

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Kenneth J. Lawless,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 3, 2023

Court of Appeals Case No.  
22A-CR-1646

Appeal from the  
Allen Superior Court

The Honorable  
David M. Zent, Judge

Trial Court Case No.  
02D06-2009-F3-63

**Memorandum Decision by Senior Judge Shepard**  
Judges Riley and Weissmann concur.

**Shepard, Senior Judge.**

- [1] Kenneth J. Lawless appeals his convictions by jury of neglect of a dependent, a Level 3 felony,<sup>1</sup> and domestic battery, a Level 5 felony.<sup>2</sup> He argues the State failed to present sufficient evidence to disprove his claim of self-defense. We affirm.

**Facts and Procedural History**

- [2] On the afternoon of September 14, 2020, seventeen-year-old K.L. returned to the home he shared with his father, Lawless. Lawless was aggressive and angry, and he appeared intoxicated. He repeatedly accused K.L. of sleeping with his girlfriend. K.L. denied Lawless's accusations, but Lawless continued to question him argumentatively.
- [3] Several hours later, Lawless's girlfriend arrived to retrieve some personal items, and Lawless argued with her. After she left, he continued to angrily accuse K.L. of sleeping with her. At one point, Lawless grabbed K.L. by the shoulder and shook him. Lawless also consumed alcohol and controlled substances.

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<sup>1</sup> Ind. Code § 35-46-1-4 (2019).

<sup>2</sup> Ind. Code § 35-42-2-1.3 (2020).

K.L. took a knife from the kitchen and hid it in his bedroom before going to sleep.

- [4] During the night, K.L. woke up to find Lawless looking into his room. K.L. got out of bed and closed the door, telling him to get out. Lawless “forcefully” reopened the door, stating the house belonged to him. Tr. Vol. 1, p. 134. Lawless again accused K.L. of sleeping with his girlfriend, “saying that she was in [K.L.’s] bed.” *Id.*
- [5] K.L. picked up his knife with one hand, grabbed Lawless by the throat with his other hand, and pushed Lawless out of the bedroom. He did not cut Lawless. Lawless then took a picture off of the wall and broke its frame, cutting himself in the process. Lawless threw the picture at K.L., cutting his face.
- [6] Next, K.L. returned to his bedroom and put the knife down, but Lawless entered the room carrying a metal pipe. He hit K.L. in the neck with the pipe, causing K.L. to fall to the floor and “black[] out for about five (5) seconds.” *Id.* K.L. tried to get up, raising an arm to protect himself. Lawless hit K.L.’s arm with the pipe, and K.L. immediately felt severe pain.
- [7] At that point, a friend of Lawless who was at the house convinced Lawless to go to his own bedroom. K.L. went to the living room, where he picked up Lawless’s handgun and fired a shot, but “not towards [Lawless.]” *Id.* at 135. Next, K.L. went into the kitchen and fired another shot, before Lawless’s friend escorted him out of the house. K.L. intended for Lawless to hear the shots and

not “come anywhere near me.” *Id.* He threw the handgun into the front yard, and the friend took him to a hospital.

[8] Police officers were dispatched to the hospital to investigate. An officer interviewed K.L., who appeared to be nervous and sad. K.L. was initially concerned he would be “placed back in the foster care system,” *id.* at 136, so he falsely told hospital staff and the officer that he had fallen out of a bunk bed. There were no bunk beds in Lawless’s house. K.L. later told the officer his father had attacked him.

[9] K.L. had a fractured elbow and had to wear a splint for a month. The doctor who treated K.L.’s elbow later testified the nature of the injury was inconsistent with being caused by a fall.

[10] Meanwhile, several officers went to Lawless’s house. They knocked on the door for thirty minutes, but no one responded. The officers saw lights on in the home, along with a burning candle, and a phone was ringing. They attempted to call Lawless on his phone and called out to him using a loudspeaker, but he did not respond.

[11] After further discussion, the Fort Wayne Police Department sent its SWAT team to the house. The SWAT team officers again attempted to contact Lawless by phone and loudspeakers for over an hour, but he failed to respond. During this process, they spotted the handgun in the front yard and retrieved it. Finally, after other officers obtained a search warrant, the SWAT team sent tear gas into the house. Lawless appeared at the front door and was arrested.

Officers entered the house and found broken glass in a hallway outside K.L.'s bedroom. In addition, they found the metal pipe in Lawless's bedroom.

[12] The State charged Lawless with neglect of a dependent, a Level 3 felony, and two counts of domestic battery, both Level 5 felonies. The week before the trial, Lawless called K.L. to ask him to not testify and to drop the case. K.L. refused and testified at trial. Lawless also testified at trial, raising a claim of self-defense.

[13] The jury determined Lawless was guilty as charged. The court vacated one of the domestic battery convictions on double jeopardy grounds and imposed sentences on the other two convictions. This appeal followed.

## Discussion and Decision

[14] Lawless argues the Court must reverse his convictions because the State failed to present sufficient evidence to disprove his claim of self-defense. “[I]t is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime.” Ind. Code § 35-41-3-2(a) (2019). Accordingly, “[a] valid claim of defense of oneself or another person is legal justification for an otherwise criminal act.” *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). The General Assembly has provided:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

(1) is justified in using deadly force; and

(2) 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 or a third person or the commission of a forcible felony. No person, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

Ind. Code § 35-41-3-2(c).

[15] Further, the Indiana Supreme Court has determined a defendant claiming self-defense “must establish that he or she was in a place where he or she had the right to be, acted without fault, and was in reasonable fear or apprehension of death or great bodily harm.” *Miller v. State*, 720 N.E.2d 696, 699-700 (Ind. 1999). Once a defendant claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt. *Id.* at 700.

[16] The standard of review for a challenge to the sufficiency of the evidence to disprove a claim of self-defense is the same as for any other sufficiency of the evidence claim. *Stewart v. State*, 167 N.E.3d 367 (Ind. Ct. App. 2021), *trans. denied*. We neither reweigh the evidence nor judge witness credibility. *Wolf v. State*, 76 N.E.3d 911 (Ind. Ct. App. 2017). If a defendant is convicted despite a claim of self-defense, we will reverse only if no reasonable person could say self-defense was negated beyond a reasonable doubt. *Id.*

[17] Lawless argues the evidence demonstrated K.L. was the aggressor, and he merely defended himself against his son’s attack. We disagree. Although K.L. grabbed Lawless by the throat while wielding a knife, K.L. had been provoked

by hours of Lawless's argumentative questioning, which included unwanted physical contact, as well as Lawless's aggressive intrusion into K.L.'s bedroom in the middle of the night.

[18] In any event, after Lawless threw a picture at K.L. in the hallway, cutting himself and K.L. in the process, he walked away while K.L. withdrew to his bedroom and put down the knife. But Lawless returned, having armed himself with a metal pipe, and struck K.L. several times. Further, after K.L. left the house to go to the hospital, Lawless did not report the incident to police, and he did not respond to police attempts to call him and hail him via loudspeaker for over an hour and a half. These facts demonstrate Lawless did not act without fault. *See Stewart*, 167 N.E.3d at 377 (defendant did not act without fault; after being attacked by several men, she walked away from the group, retrieved a gun from her car, and "returned to the fray," shooting the victim); *McCullough v. State*, 985 N.E.2d 1135 (Ind. Ct. App. 2013) (defendant's failure to immediately contact police, coupled with efforts to conceal wrongdoing, showed he did not act without fault), *trans. denied*.

[19] In addition, "in all self-defense claims, the force employed must not be out of proportion to the apparent urgency of the situation." *Morrison v. State*, 613 N.E.2d 865, 868 (Ind. Ct. App. 1993), *trans. denied*. Lawless used disproportionate force when he struck K.L., who was at that time unarmed, in the neck and arm with the metal bar. The first strike caused K.L. to black out for several seconds, and Lawless inflicted the second strike as K.L. attempted to stand up with his arm raised to fend off the attack.

[20] Lawless points to evidence K.L. stabbed him with the knife, but his argument is, in substance, a request to reweigh the evidence, which our standard of review forbids. He has failed to demonstrate the insufficiency of the evidence to disprove his claim of self-defense.

## Conclusion

[21] For the reasons stated above, we affirm the judgment of the trial court.

[22] Affirmed.

Riley, J., and Weissmann, J., concur.