MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Darius K. Thomas,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2024

Court of Appeals Case No.
23A-CR-1260

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No.
20C01-2102-MR-1

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

[1] Darius K. Thomas appeals his conviction for murder and a firearm enhancement, arguing the trial court abused its discretion in excluding certain evidence and refusing to instruct the jury on reckless homicide. We affirm.

Facts and Procedural History

[2] In February 2021, Thomas and his friend, Jeffrey Mack, were parked in the lot of a Marathon gas station in Elkhart. Thomas was in the driver's seat of the car, and Mack was in the passenger seat. A man later identified as Shamar Barnes walked past the car but then turned around and walked back toward the driver's side. Thomas saw Barnes heading for the car and grabbed a gun from the glove compartment. As Barnes continued approaching, Thomas opened the car door slightly, stuck the gun out, fired three shots at Barnes, and then sped out of the parking lot. One of the bullets hit Barnes in the chest and went through his lung and heart, killing him. Another bullet hit a sign at a gas station across the street that was about twelve feet tall. The third bullet was not located.

[3] The State charged Thomas with murder and a firearm enhancement. At the jury trial, the trial court admitted videos and still photos from Marathon's surveillance cameras. The surveillance footage showed the driver's car door crack open and the barrel of a gun point out as Barnes walked toward the car. *See* State's Exs. 13, 200A.

[4] Thomas testified in his own defense. At a hearing outside the presence of the jury, Thomas sought to introduce evidence that on May 18, 2020, Thomas and Mack were on the porch of Mack's house, less than half a mile from the Marathon gas station, when someone drove by and fired shots at them, one of which hit Mack. The defense wanted Thomas to testify as to his state of mind, specifically that he "was still scared" and had "apprehension and concern" that when Barnes "was making that comeback towards the car," he "might have been the [May 2020] aggressor coming back." Tr. Vol. V pp. 64-65. In an offer of proof, Thomas explained that because of the shooting, he was "always on edge," "apprehensive," "anxious," "paranoid," and "[e]xtremely shell-shocked." *Id.* at 72-74. The shooting made him "weary" of people around him, especially people he didn't recognize because he didn't know who the shooter was or whether the shooter had been apprehended. *Id.* at 73. He said the shooting still impacted him, including on the day he killed Barnes.

[5] The State argued Thomas was "trying to backdoor" a defense of a mental disease or defect by arguing that the May 2020 shooting "somehow, on the day of the [February 2021] shooting, is affecting him to such degree that he has a self-defense claim based on his reasonable belief." *Id.* at 67-68. The State contended the defense was "actually trying to use this for PTSD by a different name or no name." *Id.* at 76. The trial court sustained the State's objection, explaining:

> Your evidence that you want to put in as to this May 18, 2020, shooting does nothing to show that the defendant's actions on

> February 5, 2021, were . . . objectively reasonable. That's the problem I think you have. The objective component of self-defense is analyzed from the standpoint of an ordinary reasonable person. The ordinary man standard does not change on a case-by-case basis.
>
> The question for the jury is whether an ordinary reasonable person would have responded with deadly force if confronted with the same circumstances as the defendant on February 5, 2021; not whether a person, like the defendant, suffering from trauma from May 18, 2020, would have responded like the defendant. That, to me, is the difference, and it's key.
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> * * * *
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> The question for the jury is . . . not whether a person like the defendant, Mr. Thomas, suffering from, as he put it, anxiety, paranoia, shell-shock[], apprehension, any of those, would have responded like -- like Mr. Thomas did. All of those descriptions, as put forth like they were by Mr. Thomas, are better suited towards an insanity defense than they are to show mental state, which Indiana law does not allow him to do, as he is trying to do in this case in this manner.

Id. at 79-80, 83.

[6] Thomas resumed his testimony in front of the jury and recounted the events leading up to Barnes's death. He testified that he started panicking when he saw Barnes approaching the car in the parking lot and that Barnes had his hands in his pockets, so he was concerned he might draw a weapon if he got closer. He said he feared for his life as Barnes neared the car. He claimed he fired the gun to scare Barnes away and tried to aim above him. But he admitted that he

didn't know Barnes, he never saw a gun in Barnes's hand, and Barnes never said anything to him.

[7] After the parties rested, Thomas requested a jury instruction on reckless homicide as a lesser-included offense of murder, to which the State objected. The parties presented arguments about whether there was a serious evidentiary dispute over whether Thomas acted knowingly[1] or recklessly. The court found no such dispute, concluding that Thomas acted knowingly, not randomly or recklessly, by firing a loaded gun at Barnes while Barnes was walking toward him and in close range. Finding that Thomas "had to know his acts would result in a high probability of Barnes' death," the court denied Thomas's request for a reckless-homicide instruction. *Id.* at 140-41.

[8] Thomas pled guilty to the firearm enhancement, conditioned upon a conviction for murder. The jury found Thomas guilty of murder. The trial court sentenced Thomas to sixty-three years for murder and ten years for the firearm enhancement, for a total sentence of seventy-three years.

[9] Thomas now appeals.

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[1] The State alleged only that Thomas killed Barnes knowingly, not intentionally. *See* Appellant's App. Vol. II p. 28.

Discussion and Decision

I. The trial court did not abuse its discretion by excluding evidence relating to the previous shooting

[10] Thomas argues the trial court erred in excluding evidence of the May 2020 shooting. Generally, trial courts have broad discretion in ruling on the admissibility of evidence, and we review only for an abuse of that discretion. *Chambless v. State*, 119 N.E.3d 182, 188 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[11] Thomas sought to introduce evidence of the May 2020 shooting in support of his self-defense claim. Indiana's self-defense statute provides that a person is justified in using deadly force if he reasonably believes it is necessary to prevent serious bodily injury or the commission of a forcible felony. Ind. Code § 35-41-3-2(c). The phrase "reasonably believes" as used in the statute "requires both a subjective belief that force was necessary to prevent serious bodily injury and that a reasonable person under the circumstances would have such an actual belief." *Washington v. State*, 997 N.E.2d 342, 349 (Ind. 2013). The second part of this analysis requires the factfinder to consider "'what a reasonable person would believe if standing in the shoes of the defendant.'" *Passarelli v. State*, 201 N.E.3d 271, 276 (Ind. Ct. App. 2023) (quoting *Washington*, 997 N.E.2d at 349), *trans. denied*.

[12] Thomas contends he "had a right to have his jury hear evidence that he was placed in a position of fear or apprehension, after watching his friend be shot in the exact same neighborhood, and determine whether that made his following course of conduct objectively reasonable." Appellant's Br. pp. 10-11. He argues that, in considering the admissibility of the evidence, the trial court should have undertaken the analysis set forth in *James v. State*, 96 N.E.3d 615 (Ind. Ct. App. 2018), *trans. denied*. There, the trial court excluded evidence that the victim threatened the defendant two years earlier, and this Court considered whether the evidence was relevant to whether the defendant acted in self-defense. Thomas asserts that, rather than focusing on whether he was trying to "back-door" an insanity defense or "shift the reasonable person standard," the trial court should have determined if evidence of the prior shooting was relevant to whether his actions were objectively reasonable under the circumstances. Appellant's Br. pp. 11-12.

[13] *James* does not help Thomas. To begin, the proffered evidence in *James* concerned a prior act by the victim. In contrast, Thomas presented no evidence that Barnes had anything to do with the May 2020 shooting—in fact, he testified that he didn't know who the shooter was and that he didn't know Barnes. Additionally, the *James* Court affirmed the trial court's exclusion of the evidence, finding it too remote to be relevant to whether the defendant acted in self-defense. *See* 96 N.E.3d at 619 ("Nothing in the record or the proffered evidence would support the reasonable inference that James felt threatened by [the victim] during the intervening two years since the threat was allegedly

made."). As Thomas concedes, given that the prior shooting was nine months before he killed Barnes, "there is certainly an argument that the actual proffered evidence is too attenuated in time to be relevant." Appellant's Br. p. 12.

[14] Thomas does cite several cases where the trial court erroneously excluded evidence that was relevant to the reasonableness of the defendant's fear of the victim. *See* Appellant's Br. p. 10 (citing *Brand v. State*, 766 N.E.2d 772 (Ind. Ct. App. 2002), *trans. denied*, *Hirsch v. State*, 697 N.E.2d 37 (Ind. 1998), and *Russell v. State*, 577 N.E.2d 567 (Ind. 1991)). But, like *James*, these cases involved evidence of some conduct or statement by the victim either before the charged crime or during the crime. *See Brand*, 766 N.E.2d 772 (evidence of victim's character and prior acts); *Hirsch*, 697 N.E.2d 37 (evidence of victim's statement to defendant during fight); *Russell*, 577 N.E.2d 567 (evidence of victim's statement to defendant during fight). The *Brand* Court clarified that while a defendant may support a self-defense claim with evidence that would make his fear of the victim reasonable, the evidence must relate specifically to the victim, and the defendant "must first introduce appreciable evidence of the victim's aggression to substantiate the claim of self-defense before evidence is admissible to show the reasonableness of the defendant's fear of the victim." 766 N.E.2d at 780. As noted above, there is no evidence that Barnes was involved in the May 2020 shooting. And there is no evidence of any aggression by Barnes given Thomas's testimony that Barnes didn't say anything to him and he never saw a gun in Barnes's hand.

[15] Thomas doesn't cite any authority permitting a defendant to introduce evidence of a prior aggression to show reasonable fear of the victim when there is no evidence that the victim had anything to do with the prior aggression. That said, Thomas maintains that the trial court abused its discretion in excluding the evidence because its ruling didn't include a relevancy determination. We disagree. The trial court analyzed the admission of evidence under a relevancy standard. Although the trial court didn't say the word "relevancy," it determined that Thomas's prior trauma, unrelated to Barnes, was better suited for an insanity defense than a self-defense claim. Put differently, the prior incident was not relevant to Thomas's defense. Thomas has shown no abuse of discretion in the trial court's exclusion of the evidence.

II. The trial court did not abuse its discretion in refusing to give a reckless-homicide instruction

[16] Thomas also argues the trial court erred in refusing to instruct the jury on reckless homicide as a lesser-included offense of murder. Trial courts use a three-part test to determine whether to instruct the jury on a lesser-included offense: (1) whether the lesser-included offense is inherently included in the crime charged; (2) if not, whether the lesser-included offense is factually included in the crime charged; and (3) if either, whether a serious evidentiary dispute exists where the jury could conclude that the lesser offense was committed but not the greater. *Wright v. State*, 658 N.E.2d 563, 566-67 (Ind. 1995). When an instruction is refused on grounds that a serious evidentiary dispute does not exist, we review only for an abuse of discretion. *Young v. State*,

699 N.E.2d 252, 255 (Ind. 1998), *reh'g denied*. It is reversible error for a trial court not to give an instruction, when requested, on an inherently or factually included lesser offense if there is a serious evidentiary dispute. *Webb v. State*, 963 N.E.2d 1103, 1106 (Ind. 2012).

[17] A person who knowingly or intentionally kills another human being commits murder, I.C. § 35-42-1-1, while a person who recklessly kills another human being commits reckless homicide, I.C. § 35-42-1-5. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(b). "A person engages in conduct 'recklessly' if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct." *Id.* at (c).

[18] Reckless homicide is an inherently included offense of murder, as the only element distinguishing the two is the mens rea. *Evans v. State*, 727 N.E.2d 1072, 1082 (Ind. 2000). Thus, we move to the third prong of the *Wright* test: whether there was a serious evidentiary dispute over Thomas's mens rea such that the jury could've concluded Thomas committed reckless homicide but not murder.

[19] Thomas contends a serious evidentiary dispute exists as to whether he acted recklessly or knowingly. He points to his testimony that he fired the gun to scare Barnes away and tried to aim above him, as well as evidence that one of the bullets hit the twelve-foot sign at the gas station across the street. We, however, agree with the trial court that there was no serious evidentiary

dispute. As the surveillance footage showed, rather than firing one warning shot in the air or at the ground, Thomas fired three shots in Barnes's direction at close range and in quick succession. And although one of the bullets hit the gas-station sign across the street, another hit Barnes in the chest. The evidence supports the trial court's conclusion that Thomas "had to know his acts would result in a high probability of Barnes' death." *See, e.g.*, *Etienne v. State*, 716 N.E.2d 457, 463 (Ind. 1999) ("When one aims a gun at another person's shoulder or upper chest area and fires it, he or she is reasonably aware of a high probability that the shot may kill."); *Sanders v. State*, 704 N.E.2d 119, 122-23 (Ind. 1999) ("There was no serious evidentiary dispute that Sanders knowingly shot [the victim], because Sanders must have known that firing directly at a person at such close range is highly probable to result in death."). The trial court did not abuse its discretion in refusing to instruct the jury on reckless homicide.

[20] Affirmed.

May, J., and Kenworthy, J., concur.

ATTORNEY FOR APPELLANT

Andrew Bernlohr
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana