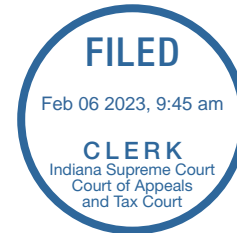


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Larry Boston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 6, 2023

Court of Appeals Case No.
22A-CR-1814

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-2007-MR-23

Memorandum Decision by Judge Riley

Judges Bailey and Vaidik concur

STATEMENT OF THE CASE

[1] Appellant-Defendant, Larry Boston (Boston), appeals his conviction for murder, a felony, Ind. Code 35-42-1-1(1).

[2] We affirm.

ISSUE

[3] Boston presents this court with one issue: Whether the State disproved beyond a reasonable doubt that Boston acted in self-defense.

FACTS AND PROCEDURAL HISTORY

[4] Boston, Taj Nelson (Nelson), and Charles Golden (Golden) spent the evening of July 7, 2020, together at Nelson's cousin's house in Gary, Indiana. During the morning of July 8, 2020, the three men went together in Nelson's car to two gas stations in Gary attempting to buy tobacco products, and then they drove to BJ's Barber Shop near 61st Street and Broadway. Shortly before 11:00 a.m., the trio left the barbershop, with Nelson driving, Golden in the front passenger seat, and Boston in the back seat. As the car passed near the intersection of West Adams Street and 47th Avenue, Boston shot Golden once in the head above his right eye, killing him almost instantly. After shooting Golden, Boston jumped from the still-moving vehicle, as did Nelson. Boston hit the back of his head and sustained a large gash. The car continued to roll a short distance and came to rest on a residential lawn. A resident of the area saw Boston pull Golden from the car, get back in the driver's seat, get out again, and run away. Nelson placed a call to 9-1-1 to report that Boston "just shot him in his head." (Exh.1).

Nelson stated during the 9-1-1 call that his cellphone was still in the car and that he did not want to return to the car to retrieve it for fear of being shot. Nelson stayed at the scene and spoke to responding officers, who patted him down for officer safety. Nelson had a Glock handgun tucked into his underwear which was removed from him. After this discussion, Nelson refused to further assist law enforcement.

- [5] After fleeing the scene of the shooting, Boston ran to a nearby home in the 200 block of West 46th Avenue, where he forced his way inside, showed his gun, and demanded the homeowner's car keys. Boston drove away in the homeowner's bright orange Honda Fit. After hearing a description of Boston and the stolen car, an officer of the Gary Police Department quickly spotted the Honda Fit and attempted to initiate a stop. Boston did not stop and instead drove onto Interstate 80/94, precipitating a high-speed chase by multiple law enforcement vehicles. During the chase, Boston opened the driver's side window and threw out a handgun that was later retrieved by law enforcement. Boston crossed over the Indiana state line into Illinois, eventually exited the interstate, and left the Honda Fit in the middle of the road in the 300 Block of 58th Street on Chicago's south side. Boston fled on foot, and the pursuing officers lost sight of him. Dozens of law enforcement officers were called to the area to search for Boston. During the search, a citizen informed law enforcement that Boston was hiding in a nearby home, where officers found Boston hiding in the attic. Boston was taken into custody. While officers discussed how to obtain medical

treatment for the gash on the back of Boston's head, Boston accused the officers of causing the wound.

[6] On July 9, 2020, the State filed an Information, charging Boston with Golden's murder. Between July 10, 2020, and July 17, 2020, Boston made telephone calls from jail which were recorded. In two calls, Boston commented that murder is "normal" in Chicago, "a lot of people get away with it", and that "if [Nelson] don't come to court, I'm gonna beat this." (Exh. 124A, calls 5718, 2450). During another call, Boston, who at that point had been told mistakenly that a gun had been found in Nelson's car, informed the other person on the call that "they found another gun in the car, so I'm trying for self-defense." (Exh. 124A, call 2141). In yet another call, after being informed that Nelson's gun had been taken off his body by the police, Boston exclaimed that "that's going to help my case 'cause now everyone in the car had a gun so now I can say that I was scared for my life . . . [unintelligible] I forgot I'm on a jail call." (Exh. 124A, call 5058). July 23, 2020, the State amended the Information to add charges of Level 3 felony armed robbery, Level 6 felony auto theft, and a firearm enhancement to the murder charge.

[7] On May 16, 2022, the trial court convened Boston's four-day bifurcated jury trial. In addition to evidence consistent with the aforementioned facts, photographs of the interior of Nelson's car after the shooting were admitted into evidence showing blood and other biological matter splattered over the passenger side seat and the upholstered armrest console between the front passenger and driver's side seats. The results of DNA analysis done on

Nelson's gun were also admitted into evidence that showed that, although two unidentified persons' DNA was on Nelson's firearm, Golden's was not.

Ballistics evidence showed that a spent shell casing found in the back seat of Nelson's car had been fired from the gun Boston had jettisoned from the Honda Fit on Interstate 80/94 on July 8, 2020.

- [8] Boston proceeded with a self-defense theory at trial and testified on his own behalf. According to Boston, Golden and he had plans for a double date the night of July 8, 2020, but that they had fought about who was going to get his hair cut first at the barbershop. In order to keep the peace, Boston had allowed Golden to go first, but Golden continued to hold a grudge. After finishing his own haircut, Golden waited in Nelson's car while Boston had his turn. Boston then returned to Nelson's car and got into the back seat with his legs behind the driver's side seat. Boston testified that Golden escalated the argument, calling him names and threatening to kill him and that Boston then observed that there was a handgun resting on the armrest console between Nelson and Golden. Boston maintained that Golden, who had turned in his seat so that he was facing Boston, went silent, turned, and reached for the gun that rested on the console, whereupon Boston went for his own handgun and shot Golden once. Boston testified that Golden had actually touched the gun that Boston claimed rested on the armrest console. In his trial version of events, Boston stated that his head wound had been caused by his fall when he jumped from Nelson's moving vehicle. Boston admitted that he had stolen the Honda Fit but claimed he fled because he panicked and was afraid that overzealous law enforcement

would have shot him if he remained at the scene. Boston stated that he had thrown his gun out the window during the high-speed chase so that the police would know that he was not armed. On cross-examination, Boston was unable to describe the direction the handgun was pointed as it rested on the armrest console.

- [9] At the close of the evidence, the jury found Boston guilty as charged. After the jury entered its verdicts, Boston pleaded guilty to the firearm enhancement to the murder charge. On June 30, 2022, the trial court conducted Boston's sentencing hearing. The trial court entered judgment of conviction only on Boston's murder and armed robbery convictions. The trial court sentenced Boston to fifty-seven years for his murder conviction, enhanced by five years for his use of a firearm. The trial court sentenced Boston to eleven years for his armed robbery conviction, to be served consecutively to the murder sentence.
- [10] Boston now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

- [11] Boston argues that the State did not sufficiently disprove his self-defense theory to Golden's murder. We review such claims using the same standard of review applied to other claims of insufficient evidence. *Hughes v. State*, 153 N.E.3d 354, 361 (Ind. Ct. App. 2020), *trans. denied*. We do not reweigh the evidence or assess the credibility of the witnesses. *Larkin v. State*, 173 N.E.3d 662, 667 (Ind. 2021). In addition, in conducting our review, we consider only the evidence most favorable to the judgment. *Id.*

[12] “A defendant can raise self-defense as a justification for an otherwise criminal act.” *Id.* at 670 (citing I.C. § 35-41-3-2). Under Indiana’s self-defense statute,

[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. However, 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[.]

I.C. § 35-41-3-2(c) (internal punctuation omitted). In order to prevail on a claim of self-defense, a defendant must show that he “(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.” *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). Once a defendant claims self-defense, the State has the burden of disproving beyond a reasonable doubt at least one of the elements, and the State may do so by “rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000) (quoting *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999)). This court will affirm the defendant’s conviction “if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.” *Id.*

[13] Here, the linchpin of Boston’s self-defense theory was that he was reasonably in fear of serious bodily injury because Golden reached for and touched a firearm that was on the center armrest console. The State disproved the factual premise

of Boston's self-defense, *i.e.*, that there was a firearm resting where Boston said it was, through evidence that there were only two firearms in the car, Boston and Nelson's. The jury could have reasonably inferred that Nelson's Glock was not where Boston theorized it was based on evidence that Nelson reported in his 9-1-1 call that he had jumped from a moving car, he was reluctant to return to the car to retrieve his property, eyewitnesses did not report seeing Nelson return to the car, and Nelson's Glock was found on his person after the shooting. In order to credit Boston's self-defense theory, the jury would have had to believe that, in reaction to the shooting that had just taken place inches from his head, Nelson, who was driving, had grabbed the firearm from the armrest console before jumping from the moving vehicle, an unlikely proposition that the jury reasonably discredited. Physical evidence also disproved that Nelson's Glock had been resting on the armrest console, in that photographs showed that there was blood covering the armrest after the shooting, yet none of Golden's DNA was found on the Glock. This evidence supports a reasonable inference that Nelson's firearm was in his pants during the shooting and that, therefore, Golden was unarmed.

[14] In addition, Boston's own testimony was critical to his self-defense, yet the State undermined Boston's credibility through several avenues. The State presented evidence that Boston initially accused law enforcement of causing his head wound, a claim he abandoned at trial, and the jury heard Boston's jailhouse calls indicating that his self-defense theory was constructed by him after the fact to fit the evidence and was not based on what had actually

happened on July 8, 2020. Boston's assertion in one of his jailhouse calls that he would be acquitted if Nelson did not testify at his trial created a reasonable inference for the jury that Nelson's truthful testimony would not support Boston's self-defense theory. On cross-examination, Boston could not tell the jury what direction the firearm was pointed, a detail that the jury could have reasonably expected Boston to know given that the firearm was what purportedly caused his fear of Golden. Boston's protracted flight from the scene of the shooting also could have been reasonably considered by the jury as evidence of his knowledge that his killing of Golden was wrongful and not justified by self-defense. *See Orozco v. State*, 146 N.E.3d 1038, 1041-42 (Ind. Ct. App. 2020) (holding that evidence of Orozco's flight from the state and disposal of the murder weapon was "probative evidence from which a reasonable factfinder could have concluded that the murder was not committed in self-defense."), *trans. denied*.

- [15] All this evidence disproved the element of Boston's self-defense that he had a reasonable fear "of death or great bodily harm" because Golden reached for a gun. *Wilson*, 770 N.E.2d at 800. Boston's arguments to the contrary attributing other interpretations to his actions after the shooting, his flight, and the fact that he only fired one shot are simply requests that we consider evidence that does not support the jury's verdict, reweigh the evidence, and reassess his credibility, all of which are unpersuasive given our standard of review. *Larkin*, 173 N.E.3d at 667. Equally unavailing is Boston's argument that it was "unsurprising" that Golden's DNA was not found on Nelson's Glock because other contents in the

vehicle's cupholders, including a water bottle, were not blood splattered. (Appellant's Br. p. 11). However, the factual underpinning of this argument is incorrect, in that Boston claimed at trial that the firearm was "on the center console like the armrest . . . behind the cup holders", not in the cupholders themselves. (Transcript Vol. III, p. 112). Neither can we credit Boston's assertion that, on appeal, the State has attempted to shift the burden of persuasion to him by pointing out that no other evidence supported Boston's version of events apart from his testimony, as this is merely an argument as to why the jury might have found Boston's version of events unbelievable. As such, and given the evidence disproving Boston's self-defense claim, we do not disturb the jury's verdict.

CONCLUSION

- [16] Based on the foregoing, we conclude that the State disproved Boston's self-defense theory beyond a reasonable doubt sufficient to sustain his conviction for murder.
- [17] Affirmed.
- [18] Bailey, J. and Vaidik, J. concur