IN THE

SUPREME COURT OF OHIO

STATE OF OHIO Plaintiff-Appellee vs. JOSEPH MARIO RALLS Defendant-Appellant	: : : : : :	NO. 2022-0901 On Appeal from the Hamilton County Court of Appeals, First Appellate District Court of Appeals Case Number C-2100410

MEMORANDUM IN RESPONSE

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TABLE OF CONTENTS

PAGE

EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

The issues raised by defendant-appellant have already been resolved by this Court and other Ohio Courts. No issue of great public or general interest is presented, nor does any substantial constitutional question exist. Jurisdiction is properly denied.

STATEMENT OF THE CASE

Ralls shot and killed Thomas Bibbs, Jr. on November 15, 2019. After a bench trial before the Honorable Wende Cross, Ralls was convicted of felony murder with firearm specifications and having weapons under disability. Ralls was sentenced to an aggregate term of 18 years to life. The Court of Appeals affirmed.

STATEMENT OF THE FACTS

In the evening hours of November 7, 2019, Ralls shot and killed Thomas Bibbs, Jr. He claimed he had acted in self-defense. But the evidence at trial showed otherwise.

Ralls and Bibbs were each acquaintances of one Jason Barwick. The men often used drugs at Barwick's apartment in Norwood. At the time of the shooting, Ralls owed Bibbs $50 for methamphetamine. (T.p. 98-107) Ralls told Barwick that he was not going to pay Biggs $50. Indeed, just a few days before the shooting, Ralls said "If [Biggs] comes at me, I'm just going to shoot him." (T.p. 126, 160)

The night of the shooting, Ralls got a ride to Barwick's apartment at 5138 Silver Street. (T.p. 44-45) Unknown to Ralls, victim Biggs was there – sitting in a car already parked on Silver across from Barwick's apartment. Ciera Grant and Donald Gibson were in the car with Biggs. (T.p. 165, 199) All three recognized Ralls when he exited the car to walk to Barwick's residence. (T.p. 206) Biggs decided to get out of Gibson's car and talk to Ralls. (T.p. 207)

Biggs, unarmed, approached Ralls in a non-threatening manner. He did not run at Ralls – he walked swiftly. He said, "What's up man?" (T.p. 208) Eyewitnesses did not hear Biggs threaten Ralls. (T.p. 49) Courdney Bentley, the man who had driven Ralls there, testified that it looked like a verbal conversation – it didn't look like nothing serious." (T.p. 47) When Biggs reached Ralls, Ralls took a few steps back, raised his gun and fired. (T.p. 209) It was over in 15 seconds. (T.p. 210) Ralls ran back to Bentley's car and instructed him to drive off. Ralls tried to throw the gun out of the car on I-75. (T.p. 51)

At trial, Ralls testified that he feared Biggs because Biggs had a reputation for violence. And he claimed Biggs said, "You're dead" as Biggs ran up on him. (T.p. 468-69) Ralls' claim of self-defense was undermined considerably when it was disclosed he had written Barwick a letter from jail. In it, he asked Barwick to help him prove self-defense. (T.p. 132) Barwick refused because he felt the shooting was premeditated. (T.p. 132)

At the end of the trial, the court determined that the State proved that Ralls had <u>not</u> acted in self-defense.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

FIRST PROPOSITION OF LAW: THE RECORD FAILS TO CLEARLY DEMONSTRATE THAT THE TRIAL COURT MISAPPLIED THE LAW. THIS COURT MUST PRESUME IT APPLIED THE LAW CORRECTLY.

[IN RESPONSE TO RALLS' FIRST AND SECOND PROPOSITIONS OF LAW]

Ralls first claims that the trial court erred by misapplying self-defense law in his case. Specifically, he claims the court misconstrued the evidence in favor of the State and shifted the burden of persuasion to him when it found Ralls' fear objectively unreasonable and his duty to retreat violated. The State submits the trial court properly applied the law to defendant's self-defense claim.

Whether the record reflects that the trial court properly applied the law presents a legal question that a reviewing court reviews de novo. *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691. Ralls' trial was a bench trial. In reviewing a bench trial, this Court must presume that the trial court applied the law correctly unless the record clearly demonstrates otherwise. *State v. Coombs* (1985), 18 Ohio St.3d 123, 125, 18 Ohio B. 153, 480 N.E.2d 414. See also *State v. Roberts*, 1st Dist. Hamilton No. C-190449 (Dec. 16, 2020). A trial court is not required to make any statement or specific finding as to elements of the offense (or defense) at the conclusion of a bench trial other than the finding of guilt. Crim. R. 23(C); *State v. Dear*, 10th Dist. Franklin Co. 14AP-298, 2014-Ohio-5104; *State v. Roberts*, supra.

Ralls claimed he shot Bibbs in self-defense. Deadly force self-defense is an affirmative defense. The law in effect at the time of the murder required Ralls to show he: (1) was not at fault in creating the situation giving rise to the affray; (2) had a bona fide belief that he was in imminent danger of death or great bodily harm and it was necessary to use such force to escape;

and (3) did not violate any duty to retreat. *State v. Robbins*, 58 Ohio St.2d 74, 388 N.E.2d 755 (1979), paragraph two of the syllabus.

Under recently amended R.C. 2901.05(B)(1), if a defendant presents evidence that "tends to support" a self-defense theory, "the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense * * *." See R.C. 2901.05(B)(1). The burden of persuasion shifts to the State. The State must disprove at least one of the elements of self-defense beyond a reasonable doubt. *State v. Williams*, 1st Dist. Hamilton No. C-190380, 2020-Ohio-5245, ¶ 7, quoting *State v. Petway*, 2020-Ohio-3848, N.E.3d , ¶ 38 (11th Dist.); *State v. Pitts*, 2020-Ohio-5494, 163 N.E.3d 1169, 2020 Ohio App. LEXIS 4364, 2020 WL 7053788.

At the conclusion of a bench trial, the court must consider the evidence presented at trial, and determine whether the State proved beyond a reasonable doubt that a defendant did not use the admitted force in self-defense. See *State v. Parrish*, 2020-Ohio-4807, 2020 Ohio App. LEXIS 3667, 2020 WL 5946970. See also *State v. Vandergriff*, 2021-Ohio-3230, 2021 Ohio App. LEXIS 3183, 2021 WL 4239664 ("the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found * * * beyond a reasonable doubt" that Ms. Vandergriff was *not* acting in self-defense. See *State v. Walker*, 150 Ohio St.3d 409, 2016-Ohio-8295, 82 N.E.3d 1124, ¶ 12, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.)

Here, the record demonstrates the trial judge properly applied self-defense law in assessing the requisite burdens of proof and persuasion and ultimately in determining the State had disproved Ralls' self-defense claim beyond a reasonable doubt. As Ralls concedes, the trial court correctly articulated the law to apply to the case:

> "THE COURT: So effective March 28, 2019, Revised Code 2901.05 as amended by House Bill 228 provides the Defendant need only provide some evidence that tends to support that the Defendant used force in self-defense or defense of another.
>
> So the Court has to find, as a matter of law, that the Defendant presented such evidence in all the proof, the burden is some evidence, and the Court finds [as a] matter of law that the Defense has met that burden.
>
> However, once the burden is met, then the burden of going forward with evidence, proving beyond a reasonable doubt, that the Defendant did not use force in self-defense is on the prosecution. And so, I just wanted to make sure that that was put on the record. …"

(T.p. 522-523)

After the parties presented their cases, the trial court reviewed the evidence. The court returned and announced its judgment of guilty on the count of felony murder. The court summarized its factual findings and explained its reasons for determining the evidence disproved prongs 2 and 3 of the Ralls' self-defense claim, beyond a reasonable doubt. (T.p. 568-575)

> "THE COURT: As to the second element by the evidence, the Court finds that the evidence, the Court finds that the Defendant's belief that he was in danger of death or great bodily harm was not objectively reasonable."
>
> * * *
>
> "… the court finds that Mr. Ralls violated a duty to retreat beyond a reasonable doubt.
>
> Thus, not having met two of the elements required for self-defense, the Defendant's self-defense claim fails. …"

(T.p. 574-75)

Ralls claims the trial court improperly placed the burden of persuasion on him and misconstrued the evidence in a light most favorable to the State. But nowhere in its decision does the court so misstate its analysis. Ralls supports his claim by pointing to the trial court's discussion of "omissions" in the evidence (i.e. – lack of evidence of objective fear or attempt to retreat). But such a discussion of the evidence does not demonstrate improper burden-shifting or

a misapplication of the law. In all cases in which a claim of self-defense is properly rejected, it will necessarily be because evidence of elements of the affirmative defense are lacking in the record ("disproven" or "omitted"). This is a fabricated claim premised upon a mischaracterization of the court's rationale. Ralls has failed to establish the trial court applied the wrong legal standard and therefore has failed to overcome the presumption afforded to the trial court in a bench trial: the court applied the law correctly.

Ralls was convicted of felony murder. The elements of felony murder are set forth in R.C. 2903.02(B), which states in relevant part that "[n]o person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree." The predicate offense of violence charged in the indictment is felonious assault pursuant to R.C. 2903.11. R.C. 2903.11(A)(2) provides in pertinent part that "[n]o person shall knowingly * * * [c]ause or attempt to cause physical harm to another *** by means of a deadly weapon." A person acts knowingly, regardless of purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist. R.C. 2901.22(B). It is undisputed that Ralls knowingly caused serious physical harm to Bibbs. Ralls claimed he acted in self-defense. To establish self-defense, defendants have the initial burden of producing evidence that tends to support that they used force in self-defense. *State v. Davidson-Dixon*, 2021-Ohio-1485, 170 N.E.3d 557, ¶ 21 (8th Dist.); R.C. 2901.05(B)(1). If the defendant produces such evidence, the State then carries the burden of persuasion to prove the absence of any of these three elements beyond a reasonable doubt. *State v. Jacinto*, 2020-Ohio-3722, 155 N.E.3d 1056, ¶ 46 (8th Dist.).

The State clearly proved beyond a reasonable doubt that Ralls did not act in self-defense. Testimony established that Ralls' fear of Bibbs was unreasonable and the force used was excessive. Eyewitnesses testified that Bibbs walked to Ralls in a non-threatening manner. Courdney Bentley said it "was more like a verbal conversation – it didn't look like nothing serious…" (T.p. 47) Bibbs walked quickly to Ralls – but he was not running. (T.p. 79) Cierra Grant and Donald Gibson both testified that Bibbs walked toward Ralls – he did not run. (T.p. 168, 208) Gibson testified that [Bibbs] "got out of the car … he walked normally." (T.p. 234) No one heard Bibbs threaten Ralls. When asked, Gibson testified:

> [PROSECUTOR] Had he done anything of a threatening nature that you saw before the Defendant shot?
>
> [GIBSON] I mean, no. No. He just came over, like, to talk to him. Like, they was supposed to be friends.

(T.p. 209) No one saw Bibbs grab Ralls or throw a punch at him. (T.p. 92) And it was undisputed that Bibbs was unarmed. (T.p. 122, 244)

Generally, the law holds that the use of deadly force against a single unarmed victim is unreasonable – especially where the confrontation is not violent. In a similar case, a Court found the defendant used excessive force against an unarmed victim when defendant shot the victim who had "never raised his hand" to the defendant. The Court found the defendant had failed to prove that he acted upon a bona fide belief that he was in imminent danger of death or great bodily harm. See *State v. Carmen*, 1st Dist. Hamilton No. C-120692, 2013-Ohio-3325. Here, Ralls' fear was objectively unreasonable and the deadly force used was clearly excessive.

And Ralls' clearly had an opportunity to retreat. At least 5 feet separated Ralls from the unarmed Bibbs. (T.p. 318-319) Indeed, Ralls did back-up a bit before he quickly fired at Bibbs. He could have continued to separate himself from Bibbs while keeping his gun trained on him. Instead, he fired. (T.p. 208)

Ralls only strengthened the State's case when he testified. He confirmed he had stopped Bibbs' approach with his hand and took some steps back. (T.p. 468-469) Ralls confirmed that Bibbs never put his hands on Ralls, and Ralls admitted that Bibbs was unarmed. (T.p. 470, 502-505) Bibbs was alone – no one else was behind Bibbs. (T.p. 495-496) Ralls clearly could have walked back to the car – walked to Barwick's apartment or otherwise retreat to safety. He fired at Bibbs instead.

The State proved that Ralls (1) did not have a reasonable belief that he was in imminent danger; (2) used excessive force and (3) violated his duty to retreat. As Ralls failed to show the court clearly lost its way in rejecting his self-defense claim, the trial court did not improperly shift the burden or misapply the law.

<u>SECOND PROPOSITION OF LAW</u>: DE NOVO REVIEW IS NOT APPROPRIATE ON APPEAL WHEN ASSESSING A "WEIGHT OF THE EVIDENCE" CHALLENGE. A "WEIGHT" CHALLENGE IS A FACTUAL QUESTION INVOLVING EVALUATION OF WITNESS CREDIBILITY. QUESTIONS REGARDING THE CREDIBILITY OF WITNESSES ARE RESOLVED BY THE TRIER OF FACT.

[IN RESPONSE TO RALLS' THIRD PROPOSITION OF LAW]

Here, Ralls urges this Court to assess the "objective fear" and "duty to retreat" prongs de novo. But de novo review is reserved for legal questions like a sufficiency challenge. *State v. Ellison*, 1st Dist. No. C-070875, 178 Ohio App.3d 734, 2008-Ohio-5282, 900 N.E.2d 228, ¶ 9 (1st Dist.). A "weight of the evidence" challenge is a factual question involving evaluation of the credibility of witnesses. "[I]t is well settled law that matters as to the credibility of witnesses are for the trier of fact to resolve." *State v. Ham*, 1st Dist. Hamilton No. C-170043, 2017-Ohio-9189, ¶ 21.

Ralls advocates for de novo review claiming the fact-intensive inquiry does not turn upon the "credibility" of evidence. He essentially claims the circumstances of the shooting "are what

they are" and this Court should evaluate them anew "considering the objective nature of the inquiry." But this claim begs the question – from where does a description of said circumstances come? The facts of the shooting do not exist in a vacuum. The facts and circumstances of the shooting come to a great extent from testimony of witnesses on the stand.

The credibility of any witness who describes the circumstances must be judged – and it is well-settled that the trier of fact is in the best position to do so. *State v. Carson,* 1st Dist. Hamilton No. C-180336, 2019-Ohio-4550, ¶ 16. "Because the trier of fact sees and hears the witnesses and is particularly competent to decide 'whether, and to what extent, to credit the testimony of particular witnesses,' we must afford substantial deference to its determinations of credibility." *Barberton v. Jenney,* 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047, ¶ 20, citing *State v. Konya,* 2d Dist. Montgomery No. 21434, 2006-Ohio-6312, ¶ 6, quoting *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 Ohio App. LEXIS 3709, 1997 WL 476684, 4 (Aug. 22, 1997). Indeed, when reviewing a challenge to the weight of the evidence, this Court should not substitute its view for that of the trier of fact. Rather, it should defer to the fact finder's decisions whether, and to what extent, to credit the testimony of a particular witness. *State v. Hatfield,* 2022-Ohio-148. De novo review would be improper.

THIRD PROPOSITION OF LAW: AS OHIO DOES NOT RECOGNIZE THE DOCTRINE OF IMPERFECT SELF-DEFENSE, IT CANNOT BE PLAIN ERROR TO FAIL TO CONSIDER IT.

[IN RESPONSE TO RALLS' FOURTH PROPOSITION OF LAW]

Finally, while conceding Ohio does not recognize the doctrine of imperfect self-defense, Ralls contends the trial court committed plain error by failing to consider it. The claim is meritless. Under the imperfect self-defense doctrine, a killing amounts to voluntary manslaughter if the defendant acts with an honest but unreasonable belief that it is necessary to defend himself from imminent threat to life or great bodily injury. The imperfect self-defense doctrine requires

that the trier of fact find that the defendant had an actual belief of imminent harm. Without this finding, imperfect self-defense is no defense. Ohio does not recognize the doctrine. *State v. Goff,* 2013-Ohio-42, 2013 Ohio App. LEXIS 27. The establishment of such a defense is the province of the legislature.

CONCLUSION

Jurisdiction is properly denied.

Respectfully,

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I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by email, to Krista M. Gieske (0080141), counsel of record, at *kgieske@hamiltoncountypd.org* this 18th day of August, 2022.

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