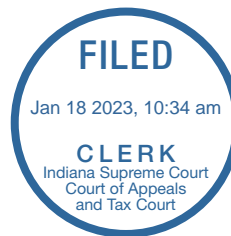


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Dwight P. Shotts,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

January 18, 2023

Court of Appeals Case No.  
22A-CR-338

Appeal from the Marion  
Superior Court

The Honorable Grant W.  
Hawkins, Judge

Trial Court Cause No.  
49D31-1805-MR-14340

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Dwight Shotts (Shotts), appeals his conviction for murder, a felony, Ind. Code § 35-42-1-1(1).

[2] We affirm.

## ISSUE

[3] Shotts presents this court with one issue, which we restate as: Whether the trial court abused its discretion and infringed upon Shotts' constitutional rights when it excluded evidence of certain prior bad acts by the murder victim and the murder victim's wife.

## FACTS AND PROCEDURAL HISTORY

[4] Shotts, Anthony Cline (Cline), and Billy Hicks (Hicks) were acquainted through fishing at the same lakes. All three men also dealt drugs. Shotts sold marijuana and prescription medication. Shotts would purchase prescription medication from Cline and then resell it. Cline routinely purchased marijuana from Shotts. Hicks "fronted" marijuana on credit to Shotts, who would then sell the marijuana, repay Hicks, and keep the profit. (Transcript Vol. IV, p. 137). In April 2018, Hicks fronted Shotts one pound of marijuana. Shotts resold the marijuana but later purportedly received complaints from the buyer that the marijuana was not as potent as promised. Shotts did not pay Hicks for the marijuana. Hicks sent Shotts several Facebook messages demanding payment, including a message on Tuesday, April 24, 2018, in which, in response to Shotts' assurances of payment, Hicks referred to having to call "the sicarios", which is a term for a hitman. (Exh. Vol. III, p. 49).

[5] On April 24, 2018, Cline went to his job at a home improvement store. Cline had medication to sell, and, after leaving work that afternoon, he went to Shotts' home in the 3100 block of East Tabor Street in Marion County, Indiana. Cline, who was living separately from his wife Kellie Cline (Kellie) at the time, did not show up to take their two children to dinner that evening as planned. Kellie still had access to Cline's cell phone account and was able to discern that Shotts was the last person Cline had contacted with his cell phone. Kellie contacted Shotts, who claimed that Cline had never arrived at his house. Cline's family immediately began looking for him and filed a missing person's report on April 25, 2018. Also on April 25, 2018, Cline's truck was found in a parking lot within sight of Shotts' home.

On April 26, 2018, a detective with the Indianapolis Metropolitan Police Department (IMPD) met with Shotts on his front porch. Shotts told the detective that he had no knowledge of Cline's whereabouts.

[6] On Monday, April 30, 2018, Shotts called 9-1-1 and reported that he did "not know how [he] was going to explain it," but there was "a guy dead in [his] house." (Exh. 139 at :24-:26). Shotts told the 9-1-1 operator that he had had an "altercation" and a "fight" with his friend, he shot him, the body had been in Shotts' bathtub for a week, and that "now he stinks[.]" (Exh. 139 at :51-1:01, 3:16). When law enforcement arrived, they found Shotts in the garage of his home sitting in a chair with a .38 caliber revolver next to him. Cline's body was found in the bathtub of the only bathroom in Shotts' home. Cline was later determined to have died from a single contact gunshot wound to the back of his head.

[7] Shotts was transported from his garage to the IMPD headquarters where he provided a statement in which he identified Hicks as the person who had shot Cline. Shotts reported that Cline had owed Hicks money, Shotts had arranged to have Cline come to the East Tabor Street home, and that Hicks had shot Cline and then had run away, leaving the murder weapon with Shotts. Shotts was taken into custody after providing his statement. Subsequent investigation of Hicks' and Shotts' cell phone data revealed that Hicks was not at Shotts' home at the relevant time. Although Shotts had attempted to delete data from his cell phone prior to calling 9-1-1, investigators recovered texts between Hicks and Shotts dating from April 20 to April 30, 2018, concerning the money Shotts owed Hicks for the fronted marijuana and in which Hicks threatened Shotts. During this same period, Shotts was also being contacted and/or threatened by at least three other drug dealers to whom he owed money.

[8] On May 2, 2018, the State filed an Information, charging Schott with Cline's murder. On November 7, 2021, the State filed two motions in limine, the first of which pertained to Kellie's 2019 federal conviction for embezzlement of approximately \$50,000 from her employer, Greenwood Middle School, where Kellie had previously been the extracurriculars treasurer. The State sought to exclude evidence of the nature and circumstances, but not the existence of, Kellie's embezzlement conviction. The State's second motion in limine requested that Shotts be prohibited from eliciting any testimony from Kellie regarding Cline's 2011 conviction for theft as well as any testimony that she suspected that Cline had been stealing appliances from his employer.

[9] On December 13, 2021, the trial court convened Shotts' three-day jury trial. Shotts proceeded on a defense theory that Cline had attempted to rob him and that Shotts was acting in self-defense when he shot Cline. Before the presentation of the evidence, the parties litigated the State's motions in limine. Shotts argued that the evidence of Cline's and Kellie's prior bad acts was relevant to show that Cline was in a desperate financial condition in April 2018, thus providing a motive for his attempt to rob Shotts, and that presentation of this evidence fell within his right to pursue his defense. Shotts' counsel represented to the trial court that Kellie and Shotts had knowledge of the facts that were the subject of the State's motions, that it was "common knowledge" that Cline was stealing from his employer, and that Kellie's embezzlement from her employer had been exposed as part of a public investigation. (Tr. Vol. III, p. 7). The State argued that the challenged evidence was precluded by Indiana Evidence Rule 404(b) and that any suggestion that Cline was stealing from his employer was merely speculative. The State agreed that Shotts could show that Cline had "money issue problems", but that, otherwise, the proposed evidence as to Cline was inadmissible. (Tr. Vol. III, p. 6). As to the evidence of Kellie's embezzlement, the State agreed that Shotts could impeach Kellie with the fact that she had been convicted in federal court of the offense, but it objected to Shotts exploring the identity of Kellie's employer, any link between her embezzlement and her termination from her job, and other details of Kellie's offense. Shotts countered that the evidence regarding Kellie was relevant to show the extent of Cline's financial desperation in April 2018, in that the family had lost not only Kellie's legitimate income, but also the stream of money from her embezzling. The trial court issued a preliminary ruling granting the State's motions in limine, excluding the Cline evidence and ruling that Shotts could impeach Kellie with her embezzlement conviction and could ask her about being terminated, but that Shotts was prohibited from expressly linking her crime to her termination from her job.

[10] At trial, Kellie testified that, at the time of the murder, Cline and she had been separated for three weeks and were living in two separate households but still shared finances, including a bank account that was overdrawn at the time of Cline's murder. Kellie told the jury that she had been fired from her previous job a few weeks before April 24, 2018, and that she had been convicted of embezzlement in 2019. After Kellie's in-trial testimony, she testified in relevant part during Shotts' offer of proof that she had embezzled \$50,000 over a period of years. Concerning the allegation that Cline was stealing from his employer, Shotts elicited testimony during his offer of proof that Kellie saw appliances in their garage, she had asked Cline about their source, and that she did not necessarily accept his explanation. Kellie did not testify

what Cline’s explanation for the appliances was, but she affirmed that she thought that something “untoward” was going on. (Tr. Vol. III, p. 137). Shotts did not provide any evidence during this offer of proof indicating that, on the date of the murder, Shotts had knowledge of Cline’s 2011 theft conviction, Cline’s alleged theft from his employer, or the details of Kellie’s embezzlement. The trial court renewed its ruling granting the State’s motions in limine.

[11] Shotts testified on his own behalf at trial. Shotts told the jury that in 2009 he had been severely injured during a home invasion and that the experience had stuck with him and made him more afraid of people. Regarding the soured drug deal with Hicks, Shotts told the jury that he interpreted Hicks’ reference to ‘sicarios’ in his texts as a threat that “[t]hey’re going to send somebody after me.” (Tr. Vol. IV, p. 137). Shotts’ in-trial version of the offense itself was that on April 24, 2018, he was going to pay Cline \$500 for prescription medication and that when Cline arrived at his home that day everything at first seemed normal. However, Cline had suddenly pulled a gun on Shotts and demanded Shotts’ marijuana, which Shotts had refused. When Cline was distracted by Shotts’ dog, Shotts wrestled the gun away from Cline in the bathroom and shot him in a life or death struggle. Shotts reiterated several times during his testimony that he thought that Hicks had sent someone to attack him. During re-direct examination, Shotts testified that he was shocked that Hicks had sent Cline to rob him. When asked, “Now, at the time, did you know about [Cline’s] financial issues?”, Shotts responded, “I did not, no.” (Tr. Vol. IV, p. 197). After Shotts’ testimony, he did not make any additional offer of proof regarding the evidence excluded by the State’s successful motions in limine.

[12] During closing argument, Shotts emphasized the evidence that led him to be afraid that Hicks would send someone to attack him, including his lingering fear as a result of being a victim of a prior violent home invasion and Hicks’ threatening texts and behavior. The jury found Shotts guilty as charged. On January 26, 2022, the trial court held Shotts’ sentencing hearing. The trial court sentenced Shotts to fifty-five years in the Department of Correction.

[13] Shotts now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Standard of Review*

[14] Shotts appeals the trial court’s exclusion of evidence that Cline had been convicted of theft in 2011, Cline stole appliances from his employer, and that Kellie’s termination from her employment was specifically because she had embezzled \$50,000 from her employer. We review a trial court’s evidentiary rulings for an abuse of its discretion and will reverse only for an abuse of that discretion, which occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law. *James v. State*, 96 N.E.3d 615, 618 (Ind. Ct. App. 2018), *trans. denied*. Inasmuch as the trial court’s ruling on the admissibility of evidence hinges on facts, we do not reweigh evidence, and we consider the evidence most favorable to the trial court’s ruling. *Id.* We may affirm the trial court’s ruling on any basis sustained by the record, even if our rationale was not relied upon by the trial court. *Id.*

### II. *Admissibility of the Excluded Evidence*

[15] Shotts contends that the trial court’s exclusion of the evidence at issue was an abuse of its discretion that impermissibly infringed upon his right to present his defense. Whether it is rooted directly in the Due Process Clause of the Fourteenth Amendment or the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). “The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense . . . This right is a fundamental element of due process of law.” *Kubsch v. State*, 784 N.E.2d 905, 924 (Ind. 2003) (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). However, although this right is fundamental and of the utmost importance, it is not absolute. *Marley v. State*, 747 N.E.2d 1123, 1132 (Ind. 2001). “[T]he accused, as is required by the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Id.* (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)).

[16] Here, Shotts proceeded on a self-defense theory. In Indiana, a person is justified in using deadly force and has no duty to retreat “if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person . . . or the commission of a forcible felony.” I.C. § 35-41-3-2(c) (2013). In the context of Indiana’s self-defense statute, the phrase

'reasonably believes' requires both a subjective belief that the force used was necessary and that such belief was one that a reasonable person would have had under the circumstances. *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007). While evidence regarding a victim's character is generally prohibited, an exception is made when a defendant raises self-defense. *Holder v. State*, 571 N.E.2d 1250, 1253-54 (Ind. 1991). Where self-defense is at issue, a defendant may have such evidence admitted to show either that the victim had a violent character which gave the defendant reason to fear him or that the victim was the initial aggressor. *Id.* at 1254. A defendant may use evidence of specific bad acts to show the victim's violent character, but only general reputation evidence is admissible to prove that the victim was the initial aggressor. *Id.* A defendant seeking to have the victim's specific bad acts admitted must first provide a foundation showing that the defendant knew about those acts before he killed the victim. *Id.* In addition, evidence of crimes, wrongs or other acts is generally inadmissible to prove a person's character to show that person acted in conformity with that character on a particular occasion, but such evidence may be admissible for other purposes, such as to prove motive, intent, or plan. Ind. Evidence Rule 404(b)(1)-(2). Evidence that may be admissible under Rule 404(b) must also be admissible under Indiana's other Evidence Rules pertaining to relevancy. *Hicks v. State*, 690 N.E.2d 215, 221 (Ind. 1997). Rule 401 provides that evidence is relevant if it has any tendency to make a fact that is of consequence in determining the action more or less probable. Rule 403 provides in pertinent part that a trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury.

[17] Shotts contends that the evidence at issue was relevant to show his reasonable belief that the deadly force he used was necessary by showing Cline's motive to rob him. Shotts sought to have two specific instances of Cline's conduct admitted into evidence, namely, Cline's 2011 theft conviction and his purported theft from his employer. Shotts never made any showing that these specific acts were violent so as to render them relevant to showing Cline's violent nature. However, even if we were to assume, without deciding, that this evidence was relevant to showing Cline's violent character, in order for the evidence to be relevant to the issue of Shotts' fear of Cline, Shotts was required to provide a foundation that he knew about Cline's theft conviction and Cline's theft from his employer before he shot Cline. *Holder*, 571 N.E.2d at 1254; *see also Weedman v. State*, 21 N.E.3d 873, 891 (Ind. Ct. App. 2014) (observing that a victim's prior acts, "if known by the defendant," may be relevant to the issue of defendant's fear of the victim), *trans. denied*. Shotts did not make his own offer of proof

regarding his knowledge of these facts, and Kellie did not testify that Shotts knew these facts during her offer-of-proof testimony. The comment of Shotts' counsel that it was "common knowledge" that Cline was stealing from his employer, even if taken as true, did not establish that Shotts was personally aware of that common knowledge. Therefore, we conclude that Shotts did not establish a sufficient foundation for the admission of this evidence to show his fear of Cline.

[18] Neither can we conclude that the evidence pertaining to Cline was admissible under Rule 404(b). Shotts does not explain why Cline's 2011 theft conviction had any relevance to Cline's financial condition in 2018, and we hold that it did not. Regarding Cline's alleged theft from his employer, Kellie's testimony during her offer of proof failed to clearly establish that she believed that Cline stole appliances from his employer, and Shotts failed to establish that Cline's alleged theft from his employer occurred within a timeframe that made it relevant to his defense theory. Shotts does not even attempt to argue that the probative value of this evidence outweighed its danger of unfair prejudice, confusion of the issues, or misleading the jury under Rule 403. Therefore, we find no abuse of the trial court's discretion in excluding evidence of Cline's 2011 theft conviction and any allegation that he stole from his employer.

[19] We reach a similar conclusion regarding the proposed evidence of the details of Kellie's embezzlement. Schott argues that he should have been able to inform the jury that Kellie embezzled \$50,000 and that the embezzlement of these funds was the specific reason she was terminated from her employment because those facts were relevant to show the dire state of the family's finances and, thus, Cline's motive to rob Shotts. According to Shotts, these facts were relevant to his defense because they showed that the family had been deprived of both Kellie's legitimate income and the stream of money from her embezzling. However, we agree with the State that Shotts did not establish that this evidence was relevant for purposes of showing Cline's motive to rob Shotts, as Kellie testified during her offer of proof that she had taken the funds over a period of years and there is nothing in the record indicating that Kellie ever shared her embezzled money with her family such that being deprived of those funds would have rendered the family and Cline more financially desperate in April 2018 than would have otherwise been the case. In addition, Shotts does not explain how this evidence passed Rule 403's balancing test.

[20] Inasmuch as Shotts contends that the additional evidence of Kellie's embezzlement was relevant to show his reasonable fear of Cline, although his counsel represented to the trial



court that Kellie's embezzling was uncovered through a public inquiry, Shotts failed to provide a foundation through an offer of proof that he was personally aware of these facts at the time he shot Cline. *See Holder*, 571 N.E.2d at 1254; *Weedman*, 21 N.E.3d at 891. Rather, at trial, Shotts testified that at the time of the offense, he had no knowledge of Cline's finances. As such, we find no error in the exclusion of this evidence.<sup>1</sup>

## CONCLUSION

- [21] Based on the foregoing, we conclude that the trial court's evidentiary ruling was within its discretion and that Shotts' constitutional rights were not curtailed where he presented his self-defense theory within the confines of the Indiana Rules of Evidence.
- [22] Affirmed.
- [23] Bailey, J. concurs in result
- [24] Vaidik, J. concurs in result with separate opinion

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<sup>1</sup> Given our resolution, we do not address the parties' argument regarding harmless error.

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I N T H E  
C O U R T O F A P P E A L S O F I N D I A N A

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Dwight Shotts,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff*

Court of Appeals Case No.

22A-CR-338

**Vaidik, J., concurring in result.**

- [25] As the lead opinion notes, evidence of a victim’s character is generally inadmissible, but in a self-defense case, evidence that the victim has a violent character can be admitted to prove (1) that the victim was the initial aggressor or (2) that the defendant was in fear of the victim (if the defendant was aware of the victim’s violent character). *Holder v. State*, 571 N.E.2d 1250, 1253-54 (Ind. 1991). But we shouldn’t even be talking about this principle. Shotts makes no claim that Cline had a violent character, so the rule governing evidence of violent character is irrelevant to this appeal.
- [26] Rather than trying to show that Cline had a violent **character**, generally, Shotts simply sought to prove that Cline had a motive to be violent **in this particular situation**. Specifically, he sought to admit evidence of prior thefts by Cline and his wife to prove that Cline was struggling financially and therefore had a reason to rob Shotts. Such claims—that other crimes, wrongs, or acts prove motive—fall squarely under Evidence Rules 404(b) and 403. The lead opinion ultimately analyzes Shotts’s argument under those rules, and I agree with

that analysis. However, because of the unnecessary detour regarding evidence of “violent character,” I concur only in result.

[27]