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IN THE
COURT OF APPEALS OF INDIANA

Brady A. Turner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 25, 2022

Court of Appeals Case No. 21A-CR-1359

Appeal from the Delaware Circuit Court

The Honorable John M. Feick, Judge

Trial Court Cause No. 18C04-1809-MR-2

Crone, Judge.

Case Summary

[1] Brady A. Turner appeals his murder conviction. He argues that the trial court erred by admitting certain evidence and by denying his motion to secure attendance of a witness incarcerated in another state. Finding no reversible error, we affirm.

Facts and Procedural History

[2] In June 2018, Turner was placed on parole for an unrelated conviction. His parole was to last for two years and included the condition that he would live at a certain residence in Chesterfield in Madison County and would not move outside of Chesterfield without permission from his parole officer. Tr. Vol. 6 at 227-28.

[3] Sometime in late July or August 2018, Turner was at his friend James Hill's home on East 15th Street in Muncie in Delaware County. Chris Burgess and his girlfriend Janaya Blevins, an old and close friend of Turner's, were also there. Tr. Vol. 5 at 210, 227. Just after Blevins and Burgess left, Blevins realized that she had left her cigarettes and jewelry in the house. She went back inside to look for them and told Turner to help her find them because she suspected that he had taken them. Turner told her that "he was tired of being accused of stealing," and he threatened to hit her. *Id*. at 229. Burgess, who had been standing right outside the back door, walked in at this point, and Turner began punching him. During the fight, a gun discharged once, and Burgess and Turner fell out the back door to the ground, with Turner on top of Burgess and Turner's arms wrapped around Burgess's shoulders. *Id*. at 230. Blevins saw that Burgess held a gun, but when Turner got up, Burgess put away the gun. *Id*. at 231. Over the next couple weeks, Blevins told Turner that she was sorry about what happened, and Turner told her it was "cool." Tr. Vol. 7 at 82. Also, Burgess and Turner "hung out and did a couple tattoos and stuff like that" together and "squashed the beef." *Id*.

[4] Around September 13 and 14, 2018, Blevins began receiving prank phone calls. Tr. Vol. 5 at 226. When Burgess answered one of the calls, Blevins took the phone from him and heard Turner saying that "he was looking for that b*tch." *Id*. at 226-27. Although Turner identified himself as someone else, Blevins recognized his voice. *Id*. at 227. Burgess and Blevins switched the phone to speakerphone, and Blevins heard Turner tell Burgess that he would kill him. *Id*.

[5] On September 17, 2018, Turner's parole officer went to check on Turner at the residence in Chesterfield where he was supposed to be living and learned that Turner had not been living there for the last month. Tr. Vol. 6 at 228-29. Turner's parole officer tried to call Turner, but Turner did not answer his calls. *Id*. at 234. That day, the parole officer filed a parole violation against Turner and requested a warrant for his arrest. *Id*. at 230, 234.

[6] On the morning of September 17, 2018, Turner and his girlfriend Tina Wright were at Hill's home. They smoked marijuana, and Turner used methamphetamine. Tr. Vol. 5 at 197. Later, Turner and Wright began arguing, and Turner hit her. Hill told Turner that they needed to leave, which angered Turner, and he threatened three times to kill Hill. *Id*. at 197-98. Eventually, Turner and Wright left.

[7] That evening, Burgess and Blevins went to Hill's house. *Id*. at 211. At about 9:00 p.m., Burgess and Blevins had an argument, and Blevins left the residence on foot and walked east down East 15th Street. *Id*. at 212-13. Burgess also left the residence and drove Blevins's SUV to look for her. He found her about one

block from Hill's house. *Id*. at 214. Burgess parked the SUV on the right side of the road and got out to talk to Blevins. They apologized to each other and decided to leave together in the SUV. As Burgess walked around the front of the vehicle to the driver's side, and Blevins started to get into the passenger side of the vehicle, Blevins saw Turner jogging toward them from the east. *Id*. at 215-16. She told Burgess that she saw Turner, and Burgess started jogging toward him while dropping his cell phone, cigarettes, and hat. *Id*. at 216-17.

[8] When Burgess and Turner met, they began "throwing punches at each other." *Id*. at 218; Tr. Vol. 7 at 155-56. Blevins stepped between them to stop the fight, but they continued to throw punches. Tr. Vol. 5 at 218. Blevins saw Turner's fist "go by [her] head towards [Burgess]." *Id*. When Turner drew his fist back, Blevins saw that he held a knife. *Id*. at 219. Blevins saw Turner fold up the knife and put it in his waistband and heard him say to Burgess, "Here I'll fight you fair." *Id*. Blevins turned around and saw Burgess fall "straight back onto his head," and she jumped on top of him because she did not want him to be kicked while he was down. She observed Turner circling them and told him not to touch Burgess anymore. Turner then ran down an alley with Wright.

[9] Blevins realized that Burgess was bleeding from his abdomen and that he had multiple cuts in his shirt. *Id*. at 222. She also saw blood spraying out of his neck. *Id*. She put her hands on his neck to apply pressure and started screaming for help. Burgess tried to speak, mumbled "family" and "love," and then started making "gurgling noises." *Id*. at 223. A nearby resident appeared and gave his shirt to Blevins, which she placed on Burgess's neck to try and stop the

bleeding. Blevins called 911. Soon after police arrived, they took Blevins to the police station, and around 9:50 p.m., they conducted a videotaped interview with her. *Id*. at 225; Tr. Vol. 6 at 33; State's Ex. 8. During the interview, Blevins was "very upset, crying … almost hysterical[,] just very emotional [and] [t]raumatized." Tr. Vol. 6 at 33.

[10] Burgess was taken to the hospital, where he died from a five-inch-deep stab wound to his neck that had severed his carotid artery and jugular vein. Burgess had also suffered a two-inch-long cut on the side of his abdomen as well as several shallower cuts. Based on Turner's own account, he was not injured during the fight and was punched by Burgess at most a single time. Tr. Vol. 7 at 150-51, 155-56. Burgess did not have a weapon on him during the fight, and Burgess did not threaten to use any weapon against Turner during the fight. Tr. Vol. 5 at 225; Tr. Vol. 7 at 154-55.

[11] Police arrested Turner for Burgess's murder on September 19, 2018. When Turner was taken into custody, he had no stab wounds, cuts, or extensive bruising. Tr. Vol. 6 at 182. On September 25, 2018, the State charged Turner with murder. Turner's first trial in November 2019 resulted in a hung jury. A new trial was set for April 19, 2021.

[12] On April 13, 2021, Turner filed a motion to transport Wright, who was incarcerated in Eaton, Ohio, so that she could testify at his trial. Appellant's App. Vol. 3 at 144. The trial court denied the motion because it did not comply with Indiana Code Section 35-37-5-6. *Id*. at 154.

[13] On April 19, 2021, Turner's four-day jury trial began. In his opening argument, Turner claimed he killed Burgess in self-defense. During its case-in-chief, the State called Turner's parole officer to testify regarding Turner's parole status at the time of Burgess's death, and Turner objected. Tr. Vol. 6 at 218-20. The trial court overruled his objection, and the witness testified. *Id*. at 224. Turner did not object or make a motion to strike during or after the parole officer's testimony. Blevins also testified for the State. After she testified, the State sought to introduce State's Exhibit 8, a portion of Blevins's videotaped interview with the police, in which she identified Turner as the person fighting with Burgess. *Id*. at 34-35. The trial court admitted the exhibit over Turner's objection. *Id*. at 35.

[14] On April 20, 2021, after the completion of the second day of trial, Turner filed a motion to secure attendance of a witness incarcerated in another state, requesting that the trial court certify that Wright, who was still incarcerated in Eaton, Ohio, was a material witness so that she could be brought to Delaware County to testify. Appellant's App. Vol. 3 at 206. At the start of the third day of trial, the trial court denied the motion as untimely. *Id*. at 208; Tr. Vol. 6 at 175-76.

[15] During Turner's case-in-chief, Turner offered, and the trial court admitted, Wright's deposition, which was read to the jury. Tr. Vol. 7 at 21-41. Turner also introduced evidence through his own testimony and that of another witness that prior to September 17, 2018, Burgess had chased him with an axe because Turner had "flirted" with Burgess's sister. *Id*. at 15-16, 83-84. The trial court

permitted the State to cross-examine Turner about his alleged sexual assault of Burgess's sister over Turner's objection. *Id*. at 137-38.

[16] The jury found Turner guilty of murder. The trial court sentenced Turner to an executed term of sixty years. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

Section 1 – The trial court did commit reversible error in ruling on the admissibility of certain evidence.

[17] We first address Turner's challenges to the admissibility of certain evidence. "Our standard of review for the admissibility of evidence is well established." *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006).

> The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal. We will reverse the trial court's ruling on the admissibility of evidence only for an abuse of discretion. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. In reviewing the admissibility of evidence, we consider only the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. Errors in the admission or exclusion of evidence are considered harmless unless they affect the substantial rights of a party. To determine whether an error in the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence on the jury.

Id. (citations omitted). We will sustain a ruling on the admissibility of evidence on any reasonable basis apparent in the record regardless of whether it was relied on by the parties or the trial court. *Washburn v. State*, 121 N.E.3d 657, 661 (Ind. Ct. App. 2019), *trans. denied*.

Section 1.1 – The trial court abused its discretion by admitting evidence regarding Turner's parole status, but the error was harmless.

[18] As mentioned above, Turner objected to the proffered testimony of his parole officer, stating, "Their argument is going to be that because [I] was on parole out of, I believe Madison County, I think specifically Chesterfield, that because [I] was out of parole there, [I] didn't have a legal right to be at Fifteenth and Mulberry [in Muncie]." Tr. Vol. 6 at 218. Turner argued that his parole status was irrelevant, unfairly prejudicial, misleading, and would confuse the jury. *Id*. Turner also argued that "[t]he remedy for [me] being out of the parole jurisdiction … is not the taking away of [my] [c]onstitutional right to protect [my]self, but the remedy for that is, file a parole violation." *Id*. at 219. The trial court overruled Turner's objection. *Id*. at 224. Turner's parole officer then testified that as of September 17, 2018, when Turner killed Burgess, Turner had stopped living at the Chesterfield residence where he was supposed to be living. *Id*. at 228-29. However, on cross-examination, Turner asked the parole officer whether he had asked for permission to go to Muncie to, for example, visit his girlfriend, and the parole officer replied that he could not recall whether he had. *Id*. at 230-31, 238. Turner did not move to strike the parole officer's testimony.

[19] On appeal, the parties dispute the relevance of Turner's parole status to his self-defense claim. We observe that in general, relevant evidence is admissible. Ind. Evidence Rule 402. Indiana Evidence Rule 401 provides that evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence[,] and the fact is of consequence in determining the action." Our supreme court has explained that Evidence Rule 401 "provides a liberal standard for relevancy." *Konopasek v. State*, 946 N.E.2d 23, 27 (Ind. 2011). Evidence Rule 403 provides that the court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice.

[20] "A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act." *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002); Ind. Code § 35-41-3-2(a). With respect to self-defense claims, Indiana's self-defense statute distinguishes the use of force from the use of deadly force:

> 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. However, a person:
>
> (1) is justified in using deadly force; and
>
> (2) does not have a duty to retreat;
>
> if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. *No person, employer, or estate of*

> *a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary*.

Ind. Code § 35-41-3-2(c) (emphasis added). However, subsection (g) provides in relevant part:

> [A] person is not justified in using force if:
>
> (1) the person is committing or is escaping after the commission of a crime;
>
> (2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or
>
> (3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

[21] Our courts have long held that to prevail on a self-defense claim, one is required to show that he or she "*was in a place where he [or she] had a right to be*, acted without fault, and reasonably feared or apprehended death or great bodily harm." *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021) (emphasis added) (citation and quotation marks omitted). To defeat a self-defense claim, the State is required to disprove at least one of these elements beyond a reasonable doubt. *Id*. The State "may meet this burden by rebutting the defense directly, by affirmatively showing the person did not act in self-defense, or by relying upon

the sufficiency of its evidence in chief." *Hall v. State*, 166 N.E.3d 406, 413 (Ind. Ct. App. 2021) (quoting *Cole v. State*, 28 N.E.3d 1126, 1137 (Ind. Ct. App. 2015)).

[22] Turner asserts that a person's parole status should not disqualify one from defending oneself on a public street, and therefore whether his presence in Muncie was a violation of his parole is irrelevant to whether he had a right to be there for purposes of his self-defense claim. Turner contends that the General Assembly did not intend for a parole violation to deprive a person of the right to defend himself. In support, he cites Indiana Code Section 35-41-3-2(a), which provides that "*it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime*," and that "[b]y reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self[-]defense rights that citizens of this state have always enjoyed." (Emphasis added.)

[23] It is "well settled" in Indiana that to prevail on a self-defense claim, the defendant must prove that he or she was in a place where he or she had a right to be. *Dean v. State*, 432 N.E.2d 40, 42-43 (Ind. 1982); *see also Flick v. State*, 207 Ind. 473, 476-77, 193 N.E. 603, 605 (1935); *Runyon v. State*, 57 Ind. 80, 84 (1877). However, this requirement has rarely been in dispute, and thus there are very few Indiana cases that have explored its application. The State does not

cite any self-defenses cases where this requirement was in issue.[1] Turner cites to only one, *Creager v. State*, 737 N.E.2d 771, 777-78 (Ind. Ct. App. 2000), *trans. denied* (2001), which addressed whether the defendant had a right to be where he was based on his violation of a no-contact order.[2] We have found no cases that have addressed the relationship between a parole violation and the right to be in a place for purposes of establishing a self-defense claim.

[24] In considering how to apply the requirement that a person was in a place where he or she had a right to be, we are guided by our supreme court's opinions in *Mayes v. State*, 744 N.E.2d 390, 393 (Ind. 2001), and *Gammons v. State*, 148 N.E.3d 301, 304-05 (Ind. 2020). In these cases, the court examined the proper application of the statutory limitation in Section 35-41-3-2 that a person cannot use force defending himself if he is committing a crime. Both courts held that a literal application of the limitation would nullify self-defense claims in a variety of circumstances, and therefore the limitation would not be applied to bar a claim of self-defense unless "there is an immediate causal connection between

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[1] In support of its argument that Turner's parole status was admissible, the State relies on *Basset v. State*, 895 N.E.2d 1201, 1212 (Ind. 2008), in which our supreme court upheld the trial court's ruling that evidence of Basset's parole status was admissible as evidence of motive.

[2] In *Moore v. State*, 634 N.E.2d 825, 826 (Ind. Ct. App. 1994), the court concluded that sufficient evidence disproved the defendant's self-defense claim, including evidence that the defendant did not have a right to be on the victim's property after the victim told him to leave. In *Hightire v. State*, 247 Ind. 164, 166, 213 N.E.2d 707, 708 (1966), the court concluded that the evidence showed that the defendant was living in adultery with the victim's wife, and thus the trial court could have found that the defendant was not in a place where he had a right to be under the law, regardless of the fact that he was partially supporting her and paying her rent.

the crime and the confrontation." *Mayes*, 744 N.E.2d at 392; *Gammons*, 148 N.E.3d at 304-05.

[25] The *Mayes* court explained the reasoning for this rule in some depth. In *Mayes*, a jury rejected Mayes's self-defense claim and found him guilty of murder and carrying a handgun without a license. 744 N.E.2d at 392. On appeal, Mayes contended that although he possessed an unlicensed handgun when he shot the victim, this was not the type of offense that should negate a claim of self-defense. *Id*. at 393. In considering his argument, our supreme court reasoned as follows:

> A valid claim of self-defense is legal justification for an otherwise criminal act. This is a long-standing tenet of the law in this jurisdiction that predates statutory codification. *See, e.g., Bryant v. State*, 106 Ind. 549, 7 N.E. 217, 219-20 (1886) (noting that principle of justifiable and excusable homicide on the ground of self-defense has been fully endorsed, approved, and acted upon in many recent decisions of this Court, well before the defense was codified in 1905). Indeed, the self-defense statute itself endorses the proposition that one is entitled to defend oneself under circumstances where it reasonably appears that a person is in danger of bodily harm: "[n]o person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting himself or his family by reasonable means necessary." I.C. § 35-41-3-2(a). The goal of statutory construction is to determine, give effect to, and implement the intent of the legislature. The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an unjust or absurd result. Although penal statutes are not to be read so narrowly that they exclude cases that they fairly cover, nonetheless, we conventionally construe penal statutes strictly against the State.

> A literal application of the contemporaneous crime exception would nullify claims for self-defense in a variety of circumstances and produce absurd results in the process. ….
>
> We also observe that as applied to the facts of this case, if Mayes had previously obtained a valid license but it had expired one minute before he shot his girlfriend, then, if the statute is to be read literally, a self-defense claim would be unavailable. The legislature could not have intended that a defense so engrained in the jurisprudence of this State be dependent upon the happenstance of such timing.

Id. at 393-94 (citations omitted). Our supreme court concluded that the fact that "a defendant is committing a crime at the time he is allegedly defending himself is not sufficient standing alone to deprive the defendant of the defense of self-defense. Rather, there must be an immediate causal connection between the crime and the confrontation." *Id*. at 394.[3]

[26] Although *Mayes* and *Gammons* dealt with a statutory limitation, we believe that the grounds supporting those decisions are relevant to determining the proper application of the requirement that a person was in a place where he or she had a right to be, namely, that the right to defend oneself is an enduring policy of this State and the self-defense statute explicitly proclaims this right in both

[3] The *Mayes* court rephrased the immediate causal connection requirement as follows: "the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred." 744 N.E.2d at 394. The *Gammons* court rejected the "but for" test, noting that the "'but for' test can impede the defense in the same unjust and absurd ways as a literal reading of the statute, … and reiterat[ed] that self-defense is barred only when there is 'an immediate causal connection between the crime and the confrontation.'" *Gammons*. 148 N.E.3d at 304-05 (quoting *Mayes*, 744 N.E.2d at 394).

subsections (a) and (b). A literal application of the requirement that one be in a place where one has a right to be could bring about unjust or absurd results and defeat "the policy of this state that people have a right to defend themselves and third parties from physical harm and crime."[4] Ind. Code § 35-41-3-2(a). We conclude that when a person is not in a place where he or she has a right to be, a self-defense claimed is barred only if there is an immediate causal connection between the person's presence in that place and the confrontation.

[27] As mentioned earlier, *Creager* addressed whether the defendant's presence in a place in violation of the no-contact order issued against him was a bar to his self-defense claim. 737 N.E.2d 771. Although the *Creager* court did not explicitly consider whether there was an immediate causal connection between Creager's violation of the no-contact order and the confrontation, it provides a useful illustration. There, Jeremy Creager was married to Mary Creager, and a no-contact order was issued prohibiting him from having contact with her as a result of the State charging him with a crime of violence against her. One night, Jeremy entered the marital residence without Mary's knowledge and hid in an upstairs bedroom closet. Upon Mary's return home, she put their daughter to bed and went into the master bedroom to watch a video with a male friend, Patrick Johnson. Jeremy came into the bedroom and confronted them with a baseball bat and a combat knife. A struggle ensued between Jeremy and Patrick.

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[4] For example, it would bar a self-defense claim of a twenty-year-old person who is attacked in a bar, a person who sneaks into a theater or a football game without paying for admission, or an undocumented resident attacked on a public street.

After Jeremy hit Patrick with the baseball bat several times and stabbed him with the knife, Patrick retreated to the bathroom and locked the door. Mary attempted to call 911, but Jeremy took the phone, threw it against the wall, and tied her up. Jeremy then went to the bathroom door and began repeatedly striking it. During this time, Mary was able to escape and ran to a neighbor's house. Jeremy followed her and forcibly entered the home but was unable to find her. Jeremy went back to the marital residence, took his daughter, and fled to South Dakota, where he was apprehended. Patrick later died from his injuries.

[28] The State charged Jeremy with murder, robbery, burglary, invasion of privacy, and two counts of criminal confinement. A jury trial was held. The trial court rejected Jeremy's proposed self-defense instruction, finding that, as a matter of law, Jeremy was in a place where he had no right to be due to the no-contact order. The jury found Jeremy guilty of criminal confinement, involuntary manslaughter, and residential entry.

[29] On appeal, Jeremy contended that the trial court erred by refusing to instruct the jury on self-defense. In considering his argument, the *Creager* court began by recognizing that "[g]enerally, the determination of whether a defendant acted in self-defense is a question of fact for the jury." *Id*. at 777. The court noted that Jeremy did not contest the facial validity of the no-contact order and rejected his argument that the order was effectively nullified by his and Mary's consensual contact with each other. *Id*. at 777-78. The court then observed, "although the no-contact order does not specify the locations Jeremy was to

refrain from visiting, the order expressly mandates that Jeremy was to have no contact with Mary." *Id*. at 778. Significantly, "the record indicate[d] that it was not a chance encounter when Jeremy violated the no-contact order" because he knew Mary would be home soon after he entered the residence, he hid to see what she and Patrick were going to do, and he confronted them in the bedroom. *Id*. Accordingly, the *Creager* court held that the trial court did not err by finding as a matter of law that the defendant was not in a place where he had a right to be and refusing to tender a self-defense instruction. *Id*.

[30] In *Creager* there was an immediate causal connection between Jeremy's violation of the no-contact order, his presence in the marital residence, and the confrontation he had with Mary and Patrick. The no-contact order specifically barred him from being in Mary's presence, he purposefully entered the home to see her, and he confronted Mary and Patrick, who was with Mary in the house at her invitation.

[31] In this case, we must determine whether there was an immediate causal connection between Turner's violation of parole, his presence in Muncie, and the confrontation with Burgess. We observe that although Turner was supposed to be in Madison County, the terms of his parole did not prohibit him from being in a specific location or from being with a specific person. Turner just happened to be in Muncie, but he would have been in violation of his parole if he was anywhere other than Madison County. Further, he was in Muncie spending time with his girlfriend. There is no evidence that he violated his parole so that he could confront Burgess or by confronting Burgess. In fact, on

the day in question, there is no evidence that Turner was attempting to or intended to see Burgess. Accordingly, the fact that Turner's presence in Muncie was a violation of his parole does not have an immediate causal connection to his confrontation with Burgess. Therefore, we conclude that the trial court abused its discretion in determining that evidence of Turner's parole status was relevant to his self-defense claim.

[32] However, errors in the admission or exclusion of evidence are harmless and do not require reversal unless they affect the substantial rights of a party. *Whiteside*, 853 N.E.2d at 1025. "To determine whether an error in the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence on the jury." *Id*. To prevail on his self-defense claim, Turner had to show that he had a reasonable fear of death or great bodily harm. *Larkin*, 173 N.E.3d at 670. "[T]o employ self-defense a defendant must satisfy both an objective and [a] subjective standard; he must have actually believed deadly force was necessary to protect himself, and his belief must be one that a reasonable person would have held under the circumstances." *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013) (quoting *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007)). "The amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation. When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished." *Hall*, 166 N.E.3d at 414 (quoting *Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004), *trans. denied* (2005)).

[33] Although Burgess brandished a gun when Turner and Burgess fought at Hill's house weeks or months earlier, Turner and Burgess reconciled following the fight and engaged in various activities as friends, which would support a reasonable inference that Turner was not particularly afraid of Burgess. Turner testified that Burgess did not have a weapon on the night he was killed, and Turner admitted that Burgess did not threaten to use a weapon during the fight. Tr. Vol. 7 at 154-55. According to Turner's own testimony, Burgess hit Turner at most a single time, and Turner suffered no injuries. Turner also testified that he thought he was a better fighter than Burgess. *Id*. at 150. This evidence disproved beyond a reasonable doubt that Turner had a reasonable fear of death or great bodily harm. Further, the evidence overwhelmingly showed that Turner used more force than was reasonably necessary under the circumstances. *See Bullard v. State*, 245 Ind. 190, 194, 195 N.E.2d 856, 857 (1964) ("It is certain, however, that the deceased was unarmed, and, at most, that in their scuffle he struck appellant with his fist. … [A]s a general rule, the law will not excuse one who repels a blow with the fist by stabbing his assailant.") (quoting *Smith v. State*, 142 Ind. 288, 297, 41 N.E. 595, 597 (1895)). Given the overwhelming evidence disproving Turner's self-defense claim, the probable impact of Turner's parole status was minimal and did not affect his substantial rights. Accordingly, we conclude that the admission of evidence of his parole status was harmless.

Section 1.2 – The trial court did not abuse its discretion by admitting State's Exhibit 8.

[34] Turner also challenges the admission of State's Exhibit 8, which contained a portion of Blevins's police interview in which she identified Turner as the person fighting Burgess. Turner objected that the exhibit was hearsay and cumulative. On appeal, Turner's sole contention is that Exhibit 8 was inadmissible hearsay. Hearsay is a statement not made by the declarant while testifying at trial that is offered to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay is not admissible unless the rules of evidence or other law provides otherwise. Ind. Evidence Rule 802.

[35] The State argues that Exhibit 8 was admissible as an excited utterance pursuant to Indiana Evidence Rule 803(2). We agree.

> Statements made by a witness are admissible as substantive evidence pursuant to Indiana Evidence Rule 803(2) when the statements (a) pertain to a startling event or condition; (b) are made while the declarant was under the stress or excitement caused by the event or condition; and (c) are related to the event or condition. This test is not mechanical and admissibility turns on whether the statement was inherently reliable because the witness was under the stress of the event and unlikely to make deliberate falsifications. The lapse of time is not dispositive, but if a statement is made long after a startling event, it is usually less likely to be an excited utterance. The heart of the inquiry is whether the declarant was incapable of thoughtful reflection.

Stinson v. State, 126 N.E.3d 915, 920-21 (Ind. Ct. App. 2019) (citations and quotation marks omitted).

[36] Police interviewed Blevins less than an hour after she saw Turner kill Burgess. She saw blood spraying out of Burgess's neck and tried to stop the bleeding while screaming for help. During the interview, Blevins was "very upset, crying … almost hysterical[,] just very emotional [and] [t]raumatized." Tr. Vol. 6 at 33. Burgess's murder was a startling event, Blevins was still under stress caused by that event, and her identification of Turner was clearly related to the event. Thus, Blevins's statement to police identifying Turner was admissible as an excited utterance. Accordingly, the trial court did not abuse its discretion by admitting Exhibit 8. Further, for the reasons stated in the previous section, we would conclude that even if the admission of Exhibit 8 was erroneous, the error would have been harmless.

Section 1.3 – Turner has waived his challenge to the admission of evidence regarding his alleged sexual assault.

[37] During Turner's case-in-chief, Destiney Schick testified that she was present at Hill's house one evening and saw Burgess chasing Turner with an axe and Turner running behind a bush. Tr. Vol. 7 at 15-16. Turner and defense counsel referred to that incident as the "hatchet incident," and Turner testified that it occurred after Burgess told him not to "mess" with his sister Sheyenne, and Burgess found out that Turner had "flirted" with her. *Id*. at 83-84, 96, 137. On cross-examination, the State asked Turner whether he tried to sexually assault Sheyenne. *Id*. at 138. Turner objected on the basis that the question assumed facts not in evidence. *Id*. The trial court overruled his objection. The State then asked Turner whether he had waited for Burgess to leave and then "got on top

of her, pulle[d] her hair while she's asleep." *Id*. Turner's counsel started to object, but Turner said that he would testify as to what happened. *Id*. Turner's counsel again objected that the question assumed facts not in evidence and was inflammatory rather than relevant. *Id*. at 139. Turner repeated that he wanted to testify as to what happened. *Id*. Turner then testified that he believed that Sheyenne liked him, that when she was lying on the floor on her stomach, he got on top of her, pulled her hair a little, and whispered in her ear, and after they agreed that they should not take their relationship any further, he got off of her. *Id*. at 140.

[38] On appeal, Turner argues that the evidence of his alleged sexual assault was inadmissible pursuant to Indiana Evidence Rule 404(b). However, Turner did not present this argument to the trial court, and therefore he may not raise it on appeal. *See Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020) ("[A]s a general rule, a party may not present an argument or issue on appeal unless the party raised that argument or issue before the trial court.") (quoting *Marshall v. State*, 621 N.E.2d 308, 314 (Ind. 1993)), *trans. denied*; *see also Jackson v. State*, 712 N.E.2d 986, 988 (Ind. 1999) (declining to review defendant's claim of evidentiary error under Evidence Rule 404(b) where defendant objected to evidence only on relevancy and unfair prejudice grounds).

[39] Moreover, even if there was error in the admission of the evidence, it was invited. The doctrine of invited error, which is based on the legal principle of estoppel, "forbids a party from taking 'advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or

misconduct.'" *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (quoting *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005)). Despite defense counsel's objections, Turner asserted that he wanted to answer the questions. We agree with the State that "Turner had a right to testify on his own behalf, and the final decision about whether to invoke that right belonged to him, not his attorney." Appellee's Br. at 34 (citing *United States v. Teague*, 953 F.2d 1525, 1532 (11th Cir. 1992) (reaffirming that "a criminal defendant has a fundamental constitutional right to testify in his or her own behalf at trial," and holding that "[t]his right is personal to the defendant and cannot be waived either by the trial court or by defense counsel.")). Turner heard defense counsel's objections, so he was aware that he might not need to answer the questions, but he made clear that he wanted to answer. The trial court allowed him to exercise his fundamental constitutional right to testify on his own behalf. Turner cannot now claim that the trial court erred in doing so.

Section 2 – The trial court did not abuse its discretion by denying Turner's motion to secure attendance of a witness incarcerated in another state.

[40] Last, Turner challenges the trial court's denial of his motion to secure attendance of a witness incarcerated in another state. We review such a motion for an abuse of discretion and will not reverse the ruling absent a clear showing of an abuse of that discretion. *See Stevenson v. State*, 656 N.E.2d 476, 478 (Ind. 1995) (applying abuse of discretion standard to trial court's ruling on motion to

produce witness incarcerated in Indiana) (citing *Eubank v. State*, 456 N.E.2d 1012, 1015 (Ind. 1983)).

[41] Ordinarily, Indiana courts do not have the ability to "compel the attendance of an out-of-state witness over whom the court does not have jurisdiction." *Collins v. State*, 14 N.E.3d 80, 84 (Ind. Ct. App. 2014). However, Indiana has adopted the Uniform Act to Secure Attendance of Witnesses from Outside the State in Criminal Proceedings, Indiana Code Chapter 35-37-5 (the Act), which allows cooperation between Indiana and other states, such as Ohio, that have adopted the Act. Ind. Code § 35-37-5-6(d)(4); Ohio Rev. Code §§ 2939.25 through 2939.29. Indiana Code Section 35-37-5-6 governs the proper procedure for summoning a person incarcerated in another state to testify in Indiana:

> (d) If:
>
> > (1) a criminal action is pending in a court of record of this state by reason of the filing of an indictment or affidavit or by reason of the commencement of a grand jury proceeding or investigation;
> >
> > (2) there is reasonable cause to believe that a person confined in a correctional institution or prison of another state (other than a person awaiting execution of a sentence of death or one confined as mentally ill) possesses information material to such criminal action;
> >
> > (3) the attendance of such person as a witness in such action is desired by a party; and

> (4) the state in which such person is confined possesses a statute equivalent to this section;
>
> a judge of the court in which such action is pending may issue a certificate certifying all such facts and that the attendance of such person as a witness in such court is required for a specified number of days. *Such a certificate may be issued upon application of either the state or defendant demonstrating all the facts specified in this section*.
>
> (e) Upon issuing such a certificate, the court may deliver it to a court of such other state which, pursuant to the laws thereof, is authorized to undertake legal action for the delivery of such prisoners to this state as witnesses.

(Emphasis added.)

[42] We begin by reviewing the trial court's ruling on Turner's motion to transport. Although Turner does not challenge it, a fuller discussion of his motion and the trial court's ruling may be helpful to future defendants. Six days before trial was scheduled to begin, Turner filed a motion to transport Wright, who was incarcerated in Eaton, Ohio, so that she could testify at his trial. Appellant's App. Vol. 3 at 144. The motion stated the place Wright was incarcerated and requested that she be transported to the Delaware County Jail. *Id*. The trial court denied the motion because it did not comply with Indiana Code Section 35-37-5-6. *Id*. at 154. Indeed, Turner's motion did not demonstrate that there was reasonable cause to believe that Wright had information material to his criminal action or that Ohio had enacted a statute equivalent to Section 35-37-5-6, and the motion did not request that the trial court issue a certificate

certifying these facts and that the attendance of the person was required for a specified number of days. The party seeking to compel the appearance of a witness bears the burden of following the required statutory procedures. *Battles v. State*, 486 N.E.2d 535, 538 (Ind. 1985) (citing *Gormon v. State*, 463 N.E.2d 254, 255 (Ind. 1984)). *But see Forbes v. State*, 810 N.E.2d 681, 683-84 (Ind. 2004) (noting that the Act "does not purport to be the exclusive method for sharing information across state lines[,]" and concluding that although State's subpoenas served on out-of-state hospital demanding defendant's blood alcohol test results did not comply with the Act, noncompliance did not render defendant's test results inadmissible where hospital voluntarily responded to State's subpoenas.). Accordingly, the trial court committed no error by denying Turner's motion for transport.

[43] On April 20, 2021, after the second day of trial, Turner filed his motion to secure appearance of a witness incarcerated in another state. In this motion, Turner requested that the trial court issue a certificate certifying that Wright, who was still incarcerated in Ohio, was a material witness and that her attendance was required for two days beginning April 21, 2021. Appellant's App. Vol. 3 at 206. On April 21, 2021, the trial court denied the motion as untimely. *Id*. at 208; Tr. Vol. 6 at 175-76. As the State notes, granting Turner's motion would have resulted in an indefinite delay, given that the Ohio courts also have required statutory procedures to follow, which include holding a hearing. Ohio Rev. Code § 2939.26. The Ohio statute does not require that a hearing on the matter be set within any specific period of time. Therefore, the

time needed by the Ohio courts to satisfy their procedures is outside the control of the Indiana court or the parties. Further, before trial began, Turner had time following the denial of his motion to transport to follow the proper procedures, and he failed to do so. In *Engle v. State*, 467 N.E.2d 712, 716 (Ind. 1984), under similar circumstances, our supreme court upheld the denial of the defendant's motion to certify the necessity of testimony of an out-of-state witness. In upholding the denial, the *Engle* court reasoned that the defendant "did not initiate the correct procedures to compel the appearance of his out-of-state witness until trial was in process" and "the opportunity existed prior to trial to take the correct steps to compel the witness to appear." *Id*. For the same reasons, we conclude that the trial court did not abuse its discretion by denying Turner's motion to secure attendance of a witness incarcerated in another state.

[44] For the first time on appeal, Turner argues that the denial of his motion violated his rights under the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution to have compulsory process for obtaining witnesses. He contends that "the stated reason to deny the motion should be found to be legally insufficient" to deny him these constitutional rights and that "the trial court should have held a full hearing on the importance of the witness and the logistics of obtaining the witness." Appellant's Br. at 23. However, because he did not present this argument to the trial court, he may not raise it now. *See Shorter*, 144 N.E.3d at 841.

[45] Furthermore, Turner cannot show that he suffered any prejudice due to the trial court's denial of his motion. We observe that Wright's deposition was read to

the jury. Tr. Vol. 7 at 21-41. Turner's counsel informed the trial court that the admission of Wright's deposition would address his concerns.[5] Tr. Vol. 6 at 15. Turner did not make an offer to prove regarding the substance of Wright's testimony. *See* Ind. Evid. Rule 103(a)(2) (providing that where trial court's ruling excludes evidence, party is required to inform trial court of substance of evidence by offer of proof, unless the substance was apparent from context). He did not argue to the trial court, nor does he on appeal, that Wright's testimony was going to be any different from her deposition testimony. The jury heard all of the substance that Wright's in-person testimony would have provided, and therefore Turner cannot show that he was prejudiced.

[46] Having found no reversible error, we affirm Turner's murder conviction.

[47] Affirmed.

Bradford, C.J., and Tavitas, J., concur.

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[5] We also note that Turner's counsel was present during Wright's deposition, and he agreed with the trial court that there was no violation of Turner's right of confrontation under the Sixth Amendment. Tr. Vol. 6 at 176.