

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Shawn Michael Burkhart,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 15, 2023

Court of Appeals Case No.  
23A-CR-903

Appeal from the Grant Superior  
Court

The Honorable Marianne Vorhees,  
Senior Judge

Trial Court Cause No.  
27D02-1911-F6-633

**Memorandum Decision by Judge Riley.**  
Judges Crone and Mathias concur.

**Riley, Judge.**

## **STATEMENT OF THE CASE**

[1] Appellant-Defendant, Shawn Michael Burkhart (Burkhart), appeals his convictions for killing a domestic animal, a Level 6 felony, Ind. Code § 35-46-3-12(d); cruelty to an animal, a Class A misdemeanor, I.C. § 35-46-3-12(b); unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor, I.C. § 35-47-4-6; unlawful possession of a firearm by a serious violent felon, a Level 4 felony, I.C. § 35-47-4-5(c); and two Counts of neglect of a dependent, Level 6 felonies, I.C. § 35-46-1-4(a)(1).

[2] We affirm.

## **ISSUES**

[3] Burkhart presents this court with two issues on appeal, which we restate as:

- (1) Whether the State presented sufficient evidence beyond a reasonable doubt to rebut Burkhart's claim of self-defense; and
- (2) Whether the trial court abused its discretion by admitting into evidence body camera footage showing the injured animal after having been shot by Burkhart.

## **FACTS AND PROCEDURAL HISTORY**

[4] In late 2019, Burkhart and his two minor daughters lived in a home in Marion, Indiana, together with Mary Schalk (Mary) and her fiancé, Joseph Burkhart (Joseph), Burkhart's brother. Mary and Joseph had two dogs and two cats. One of the dogs, Athena, was a big dog that was protective of Mary. Athena

had never bitten anyone but disliked loud noises or yelling and would bark at anyone who raised his voice.

[5] On November 17, 2019, after Joseph had left for work, Mary fixed breakfast for Burkhart's daughters. After breakfast, the children attempted to wake Burkhart, but he started to yell at them, telling them to leave him alone. Mary interfered and told him that he needed to "get up while his girls needed him" because they needed to clean the house as the girls were expecting a visitor. (Transcript p. 33). Burkhart became frustrated and angry. He yelled at Mary, and Mary raised her voice in response. Because she did not want the children to hear the argument, she told them to go to their room. Mary placed Athena in her bedroom to "de-escalate the situation[,] but the bedroom door did not latch correctly, and Athena returned to Mary's side. (Tr. p. 38). Mary and Burkhart continued to exchange words in the dining room and Mary told Burkhart to leave the residence. Burkhart went into the living room, passing the front door, and retrieved a gun off the mantel. Mary was unaware that a handgun was on the mantel and "was kinda shocked that he picked it up." (Tr. p. 40). Burkhart phoned his brother and told him, "[c]ome get your bitch wife or I'll shoot your dog." (Tr. p. 42).

[6] Mary and Athena remained in the dining room while Burkhart was yelling at Joseph through the phone in the living room. Athena was pacing and barking but did not leave Mary's side. After hearing Burkhart's threat to shoot Athena, Mary started to push Athena down the hall toward her crate. As Mary was walking away from Burkhart and taking Athena to her crate, Burkhart came up

behind Mary, walked around her, and fatally shot Athena in the face. Burkhart then ran out of the house through the back door. Although Burkhart claimed that Athena had bitten him, Officer Matthew Andry (Officer Andry), the canine handler for the Marion Police Department, checked Burkhart's wound and noted that Burkhart's injuries were not consistent with injuries typical of dog bites. He explained that Burkhart's wound was missing the general characteristics of a dog bite, such as puncture wounds from the canine teeth and abrasions from the front or back teeth.

[7] On November 21, 2019, the State filed an Information, charging Burkhart with Level 6 felony domestic violence, animal cruelty, Level 6 felony killing a domestic animal, Class A misdemeanor cruelty to an animal, and Class A misdemeanor unlawful possession of a firearm by a domestic batterer. The State later amended the Information, adding Level 4 felony unlawful possession of a firearm by a serious violent felon and two Counts of Level 6 felony neglect of a dependent. On February 27, 2023, the trial court commenced a three-day jury trial. The state dismissed the Level 6 felony domestic violence, animal cruelty charge and the jury returned a guilty verdict on the remaining Counts. On March 27, 2023, the trial court sentenced Burkhart to an aggregate sentence of twelve years.

[8] Burkhart now appeals. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

### *I. Self-Defense*

- [9] Burkhart first contends that the State failed to present sufficient evidence to negate his claim of self-defense, as he was in a place where he had the right to be, he was not at fault for the confrontation, and he had a reasonable fear of harm or bodily injury.
- [10] A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. I.C. § 35-41-3-2(a); *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). To prevail on a claim of self-defense, the 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. *Id.*; *Kimbrough v. State*, 911 N.E.2d 621, 635 (Ind. Ct. App. 2009). Once a defendant raises a claim of self-defense, the State has the burden of negating at least one of the necessary elements. *Kimbrough*, 911 N.E.2d at 635. The State may meet its burden by rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by relying on the sufficiency of the case-in chief. *Id.* Whether the State has met its burden is a question for the trier of fact. *Id.*
- [11] The standard for reviewing a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same standard used for any claim of insufficient evidence. *Id.* at 699; *Wilson*, 770 N.E.2d at 802. We neither reweigh the evidence nor judge the credibility of witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will reverse a conviction only if no reasonable person could say that the State negated the defendant's self-defense claim beyond a reasonable doubt. *Id.*; *Wilson*, 770 N.E.2d at 800-01. The evidence is

sufficient if an inference may be reasonably drawn from it to support the verdict. *Drane*, 867 N.E.2d at 147.

[12] Pointing to his own testimony in support, Burkhart insists that during the course of the argument with Mary, he reasonably became in fear of serious bodily injury. He maintains that when he was making his way out of the dining room and towards the back door, Athena “lunge[d]” at him, “grab[bed] [his] pants” and “bit [him] on the side of [his] knee.” (Tr. p. 149). Burkhart advises that “[h]aving been bitten through his clothing, [he] believed that Athena would continue the attack against him.” (Appellant’s Br. p. 10). However, the State’s presentation of evidence paints a different picture and establishes that although Athena was a big dog who barked at loud noises, she had never attacked or bitten anyone. Throughout the ensuing argument between Burkhart and Mary, Athena remained at Mary’s side and there is no evidence indicating that she moved toward or lunged at Burkhart. Rather, the phone call placed by Burkhart to Joseph indicates a growing annoyance by Burkhart toward Athena because of her barking, not because she displayed any threatening behavior or placed him in fear of great bodily harm or death. At the time Burkhart left the living room with the gun, passed the front door—which he could have used to exit the house—and moved towards the dining room and the back door, Mary was in control of Athena, and was guiding the dog towards her crate and away from Burkhart. Nevertheless, Burkhart walked around Mary and fatally shot Athena in the face. Mary testified that at no point did Athena move towards Burkhart or bite him. Mary’s testimony that Athena did not bite Burkhart was

corroborated by Officer Andry who explained that Burkhart's injuries were not consistent with injuries typical of dog bites.

[13] The only evidence supporting a self-defense claim was Burkhart's own testimony. The trial court gave the jury a self-defense instruction, and it convicted Burkhart nonetheless, thereby rejecting Burkhart's testimony, which it had the right to do. Burkhart now essentially invites this court to reweigh the evidence. We decline. We conclude that because there is sufficient probative evidence from which the trier of fact could have found that Burkhart had no reasonable fear of death or great bodily harm, the State negated Burkhart's claim of self-defense beyond a reasonable doubt.

## II. *Admission of Evidence*

[14] Next, Burkhart contends that the trial court abused its discretion by admitting an officer's body camera footage showing Athena's injuries because this evidence was unfairly prejudicial and only served "to inflame" the jury. (Appellant's Br. p. 12). The trial court has broad discretion to rule on the admissibility of evidence, and a reviewing court will reverse the trial court's decision only upon finding an abuse of discretion. *Holloway v. State*, 69 N.E.3d 924, 929 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when the "admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* We will not reweigh the evidence and will resolve all conflicts in favor of the trial court's ruling. *Id.* As such, the trial court's ruling is presumptively correct, and a

challenger bears the burden on appeal of persuading us that the trial court erred in its exercise of discretion. *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453, 457 (Ind. 2001).

[15] In *Swingley v. State*, 739 N.E.2d 132, 133 (Ind. 2000) (internal citations omitted), our supreme court stated the standard of review for admission of photographic evidence:

Relevant evidence, including photographs, may be excluded only if its probative value is substantially outweighed by the danger of unfair prejudice. Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally. Photographs, even those gruesome in nature, are admissible if they act as interpretative aids for the jury and have strong probative value.

“Unfair prejudice addresses the way in which the jury is expected to respond to the evidence; it looks to the capacity of the evidence to persuade by illegitimate means, or the tendency of the evidence to suggest a decision on an improper basis.” *Myers v. State*, 33 N.E.3d 1077, 1110 (Ind. Ct. App. 2015), *trans. denied*. Because the bar for unfair prejudice, rather than mere prejudice, is high, courts err on the side of admissibility and consider whether there is a risk that a jury will “substantially overestimate the value of the evidence or that the evidence will arouse or inflame the passions or sympathies of the jury.” *Schnitzmeyer v. State*, 168 N.E.3d 1041, 1045 (Ind. Ct. App. 2021).

[16] Burkhart claims that the body camera footage of Athena suffering and dying was too graphic in nature and its effect was far more prejudicial than any



probative value gained by the jury. Reviewing the evidence, we find that the probative value of the body camera footage was high. Not only did the footage corroborate the testimony that Athena had been shot, showed the extent of her injuries, and recorded her passive and non-aggressive reactions to the aid that was rendered to her, the video also provided additional context and corroboration of the layout of the residence and the location of events. In broadcasting the footage to the jury, additional precautions were taken to reduce its potential prejudicial value: the sound was muted, and certain portions were fast-forwarded. Accordingly, as the footage was relevant to material issues before the jury and showed scenes that had been testified to orally, we cannot say that the prejudicial effect amounted to unfairness and outweighed its probative value.

[17] Even if the trial court abused its discretion in admitting the body camera footage, its admission would be harmless “as the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.” *Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017). Burkhart does not dispute that he shot Athena, and Mary testified as to the events leading up to and resulting in the shooting of the dog, as well as to the extent of dog’s injuries. Therefore, any error in the admission of the video would have been harmless.

## **CONCLUSION**

[18] Based on the foregoing, we hold that the State presented sufficient evidence beyond a reasonable doubt to negate Burkhart’s claim of self-defense and that the trial court did not abuse its discretion in admitting the body camera footage.

[19] Affirmed.

[20] Crone, J. and Mathias, J. concur