

## MEMORANDUM DECISION

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### ATTORNEY FOR APPELLANT

David P. Jones  
Newby, Lewis, Kaminski & Jones, LLP  
La Porte, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
Tiffany A. McCoy  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Francisco Amaro,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 26, 2021

Court of Appeals Case No.  
20A-CR-1922

Appeal from the LaPorte Superior  
Court

The Honorable Richard R.  
Stalbrink, Jr., Judge

Trial Court Cause No.  
46D02-1708-MR-1

**Crone, Judge.**

## Case Summary

- [1] Francisco Amaro appeals his conviction for murder. He contends that the State presented insufficient evidence to rebut his self-defense claim. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

- [2] On July 26, 2017, Amaro and Willie Steele were inmates at the Indiana State Prison Correctional Facility in Michigan City. Both Amaro and Steele were convicted murderers. On that date, Amaro was housed in a cell located on the second level in the I cell house detention unit (IDU). The IDU is a disciplinary segregation unit where offenders are housed if they have committed misconduct in the general population. Access to the IDU and its cells is controlled by a control room. Steele, although housed in the general population, worked as a porter and was granted access to the IDU in order to hand out food trays to inmates in the unit. Within the IDU, inmates are housed in personal eight-by-ten cells with doors consisting of both vertical and horizontal bars that permit individuals to see into and outside of the cells through the doors. However, it is not uncommon for an inmate to hang a blanket on the inside of the cell door for privacy and to block the light going into the cell.
- [3] At approximately 4:30 a.m. on July 26, Steele was delivering breakfast trays to the inmates housed on the second level in the IDU. Amaro had a blanket across the inside of his entire cell door. When Steele arrived at Amaro's cell, he grabbed a food tray off the food cart and placed the tray on the food port in

Amaro's cell door. At that moment, Amaro pushed a "spear-like" weapon through his cell door twice and stabbed Steele in the abdomen. Tr. Vol. 2 at 238, 240. The blade of the weapon went five to seven inches into Steele's abdomen. This caused Steele to fall back and hit his head on the guardrail.

[4] Correctional Officer Adam Eng was on the first floor of the IDU when he heard "a commotion upstairs" that "sounded like trays crashing to the ground." *Id.* at 66. Eng ran upstairs and discovered Steele unconscious and lying facedown on the ground. Eng radioed for medical help, and first responders arrived within five or ten minutes. One of the first responders, registered nurse Betty Boggs, observed that although Steele was breathing, he was unresponsive, pale, diaphoretic, and had a "thready" pulse, and his pupils were dilated. *Id.* at 74. Steele had blood on the back of his head and what appeared to be a puncture wound in his abdomen. Steele was transported by ambulance to a local hospital where he died shortly after arrival. Steele's cause of death was determined to be a stab wound to the upper left abdomen.

[5] Right after the incident, correctional officers removed Amaro from his cell and performed a "cursory inspection" of his cell for weapons, but there were "no lights in the cell and it was fairly dark" and officers did not find anything. *Id.* at 100. The cell was secured until officers could do a more thorough "shakedown" search of the cell later that day. *Id.* at 101, 162. Correctional Officer Timothy Reed conducted a shakedown search of Amaro's cell on the afternoon of July 26 and located a "homemade prison shank" in the back of a heat vent on the wall. *Id.* at 164. Reed also found fourteen tubular newspaper

“rods” wrapped in a towel on the bed. *Id.* at 169. The rods were “pretty hard” and made to be interlocking so that an individual could make “a long stick,” and one of the rods was bent like a “handle” to be placed on the end. *Id.* at 171-72.

[6] On August 21, 2017, the State charged Amaro with murder and level 4 felony possession of a deadly weapon by an incarcerated person. A jury trial was held on January 23, 2020. During trial, the State called several correctional officers and investigators as witnesses. The State also submitted still photographs and security video of the incident.<sup>1</sup> Amaro testified as the only defense witness, admitted that he stabbed Amaro, but claimed self-defense. Specifically, Amaro testified that the day before the incident, his fiancée had come to the prison for a visit. He stated that after the visit, Steele commented to Amaro that his fiancée was “a fine piece of a\*\*” and that Steele would “f\*\*k her real good” when he was released. *Id.* at 229. Amaro claimed that when he objected to Steele’s comments about his fiancée, Steele threatened to “burn [Amaro’s] face off ....” *Id.* at 230. Amaro explained that in his experience in prison, a threat to “burn your face off” means that the person is threatening to boil water or other items and throw the hot substance on the other person. *Id.* Amaro stated that he knew that Steele had access to a microwave.

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<sup>1</sup> The motion-activated security cameras recorded Steele walking down the hall toward Amaro’s cell with the food cart and also recorded the spear-like object coming out of Amaro’s cell door. The cameras stopped recording at 4:28:34 a.m.—when Steele was still standing in front of Amaro’s cell—and started recording again at 4:29:29 a.m.—when Steele was on the ground. State’s Exs. 6 and 9A.

[7] Amaro testified that he took Steele's threat seriously and that it caused him to feel "stressed out." *Id.* at 234. Amaro admitted that the shank and "the pole" found in his cell had belonged to him for eight months, that he had them for his protection, and that he assembled the pole and connected "[his] knife" to the end "like four days" before he killed Steele. Tr. Vol. 3 at 8. He explained that on the morning of July 26, when it was time for Steele to deliver breakfast, "I was thinking that he was going to proceed in pulling my blanket down and burning me with a hot substance." Tr. Vol. 2 at 235. Amaro stated that due to the blanket, he could not really see out of the cell and could just see "a little shadow but not too much." *Id.* at 234. Amaro said that as Steele approached his cell, Amaro told him, "[H]ey, Mr. Steele, I'm cool, I don't want nothing to eat. I'm fine." *Id.* at 235. Amaro testified that although "usually" Steele would keep on walking when he refused food, this time "the shadow came toward the door[,] and so he "grabbed [his] pole and stuck it out through the door." *Id.* at 235-36. Amaro testified that because Steele remained in front of his cell, he "stuck [the weapon] out through the curtain again." *Id.* at 239. Amaro admitted that although he could not see exactly where he was aiming his weapon, he twice "shoved it out" of his cell at the shadow he knew to be Steele, and he did it because he believed that he had to "strike first." *Id.* at 249; Tr. Vol. 3 at 12. Amaro denied intending to kill Steele.

[8] At the conclusion of the trial, the jury found Amaro guilty as charged. Upon the State's request, the trial court merged the two charges and entered judgment

of conviction for murder. The court sentenced Amaro to forty-five years in the Department of Correction. This appeal ensued.

## Discussion and Decision

- [9] Amaro asserts that the State presented insufficient evidence to rebut his self-defense claim. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency claim. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*
- [10] A person who knowingly or intentionally kills another human being commits murder. Ind. Code § 35-42-1-1. Amaro claimed self-defense to the murder of Steele. Self-defense is a legal justification for an otherwise criminal act. *Bryant v. State*, 984 N.E.2d 240, 250 (Ind. Ct. App. 2013), *trans. denied*. A person is justified in using reasonable force, including deadly force, against another person to protect himself “if the person believes that the force is necessary to prevent serious bodily injury to the person[.]” Ind. Code § 35-41-3-2(c). To prevail on his self-defense claim, Amaro was required to 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.” *Quinn v. State*, 126 N.E.3d 924, 927 (Ind. Ct. App. 2019).

[11] When a claim of self-defense is made, and the claim finds support in the evidence, the State bears the burden of negating at least one of the necessary elements. *Wilson*, 770 N.E.2d at 800. “The State may meet its burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by relying on the sufficiency of the case-in chief.” *Quinn*, 126 N.E.3d at 927. Whether the State has met its burden is a question for the trier of fact. *Kimbrough v. State*, 911 N.E.2d 621, 635 (Ind. Ct. App. 2009). If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated beyond a reasonable doubt. *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999).

[12] Here, the State presented sufficient evidence to rebut Amaro’s claim of self-defense. First, although Amaro was in his cell when he stabbed Steele and therefore was in a place he had a right to be, there is ample evidence to establish that Amaro instigated the violence and was the sole aggressor. There was no evidence that Steele instigated any violence or demonstrated any aggression toward Amaro that morning. Indeed, Amaro admitted that he assembled his weapon days before the stabbing, and he agreed that his intent was to “strike first” when he stabbed Steele. Tr. Vol. 2 at 249.

[13] As for Amaro’s claim that the stabbing was justified by his fear of death or bodily harm, we emphasize that “[t]he ‘reasonableness’ of a defendant’s belief that he was entitled to act in self-defense is determined from that point in time at which the defendant takes arguably defensive action. That belief must be

supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant.” *Henson v. State*, 786 N.E.2d 274, 278 (Ind. 2003). Amaro’s self-serving claim that Steele had earlier verbally threatened violence against him, even if credited by the jury, would not justify his use of deadly force against Steele unless there was some act on the part of Steele which gave rise to the requisite apprehension that attack was imminent. *See Smith v. State*, 506 N.E.2d 31, 34 (Ind. 1987) (acknowledging prior case law holding that “threats alone are not sufficient to justify the use of deadly force under a claim of self-defense”) (citing *DeBoor v. State*, 243 Ind. 87, 92, 182 N.E.2d 250 (1962)) (providing that “[t]hreats alone are not sufficient to justify the taking of a human life.”). In this case, there is no evidence that at the time Amaro allegedly took defensive action, Steele had done anything which gave rise to the requisite apprehension that an attack was imminent. Moreover, there is no evidence that Steele was imminently prepared or in the position to inflict bodily harm of any kind on Amaro. Indeed, no weapons or hot items were found near Amaro’s cell.

[14] Amaro’s arguments on appeal are simply requests that we reweigh the evidence and reassess witness credibility, tasks not within our prerogative on appeal. We conclude, based upon the evidence before the jury, that Amaro’s self-defense claim was rebutted beyond a reasonable doubt. Accordingly, we affirm Amaro’s conviction for murder.

[15] **Affirmed.**

Riley, J., and Mathias, J., concur.