

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alejandro Leon Barroso,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 1, 2023

Court of Appeals Case No.
23A-CR-264

Appeal from the Marion Superior
Court

The Honorable Mark D. Stoner,
Judge

Trial Court Cause No.
49D32-2105-MR-16439

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

- [1] Alejandro Leon Barroso appeals his murder conviction, arguing that the State failed to rebut his claim of self-defense beyond a reasonable doubt. Finding the evidence sufficient, we affirm.

Facts and Procedural History

- [2] On May 24, 2021, Barroso was working maintenance in an empty apartment in Indianapolis. Oswaldo Crux Lopez was assigned to do maintenance in the same apartment as Barroso. Barroso shot and killed Lopez at the apartment while they were working.
- [3] In May 2021, the State charged Barroso with murder. Barroso claimed that he acted in self-defense. At his jury trial, Barroso’s testimony provided most of the evidence regarding what occurred the day he shot Lopez. Barroso testified that he believed that the neighborhood where the apartment was located was unsafe, and therefore he carried a gun. Prior to that day, Barroso and Lopez had briefly encountered each other in the past but had not worked together. Lopez was a younger, larger man than the fifty-nine-year-old Barroso.
- [4] As Barroso and Lopez began work that morning, Lopez made frequent insulting remarks to Barroso. Lopez told Barroso that he was old and slow and to hang a curtain a different, quicker way. Lopez also told Barroso that Barroso could not see because he was old. As Barroso was carrying a new stove, Lopez told him that the task was fast and that “the Black guys [were] going to lick your ass.” Tr. Vol. 3 at 83. Barroso discussed the comment with another

coworker, who explained that “that’s the way [Lopez] is” and advised Barroso to “[j]ust ignore it.” *Id.* at 84. Lopez was not Barroso’s supervisor, and Barroso started to ignore him and focused on his work. Barroso began repairing a door on the first floor while Lopez worked on the apartment’s second floor. Around lunchtime, Barroso asked Lopez why he was saying those things to him. Lopez did not respond but was upset and left. After lunch, Barroso spent a long time patching holes in the door, while Lopez went back upstairs to work.

[5] At some point, Lopez came downstairs and asked Barroso why he had not installed the smoke detector. Barroso responded that the one he had brought to the apartment did not match the base and he had not found a smoke detector that fit. Lopez said, “[W]ell, if you were looking for a Black guy’s dick, then you would have found it.” *Id.* at 86. Barroso replied, “[S]top it. Cut it out. ... [Y]ou’re not going to talk to me ... like I’m an idiot.” *Id.* Barroso, who was then standing near the back of the apartment by the kitchen, had a gun in his pocket and gestured so that Lopez, who was standing near the front door, would understand that Barroso had something in his pocket. Lopez stared at Barroso’s pocket and took a step toward him. Barroso showed Lopez the gun and said, “[O]kay, stop it. I mean, for real[.]” *Id.* Lopez took another step toward Barroso. Barroso told him to stop and not get any closer, but Lopez continued to walk toward Barroso. Barroso then took the gun out of his pocket and said, “[L]isten, listen, don’t come towards me or I’m going to shoot you.” *Id.* at 87. Lopez continued to approach and said, “[Y]ou don’t have the balls. I

mean, you are old. You – you fucking faggot. You’re old.” *Id.* As Lopez spoke, Barroso pointed the gun at him.

[6] Lopez then made a quick movement toward Barroso to try and grab him, but his finger came into contact with Barroso’s eye. Barroso fired his gun twice, hitting Lopez in the thighs. Lopez grabbed Barroso’s hand brandishing the gun, and Barroso grabbed one of Lopez’s hands. Lopez pushed Barroso, and Barroso continued firing. Lopez fell backward and pulled down Barroso, who nearly landed on top of Lopez. Barroso noticed that Lopez’s face had changed and that he was “very quiet” and “very serene.” *Id.* at 89. According to Barroso, he then heard a gunshot, Lopez’s face shook, something came out of the side of his head, and his eyes rolled back in his head.

[7] After shooting Lopez, Barroso went to the leasing office and, with the help of an individual who interpreted Barroso’s Spanish to English, reported to the property manager that Lopez had been calling him names and continued to call him names after Barroso told him to stop, and that Lopez had hit Barroso in the eye. According to the property manager Barroso’s right eye was red and swollen as “if someone had hit him.” *Tr. Vol. 2* at 153. Barroso also told the property manager that Lopez was dead and to call 911 because he was turning himself in. Barroso pulled a magazine out of his gun and put the gun and the magazine, as well as a second magazine that he had, on the office desk. The property manager called 911.

[8] The police investigation of the incident revealed that the gun that Barroso left on the desk of the leasing office had fired five bullets. Neither of Lopez's hands showed any injury. None of the DNA samples taken from under Lopez's fingernails contained Barroso's DNA. The autopsy of Lopez's body showed five gunshot wounds: one in the left thigh, one in the right femur, one on the left side of his torso where the ribs meet the abdomen, one on his right cheek, and one on the temple on the left side of his head. The bullet that entered his right cheek injured his brain stem and exited through the left side of his head. There was unburned gunpowder on Lopez's right cheek caused by a firearm coming into contact with Lopez's skin. The bullet that entered the left side of Lopez's head traveled through his brain and exited on the right side of his head. The cause of death was multiple gunshot wounds.

[9] The jury found Barroso guilty as charged. In January 2023, the trial court sentenced Barroso to fifty-two years. This appeal ensued.

Discussion and Decision

[10] Barroso claims that the State presented insufficient evidence to rebut his self-defense claim. "The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim." *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). "We neither reweigh the evidence nor judge the credibility of the witnesses." *Id.* We will affirm the conviction "if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt." *McHenry v.*

State, 820 N.E.2d 124, 126 (Ind. 2005) (citation omitted). “The evidence does not have to overcome every reasonable hypothesis of innocence, and it is sufficient if an inference may reasonably be drawn to support the conviction.” *Stewart v. State*, 167 N.E.3d 367, 376 (Ind. Ct. App. 2021), *trans. denied*.

[11] A valid claim of self-defense is a legal justification for an otherwise criminal act. *Hall v. State*, 166 N.E.3d 406, 412 (Ind. Ct. App. 2021). A person 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[.]” Ind. Code § 35-41-3-2(c) (emphasis added). Reasonable belief as applied under Indiana’s 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 reasonable person would have under the circumstances.” *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007).

[12] “To prevail on a claim of self-defense involving deadly force, the defendant is required to show that he or she ‘(1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm.’” *Hall*, 166 N.E.3d at 413 (quoting *Wilson*, 770 N.E.2d at 800). To defeat a self-defense claim, the State is required to disprove at least one of these elements beyond a reasonable doubt. *Id.* The State “may meet this burden by rebutting the defense directly, by affirmatively showing the person did not act in self-defense, or by relying upon the sufficiency of its evidence in chief.” *Id.* (quoting *Cole v. State*, 28 N.E.3d 1126, 1137 (Ind. Ct. App. 2015)). “Whether a defendant acted in self-defense is

generally a question of fact, and on appellate review the finder of fact's conclusion is entitled to considerable deference." *Griffin v. State*, 997 N.E.2d 375, 381 (Ind. Ct. App. 2013), *trans. denied* (2014). If a defendant is convicted despite his claim of self-defense, we "will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt." *Wilson*, 770 N.E.2d at 800-01.

[13] Barroso contends that he "responded to the threat and fear of serious bodily injury at the hands of a larger, younger, and openly hostile man who was aggressively charging and grabbing him by shooting and killing him in self-defense." Appellant's Br. at 9. We observe that a person is not justified in using force if "the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action." Ind. Code § 35-41-3-2(g).

[14] Here, a reasonable person could have found that Barroso was the initial aggressor or a mutual combatant because he introduced the presence of a firearm into the situation, which transformed it to one where serious bodily injury was a possibility. As the State puts it, "Barroso introduced the possibility of violence into a situation that had previously been limited to mere insults." Appellee's Br. at 11. To put it simply, insulting comments do not support the use of deadly force. Insults are even less serious than threats, and "threats alone are not sufficient to justify the use of deadly force under a claim of self-defense." *Smith v. State*, 506 N.E.2d 31, 34 (Ind. 1987); *Young v. State*, 451

N.E.2d 91, 93 (Ind. Ct. App. 1983). It is worth noting that Barroso admitted that rather than introducing his firearm, he could have, at any time during the day, used his radio to inform his supervisor that Lopez was disparaging him and calling him names. He also admitted that either he or Lopez could have been reassigned if he had made such a request. Instead, in response to Lopez's insults, Barroso gestured to the gun in his pocket while at the same time commanding Lopez to stop insulting him. A reasonable person could find that Barroso's words and actions amounted to a threat to shoot Lopez if he did not stop insulting him.

[15] Because a reasonable person could have found from the evidence that Barroso was the initial aggressor or a mutual combatant, Barroso was not justified in standing his ground and using deadly force unless he first withdrew from the encounter and communicated his intent to do so to Lopez. *See* Ind. Code § 35-41-3-2(g). This Barroso did not do. After Barroso gestured to his gun, which triggered Lopez's approach to him, Barroso could have told Lopez that he did not want to engage in a physical fight and left through the nearby back door or radioed for help. Instead, Barroso took out his gun and pointed it at Lopez, further escalating the situation.

[16] We conclude that based on the evidence, a reasonable person could conclude that the State disproved Barroso's self-defense claim beyond a reasonable doubt. Barroso's argument is merely an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. *See Wilson*, 770 N.E.2d at 801. Accordingly, we affirm Barroso's murder conviction.

[17] Affirmed.

Brown, J., and Felix, J., concur.