

## 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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Richard Lee Williams,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 10, 2021

Court of Appeals Case No.  
20A-CR-819

Appeal from the Marion Superior  
Court

The Honorable Shatrese M.  
Flowers, Judge

Trial Court Cause No.  
49G02-1709-MR-37287

**Mathias, Judge.**

[1] Richard Lee Williams was convicted of murder and the Marion Superior Court ordered him to serve fifty-eight years in the Department of Correction.

Williams appeals his conviction and raises the following two issues:

- I. Whether the State presented sufficient evidence to rebut Williams’s claim of self-defense; and
- II. Whether the trial court committed reversible error when it responded to jury questions during jury deliberations with counsel present, but in Williams’s absence.

[2] We affirm.

### **Facts and Procedural History**

[3] Around 1:00 a.m. on September 21, 2017, Johnny Woods was celebrating his birthday and having drinks with his fiancée, brother, and sister-in-law at Taps and Dolls bar in Indianapolis. Woods was at the bar for almost an hour when he started an altercation with Williams. The two men used to consider each other friends but were no longer “getting along.” Tr. Vol. II, pp. 209, 241.

[4] Woods and Williams attempted to punch each other, but bar security separated them. Security removed Woods and Williams from the bar and made the men exit through separate doors. After Woods left the bar, he saw Williams sitting in a pickup truck, which was stopped in the street. When Williams saw Woods, he yelled at Woods to “come down here” and to “meet him.” *Id.* at 194, 215, 244; Vol. III, pp. 112, 122. As Woods walked towards his fiancée’s car, Williams followed Woods in his truck. Williams continued to yell at Woods to meet him and parked the truck in a nearby parking lot.

- [5] Woods’s friends told him to ignore Williams, but Woods was drunk and angry. Woods retrieved a handgun from his fiancée’s car and put it in his pocket.<sup>1</sup> He walked quickly to the parking lot where Williams had parked the truck. As Woods approached, Williams exited the truck. The two men met in the parking lot where Woods put up his hands in a “boxer stance” and balled his fists. Tr. Vol. II, p. 250; Vol. III pp. 113–14. Williams then removed a gun from his waistband and fired two or three shots at Woods.
- [6] Woods fell to the ground and his brother, Brandon Smith, ran to him from approximately ten feet away. As Brandon reached his brother, Woods pulled out the handgun he had retrieved from his fiancée’s vehicle and fired several shots at Williams. Williams was struck multiple times in the leg but was able to return to his truck and drive away.
- [7] The gunshot Woods suffered perforated his lung and esophagus and injured his right carotid artery. Woods was taken to the hospital where he died as a result of the gunshot wound. Meanwhile, Williams sought treatment for his injuries at a local hospital. While there, Williams spoke to the police but told them, in a recorded statement, that even if he knew who shot him, he would not tell the police or testify. Ex. Vol., State’s Ex. 12. Williams told the officers that he did not want to pursue criminal charges and would “rather just leave it alone.” *Id.*

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<sup>1</sup> The handgun belonged to Woods’s brother Brandon Smith.

Williams further claimed he was shot by a man he did not recognize as he was leaving a friend's house. *Id.*

[8] Later that morning, law enforcement learned Williams was a suspect in Woods's shooting. When the officers returned to the hospital, they discovered that Williams had left against the medical advice of his doctor. Several months later, Williams was apprehended after leading police on a high-speed chase.

[9] On September 27, 2017, Williams was charged with murder. His jury trial commenced on February 24, 2020. At trial, Williams did not dispute that he shot Woods but claimed that he acted in self-defense.

[10] A few hours after the jury began deliberating, the jurors requested guidance from the trial court because certain jurors could not reach a verdict. At the same time, the jury also asked for permission to relisten to the audio recording of Williams's hospital statement to police officers. The trial court discussed the requests with counsel, but Williams was not present for the discussion. Tr. Vol. III, p. 242. The trial court told the jury that it should continue to deliberate and gave the jury permission to relisten to Williams's recorded statement.

Williams's counsel did not object to the trial court's response to the jury's inquiries. The jury ultimately found Williams guilty of murder, and he was ordered to serve fifty-eight years in the Department of Correction.

[11] Williams now appeals, arguing that (1) the State failed to provide sufficient evidence to rebut his self-defense claim; and (2) the trial court committed

reversible error when it responded to jury questions without Williams's presence. We address each claim in turn.

## Self-Defense

- [12] Williams first argues that the State did not present sufficient evidence to rebut his claim that he acted in self-defense. We review a challenge to the sufficiency of evidence to rebut a self-defense claim using the same standard as for any sufficiency-of-evidence claim. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2003). We neither reweigh evidence nor judge witness credibility. *Id.* If sufficient evidence of probative value supports the verdict, it will not be disturbed. *Id.* If a defendant is convicted despite claiming self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Id.* at 800–01.
- [13] Williams does not deny that he shot Woods but claims he did so in self-defense. “A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act.” *Morell v. State*, 933 N.E.2d 484, 491 (Ind. Ct. App. 2010). “A person is justified in using reasonable force against any other person to protect the person . . . from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(c). A person is justified in using deadly force against another person if he “reasonably believes that that force is necessary to prevent seriously bodily injury” to himself or a third person. *Id.*

[14] To prevail on a self-defense claim, the following three conditions must be satisfied: the defendant “(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.” *Morell*, 933 N.E.2d at 491.

When a self-defense claim is raised and supported by the evidence, the State has the burden of negating at least one of the three conditions. *Id.* The State satisfies this burden by presenting evidence of probative value from which a reasonable trier of fact could have found that the defendant did not validly act in self-defense and that he was guilty of the offenses charged. *Id.* at 492.

[15] The State here met its burden to negate Williams’s self-defense claim. Woods sought out Williams in the bar and initiated the confrontation between them. But, after the men were ejected from the bar through separate exits, Williams continued the altercation. Multiple witnesses testified that Williams yelled at Woods to “come down here.” Tr. Vol. II, pp. 194, 215, 244; Vol. III pp. 112, 122. And as Woods walked towards his fiancée’s car, Williams followed Woods in his truck. Williams continued to yell at Woods to meet him and parked his truck in a nearby parking lot. In response, Woods retrieved a handgun from his fiancée’s car, put the gun in his pocket, and walked towards Williams. The two men met in the parking lot and Woods put up his hands in a “boxer stance” and balled his fists. Tr. Vol. II, p. 250; Vol. III, pp.113–14. Williams responded by removing a gun from his waistband and firing two or three shots at Woods. After Williams shot him, Woods fell to the ground, removed the gun from his pocket, and shot at Williams.

[16] This evidence reveals that although Woods initiated the encounter between himself and Woods, Williams escalated the altercation by continuing to taunt and follow Woods after the men were ejected from the bar. Under Indiana law, “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.” I.C. § 35-41-3-2(g)(3). Further, when Woods confronted Williams in the parking lot, the handgun Woods had retrieved was concealed; he was prepared to engage in a fist fight. Indeed, there is no evidence in the record that Woods threatened Williams with the gun when he met Williams in the parking lot.

[17] Under these circumstances, Williams might have reasonably feared bodily harm, but not death or serious bodily harm. “[T]he amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation.” *Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004), *trans. denied*. “When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished.” *Id.* The evidence establishes that Williams both escalated the altercation with Woods and participated willingly in the violence. Moreover, Williams was not justified in using deadly force against Woods under these circumstances. For all of these reasons, we conclude that the State presented sufficient evidence to rebut Williams’s self-defense claim.

## Jury Deliberations

[18] Williams also argues that the trial court committed reversible error during jury deliberations when the court, in the presence of counsel but not Williams, responded to two jury requests. Initially, we observe that Williams had a right to be present when the jury made a request for additional guidance during deliberations. See *Pendergrass v. State*, 702 N.E.2d 716, 718–20 (Ind. 1998). But his absence does not necessarily mean that the court committed reversible error.

[19] In *Stephenson v. State*, our supreme court held that when a jury requests additional guidance during its deliberations, a trial court should

notify the parties so they may be present in court and informed of the court’s proposed response to the jury before the judge ever communicates with the jury. When this procedure is not followed, it is an ex parte communication and such communications between the judge and the jury without informing the defendant are forbidden. However, although an ex parte communication creates a presumption of error, such presumption is rebuttable and does not constitute per se grounds for reversal. When a trial judge responds to the jury’s request by denying it, any inference of prejudice is rebutted and any error deemed harmless.

742 N.E.2d 463, 492 (Ind. 2001); see also *Pendergrass*, 702 N.E.2d at 719.

[20] Here, after deliberations began, the jury made two requests: (1) guidance from the trial court because some jurors could not reach a verdict; and (2) permission to relisten to the audio recording of Williams’s hospital statements to police. When the trial court discussed the requests with Williams’s counsel and the

prosecutor, Williams was not present in the courtroom. Williams’s counsel did not object to the jury’s inquiries. The trial court then told the jury to continue deliberating.<sup>2</sup> And the court allowed the jury to relisten to the recording.<sup>3</sup>

[21] Case law and [Indiana Code section 34-36-1-6](#) establish the procedures for allowing jurors to review evidence and testimony. However, [section 34-36-1-6](#) applies only after the jury retires for deliberations and the jurors explicitly indicate a disagreement as to any part of the testimony or a desire to be informed as to any point of law. *Hall v. State*, 897 N.E.2d 979, 982 (Ind. Ct. App. 2008). Here, there is nothing in the record indicating juror disagreement over the contents of the audio recording of Williams’s hospital interview. Therefore, [section 34-36-1-6](#) does not apply. *See id.*

[22] When [Indiana Code section 34-36-1-6](#) is inapplicable, a trial court deciding whether to permit the jury to take exhibits into the jury room should consider three factors: “(1) whether the material will aid the jury in a proper consideration of the case; (2) whether any party will be unduly prejudiced by submission of the material; and (3) whether the material may be subjected to improper use by the jury.” *Id.* at 982–83 (citing *Thacker v. State*, 709 N.E.2d 3, 6

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<sup>2</sup> The trial court did not err when it told the jury to keep deliberating. *See e.g. Lott v. State*, 690 N.E.2d 204, 209–10 (Ind. 1997) (holding that there is no reversible error where the court responds to the jury’s report of deadlock, without notifying the parties, by sending the bailiff to instruct the jury to continue deliberating); *see also Treadway v. State*, 924 N.E.2d 621, 631 (Ind. 2010).

<sup>3</sup> There is nothing in the record that would lead us to conclude the jury listened to the recording in the courtroom in the presence of counsel and the trial court. Therefore, we presume the jury relistened to the recording in the jury room.

(Ind. 1999)). The same factors govern a trial court's decision to send exhibits to the jury before or during deliberations. *Id.*

[23] As to the first factor, we note that when the jury makes a request to review particular exhibits or testimony, as it did here, the trial court may presume that the information will aid the jury in its deliberations. *See id. at 983*. With regard to the second factor, Williams does not argue that allowing the jury to relisten to his recorded statements was unduly prejudicial. The recording had already been played in open court during the trial. *Cf. Mays v. State, 907 N.E.2d 128, 133 (Ind. Ct. App. 2009)* (finding little risk that a jury would place undue weight on videos replayed during deliberations because the videos had already been played in open court), *trans. denied*. And, as to the third factor, Williams does not claim that the jury improperly used the recording. Also, the recording was not considered in isolation—the trial court sent the admitted exhibits to the jury room with the jury when it began deliberating. *See Tr. Vol. III, p. 241*.

[24] We acknowledge that the trial court should not have considered the jury's inquiries outside of Williams's presence. But based on our review of the three factors above, the court did not commit reversible error. From the outset of the trial, the jury was informed that Williams and Woods shot at each other on the night Woods died. Yet, in the audio recording, Williams provided a false account of how he received the gunshot wounds to his leg. Therefore, the jury was made aware that Williams's hospital statements were untrue when it initially heard the recording during trial. Nothing in the record suggests that the jury's desire to relisten to William's statements was improperly motivated.

Simply put, Williams has not shown that he was prejudiced by the court's decision to allow the jury to relisten to the recording while deliberating, and he does not claim that the jury used the recording improperly.

[25] For all of these reasons, we conclude that the trial court did not commit reversible error when it considered and responded to the jury's requests without Williams present in the courtroom.

### **Conclusion**

[26] The State presented sufficient evidence to rebut Williams's claim of self-defense. And though the trial court erred when it responded to the jury's questions in Williams's absence, reversal is not required because Williams was not unduly prejudiced.

[27] Affirmed.

Altice, J., and Weissmann, J., concur.