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ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH FIELDS,

Appellant/Defendant,

vs.

STATE OF INDIANA,

Appellee/Plaintiff.

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No. 49A05-1003-CR-165

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0809-MR-204365

January 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Joseph Fields appeals from his conviction for Murder, a felony.¹ Specifically, Fields argues that the trial court abused its discretion in excluding certain evidence at trial. We affirm.

FACTS AND PROCEDURAL HISTORY

At all times relevant to this appeal, Chris Ingram, Elizabeth Coleman, and Coleman's children, Antoino and Dye'Shea, lived together in an apartment in Speedway. At approximately 12:30 a.m. on September 2, 2008, Ingram returned to the apartment after spending the evening at his sister's home. Upon his return to the apartment, Ingram and Coleman began arguing. The argument intensified, and at some point Ingram threatened Coleman and her children. After hearing Ingram's threat, Antoino began arguing with Ingram. Coleman positioned herself between Ingram and Antoino and told them both to "shut the f*** up." Tr. p. 204. Ingram and Antoino separated themselves and the argument appeared to subside.

Moments later, Coleman followed Ingram and Antoino outside and found Ingram and Antoino facing each other while standing in a "fighting stance." Tr. p. 209. As she tried to again separate Ingram and Antoino, Coleman noticed that Ingram made a threatening motion in Antoino's direction while holding a knife. Ingram and Antoino eventually separated, and Ingram walked away.

Antoino went back into the apartment, called Fields, and told him about the altercation with Ingram. After speaking to Antoino, Fields called Coleman and asked if she

¹ Ind. Code § 35-42-1-1 (2008).

was “all right.” Tr. p. 218. Coleman told Fields that she was fine and that Ingram had left. Coleman was surprised that Fields had called her and did not wish for Fields to get involved in the situation, so she called Fields and told him “don’t come over here.” Tr. p. 219. Coleman told Fields that “the police is on it’s [sic] way.” Tr. p. 219. Before ending the phone conversation, Coleman reiterated that she did not wish for Fields to come to her apartment. Fields, however, disregarded Coleman’s wishes and sped over to Coleman’s apartment armed with a loaded shotgun.

A few minutes later, Ingram knocked on the door to the apartment and requested certain personal items, including the clothes that he needed to wear to work later that day. Coleman would not allow Ingram to enter the apartment but agreed to bring his personal belongings out to him. After collecting Ingram’s personal belongings, Coleman found Ingram sitting on a chair just outside of the apartment building. Ingram appeared to be looking at documents from his wallet, and Coleman noticed that the knife that Ingram had previously been holding was on the ground at his feet.

Coleman and Ingram went back into a common area in the apartment building where they talked for a few minutes. Eventually, Coleman went upstairs to return to her apartment, and Ingram remained in the common area. Before Coleman had reached the top of the stairs, she heard Ingram say, “[H]e has a gun.” Tr. p. 231. Ingram repeated these words twice. As Coleman turned to see who Ingram was talking about, she heard a “pow.” Tr. p. 232. Coleman ran down the stairs and found Ingram “laying [sic] on the floor and he was dead.” Tr. p. 232. Coleman ran outside where she saw a maroon vehicle speeding away.

A witness provided police officers arriving on the scene with a description of the maroon vehicle as well as its partial license plate number. Fields was subsequently identified to be the driver and sole occupant of the maroon vehicle. After leaving the apartment complex, Fields led police on a high-speed chase. During the high-speed chase, the officers engaged in the chase became aware that Fields was armed with a shotgun. Eventually, Fields was arrested after crashing his vehicle and surrendering his weapon.

On September 3, 2008, the State charged Fields with murder, Class B felony unlawful possession of a firearm by a serious violent felon, and Class D felony resisting law enforcement. At trial, Fields testified that his actions were in self-defense. To buttress this testimony, defense counsel sought to introduce testimony by Charlene Simms regarding a specific incident where Ingram beat her in 2004, as well as her general belief that Ingram was a violent person. The trial court permitted Simms to testify to her general belief that Ingram was a violent person, but excluded the testimony regarding the specific incident that occurred in 2004. Following a jury trial, Fields was convicted of murder and resisting law enforcement and pled guilty to being a serious violent felon unlawfully in possession of a firearm. On February 17, 2009, the trial court sentenced Fields to an aggregate term of sixty-five years.

DISCUSSION AND DECISION

Fields contends that the trial court abused its discretion in excluding the testimony by Charlene Simms regarding Ingram's prior bad acts. According to Fields, Simms's testimony would have corroborated his testimony that he feared Ingram and shot him in self-defense

and in defense of Coleman and her family. A valid claim of self-defense is legal justification for an otherwise criminal act. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code section 35-41-3-2(a) (2008): “A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” 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 or a third person.” *Id.*

When a person raises a claim of self-defense, he is required to show three facts: (1) he was in a place where he had a right to be; (2) he acted without fault; and (3) he had a reasonable fear of death or serious bodily harm. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). Once a person claims self-defense, the State bears the burden of disproving at least one of these elements beyond a reasonable doubt. *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied*. The State may meet this burden by rebutting the defense directly, by affirmatively showing the person did not act in self-defense, or by relying upon the sufficiency of its evidence in chief. *Id.* Whether the State has met its burden is a question of fact for the factfinder. *Id.* The trier of fact is not precluded from finding that a person used unreasonable force simply because the victim was the initial aggressor. *Birdsong*, 685 N.E.2d at 45.

At trial, Fields argued that he had a reasonable belief that deadly force was necessary to protect himself, Coleman, and her children when he shot Ingram. Fields testified that he

was aware that Ingram had threatened Coleman and her children earlier that morning, that Ingram had a knife, and that Ingram knew how to fight and had “beat up people before.” Tr. p. 586. Fields also testified that he saw Ingram begin to reach for an unknown object just before he shot him. Although the trial court allowed Fields to testify as to his version of the events and his general fear and apprehension on September 2, 2008, the trial court did not allow defense witness, Charlene Simms, to testify about a specific prior instance in 2004, where Ingram had beat her. The trial court excluded this testimony because Fields did not have knowledge of this prior instance when he shot Ingram on September 2, 2008. Simms, however, was permitted to testify as to her general belief that Ingram was a violent person. Fields contends that the trial court erred in excluding Simms’s testimony regarding the 2004 incident because it was highly probative of his self-defense claim as it tends to show that his fear of an attack by Fields was reasonable.

It is undisputed that proof of a homicide victim’s character is generally prohibited. *Holder v. State*, 571 N.E.2d 1250, 1253 (Ind. 1991). However, an exception is made if a defendant raises a self-defense claim. *Id.* at 1253-54. Once a self-defense claim has been raised, evidence of the victim’s character may be admitted for either of two distinct purposes: to show that the victim had a violent character giving the defendant reason to fear him or to show that the victim was the initial aggressor. *Id.*

Evidence of specific bad acts is admissible to prove that the victim had a violent character which frightened the defendant. However, only general reputation evidence of the victim’s violent nature is admissible to prove that the victim was the initial aggressor. If the defendant wishes to introduce either type of character evidence, [he] must first introduce appreciable evidence of the victim’s aggression to substantiate the self-defense claim. When offering

specific bad acts evidence to prove the victim's violent character frightened [him], the defendant must also provide a foundation showing that [he] *knew about the specific bad acts in question before [he] killed the defendant.*

Id. (citations omitted) (emphasis added).

Here, Fields attempted to admit evidence of Ingram's specific prior bad acts, namely the 2004 incident involving Simms, to prove that his fear of Ingram was reasonable. In light of the Indiana Supreme Court's opinion in *Holder*, we conclude that evidence of the 2004 incident involving Ingram and Simms was admissible only if Fields provided a foundation showing that he knew about the specific bad acts in question before he killed Ingram. *Id.* Fields, however, has failed to do so, and has even conceded that he did not know about the specific bad acts involving Ingram and Simms before he killed Ingram. Tr. p. 806.

On appeal, Fields argues that pursuant to *Litter v. State*, 871 N.E.2d 276 (Ind. 2007), and *Hood*, he was no longer required to provide a foundation showing that he had knowledge of Ingram's specific prior bad acts before the evidence relating to the specific act in question would become admissible. However, neither *Litter* nor *Hood* supports Field's argument because the holdings in these cases are consistent with the Indiana Supreme Court's holding in *Holder*. Neither *Litter* nor *Hood* even mentions the *Holder* decision, much less explicitly overrules the requirement set forth in *Holder* that a defendant must provide a showing that he had knowledge of his victim's specific prior bad acts before testimony relating to those prior bad acts becomes admissible. *See Litter*, 871 N.E.2d at 278 (providing that the trial court's error in excluding the testimony of a witness whose testimony corroborated the defendant's testimony about specific prior acts of the victim *of which both the defendant and the witness*

were aware at the time of the incident resulting in the victim's death was not harmless because it affected the defendant's substantial rights); *Hood*, 877 N.E.2d at 495-96 (providing that the trial court erred in excluding testimony of a witness who simultaneously observed the victim's conduct at the time of the incident resulting in the victim's death because the witness's testimony was corroborative of the defendant's perception of an imminent threat, was relevant to a determination of objective reasonableness of defendant's perception, and was not harmless because, like in *Litter*, it affected the defendant's substantial rights). Therefore, pursuant to the Indiana Supreme Court's opinion in *Holder* and in light of Fields's acknowledgement that he did not have knowledge of Ingram's prior bad acts involving Simms at the time he shot Ingram, we conclude that the trial court did not abuse its discretion in excluding Simms's testimony.

Furthermore, to the extent that Fields also argues that the trial court's exclusion of Simms's testimony deprived him of his constitutional right to present a defense, we disagree.

To be sure, every defendant has the fundamental right to present witnesses in their own defense. Yet this right is not absolute. In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.

Wells v. State, 904 N.E.2d 265, 271 (Ind. Ct. App. 2009) (citations and quotations omitted), *trans denied*. The exclusion of Simms's testimony was pursuant to a well-established principle of admissibility of evidence, and we cannot therefore conclude that it violated Fields's right to present a defense.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.