

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tyler Newby,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 18, 2023

Court of Appeals Case No.
22A-CR-2900

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-2006-MR-18139

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

- [1] Tyler Newby (“Newby”) appeals his conviction, following a bench trial, of Level 5 felony reckless homicide.¹ He argues that there is insufficient evidence to support his conviction. Concluding that there is sufficient evidence to support Newby’s conviction, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether there is sufficient evidence to support Newby’s reckless homicide conviction.

Facts

- [3] The facts most favorable to the judgment reveal that in May 2020, twenty-nine-year-old Newby lived in an apartment near downtown Indianapolis. On Friday, May 29, 2020, there were peaceful protests throughout downtown Indianapolis in support of racial justice. However, the following evening, May 30, 2020, the protests turned into riots.
- [4] At approximately 6:30 p.m. on May 30, 2020, Newby and his friend Anthony Eads (“Eads”) walked to a downtown grocery store and purchased alcohol. When the two men left the grocery store, the situation downtown had become “chaotic[,]” and law enforcement officers were “shooting tear gas into the

¹ IND. CODE § 35-42-1-5.

crowd.” (Tr. Vol. 41, 50). The two men then walked to a parking garage near Pennsylvania and Market Streets. Newby and Eads went to an upper level of the parking garage and spent about ninety minutes watching the riots that were unfolding throughout downtown. The two men then returned to Newby’s apartment and watched a movie.

[5] Thereafter, in the early morning hours of May 31, 2020, Newby and Eads returned to downtown Indianapolis. Newby carried a Glock handgun (“the Glock”), and Eads carried a pocketknife. As the two men were walking south on Pennsylvania Street, Eads noticed and picked up what appeared to be a tear gas cannister. As Newby and Eads turned west on Market Street, a group of young men approached Eads and asked to see what he had found. Eads responded, “don’t fucking worry about it, mind your business.” (Tr. Vol. 2 at 63).

[6] At the same time, one of the young men, Dorian Murrell (“Murrell”), shoved Newby to the ground from behind. Newby immediately rolled over, pulled out the Glock, and shot an unarmed Murrell, who was standing over Newby. Murrell ran a short distance, collapsed in the street, and died from a gunshot wound to his heart.

[7] Newby and Eads also ran from the scene. However, Newby subsequently located a police officer and told him that he had just shot someone. Newby was then transported to the police station where he gave a videotaped voluntary statement. In this statement, Newby explained that the incident had occurred

very quickly. Specifically, Newby explained that Murrell had pushed him to the ground, Newby had been afraid that Murrell had been about to hit him, and Newby had shot at Murrell so quickly that Newby did not have time to aim. Newby further told the officer that he had not seen any weapons.

[8] In June 2020, the State charged Newby with murder. In July 2021, the State amended the charging information to include a count of Level 2 felony voluntary manslaughter. At Newby's October 2021 trial, the jury hung on the murder charge, and the trial court entered a directed verdict of not guilty on the voluntary manslaughter charge.

[9] The State determined that it would retry Newby for the murder charge, and in July 2022, Newby waived his right to a jury trial and requested a bench trial. The trial court held Newby's second trial in October 2022 and heard the evidence as set forth above. In addition, the trial court watched Newby's videotaped voluntary statement.

[10] Further, during closing argument, the State contended that Newby had used "unreasonable deadly force" because "a push d[id] not justify someone to use deadly force." (Tr. Vol. 2 at 161). The State further pointed out that Murrell had not brandished a weapon and that Newby had not believed that Murrell had been reaching for a weapon. During Newby's closing argument, Newby argued that he had had "a reasonable belief of serious bodily harm or injury" and did not "have to wait to be kicked [or] punched" before shooting Murrell. (Tr. Vol. 2 at 164).

[11] At the end of the trial, the trial court stated as follows:

I have to look at whether or not [Newby] was justified using deadly force and I just don't find it, but I don't find that he knowingly killed [Murrell] either. The court can and will look at lesser include[d] of Murder what the Court believed happened. That [Newby] engaged in plain conscious unjustifiable disregard so, the Court is going to find him guilty of Reckless Homicide. I believe your actions that night in pulling the gun and shooting absolutely was in plain conscious and unjustifiable disregard. So, the Court will find you guilty of [Level 5 felony] Reckless Homicide.

(Tr. Vol. 2 at 168). The trial court sentenced Newby to a five-year suspended sentence that included home detention and probation.²

[12] Newby now appeals his conviction.

Decision

[13] Newby argues that there is insufficient evidence to support his Level 5 felony reckless homicide conviction. Specifically, Newby first contends that the State failed to prove that he acted recklessly. We disagree.

[14] Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not

² Neither Newby nor the State challenges the sentence imposed by the trial court. As a result, we make no comment upon the sentence either.

reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[15] In order to convict Newby of Level 5 felony reckless homicide, the State was required to prove that Newby recklessly killed Murrell. *See* I.C. 35-42-1-5. “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.” I.C. 35-41-2-2(c). “Recklessness involves a conscious choice of a course of action which injures another, either with knowledge of the serious danger to others involved therein, or with knowledge of facts which would disclose the danger to any reasonable man.” *Shepherd v. State*, 155 N.E.3d 1227, 1234 (Ind. Ct. App. 2020), *trans. denied*. A defendant’s reckless homicide conviction may be sustained when the evidence “shows that a defendant understood the precise nature of the danger before him yet chose to disregard it[.]” *Id.*

[16] Here, our review of the evidence reveals that after Murrell had pushed Newby to the ground, Newby immediately drew the Glock, which is a deadly weapon, and shot Murrell, who was standing over him. We conclude that this evidence of Newby’s actions supported a reasonable inference that he understood the nature of the danger posed and chose to disregard it. *See id.* There is sufficient evidence to support Newby’s reckless homicide conviction.

- [17] Newby further contends that there is insufficient evidence to support his conviction because the State failed to rebut his claim that he shot and killed Murrell in self-defense. We disagree.
- [18] The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Cole v. State*, 28 N.E.3d 1126, 1136-37 (Ind. Ct. App. 2015). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 1137. Additionally, if there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id.*
- [19] A valid claim of self-defense is legal justification for an otherwise criminal act. *Id.* A person is justified in using deadly force and does not have a duty to retreat if the person reasonably believes that force is necessary to prevent serious bodily injury to himself or a third party or the commission of a forcible felony. I.C. § 35-41-3-2(c). In order to prevail on a claim of self-defense, a defendant must show that: (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 great bodily harm. *Cole*, 28 N.E.3d at 1137.
- [20] 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.* The State may meet this burden 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. *Id.* Whether the State has met its burden is

a question of fact for the factfinder. *Id.* Further, the factfinder “is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor.” *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997).

[21] In addition, a claim of self-defense will fail if the person uses more force than is reasonably necessary under the circumstances. *Weedman v. State*, 21 N.E.3d 873, 892 (Ind. Ct. App. 2014), *trans. denied*. “Where a person has used more force than necessary to repel an attack[,] the right to self-defense is extinguished, and the ultimate result is that the victim then becomes the perpetrator.” *Id.* (cleaned up). Here, our review of the evidence reveals that Newby shot an unarmed Murrell immediately after Murrell pushed Newby to the ground. Based on these facts, the factfinder could have reasonably concluded that Newby used more force than necessary to defend himself against Murrell’s nonlethal attack.

[22] We further note that the only evidence that Newby’s reaction was reasonable was contained in Newby’s videotaped police statement. The trial court, however, had no obligation to credit this evidence and did not. *See McCullough v. State*, 985 N.E.2d 1135, 1139 (Ind. Ct. App. 2013), *trans. denied*. Ultimately, Newby’s argument is nothing more than an invitation to reweigh the evidence and judge the credibility of the witnesses, which we will not do. *See Cole*, 28 N.E.3d at 1137. There is sufficient evidence to rebut Newby’s claim of self-defense, and, therefore, to support Newby’s reckless homicide conviction.

[23] Affirmed.

Vaidik, J., and Mathias, J., concur.