

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Shannon Whitt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 22, 2023

Court of Appeals Case No.
22A-CR-2512

Appeal from the Grant Superior
Court

The Honorable Jeffrey D. Todd,
Judge

Trial Court Cause No.
27D01-2107-MR-4

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] Matthew Shannon Whitt appeals his murder conviction, arguing that the State failed to rebut his claim of self-defense beyond a reasonable doubt. Because we find the evidence sufficient to support Whitt's murder conviction, we affirm.

Facts and Procedural History¹

- [2] In February 2020, Whitt was on parole and living with his sister Vanessa Arnold in her home in Gas City. Whitt had asked for, but had not yet received, permission to live there. Steven Nickell, Arnold's boyfriend, also lived in Arnold's home. On February 2, Grant County Sheriff's Department Deputies Todd Korporal and Sam Fowler were dispatched to Arnold's home in response to a report of violence. When they arrived, they found Nickell with a badly beaten face and blood on his clothes. Nickell told them that he and Arnold began arguing as he was preparing to move out of Arnold's home. Nickell explained that Whitt had intervened and that Whitt and his friend had beaten him up. Nickell did not want to press charges.
- [3] Whitt had left the scene before the police arrived, but Deputy Fowler spoke with Arnold and Jimmy Sheets, a friend of Whitt who had been present during the incident. After Deputy Fowler had spoken with Arnold for about fifteen minutes, he noticed a small green bruise on her arm, but Arnold did not offer

¹ Whitt does not present the facts in accordance with our standard of review as required by Indiana Appellate Rule 46(A)(6)(b).

any explanation about how she got the bruise. Although Sheets testified at trial that Nickell was pointing an AR-15 rifle at Whitt, Arnold, and him, neither Arnold nor Sheets reported that Nickell pointed a gun at them, was waving a gun around, or was threatening anyone. Neither said that they wanted to press charges.

[4] Nickell collected some belongings, and then Deputy Korporal took him to a friend's house. Nickell expressed concern that he could not find some of his firearms. Deputy Korporal told Nickell that if he needed to retrieve any more of his belongings and was concerned about his safety, the police would accompany him to Arnold's house. At trial, Sheets claimed that Nickell was told repeatedly not to return to Arnold's house, but Deputy Korporal testified that he did not tell Nickell that he could not return to Arnold's house.

[5] In the following days, Whitt believed that Nickell was contacting Whitt's parole officer to get Whitt's parole revoked and that Nickell was breaking into Arnold's house. On February 10, Whitt was at Arnold's house to install security cameras with the permission of his parole officer. Around 12:30 p.m., Nickell and his friend Micah Atkinson drove to Arnold's home. Nickell wanted to retrieve some belongings, and Atkinson wanted to see his dog, which Arnold was caring for until Atkinson could get settled into his new house. When they arrived, there were no vehicles in the driveway. They walked around the house to the back porch. Atkinson stood at the base of the stairs leading up to the porch as Nickell opened the storm door to the porch, entered the porch, and went into the house through a sliding glass door. A sheet or blanket was

hanging over the door, and Atkinson could not see Nickell after he entered the house. Nickell had a Springfield handgun on him, but Atkinson did not observe Nickell with a gun in his hand or drawn while Nickell was on the porch or when he entered the house. Within one or two seconds of Nickell entering the house, Atkinson heard shouting and gunshots. Whitt had shot Nickell in the chest and head with a Glock handgun. Atkinson was frightened and returned to the car. He waited a few seconds, but when no one came out of the house, he left.

[6] Whitt called Arnold, who was at work. Arnold left work around 12:41 p.m. and arrived home at 12:45 p.m. Arnold stayed in her car and called Whitt, who came outside to talk to her. Whitt told Arnold that he wanted to run, but she persuaded him to stay and call 911. Whitt did not want the police to know that he had a gun, so he decided to tell the police that Nickell brought the Glock handgun into the house. Arnold agreed to corroborate his story. She also agreed to tell the police that Nickell had previously taken the Glock along with its case. Whitt took Nickell's Springfield handgun and hid it in the attic. Whitt called 911 around 1:01 p.m. to report the shooting.

[7] When the police arrived, Whitt and Arnold were standing outside the house. The police found Nickell in the house, dead and lying about nine feet from the sliding door. The police arrested Whitt and transported him to the police station for questioning. He was emotional and upset but was cooperative. Initially, Whitt told the police that he had spent the night on Arnold's couch and woke up about 12:30 p.m. He said that he heard something when he was in the

bathroom, and when he walked out, someone hit him on the head with a gun. He explained that he and Nickell started wrestling, and he got the gun away from Nickell and shot the gun “real fast” two or three times. Tr. Vol. 2 at 152. Nickell “went down but not all the way to the ground.” Tr. Vol. 3 at 38. Whitt shot Nickell again when Nickell started “getting back up to come at him.” *Id.*

[8] The police did not believe Whitt’s story that Nickell was carrying the Glock handgun when he entered the house because the case for the Glock had been found in Arnold’s car and a fully loaded magazine for a Springfield handgun had been found in Nickell’s left front pocket. The police asked Whitt more than thirty times whether there was a second gun, but Whitt either did not respond or denied that there was another gun. Eventually, Whitt admitted that there was a second gun that Nickell had when he came to the house, and that the police could find it in the attic. The police found the Springfield handgun hidden in the insulation in the attic. It was fully loaded, had not been fired, and had not been racked.

[9] After Whitt admitted that there was a second gun, he gave a different account of what happened. He said that he was in the bathroom and heard a car outside. He then ran to his sister’s bedroom, grabbed her gun, and went back into the bathroom. He “heard someone coming in the back door racking a gun,” and he shot Nickell before Nickell could shoot him. Tr. Vol. 2 at 153. Whitt claimed that he did not remember if he got hit in the head or how he got the small laceration on his forehead. Ultimately, Whitt admitted that Nickell never hit him on the head with a gun.

[10] On July 14, 2021, the State charged Whitt with murder, level 4 felony unlawful possession of a firearm by a serious violent felon, and level 6 felony obstruction of justice. The State also alleged that he was a habitual offender. Whitt filed a notice of intent to claim self-defense. In August 2022, a jury trial was held.

[11] At trial, Whitt testified that on February 10, 2020, he was in Arnold's house to install security cameras. He stated that he heard someone come in the sliding glass door and assumed it was his sister, so he called out to her. He heard someone say, "[N]o I have something for your bitch ass now[,]” and heard what “sounded like a gun being racked.” Tr. Vol. 4 at 20. Whitt recognized the voice as Nickell's. Whitt grabbed his sister's gun and told Nickell that he was armed. According to Whitt, Nickell responded, “[F]uck you. Stick your pretty boy face around that corner and I'll put another hole in it.” *Id.* at 21. Whitt testified that he “came around the corner” and Nickell “had a gun in his hand pointed in that direction.” *Id.* Whitt said that he quickly fired his weapon two to three times.

[12] Forensic pathologist Dr. Scott Wagoner testified regarding Nickell's wounds. Dr. Wagoner indicated that Nickell had a hard contact chest wound, which means that Whitt's gun was pushed slightly into his skin when it was fired. He stated that the bullet entered on the left side of Nickell's chest, went through his aorta, and exited out his back. He testified that such a wound would cause most people to immediately collapse from lack of blood pressure. Dr. Wagoner testified that Nickell had also been shot in the head, and that the bullet had entered behind his left ear and exited from his right forehead. Dr. Wagoner

explained that such a head wound would cause immediate unconsciousness. Dr. Wagoner testified that Nickell was alive when he was shot in the chest and when he was shot in the head. Dr Wagoner opined that Nickell's cause of death was multiple gunshot wounds.

[13] The jury found Whitt guilty as charged and also found him to be a habitual offender. In September 2022, the trial court sentenced Whitt to sixty years for murder, enhanced by fifteen years for being a habitual offender, and concurrent terms of eight years for unlawful possession of a firearm by a serious violent felon and two years for obstruction of justice. This appeal ensued.

Discussion and Decision

[14] Whitt asserts that the State presented insufficient evidence to rebut his self-defense claim. "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." *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). "We neither reweigh the evidence nor judge the credibility of the witnesses." *Id.* We will affirm the conviction "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) (citation omitted).

[15] A person who knowingly or intentionally kills another human being commits murder. Ind. Code § 35-42-1-1. Self-defense is a legal justification for an otherwise criminal act. *Hall v. State*, 166 N.E.3d 406, 412 (Ind. Ct. App. 2021).

A person is justified in using deadly force and does not have a duty to retreat “if the person *reasonably* believes that force is necessary to prevent serious bodily injury to the person[.]” Ind. Code § 35-41-3-2(c) (emphasis added). Reasonable belief as applied under Indiana’s self-defense statute “requires both subjective belief that force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances.” *Little v. State*, 871 N.E.2d 276, 279 (Ind. 2007).

[16] Our courts have long held that to prevail on a self-defense claim, the defendant 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) (citation and quotation marks omitted).² 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*, 166 N.E.3d at 413 (quoting *Cole v. State*, 28 N.E.3d 1126, 1137 (Ind. Ct. App. 2015)). “Whether a defendant acted in self-defense is generally a question of fact, and on appellate review the finder of fact’s conclusion is entitled to considerable deference.” *Griffin v. State*, 997

² We recently qualified the requirement that a person be in a place where he or she has a right to be, holding that “when a person is not in a place where he or she has a right to be, a self-defense claim is barred only if there is an immediate causal connection between the person’s presence in that place and the confrontation.” *Turner v. State*, 183 N.E.3d 346, 356 (Ind. Ct. App. 2022), *trans. denied*.

N.E.2d 375, 381 (Ind. Ct. App. 2013) (citing *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999)), *trans. denied* (2014). If a defendant is convicted despite his claim of self-defense, we “will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt.” *Wilson*, 770 N.E.2d at 800-01.

[17] Here, the State’s evidence shows that Nickell did not have his handgun in his hand or drawn when he entered the house and that he was shot within seconds of entering the house. Whitt testified at trial that Nickell was pointing a gun at him and that he was fearful of Nickell, but Whitt lied to the police about what happened and related yet a third account of the incident in his trial testimony. His many stories create doubt regarding his credibility, and the jury was not required to accept his version of events even if they were uncontradicted. *See Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004) (“As a general rule, factfinders are not required to believe a witness’s testimony even when it is uncontradicted.”). Even if Whitt initially had a reasonable belief that deadly force was necessary, Whitt shot Nickell multiple times at point-blank range in the chest and the head. Either wound would have caused immediate unconsciousness, such that the second shot was not a valid act of self-defense. *See Birdsong v. State*, 685 N.E.2d 42, 46 (Ind. 1997) (defendant employed unreasonable force and did not validly act in self-defense where victims were shot after being incapacitated). After Whitt shot Nickell, he called Arnold instead of 911. He wanted to run, but Arnold persuaded him to stay and call 911. Before the police arrived, he hid Nickell’s gun and concocted a story that

Nickell had brought the Glock handgun into the house. *See Orozco v. State*, 146 N.E.3d 1038, 1041-42 (Ind. Ct. App. 2020) (evidence that defendant fled scene, did not call for medical assistance for victim, and disposed of murder weapon showed he did not believe he acted in self-defense), *trans. denied*.

[18] Based on the evidence, a reasonable fact-finder could conclude that the State disproved Whitt's self-defense claim beyond a reasonable doubt. Whitt's argument is merely an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. *See Wilson*, 770 N.E.2d at 801. Accordingly, we affirm Whitt's murder conviction.

[19] Affirmed.

Brown, J., and Robb, Sr.J., concur.