

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Victor Allen Young,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 15 2022  
Court of Appeals Case No.  
21A-CR-2552  
Appeal from the  
Lake Superior Court  
The Honorable  
Natalie Bokota, Judge  
Trial Court Cause No.  
45G02-1802-MR-5

**Molter, Judge.**

- [1] Victor Allen Young was convicted after a jury trial of murder and resisting law enforcement as a Level 6 felony. The trial court added two sentencing

enhancements—one for using a firearm and the other for being a habitual offender—yielding an aggregate sentence of eighty years. Young now appeals, arguing that the trial court abused its discretion by denying his requests for jury instructions on the lesser included offense of voluntary manslaughter and for self-defense. Because we find that the trial court did not abuse its discretion, we affirm.

### **Facts and Procedural History**

[2] In February of 2018, Young was living at the Rodeway Inn in Merrillville, Indiana. One afternoon, he and the hotel’s manager, Shannon Goss, drove to buy cigarettes. During the ride, Young received a phone call from Miles Beach, which started an argument. Young and Goss eventually returned to the hotel, parking in the front parking lot. When they arrived, Beach and a man identified as “Big Lord” or “Fat Lord” were waiting in an SUV. Tr. Vol. 3 at 53.

[3] Beach and Big Lord exited the SUV and approached Young’s vehicle. As Young, Beach, and Big Lord stood next to the passenger’s seat of Young’s vehicle, they began to argue and soon were bumping chests. After a few minutes of arguing, Young returned to the driver’s side of the car and retrieved a handgun from underneath the seat while Goss continued arguing with Beach and Big Lord. The argument continued with all participants until Young took a step back, pulled out his gun, and aimed it at Beach. Beach started to run away toward the SUV when Young began firing, shooting Beach in the back.

- [4] Young, Goss, and Big Lord all fled the scene. After the shooting, Corporal Joshua Miskus of the Merrillville Police Department was informed of the incident and that Young was a suspect driving a white Ford Mustang with a stripe. Corporal Miskus spotted the vehicle at a fast-food restaurant drive-thru and began to approach on foot. The car left the drive-thru and fled from Corporal Miskus, which started a police chase through traffic. The Mustang eventually pulled over in a parking lot, and Corporal Miskus arrested Young.
- [5] Young was charged with the murder of Beach and for Level 6 felony resisting law enforcement. After the State rested its case, the trial court declined Young's requests for jury instructions on self-defense and voluntary manslaughter as a lesser included offense of murder. The jury found Young guilty of murder, and the trial court sentenced him to eighty years.

## **Discussion and Decision**

### **I. Voluntary Manslaughter Instruction**

- [6] We review a trial court's jury instructions for an abuse of discretion. *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016). When reviewing instructions, we consider them as a whole and in reference to each other. *Evans v. State*, 81 N.E.3d 634, 637 (Ind. Ct. App. 2017). We will not find an abuse of discretion unless the jury instructions, taken as a whole, misstate the law or mislead the jury. *Id.* Before a defendant is entitled to a reversal, he must show that the erroneous instruction prejudiced his substantial rights. *Id.*

- [7] In determining whether the trial court should have given an instruction for a lesser-included offense of the crime charged, this court conducts a three-part test. *Isom v. State*, 31 N.E.3d 469, 485 (Ind. 2015), *cert. denied*, 136 S. Ct. 1161 (2016). The first two parts require the trial court to consider whether the lesser-included offense is inherently or factually included in the greater offense. *Leonard v. State*, 80 N.E.3d 878, 885 (Ind. 2017) (citing *Isom*, 31 N.E.3d at 485). If it is, then the trial court must determine if there is a serious evidentiary dispute regarding the element that distinguishes the lesser offense from the principal charge, in which case the court must give the instruction. *Id.*
- [8] When considering whether there is a serious evidentiary dispute, the trial court examines the evidence regarding the element distinguishing the greater offense from the lesser one. *Id.* (citing *Young v. State*, 699 N.E.2d 252, 255 (Ind. 1998)). This examination “involves evaluating the ‘weight and credibility of [the] evidence,’ and then determining the ‘seriousness of any resulting dispute.’” *Id.* (quoting *Fish v. State*, 710 N.E.2d 183, 185 (Ind. 1999)). We will reverse a trial court’s finding that no serious evidentiary dispute existed only if that finding was an abuse of discretion. *Id.* In reviewing a trial court’s finding, we view the evidence in a light most favorable to the trial court’s decision and determine whether the decision can be justified considering the evidence and circumstances of the case. *Id.*
- [9] Young contends that voluntary manslaughter is an inherently lesser-included offense of murder, *Wilson v. State*, 697 N.E.2d 466, 474 (Ind. 1998), and there was a serious evidentiary dispute over whether Young shot Beach under

“sudden heat.” Sudden heat is “a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter.” *Landske v. State*, 147 N.E.3d 387, 391 (Ind. Ct. App. 2020) (citing Ind. Code § 35-42-1-3). “Sudden heat exists when a defendant is ‘provoked by anger, rage, resentment, or terror, to a degree sufficient to obscure the reason of an ordinary person, prevent deliberation and premeditation, and render the defendant incapable of cool reflection.’” *Brantley v. State*, 91 N.E.3d 566, 572 (Ind. 2018) (quoting *Isom*, 31 N.E.3d at 486).

[10] Young cites *Clark* for the proposition that “[a]ny appreciable evidence of sudden heat justifies an instruction on voluntary manslaughter.” *Clark v. State*, 834 N.E.2d 153, 159 (Ind. Ct. App. 2005). He contends there was such appreciable evidence here: a bullet casing discovered on the ground that did not belong to him, the testimony of one witness claiming he heard “some popping noise outside” shortly before Young brandished his weapon, and the fact that Beach and Big Lord instigated the argument. Appellant’s Br. at 13–15; Tr. Vol. II at 194. This evidence does not reflect reversible error for multiple reasons.

[11] First, as to the bullet casing and the testimony that could be understood as the possibility of other shots fired, there is no evidence connecting those to Beach. There is no evidence that Young shot Beach in response to any shots fired, which is not surprising because Young shot Beach in the back while Beach was running away. The same witness who heard a “popping noise” before Young drew his weapon did not see any weapon in the victim’s hand, nor was there any other evidence that anyone but Young brandished a weapon. And Young’s

own description of the incident belies any notion that he was responding to shots fired. As he describes it in his Appellant's Brief:

After another minute of arguing by the passenger side, Young once again walks to the driver's side, at which point the other two men continue to interact with [G]oss. After roughly one minute and twenty seconds, Young returns to the driver's side of the vehicle and continues the argument with the other two men. Approximately ten seconds later, Young takes a step back from the men, raises a firearm with both hands, and shoots in the direction of the men.

Appellant's Br. at 6–7.

[12] Second, and relatedly, it is not enough that Beach and Big Lord may have instigated an argument. Young had to be acting through overwhelming emotion that prevents deliberation, *Brantley*, 91 N.E.3d at 572. While there was chest bumping and lively argument leading up to the shooting, there is no evidence that Young was provoked by “anger, rage, resentment, or terror, to a degree sufficient to obscure his ability to reason, prevent deliberation and premeditation, and render him incapable of cool reflection.” *See Brantley*, 91 N.E.3d at 572; *Isom*, 31 N.E.3d at 486. Relatedly, insults and taunts by themselves are not enough to establish sudden heat. *Wilson v. State*, 160 N.E.3d 222, 230 (Ind. Ct. App. 2020), *trans. denied*.

[13] Finally, a showing that a defendant had time to calm down during an altercation precludes a sudden heat defense. *Suprenant v. State*, 925 N.E.2d 1280, 1283 (Ind. Ct. App. 2010) (citing *Evans v. State*, 727 N.E.2d 1072, 1077

(Ind. 2000)). As the trial court explained, Young had the ability to retreat from the scene of the altercation and in fact did retreat into his vehicle multiple times before shooting Beach. Given that sudden heat requires an overwhelming emotion that prevents deliberation, the trial court did not err in concluding Young's opportunities to deliberate precluded a sudden heat defense. *Brantley*, 91 N.E.3d at 572.

- [14] The trial court did not err when it denied the lesser-included offense jury instruction for voluntary manslaughter.

## **II. Self-Defense Instruction**

- [15] Young also asserts the trial court abused its discretion by denying his request for the jury to receive an instruction on self-defense. Under Indiana law, “[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.” Ind. Code § 35-41-3-2(c). An individual is justified in using deadly force and 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.” *Id.* A jury must be instructed on self-defense where there is some foundation in the evidence. *Creager v. State*, 737 N.E.2d 771, 776 (Ind. Ct. App. 2000).
- [16] The trial court did not abuse its discretion when it rejected Young's self-defense jury instruction because it was not required to do so based on the evidence presented. The level of force that an individual may use to protect themselves

must be proportionate to the situation, and when one uses more force than needed in a circumstance, the right to self-defense is extinguished. *Hall v. State*, 166 N.E.3d 406, 414 (Ind. Ct. App. 2021). During the trial, Young presented no evidence that would have justified the use of deadly force. The evidence presented included surveillance camera footage depicting the argument between Young, Beach, and Big Lord in the parking lot of the Rodeway Inn. The only physical contact that occurred during the altercation was chest bumping that did not injure anyone. The footage showed Young taking a few steps back and drawing his gun, aiming it at Beach and Big Lord while they were facing away from Young and toward the car where Goss was seated. These actions demonstrate that Beach and Big Lord were not using deadly force or even imminent use of force toward Young or Goss. In fact, Beach was running away from Young when Young shot him, evidenced by the bullet wound in his back and the surveillance footage.

- [17] Young claims the trial court abused its discretion in denying the instruction based on Young's decision to not testify. There must be some evidence of the defendant's subjective perception that he was in danger of imminent violence for the self-defense instruction to be given to the jury. *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013). The trial court's denial was not wholly based on Young's decision not to testify. The court noted Goss's testimony for its finding that Young was not in imminent danger since there was no evidence that he ever saw a gun— "[t]he only testimony that comes close to it is Ms. Goss who said there was a gesture that Mr. Beach made toward his waist that



she interpreted to be that he might have a gun.” Tr. Vol. 4 at 96. These words do not indicate that, standing alone, Young’s failure to testify was why the trial court rejected the self-defense instruction. When the trial court analyzed Young’s perception of danger, it noted that Young did not present any evidence that he was reasonably afraid of being in danger from Beach or Big Lord. Thus, this absence of evidence, and not Young’s failure to testify, explains the trial court’s denial of the self-defense jury instruction.

[18] Because there was no evidence that Young had a reasonable belief that use of deadly force was necessary to prevent serious bodily injury to him, the trial court did not abuse its discretion in denying Young’s request for an instruction on self-defense.

[19] Affirmed.

Mathias, J., and Brown, J., concur.