

## MEMORANDUM DECISION

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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Tyree Dontai Henning,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 21, 2022

Court of Appeals Case No.  
21A-CR-2239

Appeal from the Marion Superior  
Court 32

The Honorable Mark D. Stoner,  
Judge

Trial Court Cause No.  
49D32-2004-MR-13382

**Mathias, Judge.**

- [1] Tyree Dontai Henning appeals his convictions for murder and Level 2 felony kidnapping following a jury trial. Henning raises a single issue for our review,

which we restate as whether the State presented sufficient evidence to negate his claim of self-defense and to support his conviction for kidnapping. We affirm.

### **Facts and Procedural History**

- [2] In March 2020, Supreme Orr met Henning on a dating app. Orr lived in Richmond, and Henning lived in Indianapolis. About one week after meeting online, Orr drove to Indianapolis, picked up Henning, and took him back to her apartment in Richmond, where they spent the next five days together.
- [3] During that time, Orr learned that Henning had a warrant out for his arrest. Soon thereafter, the “vibe was different” around Henning, and Henning asked Orr to take him back to Indianapolis. Orr immediately agreed. Tr. Vol. 2, p. 145. Orr took a friend and Orr’s two small children with them.
- [4] On I-70 just east of Indianapolis, Henning “started to say that [Orr and her family] were trash and he didn’t want to see or speak to [Orr] again.” *Id.* at 147. Orr took an exit and pulled over under a bridge to ask Henning “what was wrong.” *Id.* Henning “told [Orr] to keep driving or he will shoot [her].” *Id.* at 148. He then put his hand in his pocket. Orr drove to a nearby gas station and pulled next to a pump. Henning then removed a firearm from his pocket and placed it in his lap.
- [5] Orr exited the vehicle and took her children inside the gas station’s store, ostensibly to use the restroom, but she left her car keys inside the car. Orr then called her older sister, Yana, whom Orr knew to be nearby. Yana arrived at the gas station about five minutes later and pulled her vehicle alongside Orr’s.

- [6] Orr began removing the children's car seats from her vehicle to place them in Yana's vehicle. While she was doing that, she placed her youngest child in the back seat of her vehicle to ensure the child did not run near moving vehicles at the gas station. At some point, Orr's friend took the other child away from the vehicles.
- [7] Meanwhile, Yana exited her vehicle with a firearm holstered on her hip. She approached Henning, who had now moved to the driver's seat of Orr's vehicle, and she asked Henning to give her Orr's car keys. Yana did not reach for her firearm and did not remove it from the holster. Still, Henning shot Yana in the head, killing her. Henning then drove off with Orr's vehicle while Orr's youngest child was in the backseat. Orr "started to chase after the car because [her] youngest was still in the back seat." *Id.* at 152.
- [8] About one mile down the road, Henning rear-ended two vehicles. He then jumped out of Orr's vehicle and fled the scene on foot, hiding his firearm at an unknown location. The motorists of the other vehicles observed Orr's youngest child in her vehicle and stayed there until law enforcement officers arrived. That evening, officers located Henning at Methodist Hospital under a false name.
- [9] The State charged Henning with the murder of Yana and with Level 2 felony kidnapping of Orr's youngest child. At his ensuing jury trial, Orr testified to her relationship with Henning and the events of April 4. She testified that Yana never reached for nor removed her firearm before Henning shot her, which

testimony Orr's friend corroborated. The State also introduced surveillance video from the gas station, which showed that Yana's arms remained by her sides as Henning shot her. And when officers had arrived at the gas station, Yana's gun was still in the holster. Nonetheless, in his own testimony, Henning stated that he shot Yana because she was screaming, she was armed, he was scared, and he "saw her reach for the gun." Tr. Vol. 3, p. 129. Thus, Henning testified that he shot Yana "to defend [him]self." *Id.* at 129-30.

[10] The jury rejected Henning's claim of self-defense and found him guilty of Yana's murder. The jury also found Henning guilty of Level 2 felony kidnapping. The trial court entered its judgment of conviction and sentenced Henning accordingly, and this appeal ensued.

### **Standard of Review**

[11] Henning asserts that the State failed to present sufficient evidence to negate his claim of self-defense and to support his conviction for kidnapping. As our Supreme Court has made clear:

For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. On sufficiency challenges, we will neither reweigh evidence nor judge witness credibility. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

*Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We address each of Henning's arguments in turn.

## Discussion and Decision

### *Self-Defense*

[12] We first consider Henning’s argument that the State failed to present sufficient evidence to negate his claim of self-defense. As our Supreme Court has explained:

A defendant can raise self-defense as a justification for an otherwise criminal act. I.C. § 35-41-3-2; *Miller v. State*, 720 N.E.2d [696,] 699 [(Ind. 1999)]. When self-defense is asserted, the defendant must prove he was in a place where he had a right to be, “acted without fault,” and reasonably feared or apprehended death or great bodily harm. *Miller*, 720 N.E.2d at 699-700. The State must then negate at least one element beyond a reasonable doubt “by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987). We will reverse a conviction only if no reasonable person could say the State overcame the self-defense claim beyond a reasonable doubt. *Id.*

*Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021).

[13] The State presented sufficient evidence to allow the jury to reject Henning’s claim of self-defense and to find Henning guilty of murdering Yana. Orr testified that Henning shot Yana even though Yana presented no threat to him in that Yana had not reached for her firearm or removed it from its holster. Orr’s testimony was corroborated by the gas station’s surveillance video and by her friend’s testimony. Thus, the jury reasonably found that Henning was the initial aggressor. See *Miller*, 720 N.E.2d at 700 (noting self-defense is generally

not available to the initial aggressor). Further, after shooting Yana in the head, Henning fled the scene, hid the murder weapon, and checked into a hospital under a false name; therefore, Henning’s “own conduct shows that he did not believe he had acted in self-defense.” *Orozco v. State*, 146 N.E.3d 1038, 1041-42 (Ind. Ct. App. 2020), *trans. denied*. And, while Henning testified that he shot Yana only after she had reached for her gun, the jury was free to assess Henning’s credibility and weigh the evidence. Accordingly, we cannot say that the State failed to negate an element of Henning’s claim of self-defense, and we affirm his conviction for murder.

### ***Kidnapping***

[14] We next consider Henning’s argument that the State failed to present sufficient evidence to show that he committed Level 2 felony kidnapping when he fled the gas station in Orr’s vehicle with Orr’s youngest child still in the vehicle. “A person who knowingly or intentionally removes another person, by . . . force . . . from one place to another commits kidnapping.” *Ind. Code* § 35-42-3-2(a). Kidnapping is a Level 2 felony if committed “while hijacking a vehicle.” *I.C.* § 35-42-3-2(b)(4)(B).

[15] Henning asserts that he fled the gas station in Orr’s vehicle without knowing that the child was in the back seat. Henning’s argument is merely a request for this Court to reweigh the evidence, which we will not do. Orr testified that she returned to her vehicle with her children from the gas station’s store and observed Henning in the driver’s seat facing them as they came back to the car. Thus, Henning knew the children had returned to the vehicle with Orr. Orr

further testified that she had told Henning that Yana was coming to pick up the children, and, a few minutes before Yana arrived, Orr placed the youngest child inside the vehicle while Orr removed the children's car seats. And Orr testified that, as Henning fled the scene in her vehicle, she chased after him because her child was still in the vehicle.

- [16] This evidence is sufficient to establish that Henning fled the scene with the knowledge that the child was still in the vehicle. We therefore affirm Henning's conviction for Level 2 felony kidnapping.

### **Conclusion**

- [17] For all of the above reasons, we affirm Henning's convictions for murder and Level 2 felony kidnapping.

- [18] Affirmed.

Brown, J., and Molter, J., concur.