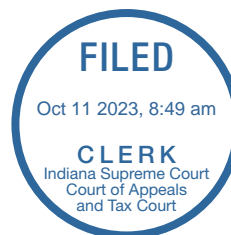


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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### ATTORNEY FOR APPELLANT

Ellen M. O'Connor  
Marion County Public Defender Agency  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Erica S. Sullivan  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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William Simon,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 11, 2023

Court of Appeals Case No.  
22A-CR-3030

Appeal from the Marion Superior  
Court

The Honorable Shatrese Flowers,  
Judge

The Honorable James Snyder,  
Magistrate

Trial Court Cause No.  
49D28-2203-F3-8053

**Memorandum Decision by Judge Kenworthy**  
Judges Bailey and Taviton concur.

**Kenworthy, Judge.**

## Case Summary

- [1] A jury found William Simon guilty of Level 5 felony battery by means of a deadly weapon<sup>1</sup> and Class A misdemeanor carrying a handgun without a license.<sup>2</sup> Simon appeals his convictions, alleging the State failed to rebut his claims of self-defense and necessity. We affirm.

## Facts and Procedural History

- [2] In early 2022, Bobby Williams and Simon, who was known to Williams as “Cain,” had been acquainted for about two-and-a-half years and did drugs together. Williams was trying to get in touch with Simon because he heard Simon was spreading rumors about Williams being “the police.” *Tr. Vol. 3* at 137. On March 15, Williams was at a cell phone store in Indianapolis when a vehicle Williams recognized as Simon’s pulled up. Simon was driving and several other people were with him. Williams approached the driver’s side of the vehicle with his hands in his pockets and he and Simon argued, with Williams asking “[w]hy [are you] spreading rumors around the city like that[?]” and Simon responding, “you are, you are [the police].” *Id.* at 139–40.
- [3] Three armed men who were in front of the store said Williams was “clutching.”<sup>3</sup> *Id.* at 138. Williams did not know the men but believed Simon

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<sup>1</sup> Ind. Code § 35-42-2-1(c)(1), (g)(2) (2020).

<sup>2</sup> I.C. § 35-47-2-1(a) (2017).

<sup>3</sup> Williams said “clutching” meant he was “packing, holding a gun.” *Id.* at 139.

knew them. As Williams and Simon kept arguing, the three men searched Williams. One of the three men handed a .38-caliber revolver to Simon. Simon confronted Williams with the gun. Williams backed up toward the front of Simon's vehicle with his hands out as Simon walked toward him and fired one shot past him. Then Simon fired one shot at Williams' legs, said, "I ought to kill you," and fired another shot at Williams' legs. *Id.* at 140. Simon then drove away. Surveillance video from the store largely confirms this account of everyone's actions.

[4] Williams suffered a gunshot wound in each thigh—one shot went through his right thigh and the second lodged in his left thigh. Williams was taken to the hospital where two live rounds of .38-caliber ammunition were found in his pocket. While at the hospital, Williams was questioned by police. Williams told police "Cain took [his] 38 off of him" and he was shot with that gun. *Id.* at 222. Williams identified Simon from a photo array as the person who shot him.

[5] The investigation led detectives to Simon's vehicle and eventually to Simon. Detectives searching the hotel room where Simon was staying found a .38-caliber revolver on the bed. Two spent casings and three live rounds were recovered from the gun. During a police interview, Simon at first denied knowing Williams or being part of a shooting on March 15. Only after the detective told Simon he had surveillance video from the store and asked Simon if he had acted in self-defense did Simon offer an explanation. He said he was at the store by himself when a man walked up to him with a gun in his pocket,

accusing Simon of calling him a snitch. Simon wrestled with the man and disarmed him. He told the man to back up, but the man lunged at him. Simon said to protect himself, he shot twice toward the ground before leaving the scene.

- [6] The State charged Simon with battery by means of a deadly weapon and carrying a handgun without a license. Williams testified at Simon’s jury trial, and the videos from the store and Simon’s interview were admitted into evidence. At Simon’s request, the jury was instructed on self-defense and the defense of necessity. The jury found Simon guilty as charged. He now appeals.

### **The State Rebutted Simon’s Defenses**

- [7] Simon contends the State failed to present sufficient evidence to rebut his claims of self-defense and necessity. Both self-defense and the necessity defense are “affirmative defenses of justification.” *Stubbers v. State*, 190 N.E.3d 424, 430 (Ind. Ct. App. 2022), *trans. denied*. That is, they “admit[] that the facts of the crime occurred but contend[] that the acts were justified.” *Moon v. State*, 823 N.E.2d 710, 716 (Ind. Ct. App. 2005), *trans. denied*. The burden of proof for these defenses is allocated in two steps: first, the defendant must produce evidence raising the defense; and second, the State must negate at least one element of the defense beyond a reasonable doubt. *Id.* 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 upon the sufficiency of its evidence in chief.” *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987).

[8] The standard of review for a challenge to the sufficiency of evidence to rebut an affirmative defense is the same as the standard for any sufficiency of the evidence claim. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor assess witness credibility. *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023). Rather, we “look solely to the evidence most favorable to the [verdict,]” *Miller v. State*, 720 N.E.2d 696, 699 (Ind. 1999), and reverse “only if no reasonable person could say the State overcame the self-defense claim beyond a reasonable doubt,” *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021).

***There was Sufficient Evidence Simon Did Not Act in Self-Defense***

[9] A defendant can raise self-defense as a justification for an otherwise criminal act. *See* Ind. Code § 35-41-3-2(c). To assert a successful claim of self-defense, the defendant “must prove he was in a place where he had a right to be, ‘acted without fault,’ and reasonably feared . . . death or great bodily harm.” *Larkin*, 173 N.E.3d at 670 (quoting *Miller*, 720 N.E.2d at 700).

[10] Simon maintains Williams pulled a gun on him, causing him to fear for his life and forcing him to defend himself by disarming Williams and then firing warning shots in his direction. But the only evidence supporting this claim is Simon’s own statement during his police interview, much of which conflicts with Williams’ testimony and the video evidence. Simon said after he disarmed Williams, Williams kept coming toward him, so he fired warning shots in Williams’ direction to defend himself. But the video does not show Williams pulling a gun on Simon, the men tussling for control of the gun, or Williams lunging toward Simon. Rather, the video confirms Williams’ testimony that he

was backing away from Simon with his hands in full view when Simon shot the gun, contradicting any claim that Simon reasonably feared harm to himself or acted without fault in shooting at Williams at close range once Williams was disarmed.

- [11] Simon essentially invites us to reweigh the evidence. We decline to do so. When reviewing the sufficiency of the State’s evidence rebutting a self-defense claim, we may consider only the evidence and inferences supporting the verdict. *Miller*, 720 N.E.2d at 696. The evidence favoring the verdict is enough to rebut Simon’s claim of self-defense to the battery charge.

***There was Sufficient Evidence Simon Did Not Act Out of Necessity***

- [12] At trial, Simon argued as a defense to the charge of carrying a handgun without a license that the “brief time that there was a weapon in [his] hand” was to prevent harm to himself. *Tr. Vol. 4* at 78. Simon argues the State failed to present sufficient evidence to rebut this necessity defense.<sup>4</sup>

In order to prevail on a claim of necessity, the defendant must show (1) the act charged as criminal must have been done to prevent a significant evil, (2) there must have been no adequate alternative to the commission of the act, (3) the harm caused by the act must not be disproportionate to the harm avoided, (4) the accused must entertain a good faith belief that his act was necessary to prevent greater harm, (5) such belief must be

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<sup>4</sup> Both at trial and on appeal, Simon asserts the necessity defense in relation to the carrying a handgun without a license charge. Therefore, we do not address the State’s argument to the extent it addresses the necessity defense in the context of Simon shooting Williams.

objectively reasonable under all the circumstances, and (6) the accused must not have substantially contributed to the creation of the emergency.

*Belton v. State*, 6 N.E.3d 1043, 1045–46 (Ind. Ct. App. 2014) (quoting *Dozier v. State*, 709 N.E.2d 27, 29 (Ind. Ct. App. 1999)). The “central element” of the necessity defense “involves the emergency nature of the situation.” *Toops v. State*, 643 N.E.2d 387, 389 (Ind. Ct. App. 1994) (holding defendant was entitled to an instruction on the defense of necessity when, despite being intoxicated, he took control of a running car the driver abandoned). “[I]n order for the defense of necessity to apply to a criminal offense, the defendant must be responding to a true emergency, meaning a situation which is then occurring in his presence and requires an immediate response[.]” *Rocheft v. State*, 177 N.E.3d 113, 121 (Ind. Ct. App. 2021), *trans. denied*.

[13] The State must negate only one of the six elements of the necessity defense for the defense to fail. *See Dozier*, 709 N.E.2d at 29. We find the second factor dispositive here. Although Simon claimed he had no choice but to disarm Williams to protect himself, Williams testified one of the three armed men at the store searched him and then handed a gun to Simon. The jury could credit Williams’ testimony over Simon’s version, in which case, Simon did not need to take possession of the gun at all. Knowing Williams was not armed, Simon could have returned to his vehicle and driven away. There was an adequate alternative to possessing the gun on his person and in his vehicle thus negating one of the elements necessary to successfully establish necessity.

[14] Whether the State has disproved a claim of necessity is entrusted to the factfinder, and we will reverse the conviction only if no reasonable person could say the defense was negated by the State beyond a reasonable doubt. *Dozier*, 709 N.E.2d at 29. Here, the jury found the State had met its burden, and we cannot say that was an unreasonable determination. The verdict is supported by evidence sufficient to rebut Simon’s claim of necessity in carrying the handgun.

## **Conclusion**

[15] The State presented sufficient evidence to rebut Simon’s claims of self-defense and necessity. Accordingly, his convictions for battery and carrying a handgun without a license are affirmed.

[16] Affirmed.

Bailey, J., and Tavitas, J., concur.