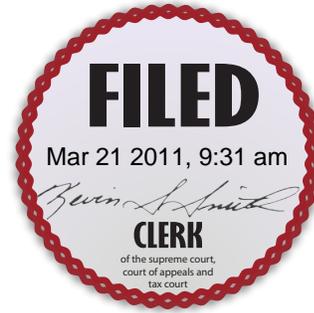


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHRISTOPHER RONDEAU, )

Appellant-Defendant, )

vs. )

No. 49A02-1006-CR-694

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Kurt Eisgruber, Judge  
Cause No. 49G01-0904-MR-38670

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**March 21, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Christopher Rondeau appeals his murder conviction. We affirm.

### Issues

Rondeau raises three issues, which we restate as:

- I. whether the trial court properly ruled on his motions to continue, motions to exclude, and motions for mistrial based on alleged discovery violations;
- II. whether the trial court properly admitted his statement to police into evidence; and
- III. whether there is sufficient evidence to support the murder conviction.

### Facts

Rondeau lived in Indianapolis with his grandmother, Franziska Stegbauer, and his great-uncle, Adolf Stegbauer, Franziska's deceased husband's brother. Rondeau lived in a shed behind Franziska's house. Rondeau was thirty-nine years old, Franziska was seventy-seven, and Adolf was sixty-nine. On April 9, 2009, Rondeau had a couple of beers and Adolf had been drinking all day and into the night. At some point, a sword fight ensued between Rondeau and Adolf, and Franziska intervened.

During the fight, Franziska was stabbed in her left armpit. Although only "a little bit of dried blood" was visible, the injury caused a "massive hemorrhage within her left cavity." Tr. pp. 85, 484-85. The stab wound "hit the heart—the anterior part of the left ventricle, caused some bleeding around the heart and then entered into the right hilar region where it caused some hemorrhage around the right lung here." *Id.* at 484. Adolf

was stabbed at least ten times, suffering injuries to his hand, arm, abdomen, head, heel, foot, and shoulder. Rondeau was stabbed once on the underside of his arm.

At 12:58 a.m., Rondeau called 911. Rondeau reported, “my uncle was wasted, and he attacked me with a sword.” Ex. 3. He stated, “So I attacked. I took it from him and hit him back with it.” Id. He continued, “And then, my grandma got involved, and she’s on the floor. Everybody’s bleeding.” Id. When asked if Franziska was awake, Rondeau said, “I have no idea.” Id. Rondeau stated that his glasses had been knocked off, and he could not see. Rondeau confirmed that everyone was awake and breathing but stated that they were all wounded. Rondeau then stated that he was trying to put his contacts in.

When police arrived at the scene, Rondeau was standing outside flagging them down. Franziska was “on the ground unresponsive.” Tr. p. 71. Adolf was in his bedroom. He was “alert and responsive but he was bloody.” Id. at 72. Police could not communicate with Adolf because he only spoke German. When the first paramedic arrived, her engine crew was already performing CPR on Franziska. Franziska had been intubated “and they were breathing for her.” Id. at 83. The paramedic observed that Franziska was “pulseless” and “already pale and pretty cold to the touch. There was no breathing.” Id. In her report, however, the paramedic indicated there was “an irregular weak rhythm” and that Franziska’s breathing rate was ten breaths per minute. Id. at 92. Franziska arrived at the hospital at 2:03 a.m. and was pronounced dead at 2:04 a.m.

At 3:00 a.m. on April 9, 2009, Indianapolis Metropolitan Police Department Officer Jeffery Patterson and another officer interviewed Rondeau at the hospital while

his leg was chained to a hospital bed. Rondeau was advised of his Miranda rights and signed a written waiver of those rights. Rondeau told police that Adolf and Franziska collected swords and hung them on the wall as decoration. He said that right before he called 911, Adolf and Franziska were arguing in German and that Adolf retrieved a katana.<sup>1</sup> According to Rondeau, Franziska tried to hold Adolf back, Adolf pushed her out of the way twice, and she fell to the floor. Rondeau said that Adolf hit him with the katana, that Rondeau retrieved a saber from the wall,<sup>2</sup> and that he hit Adolf with it at least twice. Rondeau told police that he eventually was able to get the katana from Adolf, that he put both swords in the kitchen, and that Adolf went to his bedroom. Rondeau stated that, after he put the swords in the kitchen, he called 911, checked on Franziska and tried to perform CPR, checked on Adolf and gave him some paper towels, went to the shed to get his contacts because his glasses had been knocked off, and went back into the house to the bathroom to put his contacts in. Rondeau said the fight took place in the hallway, and he tried to wipe up some of the blood. Rondeau told police that Franziska was on the floor the entire time he had a sword and that she had been on the floor two to four minutes before he called 911. Rondeau indicated that he did not know Franziska had been stabbed and said it looked like she either had a stroke or a heart attack.

An autopsy revealed that the cause of Franziska's death was sharp force injury to the left chest. Adolf died on April 13, 2009. The cause of Adolf's death was sharp force

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<sup>1</sup> The parties referred to one sword as a katana. Rondeau described it as "a modern day looking samurai sword" with a "samurai blade" and a "futuristic looking handle." Ex. 146.

<sup>2</sup> The parties referred to the other sword as a saber. Rondeau described it as a "Japanese World War II officer's sword or infantry sword." Ex. 146.

injury to the abdomen that caused bacteria in his stomach to be released into his peritoneal and abdominal cavities and led to septic shock.

On April 15, 2009, the State charged Rondeau with Adolf's murder and Class C felony reckless homicide relating to Franziska's death. Prior to and during trial, Rondeau made motions to continue, motions to exclude, and motions for mistrial based on alleged discovery violations. At trial, over Rondeau's objection, the trial court admitted his statement to police into evidence. Despite his self-defense argument, the jury found Rondeau guilty of Adolf's murder. The jury found him not guilty of Franziska's reckless homicide. Rondeau now appeals.

## **Analysis**

### ***I. Discovery***

Rondeau argues that the State committed several discovery violations. A trial court has broad discretion in dealing with discovery violations and may be reversed only for an abuse of that discretion involving clear error and resulting prejudice. Young v. State, 746 N.E.2d 920, 924 (Ind. 2001). Rondeau's discovery arguments were based on Indiana Trial Rule 26(E),<sup>3</sup> which provides:

Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

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<sup>3</sup> Rondeau also relied generally on Marion County Superior Court Criminal Rule 107, which governs discovery.

(a) the identity and location of persons having knowledge of discoverable matters, and

(b) the identity of each person expected to be called as an expert witness at trial, the subject-matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which

(a) he knows that the response was incorrect when made, or

(b) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

One of the pathologists, Dr. Joye Carter, stated in her deposition that she could not conclude which sword caused Franziska's injuries based on the information she had during the autopsy. After the deposition, Dr. Carter discussed the issue of identifying the sword with the prosecutor and asked for more precise measurements of the swords than were available at the time the autopsies were conducted. After reviewing the measurements, Dr. Carter changed her opinion from being unable to determine which sword caused the injury to saying it was more likely than not that the "smaller blade" "fit the patterned injury on the female." Tr. p. 298. At a hearing outside of the presence of

the jury, Rondeau argued the State was required to disclose the revised opinion to him and requested a continuance or a mistrial.

The trial court concluded that, although Dr. Carter's opinion had changed since the deposition, it did not amount to prosecutorial misconduct. The trial court ruled that the proper remedy was to limit Dr. Carter's trial testimony to her conclusions at the time of the deposition. Immediately prior to Dr. Carter's trial testimony, both Rondeau and the prosecutor explained to Dr. Carter the manner in which they were limiting their questions to her and the prosecutor instructed her not to testify regarding any conclusions she reached after the deposition. Dr. Carter ultimately testified that she could not tell which of the two swords caused the injury to Franziska based on the findings at the autopsy. Id. at 587.

Rondeau relied on Dr. Carter's testimony to contradict the testimony of the other pathologist, Dr. Thomas Sozio, who testified that Franziska's injury was more likely caused by the saber. On appeal Rondeau argues that the trial court's remedy of limiting Dr. Carter's testimony was inadequate because it denied him the opportunity to consult with his own expert and made the cross-examination awkward. Although Rondeau's cross-examination of Dr. Carter was difficult, Rondeau was able to elicit testimony from Dr. Carter contradicting Dr. Sozio's conclusion. Rondeau has not established that the trial court abused its discretion by limiting Dr. Carter's trial testimony to her opinion at the time of the deposition.

Moreover, Rondeau was acquitted of Franziska's reckless homicide. Thus, we are unconvinced that the denial of his motion to continue or the limitation of Dr. Carter's testimony was prejudicial to Rondeau.

Rondeau also argues he was surprised when the State elicited testimony from Dr. Carter about the temperature of the human body generally after the State indicated it did not intend to have Dr. Carter opine as to Franziska's time of death. Rondeau argues that testimony "provided the underpinning for the prosecution's contention in final argument that Mr. Rondeau did not give CPR to his grandmother, as he told the detectives, because she was already dead." Appellant's Br. p. 11.

Mindful that Rondeau was acquitted of Franziska's reckless homicide, we consider this argument in terms of the prejudicial effect this testimony might have had on Rondeau's credibility. In addition to Dr. Carter's testimony that the average temperature of a living human being was 98.6 degrees Fahrenheit, the paramedic testified that, when she arrived on the scene, Franziska was "definitely pulseless," "already pale," and "pretty cold to the touch." Tr. p. 83. Further, Dr. Sozio testified that blood accumulated in Franziska's pleural cavity in "a matter of a minute or two. It's very fast." *Id.* at 529. There was also evidence that Franziska was admitted to the hospital at 2:03 a.m. and was pronounced dead at 2:04 a.m. Moreover, in his statement Rondeau acknowledged that, when he checked on Franziska, it did not seem she was breathing. He also stated that he started CPR but gave up because he did not think he was doing it right. Based on this evidence, even if the trial court improperly denied his motions to exclude and for mistrial, we cannot conclude that Dr. Carter's body temperature testimony prejudiced Rondeau.

Rondeau also argues that the State failed to disclose that Dr. Carter categorized some of Adolf's wounds as "defensive" until her May 5, 2010 deposition. Prior to trial, on May 13, 2010, Rondeau moved for a continuance to hire his own expert. The trial court denied this motion, and the trial began as scheduled on May 17, 2010. Immediately prior to trial, Rondeau renewed his motion to continue and raised the issue again during trial.

At a hearing outside of the presence of the jury, Dr. Carter explained that she classified the wounds as "sharp force injuries" in her report and they are not described as "defensive wounds." Id. at 285. Dr. Carter explained that attorneys generally pose questions regarding "defensive wounds" and that she did not recall having any such conversation with the prosecutor prior to the May 5, 2010 deposition.

As the State points out, charges were brought in this case in April 2009, and Rondeau had a year to depose Dr. Carter or hire his own expert. Rondeau began attempting to schedule a deposition of Dr. Carter in February 2010, and, because of scheduling conflicts, the deposition was not conducted until May 5, 2010. Even if Rondeau was waiting to depose Dr. Carter until after he got the DNA results in December 2009, such a decision was a matter of trial strategy. Rondeau simply has not shown that the trial court abused its discretion in denying his motion to continue.

Finally, Rondeau argues that the State did not properly disclose a wound to the bottom of Adolf's foot or disclose an alleged change in Dr. Carter's opinion about the

defensive nature of the wound to the back of heel.<sup>4</sup> Addressing the wound to the bottom of the foot, it is undisputed that photographs of this wound were disclosed to Rondeau; his argument seems to be based on the fact that the wound was not specifically enumerated in the autopsy. During trial, however, defense counsel argued, “We’re not unaware of that wound but that wound isn’t even mentioned in the autopsy so we certainly wouldn’t have expected it to be characterized as defensive.” Id. at 320. To the extent Rondeau argues that the wound had not been previously disclosed, that argument fails.

To the extent Rondeau argues that Dr. Carter should not have been allowed to characterize the foot wound as defensive, Rondeau conceded that he asked Dr. Carter about various defensive wounds in her deposition and that he had the photographs of the foot injury during the deposition. Id. at 565-66. The State argued, “Are we really surprised that a wound to the bottom of somebody’s foot is gonna be characterized as a defensive wound?” Id. at 566. Because Rondeau had the photographs of the foot wound during the deposition and he conducted the questioning regarding defensive wounds, he has not shown that the trial court abused its discretion when it denied his motions to continue, to exclude, and for mistrial on this issue.

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<sup>4</sup> In his argument on appeal, it is unclear whether Rondeau is referring to the heel wound or the foot wound. Specifically, Rondeau argues, “When the pathologist first disclosed this new wound at the deposition, she said the wound was not defensive in nature, but at trial she changed her opinion to say the newly disclosed wound was, in fact, defensive in nature.” Appellant’s Br. p. 10. Our review of the record shows that Dr. Carter’s “changed” testimony was in reference to the heel wound, which was included in the autopsy diagram and discussed at the deposition.

Regarding Dr. Carter's trial testimony about whether the wound to the back of the heel was defensive in nature, this wound was included in a diagram of Adolf's stab wounds and referenced as "G." This wound was discussed at length during Dr. Carter's deposition.<sup>5</sup> She stated that he could have sustained the injury while he was turned away or while he on the ground, using his feet as defense against the blade. Rondeau specifically asked if Adolf suffered any wounds she would characterize as defensive-type wounds. Dr. Carter listed the wounds to Adolf's hand and arm and the heel wound. Dr. Carter repeated that she was "comfortable" saying the heel injury was a defensive wound depending on Adolf's positioning. Ex. B. Dr. Carter also stated that the heel injury "can be either/or." Id. The prosecutor then questioned Dr. Carter about the heel wound and clarified that for the heel wound to be defensive, a person would have to be on his or her back kicking his or her feet, and Dr. Carter agreed.

At trial, Dr. Carter classified the wound to the heel as defensive. In an attempt to impeach her, Rondeau pointed out the discrepancy between her deposition testimony and trial testimony. The following questioning took place between Rondeau and Dr. Carter:

- Q. And do you remember at the deposition the question that I asked- - so you are not saying G is more likely defensive than not and your answer was correct - - you don't remember saying that?
- A. I may have said that. I don't remember your exact question but I do have the ability to reconsider answers when they're posed by questions in the courtroom.

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<sup>5</sup> In an earlier argument to the trial court about Dr. Carter's testimony, Rondeau offered an unofficial transcript of Dr. Carter's deposition. The State did not object to the transcript as it related to that hearing and referenced it during its argument that Dr. Carter did not change her deposition testimony. There is no indication that the transcript of Dr. Carter's deposition testimony was ever submitted to the jury as impeachment evidence. We consider it only as it relates to the discovery issues.

Q. Would it refresh your recollection to see the question?

A. It might.

Q. Does that refresh your recollection?

A. It does but as I've just said I have the ability to reevaluate the question and the way the question is posed today and there is a injury there and considering that question I would say this more of a defensive wound from its location.

Q. So you've reevaluated and changed your opinion from when I asked it on May the 5<sup>th</sup>?

A. I have with this one.

Tr. p. 570.

At that point, Rondeau argued that the State was “under an absolute mandatory rule to disclose that.” Id. at 571. The prosecutor argued that Dr. Carter did not change her opinion and defense counsel simply phrased the question a different way. The prosecutor asserted, “We haven’t asked her any different kind of question that would lead her to change her opinion. We haven’t provided any new information that has not been discovered to defense that would lead her to change her position with regard to these wounds.” Id. at 574. Rondeau moved to continue, to exclude, and for mistrial, and the trial court denied these requests.

On appeal, Rondeau argues, “It cannot be more plain that the State, by failing to disclose this change in opinion, even between the deposition and the trial, has also violated the clear mandate of Rule 26(E).” Appellant’s Br. p. 12. We disagree. To the extent Dr. Carter’s trial testimony was inconsistent with her deposition testimony, it is

not clear that the inconsistency can be equated to a change in her opinion. Further, she was subject to impeachment on the inconsistency. Moreover, there is no indication that the State was aware of the potential inconsistency and failed to disclose it to Rondeau. He has not established that the trial court abused its discretion when it denied his motions based on this alleged discovery violation.

## ***II. Statement to Police***

Rondeau argues that his statement to police was not voluntarily given and violated his rights under the Indiana and United States constitutions. If a defendant challenges the voluntariness of a confession under the United States Constitution, the State must prove the statement was voluntarily given by a preponderance of the evidence. Pruitt v. State, 834 N.E.2d 90, 114 (Ind. 2005), cert. denied, 548 U.S. 910, 126 S. Ct. 2936. The Indiana Constitution, on the other hand, requires the State to prove “‘beyond a reasonable doubt that the defendant voluntarily waived his rights, and that the defendant’s confession was voluntarily given.’” Id. at 114-15 (citation omitted). In evaluating a claim that a statement was not given voluntarily, the trial court is to consider the totality of the circumstances. Id. at 115. Such factors include the crucial element of police coercion, the length of the interrogation, its location, its continuity, and the defendant’s maturity, education, physical condition, and mental health. Id.

On appeal, we do not reweigh the evidence; instead, we examine the record for substantial, probative evidence of voluntariness. Id. We consider the evidence most favorable to the State, together with the reasonable inferences that can be drawn

therefrom. Id. “If there is substantial evidence to support the trial court’s conclusion, it will not be set aside.” Id.

When Rondeau was interviewed at the hospital, his leg was chained to a hospital bed. Before questioning Rondeau, Detective Patterson read him his Miranda rights while Rondeau read along, and Rondeau signed a written waiver of those rights. Rondeau did not request an attorney, and he gave a recorded statement. Officer Patterson testified that no threats or promises were made to Rondeau.

Rondeau claims that he was desperate to get information about Franziska’s condition and the clear implication was that he needed to cooperate to get that information. Although Rondeau inquired about Franziska’s and Adolf’s conditions, he did not do so until nearly an half an hour after the interview began. Officer Patterson responded, “we’ll explain that to you here in a minute” and stopped the interview. Ex. 146. During the break, Officer Patterson compared notes with officers on the scene and checked on the status of Adolf and Franziska. It was not until well into the second half of the interview that Rondeau stated he was “worrying about her, him, me and what’s going on.” Id. Until that point, he apparently believed Franziska had had a heart attack or stroke and did not realize she had been stabbed. Officer Patterson did not inform Rondeau that Franziska had died until he was finished questioning Rondeau to avoid “added stress.” Tr. p. 244. We cannot conclude that Officer Patterson withheld information with the intent of extracting incrimination information from him as Rondeau argues.

Rondeau also asserts that he was on pain medication and Officer Patterson made no effort to determine what drugs he had been given or what influence they might have had on Rondeau. Similarly, Rondeau, a diabetic, argues that Officer Patterson made no attempt to gauge what effect his injury, sleep deprivation, and alcohol consumption had on his blood sugar. When he started questioning Rondeau, Officer Patterson asked him about his diabetes, including when his last insulin shot was, when his next one was due, whether he had been eating properly, and whether he had been drinking. Rondeau indicated that he had taken his last insulin shot at 9:00 p.m. and was due for the next one at 8:00 a.m., and that he had been eating properly. Although Rondeau smelled of alcoholic beverages, admitted he had three beers earlier in the evening, and indicated he had received pain medication, he did not appear intoxicated. He was responsive and oriented. Officer Patterson testified that Rondeau's speech was not slurred, his eyes were not bloodshot, and he was "very coherent." Id. at 239.

Rondeau also argues, "It is difficult to comprehend how any statement taken from such a person chained to a bed through questioning from 3:00 AM to 5:00 AM can be deemed voluntary." Appellant's Br. p. 19. The two-part interview took place from 3:03 a.m. until 3:31 a.m., and from 4:38 a.m. until 5:05 a.m. During that time, medical care providers were in and out of Rondeau's hospital room, and the door to the room was open. Although Rondeau's wound had not been stitched, it was dressed, and he had received pain medication. We cannot conclude that the fact that Rondeau's leg was chained to the hospital bed rendered his statement involuntary.

Finally, Rondeau argues that his waiver was not voluntary or intelligent because Officer Patterson did not correct Rondeau's impression that he had to sign the waiver so the police wouldn't get in trouble. Specifically, Rondeau stated, "Do I have to sign it so you guys won't get in trouble? Yeah, I'll sign it." Ex. 146. During the hearing on the admissibility of the statement, Officer Patterson testified that he does not discuss cases with individuals unless they waive their rights and that he "kind of slid around" Rondeau's question. Tr. p. 245. Although Rondeau was confused as to why he was being questioned, it is not disputed that Officer Patterson read Rondeau his rights and explained the consequences of waiving those rights, and Rondeau waived those rights. Given the totality of the circumstances, we cannot conclude that Rondeau's waiver was involuntary or unintelligent. See Berry v. State, 703 N.E.2d 154, 157 (Ind. 1998) (affirming the admission of a tape-recorded statement where defendant acknowledged he had been read his rights twice and assured the detective he understood everything she was saying to him, there was no evidence of improper promises of immunity, and defendant never indicated he wished to speak to an attorney).

### ***III. Sufficiency of the Evidence***

Rondeau argues that the State failed to present sufficient evidence to rebut his claim of self defense.<sup>6</sup> "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.

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<sup>6</sup> Rondeau's self-defense claim is based primarily on his statement, which he argues is inadmissible. He did not testify at trial.

2002) (citing Ind. Code § 35-41-3-2<sup>7</sup>). Because Rondeau used deadly force, he 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. See id. “When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements.” Id. at 800.

If a defendant is convicted despite a claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Id. at 800-01. “The standard of review for a challenge to the

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<sup>7</sup> Indiana Code Section 35-41-3-1 provides:

(a) 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. 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 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.

\* \* \* \* \*

(e) Notwithstanding subsections (a), (b), and (c), a person is not justified in using force if:

\* \* \* \* \*

(3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim.” Id. at 801. “We neither reweigh the evidence nor judge the credibility of witnesses.” Id. If there is sufficient evidence of probative value to support the jury’s conclusion, then the verdict will not be disturbed. Id.

Based on his 911 call and his statement to police, Rondeau argues that he was acting in self-defense. Rondeau claims the evidence demonstrates that he used only the force reasonably necessary to protect himself and Franziska from further harm. He claims the locations of the blood samples prove nothing and the paramedic’s testimony was inconsistent. He also contends that the toolmark evidence suggesting Adolf was struck in the head with the katana sword, not the saber, is consistent with his 911 call, in which he indicated he took the sword from Adolf and struck him with it. He goes on to assert that, even if, as the State argued, Rondeau took Adolf’s sword and hit him with it, Adolf was the initial aggressor, and the two were not engaged in mutual combat.

The State, however, presented evidence that Rondeau did not have a reasonable fear of death or serious bodily injury to him or Franziska. Such evidence includes the fact that, although similar in height, sixty-nine-year-old Adolf weighed less than 169 pounds, while thirty-nine-year-old Rondeau weighed 250 pounds. Further, Rondeau only had three beers over the course of the evening, while Adolf, who had been drinking all day, had a BAC of .252 when he was hospitalized.

Other evidence challenging the reasonableness of Rondeau’s fear is the fact that he suffered a single cut to his arm and possible a blow to the knee while Adolf suffered at

least ten sharp force injuries, several of which were characterized as defensive.

Moreover, Dr. Carter described the stab wound, which fractured Adolf's skull, as:

a combination of sharp force injury with weight. Not only does it cut through the skin but cuts into the skull so sometimes it's described as a chop wound where you have a combination of a heavy object with force that cuts through the soft tissue and then cuts into the bone itself so this would be more force because the bone is so much harder than the soft tissue.

Tr. pp. 562-63.

A forensic evidence technician from the Indianapolis Marion County Forensic Services Agency ("Crime Lab") made impressions of this injury to Adolf's skull. The firearm/toolmark section supervisor from the Crime Lab then compared the swords to the impressions of the injury to Adolf's skull. He concluded that the katana could not be excluded as a possibility for the weapon that made the impressions and that the saber could be excluded as the weapon that made the impressions. Although this conclusion is consistent with Rondeau's 911 call, in which he stated that he took the sword from Adolf and hit him back, it is inconsistent with his statement to police, in which he maintained that he was armed with the saber while Adolf was armed with the katana.

Inconsistencies in Rondeau's statement could also be drawn from forensic evidence indicating that, although Rondeau's DNA was recovered from samples taken from the phone, the bathroom sink, and the front walkway, only Adolf's DNA was found in samples taken from the hallway floor, where Rondeau claimed he was when Adolf stabbed him. Similarly, Rondeau's DNA was found on samples taken from the handle of the katana but not on samples taken from blade of the katana. Adolf's DNA was found

on the sample from the blade of the katana, and no identifiable DNA was recovered from the saber.

“A defendant may use deadly force to repel an attack only if such force is reasonable and believed to be necessary.” Mickens v. State, 742 N.E.2d 927, 930 (Ind. 2001). “Indeed, ‘[t]he trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor.’” Id. (quoting Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997) (concluding there was sufficient evidence to support murder convictions where victims were chopped with an axe and shot several times after they were incapacitated)). Thus, even if Adolf was the initial aggressor, the jury could have reasonably inferred that Rondeau disarmed Adolf and attacked him with the katana. In such a circumstance, a reasonable person in the same circumstance would not have been placed in reasonable fear of death or serious bodily injury. The evidence was sufficient to rebut Rondeau’s claim of self-defense. To conclude otherwise would require us to reweigh the evidence, which we cannot do.

### **Conclusion**

The trial court did not abuse its discretion in denying Rondeau’s motions to continue, to exclude, and for mistrial based on alleged discovery violations. His statement to police was properly admitted into evidence. There was sufficient evidence to rebut his claim of self-defense. We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.