

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kendale E. Abel, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 24, 2023

Court of Appeals Case No.
22A-CR-2303

Appeal from the Marion Superior
Court

The Honorable Angela Davis,
Judge

Trial Court Cause No.
49D27-2006-MR-19045

Memorandum Decision by Judge Riley.
Chief Judge Altice and Pyle, J. concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Kendale Eugene Abel, Jr. (Abel), appeals his conviction for murder, a felony, Ind. Code § 35-42-1-1(1).

[2] We affirm.

ISSUE

[3] Abel presents this court with one issue on appeal, which we restate as:
Whether the State presented sufficient evidence to establish his conviction for murder beyond a reasonable doubt.

FACTS AND PROCEDURAL HISTORY

[4] Abel and Ashley Richardson (Richardson) had a tumultuous romantic relationship. They started dating in 2014 but broke up sometime in 2015, after which Richardson moved to Mississippi. When Richardson returned to Indiana in 2018, they resumed their relationship. They lived together for a while, but in May of 2020, Abel was charged with assaulting Richardson with a hammer, and Richardson moved out of the residence. Abel was subject to a no-contact order and was placed on GPS monitoring.

[5] Despite the no-contact order, on June 9, 2022, Abel and Richardson attended the same gathering. At the end of the evening, Abel agreed to drive Richardson to her home. Before driving to Richardson's residence, Abel stopped at his house and Richardson followed Abel inside. Once inside, Abel and Richardson started arguing about the status of their relationship. During the argument,

Richardson sat on Abel's bed, while Abel sat on the floor in front of the bed to charge his ankle monitor. Richardson started smoking cigarettes and drinking alcohol from a bottle she had in her purse. According to Abel, Richardson removed her blouse so he could not force her to leave. At one point, Abel noticed a gun on the floor under his bed and grabbed it. He shot Richardson twice: once in the heart and once in the head. Although each wound was independently fatal, Richardson was alive at the time she sustained each gunshot wound.

[6] Abel called 911 and told the operator that he had tried to commit suicide by shooting himself in the head but had missed and instead had killed Richardson. He subsequently woke up Gwenda Hughes (Hughes), his elderly relative who lived on the second floor of the residence, to inform her that Richardson was dead, and that he was going to leave. Hughes had slept through the incident and had not heard the argument or gunshots. Abel walked to his car, which was parked in front of the residence and where he was detained by the police.

[7] Detective James Hurt of the Indianapolis Metropolitan Police Department (Detective Hurt) spoke with Abel after reading him his rights, which Abel agreed to waive. Abel told Detective Hurt that because of Richardson's taunts, calling him "stupid, lame, a loser, nothing, a wuss" which made him "feel really small," he decided to commit suicide. (Transcript Vol. II, p. 166). Abel told the detective that he put the gun to his head and pulled the trigger, but the bullet grazed his head, hitting Richardson instead. Then he shot her again. Abel told Detective Hurt that after discharging the gun twice, he attempted to

shoot himself in the head again, but missed a second time. Although ballistics determined that four shots had been fired, Abel never explained the fourth shot to Detective Hurt. Abel was treated for a superficial wound to his head after the interview with Detective Hurt.

- [8] On June 14, 2020, the State filed an Information, charging Abel with murder, a felony. On June 7, 2022, the trial court conducted a two-day bench trial. During these proceedings, Abel took the stand to testify. In his testimony, he presented the court with another version of events. According to Abel, he realized after the first gunshot that he was “being really silly, trying to kill” himself. (Tr. Vol. II, p. 168). However, at that moment, Richardson “tried to force [him] to shoot [him]self again” by grabbing the gun and aiming it at him. (Tr. Vol. II, p. 168). Abel testified that they started “tussling over the gun” and a shot was fired. (Tr. Vol. II, p. 168). This second shot was an “accidental misfire because [Abel] squeezed” the trigger during the tussle. (Tr. Vol. II, p. 187). After this, Abel testified that he blacked out and lost consciousness. When he resumed consciousness, he got to his knees, saw the gun lying on the floor, and grabbed it. He told the trial court that he noticed Richardson on the bed. She fell forward toward Abel at which time, “another shot was fired.” (Tr. Vol. II, p. 168). Abel then saw “a hole” in Richardson’s chest and called 911. (Tr. Vol. II, p. 168).

- [9] At the close of the evidence, the trial court found Abel guilty as charged. On September 12, 2022, Abel was sentenced to sixty years executed at the Department of Correction.

[10] Abel now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[11] Abel contends that the State failed to establish sufficient evidence beyond a reasonable doubt to sustain his conviction for murder. Our standard of review with regard to sufficiency claims is well-settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Clemons v. State*, 987 N.E.2d 92, 95 (Ind. Ct. App. 2013). We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

[12] To find Abel guilty of murder, a felony, the State was required to establish beyond a reasonable doubt that he “knowingly and intentionally kill[ed]” Richardson. *See* I.C. § 35-42-1-1(1). Not disputing the separate elements of the murder charge, Abel instead maintains that his conduct was not voluntary pursuant to Indiana Code section 35-41-2-1(a), which provides, in pertinent part, that “[a] person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense.” Voluntariness is defined as “behavior that is produced by an act of choice and is capable of being controlled by a human being who is in a conscious state of mind.” *McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997). “In most cases there is no issue of

voluntariness and the State's burden is carried by proof of commission of the act itself. However, once evidence in the record raises the issue of voluntariness, the State must prove the defendant acted voluntarily beyond a reasonable doubt." *Baird v. State*, 604 N.E.2d 1170, 1176 (Ind. 1992).

- [13] Abel's contention that the gun discharged, not by choice, but rather as a result of the struggle between Abel and Richardson as presented in his trial testimony is unavailing. The evidence presented at trial indicates that Richardson was shot twice: once in the head and once in the heart. Either shot would have been fatal and Abel was holding the gun. It is a reasonable inference that after being shot once, Richardson would not have been able to continue the struggle over the gun. Even if Abel is to be found credible, and he suffered a blackout after the first shot, he testified that after he resumed consciousness, he got to his knees and made a deliberate choice to grab the gun which was lying on the floor. He noticed Richardson moving toward him and he "d[id] shoot and aim[ed at] her chest, and [] pushed her back on the bed." (Tr. Vol. II, p. 192). This evidence is sufficient to establish beyond a reasonable doubt that Abel acted voluntarily in killing Richardson.

CONCLUSION

- [14] Based on the foregoing, we conclude that the State presented sufficient evidence beyond a reasonable doubt to sustain Abel's conviction for murder.
- [15] Affirmed.
- [16] Altice, C. J. and Pyle, J. concur