficient evidence to support a finding that at least one of the elements of the defendant’s self-defense claim was negated. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses.

Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). We will 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.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007)).

[5] Ramos contends that the State failed to disprove beyond a reasonable doubt any of the three elements of self-defense. Both parties agree that Ramos had a right to be in the place where the altercation took place. The State argues that Ramos provoked or instigated the physical altercation and that R.H. did not pose a reasonable threat of death or great bodily harm to Ramos, thus rebutting Ramos’s claim of self-defense. We agree that the State presented sufficient evidence to disprove the material elements of Ramos’s self-defense claim. Ramos instigated or provoked the altercation with R.H. After the initial argument with Ramos, R.H. retreated to the bedroom to cool down. Ramos then entered the bedroom and threw a cellphone at R.H. R.H. reacted by hitting Ramos on the shoulder and Ramos proceeded to attack R.H. To the extent Ramos attempts to characterize R.H. as the initial aggressor because she testified that she said she might have said something that “pushed [Ramos] over the edge” since she has a “very foul mouth,” Ramos’s argument is an improper invitation for us to reweigh the evidence, which we will not do. *See* Tr. Vol. II p.115; *see, e.g., In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017). R.H. hit the larger Ramos on the arm in reaction to being hit by the cellphone that Ramos threw at her. Ramos did not have a reasonable fear of death or great bodily harm. It’s also important to note that the jury, as the factfinder, viewed the exhibits and was able to observe the demeanor, size and emotional state of each witness in addition to R.H.’s role in the incident. “We will not disturb the

jury’s conclusion.” *Lawrence v. State*, 476 N.E.2d 840, 843 (Ind. 1985). The State presented sufficient evidence that Ramos instigated the physical altercation by entering the bedroom and throwing the cellphone at R.H. and did not have a reasonable fear of death or great bodily harm.

[6] Ramos also asserts that his actions were justified because he was acting in defense of his property. Except for the third element, a claim “of defense of property is analogous to the defense of self-defense.” *Ervin v. State*, 114 N.E.3d 888, 895 (Ind. Ct. App. 2018). Indiana Code section 35-41-3-2(e) provides:

With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary *to immediately prevent or terminate the other person’s trespass on or criminal interference with property lawfully in the person’s possession*

(emphases added). Ramos contends that he had a reasonable belief that his physical attack of R.H. was necessary to prevent her from immediately interfering with his property because R.H. “threatened to break ‘everything,’ including the television,” while waving “a heavy item.” Appellant’s Br. p. 16; *see also* Defendant’s Exhibit A. We disagree. First, the video exhibit that Ramos directs us to depicts R.H. putting the small sculpture down and stating that she will damage Ramos’s personal property once he leaves and is no longer recording her, clearly contradicting Ramos’s assertion that R.H. posed an “immediate” threat to his property. *See* Defendant’s Exhibit A at 1:11–1:25. After the video ends, R.H. disengaged from Ramos and retreated to the

bedroom to “cool[] down for a minute.” Tr. Vol. II p. 114. Ramos’s attack on R.H. only occurred after Ramos re-entered the bedroom, threw a cellphone at R.H., and R.H. struck Ramos on the shoulder as a response. R.H.’s threats to damage Ramos’s property were too remote and disconnected from the battery to give rise to a defense of property. The State presented sufficient evidence to negate Ramos’s claim of defense of property by revealing that Ramos provoked the violence and did so without a reasonable belief that force was necessary to immediately prevent criminal interference with his property. *See Moore*, 181 N.E.3d at 446.

- [7] The State presented sufficient evidence to disprove Ramos’s claims of self-defense and defense of property.

II. Prosecutorial Misconduct

- [8] Ramos claims that the prosecutor committed misconduct by asserting during the opening statement and closing argument that Ramos’s cellphone hit R.H. in the face and busted her lip when there was no evidence to support the statements. Ramos failed to object to the statements at trial or request that the trial court admonish the jury but argues that the misstatements constitute fundamental error.
- [9] To find prosecutorial misconduct, a court must consider “(1) whether misconduct occurred, and if so, (2) whether the misconduct, under all circumstances, placed the defendant in a position of grave peril to which he or she would not have been subjected to otherwise.” *Ryan v. State*, 9 N.E.3d 663,

667 (Ind. 2014) (internal quotations omitted). “Whether a prosecutor’s argument constitutes misconduct is measured by reference to case law and the Rules of Professional Conduct.” *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006). “The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury’s decision rather than the degree of impropriety of the conduct.” *Id.*

[10] When an improper argument is alleged to have been made, the correct procedure is to request the trial court to admonish the jury. *Dumas v. State*, 803 N.E.2d 1113, 1117 (Ind.2004). If the party is not satisfied with the admonishment, then he or she should move for [a] mistrial. *Id.* Failure to request an admonishment or to move for [a] mistrial results in waiver. *Id.* When “a claim of prosecutorial misconduct has not been properly preserved, our standard of review is different from that of a properly preserved claim . . . [in that] the defendant must establish not only the grounds for the misconduct but also the additional grounds for fundamental error.” *Cooper*, 854 N.E.2d at 835.

Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to make a fair trial impossible. In other words, to establish fundamental error, the defendant must show that, under the circumstances, the trial judge erred in not *sua sponte* raising the issue because alleged errors (a) constitute clearly blatant violations of basic and elementary principles of due process and (b) present an undeniable and substantial potential for harm. The element of such harm is not established by the fact

of ultimate conviction but rather depends upon whether the defendant's right to a fair trial was detrimentally affected by the denial of procedural opportunities for the ascertainment of truth to which he otherwise would have been entitled. In evaluating the issue of fundamental error, our task . . . is to look at the alleged misconduct in the context of all that happened and all relevant information given to the jury—including evidence admitted at trial, closing argument, and jury instructions—to determine whether the misconduct had such an undeniable and substantial effect on the jury's decision that a fair trial was impossible.

Ryan, 9 N.E.3d at 668 (internal citations and quotations omitted). “A finding of fundamental error essentially means that the trial judge erred by not acting when he or she should have.” *Id.* “Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail[s] to preserve an error.” *Id.*

[11] During the State's opening statement, the prosecutor made the following remark: “[R.H.] will testify how [Ramos] turned a verbal argument over infidelity into a physical one when he took a phone and threw it at her while she was laying [sic] in bed, *busting her lip*.” Tr. Vol. II. p. 110 (emphasis added). During the State's closing argument, the prosecutor made the following statement: “Throwing the phone at R[H.]'s face, *hitting her in the face and busting her lip*, that constitutes domestic battery. That is a crime.” *Id.* at 193 (emphasis added). Ramos asserts that R.H. never testified that Ramos's cellphone hit her

face and busted her lip. *See* Tr. Vol. II pp. 112–35. In fact, a lip injury was not documented as one of the injuries that R.H. suffered. *See Id.* at 141–45; *see also* Ex. Vol. I pp. 3–10. Ramos did not object to either of the statements nor did he request the trial court to admonish the jury.

[12] Ramos argues that the prosecutor’s assertions amounted to prosecutorial misconduct. “It is misconduct for a prosecutor to request the jury to convict a defendant for any reason other than his guilt.” *Coleman v. State*, 750 N.E.2d 370, 375 (Ind. 2001). The record establishes that Ramos threw the cellphone at R.H. However, the record is devoid of evidence indicating which part of R.H.’s body the cellphone made contact with and what injury R.H. sustained from that contact.

[13] We next consider whether, under all the circumstances, the misconduct placed Ramos in a position of grave peril to which he would not have been subjected to otherwise. *See Ryan*, 9 N.E.3d at 667. Ramos claims that “the State wrote its own story that would preclude self-defense or defense of others” by “adding details about the incident absent from [R.H.]’s testimony[;]” “[t]hese details placed Ramos in grave peril to which he would not otherwise have been subjected.” Appellant’s Br. p. 11. We disagree. The statements were not material and did not constitute any element of the crimes charged. If we remove the details regarding where the phone hit R.H. and the resulting injury, we are left with evidence demonstrating that while R.H. was cooling off in the bedroom after an argument with Ramos, an unprovoked Ramos entered the

bedroom and threw a cellphone at R.H. The evidence presented to the factfinder demonstrated that Ramos’s self-defense claim was unlikely.

[14] Moreover, the trial court instructed the jury that the parties’ final arguments “are not evidence” and that the jury could “accept or reject those arguments as [it saw] fit.” Appellant’s App. Vol. II p. 114. When we consider the evidence presented, the closing argument, and the jury instruction, we are not persuaded that the jury found Ramos guilty for any reason other than the evidence introduced at trial. Therefore, it is unlikely that Ramos was placed in a position of grave peril to which he would not have been subjected to otherwise. *See Ryan*, 9 N.E.3d at 667. Because we do not find that Ramos demonstrated “grave peril” as a result of the prosecutor’s misstatements, we need not reach the issue of fundamental error.

Conclusion

[15] Based on the foregoing, sufficient evidence was presented to disprove Ramos’s claims of self-defense and defense of property, and the prosecutorial misconduct did not result in fundamental error. We affirm Ramos’s conviction for Level 6 felony domestic battery.

[16] Affirmed.

Altice, C.J., and May, J., concur.