

## MEMORANDUM DECISION

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### ATTORNEYS FOR APPELLANT

Valerie K. Boots  
Talisha Griffin  
Marion County Public Defender Agency  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
George P. Sherman  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Dustin Passarelli,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 16, 2024

Court of Appeals Case No.  
23A-CR-1652

Appeal from the Marion Superior  
Court

The Honorable Cynthia L. Oetjen,  
Judge

The Honorable Lisa F. Borges,  
Senior Judge

Trial Court Cause No.  
49D30-1902-MR-6769

**Memorandum Decision by Judge Tavitas**  
Judges Pyle and Foley concur.

**Tavitas, Judge.**

## Case Summary

- [1] A jury found Dustin Passarelli guilty of murder, a felony. Passarelli had sought to offer expert testimony regarding his post-traumatic stress disorder (“PTSD”) diagnosis in support of his claim of self-defense; however, the trial court ruled that the testimony was inadmissible. On interlocutory appeal, this Court affirmed the trial court’s ruling. Passarelli was then convicted. Passarelli now argues: (1) our Supreme Court’s decision in *Littler v. State*, 871 N.E.2d 276 (Ind. 2007), on which this Court relied, in part, in the interlocutory appeal, should be overruled; and (2) the trial court erred by relying on our opinion on interlocutory appeal in excluding the expert testimony Passarelli wished to admit. We find these arguments to be without merit and, accordingly, affirm.

## Issues

- [2] Passarelli raises two issues on appeal, which we restate as:
- I. Whether our Supreme Court’s decision in *Littler* was wrongly decided and should be overruled.
  - II. Whether the trial court erred by relying on our opinion on interlocutory appeal in excluding the testimony of Passarelli’s expert witness.

## Facts

- [3] This case stems from Passarelli’s shooting of Mustafa Ayoubi on February 19, 2019. On that night, Ayoubi was driving on the highway to meet his friends, Usman Ashraf, Niraj Bhatt, and Shazad Jarwar at a townhouse in Indianapolis.

Ayoubi's blood-alcohol content was above the legal limit. Passarelli, who had previously served in the Army as a combat medic, was also driving on the highway and was carrying a licensed nine-millimeter handgun.

[4] According to Passarelli, Ayoubi erratically approached Passarelli's car on the right, "swerved" at him a couple of times, rolled down his window, and made a "throwing motion." Tr. Vol. V. p. 9. Passarelli heard a thud and believed that Ayoubi had hit or thrown something at Passarelli's car.

[5] As Ayoubi took the exit off the highway, Passarelli followed him. Passarelli testified that he wanted Ayoubi's insurance information. Passarelli followed Ayoubi around a McDonald's parking lot and into the apartment complex where the townhouse Ayoubi was traveling to was located. Passarelli testified that, when Ayoubi got out of his car, Passarelli rolled down his front passenger's side window, at which point, according to Passarelli, Ayoubi said, "[W]hy are you f\*\*\*\*\*g following me[,] you f\*\*\*\*\*g dirty [J]ew." *Id.* at 13. Passarelli also claimed that Ayoubi hit his car.<sup>1</sup>

[6] Around this time, Ashraf, Bhatt, and Jarwar stepped outside of the townhouse and observed Ayoubi and Passarelli exchanging insults. Passarelli was inside his car, and Ayoubi was standing on the sidewalk. Passarelli yelled insults at Ayoubi such as, "[G]o back to your country" and "Muhammad was a

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<sup>1</sup> Photographs admitted into evidence at trial showed no damage to Passarelli's and Ayoubi's cars.

pedophile,” Tr. Vol. III p. 135-36, and at some point, Passarelli threatened<sup>2</sup> Ayoubi. Ashraf further testified that Bhatt asked Passarelli to leave and that Ayoubi tried to leave the conversation several times. According to Ashraf, however, Passarelli would say something that would “heat the conversation again,” and Ayoubi would reengage with Passarelli. *Id.* at 156. Ashraf’s testimony was corroborated by Bhatt’s and Jarwar’s testimony.

[7] Ayoubi eventually approached Passarelli’s driver’s side window and told Passarelli to get out of the car so the two could “settle this.” *Id.* at 140. Passarelli lodged another insult, and Ayoubi raised his fist as if to punch the window.<sup>3</sup> Passarelli shined a tactical light, which was attached to his handgun, at Ayoubi and fired nine shots in quick succession. All nine shots struck Ayoubi, and most struck him in the side and back. It is not clear if Ayoubi turned and tried to run or if he stumbled and fell.

[8] Passarelli provided a different account of the shooting. According to him, Ayoubi first tried to enter his car through the passenger side door before going around to the driver’s side window. Ayoubi then punched the window, at which point Passarelli drew his handgun and warned Ayoubi that Passarelli would shoot. Ayoubi punched the window a second time, shattering it, and

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<sup>2</sup> It is not clear from the record whether Passarelli specifically threatened to shoot Ayoubi at this point.

<sup>3</sup> Neither Ashraf, Jarwar, nor Bhatt could see whether Ayoubi made contact with the window.

reached inside the car.<sup>4</sup> Passarelli testified that he shot Ayoubi because he believed that Ayoubi was reaching for Passarelli's handgun, which caused Passarelli to "fear[] for [his] life." Tr. Vol. V. p. 29. Passarelli claimed that he shot Ayoubi based on his military training.

[9] After the shooting, Passarelli and several others contacted law enforcement, and Passarelli performed CPR on Ayoubi. Law enforcement arrived shortly thereafter and arrested Passarelli. Ayoubi died at the scene. The State charged Passarelli with murder, a felony, and sought a sentencing enhancement based on Passarelli's use of a firearm.

[10] On October 22, 2019, Passarelli indicated that he planned to call Dr. John Mundt to testify at trial as an expert on PTSD. In his report, Dr. Mundt opined that, for veterans with military experience like Passarelli's, "responses to violence directed against them can be reflexive, methodical and precise, akin to 'muscle memory.'" Ex. Vol. I p. 30. Dr. Mundt further opined that, based on Passarelli's military experiences, Passarelli suffered from undertreated PTSD, and that this condition informed Passarelli's perception that Ayoubi was a "serious threat" to Passarelli's safety. *Id.*

[11] On July 14, 2021, the State moved for a hearing regarding the admissibility of Dr. Mundt's testimony. The trial court held hearings on August 18, 2021, and

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<sup>4</sup> Despite Passarelli's claim that Ayoubi shattered and reached inside the window, the coroner did not observe any significant injuries to Ayoubi's hand. Additionally, Passarelli admitted that he previously told law enforcement that the window cracked but did not shatter upon Ayoubi's second punch.

March 24, 2022. The State argued, in part, that Dr. Mundt’s testimony should be excluded because a defendant cannot introduce evidence regarding a mental condition to demonstrate that the defendant acted reasonably in self-defense. Passarelli contended that Dr. Mundt would not testify as to how PTSD affected Passarelli specifically; rather, Dr. Mundt would testify regarding Passarelli’s military training and experience and how PTSD would “generally affect someone” in self-defense situations. Tr. Vol. II p. 29. After taking the matter under advisement, the trial court issued an order on September 7, 2021, which provided in relevant part: “The Court *now* finds the Defense has not met the burden to . . . introduce the testimony of Dr. John Mundt[.]” Appellant’s App. Vol. II p. 136 (*italics in original*).

[12] The trial court certified its order for interlocutory appeal, and on January 9, 2023, a divided panel of this Court issued an opinion that affirmed the trial court’s ruling. *See Passarelli v. State*, 201 N.E.3d 271 (Ind. Ct. App. 2023), *trans. denied*.<sup>5</sup> We noted, in part, our Supreme Court’s holding in *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007), that “[t]he phrase ‘reasonably believes,’ as used in the 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

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<sup>5</sup> In our opinion, we stated that Passarelli “was stationed at Fort Hood, Texas, on November 5, 2009, when an Army psychiatrist killed thirteen soldiers on the base and wounded more than thirty others.” *Passarelli*, 201 N.E.3d at 274. We relied on Dr. Mundt’s expert report which stated the same. At Passarelli’s sentencing hearing, however, defense counsel clarified that Passarelli was stationed at Fort Hood shortly after the Fort Hood tragedy and that this fact likely “got confused” when Passarelli reported his military experiences to Dr. Mundt. Tr. Vol. V p. 183.

reasonable person would have under the circumstances.” *Passarelli*, 201 N.E.3d at 276. A majority of this Court ultimately held in *Passarelli*:

[The] evidence that Passarelli suffered from PTSD and reacts more harshly to stressful situations than an ordinary person is inadmissible to support his claim of self-defense. That evidence does nothing to show that Passarelli’s actions were objectively reasonable.<sup>[6]</sup> The objective component of self-defense, as adopted by our courts, is analyzed from the standpoint of an ordinary “reasonable person.” *See Washington [v. State]*, 997 N.E.2d [342 (2013)]. Thus, the question being presented to the jury is whether an ordinary reasonable person would have responded with deadly force if confronted with the same circumstances that Passarelli confronted. The issue is not whether a person just like Passarelli—who also suffers from PTSD caused by military combat—would have responded as Passarelli did. In short, the standard of what constitutes an “ordinary man” does not change on a case-by-case basis. *See id.* We therefore conclude that the trial court did not abuse its discretion in determining that Dr. Mundt’s anticipated testimony is inadmissible at trial to support Passarelli’s claim of self-defense.

*Id.* at 278-79.<sup>7</sup> Our Supreme Court denied transfer. Following the interlocutory appeal, on May 12, 2023, the State filed a motion in limine that sought to preclude “all testimony or argument concerning [Passarelli’s] PTSD and any related evidence.” Appellant’s App. Vol. III p. 29.

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<sup>6</sup> Passarelli did not argue that his PTSD diagnosis was relevant to the subjective component of the self-defense test.

<sup>7</sup> Judge Brown dissented.

[13] The trial court held a three-day jury trial in May 2023. Regarding the State’s motion in limine, the trial court determined that, based on this Court’s interlocutory opinion, Dr. Mundt’s testimony was inadmissible. The trial court further determined that, while Passarelli could not testify regarding his PTSD diagnosis, Passarelli could testify regarding his “state of mind” and “experiences that may have led to him having a response in his mind.” Tr. Vol. IV p. 198. Passarelli testified in his own defense and provided his account of the shooting. He also testified regarding his military training and that he had experience using firearms in “life-or-death situations.” Tr. Vol. V p. 28.

[14] The jury found Passarelli guilty of murder. Passarelli waived his right to a jury on the firearm enhancement, and the trial court determined that the evidence supported the enhancement. The trial court entered judgment of conviction and sentenced Passarelli to fifty years, enhanced by five years based on the firearm enhancement, for a total sentence of fifty-five years executed in the Department of Correction. Passarelli now appeals.

## **Discussion and Decision**

### ***I. We cannot overrule an opinion of our Supreme Court***

[15] Passarelli argues that our Supreme Court’s decision in *Little*, 871 N.E.2d 276, should be overruled. He contends that, contrary to *Little*’s holding, the language “reasonably believes” in our self-defense statute<sup>8</sup> refers to “the

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<sup>8</sup> In relevant part, the self-defense statute provides:

claimant's subjective standpoint" and is not an objective inquiry into the beliefs of a hypothetical reasonable person. Appellant's Br. p. 19.

[16] Although Passarelli argues that *Little* was wrongly decided, it is well settled that "it is not this court's role to reconsider or declare invalid decisions of our [S]upreme [C]ourt." *Culbertson v. State*, 929 N.E.2d 900, 906 (Ind. Ct. App. 2010) (quoting *Horn v. Hendrickson*, 824 N.E.2d 690, 694 (Ind. Ct. App. 2005)), *trans. denied*. Instead, we are bound by our Supreme Court's decisions, and "its precedent is binding on us until it is changed by our supreme court or legislative enactment." *Id.* (citing *Horn*, 824 N.E.2d at 694). Accordingly, we reject Passarelli's challenge to *Little*.

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(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. . . .

(d) A person:

(1) is justified in using reasonable force, including deadly force, against any other person; and

(2) does not have a duty to retreat;

if the person **reasonably believes** that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

Ind. Code § 35-41-3-2 (emphases added).

***B. The trial court did not err by excluding Dr. Mundt's testimony***

[17] Passarelli also argues that the trial court erred by relying on our interlocutory opinion and excluding Dr. Mundt's testimony.<sup>9</sup> In our interlocutory opinion, we held that Dr. Mundt's testimony was inadmissible. Under the law of the case doctrine, trial courts are bound by this Court's interlocutory opinions. *See Means v. State*, 201 N.E.3d 1158, 1164 (Ind. 2023). The purpose of the law of the case doctrine is to "minimize unnecessary relitigation of legal issues once they have been resolved by an appellate court." *Bousum v. Bousum*, 173 N.E.3d 289, 294 (Ind. Ct. App. 2021) (citation omitted), *trans. denied*; accord *State v. Huffman*, 643 N.E.2d 899, 901 (Ind. 1994).

[18] Here, the trial court was bound by this Court's interlocutory ruling in *Passarelli*, 201 N.E.3d 271, and the trial court faithfully followed that ruling at trial. And Passarelli does not now ask that we revisit our ruling.<sup>10</sup> Instead, all of his arguments are directed at *Littler*, and as we have explained, we cannot overrule or reconsider the decisions of our Supreme Court. Accordingly, we cannot say that the trial court improperly excluded Dr. Mundt's testimony.

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<sup>9</sup> The State argues that Passarelli waived his challenge to the trial court's exclusion of Dr. Mundt's testimony by not attempting to offer Dr. Mundt's testimony at trial. We need not decide whether Passarelli waived his argument because his argument is barred by the law of the case doctrine.

<sup>10</sup> Moreover, under the law of the case doctrine, this Court is also bound by its decisions in the same case absent "extraordinary circumstances such as where the initial decision was clearly erroneous and would work manifest injustice." *Huffman*, 643 N.E.2d at 901 (citations omitted). Passarelli's arguments do not persuade us that our interlocutory ruling was clearly erroneous.

## Conclusion

[19] We cannot overrule *Little*, as Passarelli requests. Passarelli's claim that the trial court improperly excluded Dr. Mundt's testimony—which is wholly based on his criticism of *Little*, is therefore without merit. Accordingly, we affirm the judgment of the trial court.

[20] Affirmed.

Pyle, J., and Foley, J., concur.