

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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John L. Vires,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 2, 2023

Court of Appeals Case No.  
22A-CR-1733

Appeal from the Allen Superior  
Court

The Honorable Frances C. Gull,  
Judge

Trial Court Cause No.  
02D06-2109-MR-19

### Memorandum Decision by Judge Tavit

Judges Vaidik and Foley concur.

**Tavit, Judge.**

## Case Summary

- [1] John Vires appeals his conviction for murder. Vires argues that the State presented insufficient evidence to rebut his claim of self-defense. Finding that the State presented sufficient evidence, we affirm.

## Issues

- [2] Vires raises one issue on appeal, which we restate as whether the State presented sufficient evidence to rebut Vires's claim of self-defense.

## Facts

- [3] On the night of September 21, 2020, William Erhardt and Vires, two close friends, were at Vires's house in Fort Wayne drinking and celebrating Erhardt's birthday. Some time later, Vires drove the two to a nearby bar, where they continued to drink. Vires eventually left the bar to charge his phone in his truck and smoke a cigarette. According to Vires, Erhardt, who did not want to leave the bar, stopped Vires before he reached the truck and assaulted Vires. Erhardt then demanded that Vires drive him back to Vires's home, and Vires did so.
- [4] Vires had surveillance cameras inside and outside of his home.<sup>1</sup> The video shows Vires driving erratically and parking on the road verge in front of Vires's house shortly after 1:00 a.m. on September 22, 2020. The video then shows the following: Vires exited the driver's side of his truck, which faced the road, as

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<sup>1</sup> The surveillance cameras did not record audio.

Erhardt exited the passenger's side. Erhardt walked toward the back of the truck, and, as Vires attempted to walk past him, Erhardt caught him by the shoulders. Vires quickly twisted free and continued walking toward his front door.

[5] The video resumes from inside Vires's living room. Erhardt followed Vires into the house and immediately began shouting at Vires. Vires turned around and the two men engaged in a heated verbal argument but did not physically fight one another. Vires eventually turned around and walked back towards the bedroom, which is connected to the living room. Erhardt followed him to the bedroom door, and Vires appeared to push Erhardt into a nearby armchair and enter the bedroom.<sup>2</sup> Erhardt stood up and walked around behind the armchair, toward the front door, then turned back to face the bedroom. A few seconds later, Vires retrieved his nine-millimeter handgun; emerged from the bedroom with the handgun in his right hand; and, almost immediately, fired directly at Erhardt's chest. Erhardt collapsed to the ground. Vires called 911 and gave his address to the dispatcher, but the call then disconnected.

[6] Police arrived at the scene and set up a perimeter. Police located Vires outside the house, and Vires told them that he "shot his friend[,] and his friend was inside by the front door." Tr. Vol. II p. 144. Vires further stated, "I had to shoot him." *Id.* at 154. Police and medics entered the house and located

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<sup>2</sup> Vires testified that Erhardt "stumbled over the chair." Tr. Vol. III p. 45.

Erhardt, whom the medics pronounced dead at the scene. Police located Vires's handgun in the living room but did not locate any weapons on Erhardt's person.

[7] Meanwhile, police arrested Vires and placed him in Officer Julian Mestre's squad car. Vires stated to Officer Mestre that "he wasn't gonna let [Erhardt] hit him like that." *Id.* at 155. Officer Mestre observed "redness to [Vires's] eye" and "some blood on [Vires's] hand," but Vires denied needing medical treatment. *Id.* at 157.

[8] On September 23, 2021, the State charged Vires with murder, a felony, and sought an enhancement based on Vires's use of a firearm in the commission thereof. The trial court held a jury trial in April 2022. Vires testified in his own defense and asserted that he shot Erhardt in self-defense. Vires testified that, outside the bar, Erhardt struck him in the face "[a]t least four or five times" and "body slammed" Vires to the ground,<sup>3</sup> Tr. Vol. III p. 40; that inside Vires's truck, Erhardt grabbed Vires by the neck; and that Erhardt tried to place Vires in a headlock after the two men exited the truck at Vires's house.

[9] Vires further testified that, at his house, Erhardt demanded Vires's assurance that Vires would not report Erhardt to the police and threatened, "You need to

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<sup>3</sup> During an interview with law enforcement shortly after Vires's arrest, Vires stated that Erhardt hit him in the face nine times; "at least five times," State's Ex. 51 at 6:39-:44; three times in the eye or face; and that he did not know how many times Erhardt struck him. Vires also did not mention Erhardt slamming him to the ground during the interview.

think about your own life and the life of your father and your little brother.”

Tr. Vol. III p. 44. Vires testified that he retrieved his gun because he “wanted to get [Erhardt] to leave” and that he “had no intentions to shoot [Erhardt].” *Id.*

at 46. He testified that he “was afraid that [Erhardt] was gonna kill [him].” *Id.*

- [10] The jury found Vires guilty of murder and of using a firearm in the commission thereof. The trial court entered judgment of conviction and sentenced Vires to sixty years in the Department of Correction enhanced by fifteen years due to the firearm enhancement. Vires now appeals.

## **Discussion and Decision**

- [11] Vires argues that the State failed to present sufficient evidence to rebut Vires’s claim of self-defense. We disagree.
- [12] The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any claim regarding the sufficiency of the evidence. *Hughes v. State*, 153 N.E.3d 354, 361 (Ind. Ct. App 2020) (citing *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999)), *trans. denied*. When analyzing a claim of insufficient evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Larkin v. State*, 173 N.E.3d 662, 667 (Ind. 2021). It is the factfinder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether the evidence is sufficient to support a conviction. *Stewart v. State*, 167 N.E.3d 367, 377 (Ind. Ct. App. 2021) (citing *Sallee v. State*, 51 N.E.3d 130, 133 (Ind. 2016)), *trans. denied*. 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. *Stewart v. State*, 167 N.E.3d 367, 376 (Ind. Ct. App. 2021) (citing *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002)).

[13] “Self-defense is a legal justification for an otherwise criminal act.” *Id.* (citing *Gammmons v. State*, 148 N.E.3d 301, 304 (Ind. 2020)). Indiana Code Section 35-41-3-2 governs claims of self-defense and provides, in relevant part:

(c) A person is justified in using 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. 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. . . .

[14] Regarding the defendant’s fear of harm, the “defendant must satisfy both an objective and 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 *Little v. State*, 871 N.E.2d 276, 279 (Ind. 2007)). Further, “[t]he ‘reasonableness’ of a defendant’s belief that he was entitled to act in self-defense is determined from that point in time at which the defendant takes arguably defensive action” and “[t]hat belief must be supported

by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant.” *Henson v. State*, 786 N.E.2d 274, 278 (Ind. 2003).

Finally, even if the defendant’s fear is reasonable, the defendant’s use of force must be “proportionate to the urgency of the situation.” *Larkin*, 173 N.E.3d at 670 (quoting *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999)).

[15] If a defendant raises a self-defense claim that finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Stewart*, 167 N.E.3d at 376 (citing *Hughes*, 153 N.E.3d at 361). The State may meet this 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 its case-in-chief. *Id.* (citing *Miller*, 720 N.E.2d at 700).

[16] Here, video evidence captured Vires emerging from his room and immediately shooting Erhardt directly in the chest. At the time, Erhardt was unarmed, and an armchair separated the two men. The two also had not been physically fighting in the house. Vires was not in imminent danger, and deadly force was not necessary to protect Vires. Vires’s statement that “he wasn’t gonna let [Erhardt] hit him like that,” moreover, suggests that Vires shot Erhardt, not to protect himself, but to retaliate against Erhardt. Tr. Vol. II p. 155. The jury, thus, could have found beyond a reasonable doubt that Vires did not reasonably fear death or serious bodily injury at the time he shot Erhardt. The jury could have further found that Vires’s shooting of Erhardt was disproportionate under the circumstances.

[17] Vires argues that his fear was reasonable because Erhardt assaulted him outside of the bar and verbally threatened him. We are not persuaded. Whether Vires reasonably feared death or serious bodily injury at the time Erhardt allegedly assaulted him outside of the bar is insufficient to prove that Vires reasonably feared death or seriously bodily injury in the moments before he shot Erhardt. Further, Vires’s self-serving testimony is the only evidence that Erhardt verbally threatened him, and the jury was not obliged to believe that testimony. *See Randolph v. State*, 755 N.E.2d 572, 576 (Ind. 2001) (holding “[t]he jury was free to disbelieve [the defendant’s] self-serving testimony.”). Vires essentially asks us to reweigh the evidence, which we cannot do.

[18] Again, the use of deadly force was not necessary at the time Vires shot Erhardt. The video evidence depicts no aggressive movement by Erhardt just prior to the shooting.

## **Conclusion**

[19] The State presented sufficient evidence to rebut Vires’s claim of self-defense. Accordingly, we affirm.

[20] Affirmed.

Vaidik, J., and Foley, J., concur.