MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Talisha Griffin
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Jeffery R. Buckley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 11, 2023

Court of Appeals Case No. 22A-CR-873

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49D30-1710-MR-40142

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

[1] Jeffery R. Buckley became angry with a driver who was "burning rubber" in a temple parking lot during a funeral gathering. Ultimately, Buckley fired more than two dozen gunshots into the car, killing the driver. Buckley, who chose to represent himself during his trial for murder, was convicted and sentenced to 60 years imprisonment.

[2] Buckley appeals, challenging his conviction on several grounds, including trial delays, the trial court's denial of standby counsel, jury instruction and evidentiary errors, and inadequate evidence to rebut his self-defense claim. Finding no basis to reverse Buckley's convictions, we affirm.

Facts

[3] Buckley was attending a reception at the Persian Temple in Indianapolis after his cousin's funeral. Kirk "Russ" Shurill drove into the parking lot and began "burning rubber"—that is, pressing the accelerator pedal while also pressing the brake—in the Temple's parking lot. Buckley approached Russ and requested that he stop. Tr. Vol. IV, p. 55. Although an argument ensued, Russ stopped "burning rubber" and began coasting forward, causing Buckley to back up. Buckley moved to the side of the car and began shooting at Russ as the car slowly moved forward. The car stopped only after colliding with a vehicle in which an off-duty police officer was sitting.

[4] Bystanders began shooting at Buckley, who returned fire. Buckley fled the scene, discarding his gun and shirt along the way. Russ, who suffered 17 entry

wounds from gunshots, died from his injuries. Buckley fled to California, where he changed his name and appearance. Seven months later, after receiving word that Buckley was at an Indianapolis hotel, police arrested him there for murder.

[5] Buckley was convicted of murder during his first jury trial, but that conviction was reversed on appeal because of an error in instructing the jury. *Buckley v. State*, 146 N.E.3d 356 (Ind. Ct. App. 2020) (mem.). The State retried Buckley for murder, and this time Buckley represented himself. Buckley claimed self-defense, arguing that Russ drew the gun and shot at him first. Buckley asserted he grabbed the gun from Russ and shot him to prevent Russ from running over Buckley and others. A jury again found Buckley guilty of murder. Buckley, now represented by counsel, appeals.

Discussion and Decision

[6] Buckley raises several issues on appeal, which we restate as follows:

- Whether the trial court violated Buckley's right to a speedy trial by conducting trial 73 days after Buckley moved for an early trial?
- Whether the trial court violated Buckley's right to self-representation by denying him standby counsel to assist with the electronic presentation of evidence?
- Whether the trial court abused its discretion in denying Buckley's proposed instruction on self-defense and necessity?
- Whether the trial court abused its discretion in admitting and excluding evidence?
- Whether the State presented sufficient evidence to rebut Buckley's claim of self-defense?

[7] We conclude that no speedy trial violation occurred, the trial court did not err in denying standby counsel, no instructional or evidentiary error occurred, and the State proved Buckley's guilt beyond a reasonable doubt. Accordingly, we affirm.

I. Speedy Trial

[8] Buckley first claims that he did not receive a timely trial. He contends the trial court violated Indiana Criminal Rule 4(B) by failing to bring him to trial within 70 days after his motion for early trial. He also argues that a 49-day delay occurring late in his prosecution violated his right to a speedy trial under the Sixth Amendment to the United States Constitution and Article 1, section 12 of the Indiana Constitution.

[9] When faced with Criminal Rule 4 claims, we review questions of law de novo and factual findings under the clearly erroneous standard. *State v. Harper*, 135 N.E.3d 962, 972 (Ind. Ct. App. 2019). "Clear error is that which leaves us with a definite and firm conviction that a mistake has been made." *Id.* (citing *State v. Oney*, 993 N.E.2d 157, 161 (Ind. 2013)). In making this determination, we will not reweigh evidence or determine the credibility of witnesses. *Id.*

[10] Applying that standard, we conclude that Buckley has not established clear error. He sought, or at least acquiesced in, the continuance of trial to a date three days beyond the 70-day deadline in Criminal Rule 4(B). And Buckley's

constitutional claims are based on a brief delay in his trial date that did not deprive him of his right to a speedy trial.

A. Criminal Rule 4(B)

[11] Indiana Criminal Rule 4(B) specifies that when "a defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion . . . ." The only exceptions to this rule are when the defendant seeks a continuance within the 70-day period, the delay is otherwise caused by the defendant's act, or court congestion prevents the defendant's trial within the 70-day period. Crim. R. 4(B).

[12] Buckley requested an early trial on December 16, 2021. In response, the trial court set Buckley's trial for January 31, 2022, well within the 70-day deadline that expired on February 25, 2022. App. Vol. II, p. 14. But at a hearing on January 24, 2022, Buckley reported he was not ready for trial on January 31 because he had been moved by the jail and his documents had not been moved with him. Tr. Vol. III, pp. 20-21. Buckley also complained that the State had not provided various discovery, although the State responded that it had provided all the discovery then due. *Id.* at 21-22. Then the following exchange occurred:

> THE COURT: Mr. Buckley, what say you to that, are you going to be ready on Monday or do you want a short continuance to make sure that you have your paperwork and you're out of quarantine [at the jail]?

> MR. BUCKLEY: Well, most definitely. I don't -- like I said, Judge, I don't have anything. I don't even have a pen to write with . . . This is -- this movement I don't believe that the jail was even prepared totally.
>
> THE COURT: Okay. So are you asking me to continue your trial for Monday?
>
> MR. BUCKLEY: Well, I wouldn't want to use it toward the defense continue it (sic). I would ask -- motion the Court for a continuance to be attributed to the State for failing to hand over the Brady material as requested . . . . But like I said, since we've been transferred I haven't had access to anything.

Id. at 26.

[13] The Court then checked its calendar and noted it had 5 days available for trial beginning on February 14 or February 28. *Id.* at 28. This exchange followed:

> THE COURT: And Mr. Buckley, what do you think? Do you think that you will have your stuff by the 14th and be ready to go in two weeks?
>
> [DEPUTY PROSECUTOR]: I guess that would be my concern is that where will he be in three weeks from now.
>
> MR. BUCKLEY: Like I said, Judge, since I've been here now approximately 15 days or more and they haven't even given us a change of underwear. I would ask the Court or motion the Court if they could compel the -- I guess the sheriff to hand over my material and not deny me due process to prepare a proper defense for my trial.
>
> I think that continuing this court date is continuously prejudicing me and it's -- has a lot to do with the State, Judge. I've been incarcerated now almost four years and I've been motioning the

> State for discovery that has been in their possession since the first year . . . .
>
> THE COURT: Well, I'm going to -- I am going to ask -- I'm going to have my staff contact the sheriff and see if we can get your items given to you soon because you are pro se defendant and need to have your items to prepare for trial. Do you want me to set this on the 14th or do you want me to set it on the 28th?
>
> MR. BUCKLEY: Well, Judge, it would all be contingent upon me receiving my material. I wouldn't want to make a judgment like that without . . . knowing."
>
> THE COURT: Okay. Then I'm going to go ahead and set it on the 28th of February so that we make sure that he has enough time to get his stuff.

Id. at 28-29.

[14] By the next pretrial hearing on February 17, Buckley had apparently recovered his documents. Even so, he told the court that he was not prepared for trial on February 28 and requested a continuance. *Id.* at 44. Although the trial court did not expressly rule on Buckley's continuance request during the hearing, it also did not alter the trial date. Buckley's trial began, as scheduled, on February 28.

[15] The record shows that Buckley sought, or at least acquiesced in, the rescheduling of the trial from January 31 to February 28. Buckley specifically sought a continuance but simply argued that it should be attributed to the State. When the trial court gave Buckley two choices—trial on February 14, which would have been within the 70-day period, or trial on February 28, which was outside the 70-day period—Buckley refused to choose. As a result, the trial

court set trial for February 28. Buckley did not object to that setting even though the State specifically noted that the 70-day period expired on February 25.

[16] A defendant must maintain a position reasonably consistent with the defendant's early trial request. *Hill v. State*, 777 N.E.2d 795, 797 (Ind. Ct. App. 2002). That means when a trial date is set beyond the limits specified in Criminal Rule 4(B), the defendant must object to the trial date or waive the right to a speedy trial. *Id.* at 798. When the defendant seeks or acquiesces in any delay that results in a later trial date, the time limitations of the rule are also extended by the lengths of those delays. *Id.*

[17] Here, Buckley could have agreed to the February 14 date and been tried within the 70-day period. Instead, he refused to choose either the February 14 or the February 28 trial dates offered by the trial court. But more importantly, he did not object to the rescheduling of trial to February 28. His failure to object to that date is deemed acquiescence in the delay. *See id.* (ruling that when trial court offered the State the choice between two trial dates and defendant did not object to State's choice of the later date, the defendant acquiesced to the later trial date). No Criminal 4(B) violation occurred.

B. Constitutional Claims

[18] In arguing that prosecution delays deprived him of his right to a speedy trial under the Sixth Amendment and under Article 1, section 12, Buckley focuses only on one period: the 49 days between the originally scheduled trial date of

January 10, 2022, and his actual trial date of February 28, 2022.[1] Buckley has no right to discharge, as we have already determined that he acquiesced in part of that delay and the remaining delay did not impinge on his speedy trial rights.

[19] We resolve both state and federal speedy trial claims by applying the analysis required by *Barker v. Wingo*, 407 U.S. 514 (1972). *S.L. v. State*, 16 N.E.3d 953, 961 (Ind. Ct. App. 2014). In *Barker*, the United States Supreme Court identified four factors to balance in determining whether a defendant has been deprived of the speedy trial right: (1) length of the delay; (2) reason(s) for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. 407 U.S. at 530. But the first factor is a "triggering mechanism" that determines whether the *Barker* analysis is even required. *Id.* at 530; *State v. Montgomery*, 901 N.E.2d 515, 520 (Ind. Ct. App. 2009). "[B]ecause of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." *Barker*, 407 U.S. at 530-31.

[20] Buckley seems to suggest that any delay in the trial date—including the 49-day delay of which he complains—is a triggering event under *Barker*. Appellant's

[1] The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." Article 1, section 12, provides that "[j]ustice shall be administered . . . speedily, and without delay."

Br., p. 33. Buckley cites no authority for that proposition other than *Barker*, which does not support his claim.

[21] *Barker* specifically noted that courts need not inquire into the other factors "[u]ntil there is some delay which is presumptively prejudicial." *Barker*, 407 U.S. at 530. Delays exceeding one year are deemed presumptively prejudicial and trigger the *Barker* analysis. *Montgomery*, 901 N.E.2d at 520. That is consistent with Indiana Criminal Rule 4(C), which entitles a defendant to discharge when the defendant is held on a criminal charge for more than a year "except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar." The provisions of Indiana Criminal Rule 4 implement the defendant's speedy trial right by expressly requiring a defendant's discharge if the defendant is not brought to trial within certain prescribed time limits. *State v. Penwell*, 875 N.E.2d 365, 367 (Ind. Ct. App. 2007).

[22] Buckley does not premise his constitutional claim on the overall length of his prosecution. Instead, he merely points to the 49-day delay between January 10 and February 28, 2022, as violating his constitutional speedy trial rights. We find that Buckley's calculations are incorrect and that no speedy trial violation occurred.

[23] The record shows that in mid-December 2021, the State sought its first continuance of Buckley's trial, which was then set for January 10, 2022. The

trial court granted the State's motion and, over Buckley's objection, continued the trial to January 31. As previously noted, the trial court later continued the trial again from January 31 to February 28 based on Buckley's lack of paperwork due to his jail move. We have already determined that Buckley sought or, at least, acquiesced in that second continuance. The delay from January 31 to February 28 therefore cannot be considered for purposes of his speedy trial claim. *Id.* (ruling that when a defendant seeks or acquiesces in a delay, the time limitations set by Criminal Rule 4 are extended by the length of the delay). Only the 21-day period between January 10 and January 31 remains in contention.

[24] Buckley does not show, nor do we find, that three weeks of additional incarceration is presumptively prejudicial and triggers the *Barker* analysis. As Buckley is not entitled to relief under *Barker*, no Sixth Amendment or Art. I, section 12 speedy trial violation occurred.

II. Standby Counsel

[25] Buckley next claims that the trial court abused its discretion and violated his Sixth Amendment right to self-representation by denying his request for standby counsel. We find no error.

[26] When Buckley first requested standby counsel, he told the court that he needed standby counsel only to present exhibits electronically through a laptop and other electronic equipment that he lacked. Buckley stated that he would not have standby counsel "actually assist me in any form or fashion in my

representation of my case." Tr. Vol. II, p. 153. Although the trial court noted that the State would share its electronic equipment with Buckley to present evidence to the jury, the court appointed a public defender to serve as standby counsel at trial.

[27] Yet at a pretrial hearing six months later, Buckley renewed his motion for standby counsel to help him use the electronic equipment in the courtroom. Although Buckley reminded the court that the issue of standby counsel had been discussed, everyone appeared to have forgotten that standby counsel had been appointed six months earlier.

[28] This time, the court determined that Buckley did not need standby counsel to present electronic evidence because the prosecutors would help him place evidence on a computer and the court would ensure that any videos that it admitted at Buckley's request would be played. The court noted, with agreement from the State, that the electronic equipment, "while provided by the State[,] is for everyone to use." *Id.* at 236. The court reassured Buckley that "[w]e will make sure that all the technology – everything that you need to be – that needs to be shown, we will make sure that is shown." *Id.* at 237. The trial court's ruling implicitly set aside the original grant of standby counsel.

[29] In a memorandum filed with the court two weeks later, Buckley again sought appointment of standby counsel but for a broader purpose. He requested standby counsel perform these tasks:

1. Research handicaps due to [Defendant's] incarceration.

2. Scripted examination of the [Defendant], provided by the [Defendant].

3. To take over if [Defendant] became ill and/or the Court terminates [Defendant] to proceed pro se for any reason.

4. Conducting Voir Dire[.]

5. Preparing Jury Instructions[.]

6. If [the Defendant is] found guilty, assistance at Sentencing hearing[.]

7. To obtain experts[.]

8. To locate experts[.]

9. To obtain evidence online and evidence for defensive strategy un accessible (sic) to [Defendant] incarcerated[.]

App. Vol. III, pp. 55-56.

[30] The trial court denied Buckley's request, noting that it had informed Buckley throughout the proceedings that standby counsel could not perform the sorts of services that Buckley sought. Afterward, Buckley never mentioned any need for standby counsel to help present electronic evidence.

[31] On appeal, Buckley does not challenge the trial court's denial of his request for standby counsel to perform the nine tasks he specified in his memorandum.[2] He appears to recognize the memorandum as requesting a hybrid form of self-

[2] Buckley also does not challenge the validity of his waiver of his right to counsel inherent in his decision to proceed pro se.

representation to which he was not entitled. *See, e.g.*, *Henley v. State*, 881 N.E.2d 639, 647 (Ind. 2008) ("The law is settled that '[t]he Sixth Amendment does not require a trial judge to permit hybrid representation . . . .") (quoting *Sherwood v. State*, 717 N.E.2d 131, 135 (Ind. 1999)). Instead, Buckley challenges only the trial court's denial of standby counsel to assist him in using electronic equipment. A defendant who proceeds pro se has no right to demand the appointment of standby counsel for assistance. *Kindred v. State*, 521 NE.2d 320, 323 (Ind. 1998). Rather, the decision is within the trial court's discretion. *Id.*

[32] Buckley cites no instance when he encountered any difficulties in presenting electronic evidence. He successfully introduced nearly three dozen defense exhibits, including transcripts, photos or copies of photos, and several electronic recordings on compact discs. Additionally, the record shows that the court and the State helped Buckley present his evidence in electronic form to the jury. Tr. Vol. IV, pp. 27-29; Tr. Vol. V, pp. 33-36. In light of that, Buckley had no need for standby counsel to assist him with electronic presentations. The trial court did not abuse its discretion in ultimately denying Buckley's request for standby counsel.

III. Instructions

[33] Buckley claims the trial court abused its discretion in rejecting his proposed instructions on self-defense and necessity. A trial court's rejection of a defendant's proposed jury instruction is reviewed for an abuse of discretion. *Rochefort v. State*, 177 N.E.3d 113, 120 (Ind. Ct. App. 2021).

[34] To prove an abuse of discretion, Buckley must establish that: (1) his tendered instruction correctly stated the law; (2) evidence in the record supported giving the instruction; and (3) the substance of the proposed instruction was not covered by other instructions. *Id*. We conclude the trial court properly rejected both of Buckley's proposed instructions because the self-defense instruction misstated the law and the necessity instruction was unsupported by the evidence.

A. Self-defense Instruction

[35] Buckley proposed a series of instructions on self-defense. After stating its intent to offer the pattern jury instruction on self-defense, the trial court asked Buckley whether he objected. Buckley responded that he objected only if the following language was excluded from the court's self-defense instruction:

> Throughout your deliberations on all of these points, you must constantly bear in mind all the circumstances under which the Accused acted. You must remember that a belief which may be unreasonable with quiet contemplation may be quite reasonable in the heat of a physical conflict. For example, you may find, upon careful reflection, that the Accused shot more bullets at [language redacted by Buckley] than were really necessary under the circumstances. However, the claim of self-defense is not necessarily defeated if more shots than would have seemed necessary are fired in the heat of passion generated by an assault. Even if on calm reflection, it appears the accused's actions might have been excessive, if he honestly believed that he was fighting for his life, he is still entitled to use all force reasonably necessary when viewed from his perspective. *It is only when all apparent danger of the loss of life or of receiving great bodily harm is at an end or has passed, that the right to use force should cease.* Detached reflection

> cannot be required in the face of a violent attack. Always remember that the standard you are seeking to apply is that of the reasonable man under all the circumstances. If you find that the circumstances of this case would have generated fear and anger, you must consider how the reasonable man would have reacted under those circumstances, not in a calmer situation.
>
> Authority: The part of this instruction in italics comes from *French* [*v. State*, 273 Ind. 251, 403 N.E.2d 821 (1980)], . . . but this instruction is in large part an attempt to stretch the "viewpoint of the accused" to its limits.

App. Vol. III, p. 124 (emphasis in original).

[36] The trial court rejected Buckley's proposed instruction and gave the pattern jury instruction on self-defense. Indiana's preferred practice is to use the pattern jury instructions. *Lacy v. State*, 58 N.E.3d 944, 947 (Ind. Ct. App. 2016).

[37] The trial court properly rejected the extra language proposed by Buckley because it misstated the law. Buckley's instruction suggested that his excessive force was appropriate if he "honestly believed that he was fighting for his life." App. Vol. III, p. 124. But the Indiana Supreme Court has found an instruction that "focuse[s] solely on the subjective belief of the defendant and ignore[s] the objective reasonableness of the defendant's belief" misstates the law. *Russell v. State*, 997 N.E.2d 351, 353 (Ind. 2013). The trial court did not err in refusing Buckley's self-defense instruction.

B. Necessity Instruction

[38] A defendant is entitled to an instruction on necessity only if substantive evidence supported the existence of that defense. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). The defense of necessity applies only when:

- the act charged as criminal stemmed from an emergency and was done to prevent a significant harm;
- there was no adequate alternative to the commission of the act;
- the harm caused by the act was not disproportionate to the harm avoided;
- the defendant had a good-faith belief that his/her act was necessary to prevent greater harm;
- the defendant's belief was objectively reasonable under all the circumstances of the case; and,
- the defendant did not substantially contribute to the creation of the emergency.

Id. at 377. Evidence of all of these factors must be present before an instruction on necessity is appropriate. *Id.*

[39] Buckley's proposed necessity instruction is close to, but not identical to, the pattern jury instruction on necessity. Indiana Pattern Jury Instructions,

Criminal § 10.2100.[3] Although the State contends the proposed instruction misstates the law, we need not decide that issue because the evidence does not support Buckley's necessity instruction.

[40] Even under Buckley's version of events, Buckley substantially contributed to the creation of the emergency by confronting and engaging in an argument with Russ. Moreover, adequate alternatives to shooting Russ existed. For instance, once Buckley had possession of the gun and either was reaching into the car or on the side of it, Buckley could have simply withdrawn. While he claimed he was protecting himself and others, shooting Russ and killing him created a far

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[3] Buckley's necessity instruction specified:

> Necessity involves a choice between two admitted evils. If the accused committed what would otherwise be a criminal act while acting out of necessity, you must find him/her not guilty of the crime charged.
>
> For a person to be acting out of necessity:
>
> (a) the act charged as criminal must have been done to prevent a significant harm;
>
> (b) there was no adequate alternative to the commission of the act;
>
> (c) the harm caused by the act must not have been disproportionate to the harm avoided;
>
> (d) the accused must have entertained a good-faith belief that his/her act was necessary to prevent greater harm;
>
> (e) the belief of the accused must have been objectively reasonable under all the circumstances of the case;
>
> (f) and the accused must not have substantially contributed to the creation of the emergency.
>
> Whether the accused was acting out of necessity is an issue in this case. The State has the burden to prove beyond reasonable doubt that the accused was not acting out of necessity.

App. Vol. III, p. 131.

more significant harm than that Buckley allegedly sought to prevent: he or other bystanders being hit by the slow-moving vehicle. And shooting Russ so many times was a disproportionate response to the events Buckley described. As the record contains no evidence to support several of the *Hernandez* prerequisites for a successful necessity defense, the trial court did not abuse its discretion in rejecting Buckley's necessity instruction.

IV. Evidentiary Issues

[41] Buckley's next claim is that the trial court abused its discretion by excluding evidence about ammunition and admitting Buckley's prior trial testimony and a pathologist's testimony about the autopsy report that the pathologist did not author. The admission and exclusion of evidence falls within the sound discretion of the trial court, and we will review such rulings solely for an abuse of discretion. *Carter v. State*, 31 N.E.3d 17, 28 (Ind. Ct. App. 2015). "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the court." *Id.* We find no error arising from the challenged evidentiary rulings.

A. Testimony About Ammunition

[42] State's witness Martina Holmes—Russ's sister—testified that Russ owned multiple guns and stored them at her house and at Russ's wife's home. After Buckley asked Holmes on cross-examination whether she had any ammunition at her home, the State objected to the question as irrelevant. Buckley argued

that the question was relevant to whether the gun that Buckley fired at Russ belonged to Russ or to Buckley.

[43] But just before Buckley asked Holmes about the ammunition, Holmes testified that she had all of Russ's guns. *Id.* at 192. The gun with which Buckley shot Russ was still in police custody and admitted as State's Exhibit 108. We fail to see how ammunition still in Russ's home five years after Russ's killing was relevant to the question of whether the murder weapon in police custody since the shooting belonged to Russ or Buckley. But even if it were relevant, the trial court's alleged error in excluding such evidence was harmless, given the substantial eyewitness testimony suggesting Buckley drew the gun. *Hall v. State,* 177 N.E.3d 1183, 1197 (Ind. 2021) (error is harmless when it does not prejudice party's substantial rights, and factors to be considered include overall strength of the prosecutor's case). The trial court did not err in refusing this irrelevant evidentiary jaunt.

B. Buckley's Prior Trial Testimony

[44] Buckley next argues that the trial court erroneously admitted State's Exhibit 189—his testimony from his first trial—because that testimony essentially revealed that he had been tried previously. As Buckley concedes, a defendant's testimony at a prior trial generally is admissible. *State v. Shepard*, 569 N.E.2d 683, 684 (Ind. Ct. App. 1991).

[45] But Buckley asserts, without citing any Indiana appellate decisions, that the trial testimony still was subject to analysis under Indiana Evidence Rule 403

before it could be admitted. Evidence Rule 403 authorizes a trial court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."

[46] Buckley contends the prejudicial impact of his prior trial testimony outweighed its probative value because it revealed to the jury that he had been tried previously. In response, the State argues that Buckley waived any Rule 403 objection by failing to raise that rule when he objected. We need not decide whether a Rule 403 balancing was required or whether the issue was waived. Even if we assume no waiver occurred and admission depended on a Rule 403 balancing, Buckley has not shown he is entitled to relief.

[47] Buckley views his prior testimony as prejudicial because it sounded like trial testimony. Although Buckley is correct that State's Exhibit 189 reflected that he was questioned by attorneys in front of a judge, the jury never learned that it was Buckley's testimony at a previous trial. Neither his prior conviction nor its reversal was evident from State's Exhibit 189.

[48] Although Buckley does not identify any significant prejudice from State's Exhibit 189, the probative value of that exhibit was great. He did not testify at this second trial so the jury did not hear his version of events except through his arguments to the jury and perhaps through inferences from his questioning of witnesses. This probative value outweighed any prejudicial impact.

Accordingly, the trial court did not abuse its discretion in admitting Buckley's prior trial testimony.

C. Autopsy Report

[49] Buckley also contends the trial court erred in admitting Dr. Christopher Poulos's testimony about the autopsy report. Dr. Poulos, the chief forensic pathologist at the Marion County Coroner's Office, did not perform the autopsy or prepare the autopsy report. This report, which was prepared by a pathologist who no longer worked for the Coroner's Office, was not admitted into evidence.

[50] Contrary to the State's claim, Buckley objected on hearsay grounds to Dr. Poulos's testimony about the autopsy report. Tr. Vol. IV, pp. 169-70. The trial court essentially treated his objection as continuing, given that the court told Buckley that he need not object again on that basis. *Id.* We therefore reject the State's claim that Buckley waived any error in the admission of Dr. Poulos's testimony by failing to object.

[51] But we agree with the State that Dr. Poulos's testimony was admissible under Indiana Evidence Rule 703. That rule permits experts to

> base an opinion on facts or data in the case that the expert has been made aware of or personally observed. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.

Evid. R. 703.

[52] Dr. Poulos is an expert who was made aware of and personally observed the autopsy report, a document reasonably prepared by and relied upon by pathologists. Tr. Vol. IV, pp. 161-64, 167; *see Ealy v. State*, 685 N.E.2d 1047, 1056 (Ind. 1997) (ruling that both before and after promulgation of Evidence Rule 703, experts could give an opinion based on an autopsy report prepared by another). Even if Buckley were correct that the autopsy report is inadmissible hearsay, Evidence Rule 703 authorized Dr. Poulos to testify about his independent opinions based on the autopsy report. *See Ackerman v. State*, 51 N.E.3d 171, 189 (Ind. 2016) (pathologist "would have been allowed to testify that his review of the autopsy reports and photographs led him" to various conclusions that he formed independently). Buckley does not address Evidence Rule 703 and therefore does not offer any basis for refuting its application here. We find no abuse of discretion.

V. Self-defense

[53] Lastly, Buckley claims that the State failed to adequately rebut his self-defense claim. A valid claim of self-defense legally justifies an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). A person is justified in using deadly force and does not have a duty to retreat if the person reasonably believes that force is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony. Ind. Code § 35-41-3-2(c).

[54] A defendant who claims he acted in self-defense must prove he was in a place where he had a right to be, acted without fault, and reasonably feared or perceived death or great bodily harm. *Larkin v. State*, 173 N.E.3d 662, 670 (Ind.

2021). "The State must then negate at least one element beyond a reasonable doubt '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.'" *Id.* (quoting *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987)).

[55] Challenges to the sufficiency of the State's evidence rebutting a defendant's self-defense claim are reviewed like any other sufficiency of the evidence claim. *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000). We do not reweigh the evidence or judge the credibility of witnesses. *Stewart v. State*, 167 N.E.3d 367, 377 (Ind. Ct. App. 2021). We reverse only if no reasonable person could say that the State negated the self-defense claim beyond a reasonable doubt. *Id.*

[56] Buckley's sufficiency claim assumes Russ shot the gun first, that Buckley was hit by those shots before grabbing the gun from Russ, and that Buckley's firing of 17 shots at Russ was reasonable force under the circumstances. But Buckley's argument essentially asks this Court to reweigh the evidence, which was conflicting on each of the points on which Buckley's argument rests.

[57] For instance, Enoch Frank, the off-duty police officer whose vehicle was hit by Russ's car, testified that Buckley fired at least five shots at Russ into Russ's car. Buckley was standing about five feet away at the side of the car when firing, according to Frank. Another eyewitness testified that he saw Buckley draw his handgun and shoot Russ from the passenger side as the car slowly moved toward Officer Frank's car. The eyewitness testified that Russ complied with Buckley's request to stop "burning rubber" and that Russ was smiling when the

shooting began. Tr. Vol. IV, pp. 57, 62. This evidence showing Buckley instigated the violence was enough to defeat Buckley's self-defense claim. *See King v. State*, 61 N.E.3d 1275, 1284 (Ind. Ct. App. 2016) (finding State rebutted self-defense claim through evidence that defendant instigated the altercation).

Conclusion

[58] As we have concluded that Buckley is not entitled to relief on any of his appellate claims, we affirm the trial court's judgment.[4]

May, J., and Crone, J., concur.

[4] We need not address a sixth claim Buckley raises—that cumulative error requires reversal—given our rejection of all of Buckley's other claims of error.