

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew C. Damron,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 29, 2021

Court of Appeals Case No.
20A-CR-1226

Appeal from the Greene Superior
Court

The Honorable Dena A. Martin,
Judge

Trial Court Cause No.
28D01-1811-MR-001

Friedlander, Senior Judge.

[1] Andrew C. Damron was charged with murder, two felonies, and a misdemeanor as a result of his fatal stabbing of Scott White. After his jury trial,

Damron was convicted of murder, intimidation, obstruction of justice, and false informing. At sentencing, he received an aggregate term of sixty-nine years. Damron appeals, challenging the sufficiency of the evidence supporting his convictions of one count of murder¹ and one count of Level 5 felony intimidation.² We affirm.

[2] Damron raises the following restated issues:

1. Was there sufficient evidence to establish beyond a reasonable doubt that Damron's threat was directed at Scott to place him in fear of retaliation for a prior lawful act such that it supports Damron's intimidation conviction?
2. Did the State present sufficient evidence to negate Damron's assertion of self defense³ such that his murder conviction can be affirmed?

[3] The statement of the facts in an appellate brief "shall describe the facts relevant to the issues presented for review. . . [and] . . . shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b). "[A]ppellate courts must consider only the probative evidence and reasonable inferences supporting the verdict." *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). Put differently, an appellate

¹ Ind. Code § 35-42-1-1 (2018).

² Ind. Code § 35-45-2-1 (2017).

³ Ind. Code § 35-41-3-2 (2013).

court “must affirm 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.” *Id.* (quotation omitted).

Accordingly, we state the facts most favorable to the jury’s verdict.

[4] Damron and Jeremiah Damron are cousins, and both were friends with Scott. Jeremiah and Scott were close friends. Scott was dating Melody Sebastian, who lived next door to Damron and his father in Linton, Indiana. Jeremiah lived not far from where Scott lived in his trailer. When Scott visited Melody at her house, Damron walked over and talked with him, and he also tagged along with Jeremiah when he visited Scott.

[5] On November 21, 2018, Jeremiah planned to drop off some tools that had been left in his pickup truck and then stop at Scott’s trailer to pay for a 4-wheeler. After he arrived at Matt Davidson’s house, he dropped off the tools and talked with Damron who, unbeknownst to Jeremiah, was there. When Damron learned that Jeremiah was going to visit Scott, he asked to come along. Damron had consumed a couple of beers and some shots of Fireball at his brother’s house before going to Davidson’s home. Jeremiah initially declined to take Damron with him because Damron wanted to “hang out” with Jeremiah and have a beer, but Jeremiah wanted to get home as soon as possible. Tr. Vol. 2, p. 178. Jeremiah reluctantly agreed to take Damron with him to Scott’s after Damron insisted.

- [6] Along the way Damron asked Jeremiah to stop at a liquor store located next to Scott's house. Damron was unable to go inside because it had already closed in anticipation of Thanksgiving the next day. During the trip, Jeremiah noticed that Damron, who was dressed in camouflage, was carrying a 10-inch hunting knife in a sheath attached to his belt.
- [7] After arriving at Scott's house, Jeremiah and Damron walked up to the door of Scott's trailer and knocked. Scott opened the door and told them that it was not a good time and for them to go away and come back tomorrow. Melody was at Scott's trailer and they planned on going out for dinner.
- [8] Jeremiah told police and testified that Damron seemed extremely disappointed by not being able to talk with Scott. Jeremiah said that Damron's "feelings were hurt" and that Damron said that Scott "was just trying to run [Damron] off like everybody else." *Id.* at 182. Jeremiah was ready to leave, but Damron persisted in his attempts to get Scott to come outside and talk. Scott finally told Damron that he needed to put on some boots and that he would come outside. Scott continued to get dressed for dinner while Damron demanded that he come outside. Jeremiah heard Scott say, "come outside and talk to me or be a bitch." *Id.*
- [9] While waiting for Scott to get ready, Melody noticed that he must have been distracted as he took some time before heading outside. Jeremiah saw Damron pacing outside the trailer with his hand resting on the handle of the knife. His attempts to get Damron to leave included eventually making up a story that he

had received a text from Scott prior to their arrival indicating that it was not a good time to come over. That story convinced Damron who returned to the truck. Next, Jeremiah started up the truck to leave.

[10] Scott rushed outside saying, “you guys ain’t got to leave. . . I will hear what you have to say [Damron].” *Id.* at 184. They stayed, and Jeremiah observed the two talk: at times arguing nose-to-nose, and at other times laughing and joking. At one point after noticing Damron’s knife, Scott said, “I would have done stuffed you before you could have got that out” and reached for the knife. *Id.* Damron warned Scott, “don’t ever do that again” and told Scott “not to f**k with me.” *Id.* at 184, 191. Scott was not happy that an uninvited Damron brought a knife to his property. Things de-escalated, however, and Scott told them to come back tomorrow when everyone was sober.⁴

[11] Scott turned to walk back to his trailer, stopping to readjust some plywood planks covering the muddy ground. Damron shouted loudly enough for Scott’s benefit, “get me out of here before I shoot this motherfu**er.” *Id.* at 186. Scott was upset by the statement and rapidly approached the passenger side of the truck where Damron was sitting. At one point, Damron said, “Scott don’t do it.” *Id.* at 188. He leaned down toward Jeremiah while reaching to pull out his knife. Scott, who was unarmed, stood outside the truck yelling at Damron. As

⁴ The record shows that on the night in question Damron had consumed alcohol. In addition, traces of drugs, some of them likely prescription, were present in Scott’s body according to the autopsy report. Tr. Vol. 3, pp. 132-33.

Damron raised his arm, Scott raised his arms in a defensive manner. Damron, who held the knife in his right hand, stabbed Scott in the lower right side of his neck.

[12] Scott placed his hand on his neck and headed toward his trailer. Damron began shouting at Jeremiah to take him to his father's or his brother's house. Jeremiah, who felt threatened by Damron, who was armed with a knife and had just stabbed Scott, agreed to take him to Damron's brother's house. Jeremiah saw Damron lick Scott's blood off his knife and heard him say that he had told Scott "not to f**k with him." *Id.* at 190-91.

[13] While inside his trailer, Scott continued to hold his neck. He told Melody that Damron had stabbed him and that he was dying. She attempted to take Scott to the hospital, but he collapsed once he was outside the trailer. Melody saw Jeremiah's truck pull away as she called 911 and then Scott's parents.

[14] Jeremiah took Damron to Damron's brother's house as instructed. After learning about what had happened, Damron's brother told him to leave. Jeremiah left Damron at his brother's house and drove away after hearing sirens. Damron's brother believed that Damron had also left his house.

[15] Several officers and medical personnel arrived at Scott's trailer where they observed Scott resting his head in Melody's lap while she held a t-shirt to his neck. Scott was transported to the hospital where he later died. Melody informed officers what she had learned about what had happened. Dr. Roland

Kohr, who performed Scott's autopsy, determined that Scott's cause of death was a stab wound to the neck and that the manner of death was homicide.

[16] After speaking with Melody a second time while she was at the hospital, officers located Damron at his brother's house hiding in the bedroom closet in the back of the house. Damron waived his *Miranda* rights and spoke with officers but was angry and confrontational during his interview. He denied being at Scott's and denied having a knife. Even after learning from the officers about Scott's surveillance system,⁵ Damron continued to deny his involvement in Scott's death.

[17] The State charged Damron with murder, two counts of intimidation as Level 5 felonies, obstruction of justice as a Level 6 felony, and false informing as a Class A misdemeanor. The matter proceeded to jury trial at the conclusion of which the jury found Damron guilty of all counts except for one of the intimidation charges. On June 11, 2020, the trial court sentenced Damron to sixty-one years for murder, five years for intimidation, two years for obstruction of justice, and one year for false informing for an aggregate sentence of sixty-nine years.

⁵ Scott had a surveillance camera set up outside his trailer. Jeremiah was aware of the surveillance camera and testified that he had installed it for Scott. The events of that night were recorded, and the recording was admitted as an exhibit at trial.

Standard of Review

[18] In both issues, Damron challenges the sufficiency of the evidence supporting his convictions. We do not assess the credibility of witnesses or reweigh the evidence in determining whether the evidence is sufficient. *Brooks v. State*, 113 N.E.3d 782 (Ind. Ct. App. 2018). We consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* That evidence need not overcome every reasonable hypothesis of innocence. *See Drane v. State*, 867 N.E.2d 144 (Ind. 2007) (quotation omitted). When determining whether an element exists, the jury most certainly may rely on its collective common sense and knowledge acquired through everyday experiences. *See Halsema v. State*, 823 N.E.2d 668 (Ind. 2005). We will affirm the conviction if there is substantial evidence of probative value from which a reasonable factfinder could have concluded beyond a reasonable doubt that the defendant was guilty of the crime charged. *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005).

1. Intimidation Conviction

[19] Damron challenges the sufficiency of the evidence supporting his Level 5 felony intimidation conviction. To establish that Damron committed the offense of Level 5 felony intimidation, the State was required to prove beyond a reasonable doubt that Damron (1) communicated a threat (“Get me out of here before I shoot this motherfu**er.”; Tr. Vol. 2, p. 186) (2) with the intent (3) that Scott be placed in fear of retaliation for a prior lawful act (asking Damron to leave) (4) while drawing or using a deadly weapon (Damron’s hunting knife). *See* Ind. Code § 35-45-2-1(a)(2), (b)(2).

[20] Damron does not challenge the fact that he communicated a threat to harm Scott and that it was done within earshot of him. He challenges the sufficiency of the evidence as it relates to his intent to place Scott in fear of retaliation for the prior lawful act of Scott asking Damron to leave his property. More particularly, he claims, in part, that Scott “revoked his request for Damron to leave.” Appellant’s Br. p. 17. He additionally asserts that the State’s case is lacking because the threat was made in response to Scott’s “unlawful attempt to snatch Damron’s knife out of his holster.” *Id.*

[21] It is true that the State must establish that the legal act occurred prior to the threat and that the defendant intended to place the victim in fear of retaliation for the act. *See Blackmon v. State*, 32 N.E.3d 1178 (Ind. Ct. App. 2015) (quotation omitted). “There is nothing in the intimidation statute that requires a defendant to expressly state what the victim’s prior lawful act was for which a defendant intends to retaliate.” *Chastain v. State*, 58 N.E.3d 235, 240 (Ind. Ct. App. 2016), *trans. denied*. The State is not required to prove intent by direct and positive evidence. *Id.* A defendant’s intent may be proven by circumstantial evidence alone, and knowledge and intent may be inferred from the facts and circumstances of each case. *Id.*

[22] Here, Scott twice asked Damron to leave his property. Scott initially asked Jeremiah and Damron to return the next day because it was not a convenient time. The evidence showed that Scott and Melody were going out to dinner together the night before Thanksgiving. As he had done with Jeremiah, Damron insisted that Scott meet his demands. He paced outside Scott’s trailer

after being asked to leave and had his arm resting on his knife. Jeremiah testified that Damron looked like he had his feelings hurt and that Damron stated that Scott was trying to run him off like others had that day.

[23] As for the second time, Scott suggested to Damron that he return the next day when they were both sober. The evidence reflected that Damron had consumed alcohol and that drugs, some of them likely prescription, were in Scott's system. It would be logical to conclude from the evidence that Damron was frustrated by being "run off" by others that day and was fixated on Scott talking with him for as long as Damron wanted. After Jeremiah convinced Damron, by false pretenses, to return to the truck, Scott acceded to Damron's demands and agreed to hear what Damron had to say. Within a relatively brief span of time, the conversation was both congenial and confrontational centering mostly on Damron's knife and that he brought it with him to see Scott. In the end, Scott opened the truck door for Damron and told him to return the next day. Damron responded by threatening to shoot Scott as Scott walked away from the truck. After regaining Scott's attention, Damron fatally stabbed Scott in the neck.

[24] The evidence of Damron's emotional state and his corresponding reactions each time Scott told him to return the next day to talk, supports the conclusion that Damron's threat was made in response to Scott's repeated requests for Damron to leave the premises, thus being the one to end their conversations. The evidence is sufficient to support Damron's conviction of intimidation.

Murder Conviction

[25] As for Damron’s murder conviction, he challenges the sufficiency of the State’s evidence to rebut his assertion of self defense. When a defendant challenges the State’s sufficiency of the evidence to rebut a claim of self defense, the standard of review remains the same as for any sufficiency of the evidence claim. *Hughes v. State*, 153 N.E.3d 354 (Ind. Ct. App. 2020). To establish that Damron committed murder, the State was required to prove beyond a reasonable doubt that Damron knowingly or intentionally killed another human being—Scott. *See* Ind. Code § 35-42-1-1.

[26] Self defense is a legal justification for an otherwise criminal act. *Gammmons v. State*, 148 N.E.3d 301 (Ind. 2020). The self-defense statute provides that an individual has the right to use “reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(c) (2013). A person is justified in using deadly force, and does not have a duty to retreat, if the person reasonably believes such force is necessary to prevent serious bodily injury to himself or a third person, or to prevent the commission of a forcible felony. Ind. Code § 35-41-3-2(c)(1) & (2). A person is not justified in using force if the person is committing or escaping from the commission of a crime. Ind. Code § 35-41-3-2(g)(1) (2013). There must be an immediate causal connection between the crime and the confrontation to preclude the defense. *Gammmons*, 148 N.E.3d 301.

[27] To prevail in presenting a self-defense claim, the defendant must show he was in a place where he had a right to be; did not provoke, instigate, or participate willingly in the violence; and had a reasonable fear of death or great bodily harm. *Wilson v. State*, 770 N.E.2d 779 (Ind. 2002). When the defendant raises a self-defense claim which finds support in the evidence, the State carries the burden of negating at least one of the necessary elements. *Hughes*, 153 N.E.3d 354. The State may meet its burden by rebutting the defense directly—by affirmatively showing the defendant did not act in self defense—or by simply relying on the sufficiency of its evidence in chief. *Miller v. State*, 720 N.E.2d 696 (Ind. 1999). Whether the State has met its burden is a question of fact for the jury. *Id.* If a defendant is convicted despite his claim of self defense, an appellate court 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 799.

[28] Damron presented evidence to the jury that Scott was a good fighter and that Jeremiah was worried that Damron would not “be able to handle” Scott. Tr. Vol. 2, p. 217. He presented the argument that he was trying to retreat from Scott when he said, “Get me out of here before I shoot this motherfu***er,” and, “go, go, go, go.” Tr. Vol. 2, pp. 186, 217.

[29] Damron’s act of intimidating Scott meets the causal connection requirement of *Gammmons*, thus precluding a claim of self defense. Scott opened the door of the truck for Damron, told him to come back the next day, and proceeded to adjust some pieces of plywood on his way back to his trailer. Damron shouted his

threat loudly enough for Scott to hear thus instigating the confrontation between the two. Damron's threat directly led to the confrontation, concluding with Damron fatally stabbing Scott in the neck shortly after the confrontation began. A reasonable jury could conclude that there was an immediate causal connection between Damron's threat and the confrontation leading to Scott's death.

[30] In any event, the State sufficiently rebutted Damron's claim of self defense. Scott walked away from Damron after telling him to come back the next day. He was adjusting some plywood before returning to his trailer to finish dressing for dinner with Melody. Scott returned to the truck only after Damron threatened him. The evidence reflects that Damron provoked and was the instigator of the confrontation ending in Scott's death. As an initial aggressor or at least a mutual combatant, Damron did not withdraw from the confrontation or communicate to Scott his intention to do so.

[31] Next, Damron's use of deadly force was unreasonable given the circumstances. He responded to the situation of an unarmed Scott rapidly approaching the truck by pulling out his 10-inch hunting knife and stabbing Scott in the neck. "The amount of force used must be proportionate to the urgency of the situation." *Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004), *trans. denied*. "When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished." *Id.*

- [32] Further, although a victim's reputation, propensity for violence, prior threats and acts may be relevant to a defendant's reasonable fear, that reputation must be known by the defendant. *See Brand v. State*, 766 N.E.2d 772 (Ind. Ct. App. 2002). Damron did not show that he had a reasonable fear of death or great bodily harm at the hands of Scott, but instead showed that Jeremiah was concerned for Damron based on what he knew.
- [33] The trier of fact resolves conflicts in the evidence and decides which witnesses to believe or disbelieve. *Ferrell v. State*, 746 N.E.2d 48 (Ind. 2001). If the testimony believed by the jury is enough to support its verdict, then we will not disturb the verdict on appeal. *Id.* Damron placed his evidence of self defense before the jury and the jury chose to reject it as was its right. To the extent Damron tacitly asks us to reweigh the evidence, we decline to do so as it is not our duty on appeal. *See Brooks*, 113 N.E.3d 782. The State sufficiently rebutted Damron's claim of self defense such that Damron's murder conviction is affirmed.

Conclusion

- [34] For the foregoing reasons, the trial court's judgment is affirmed.
- [35] Judgment affirmed.

May, J., and Robb, J., concur.