

## 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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Steven Kirschbaum,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 5, 2021

Court of Appeals Case No.  
20A-CR-1621

Appeal from the Jackson Circuit  
Court

The Hon. Richard W. Poynter,  
Judge

Trial Court Cause No.  
36C01-1805-F1-3

**Bradford, Chief Judge.**

## Case Summary

- [1] In April of 2018, Steven Kirschbaum lived in a garage apartment on Bonnie Bell's property. In the early morning of April 28, 2018, after an altercation, Kirschbaum fired two bullets into Bell's television room in the main residence, one of which likely would have struck her had it not been stopped by her television. The State charged Kirschbaum with Level 1 felony attempted murder, Level 5 felony intimidation, Level 5 felony criminal recklessness, and Level 6 felony pointing a firearm. The trial court found Kirschbaum guilty as charged, entered judgment of conviction for attempted murder and intimidation, and sentenced Kirschbaum to an aggregate sentence of thirty years, with twenty executed, ten suspended, and five of those ten years suspended to probation. Kirschbaum contends that the State failed to produce sufficient evidence to sustain his conviction for attempted murder. Because we disagree, we affirm.

## Facts and Procedural History

- [2] Kirschbaum met Bell in 2011, and he moved into her Jackson County house at some point, helped Bell care for her ailing husband, continued to live with her after her husband passed away in 2017, and eventually moved into an apartment attached to a detached garage on the property. After completing her work shift at approximately midnight on April 27, 2018, Bell went to a bar called Bubba's with friends for some drinks. As it happens, Bell and Kirschbaum had agreed that she would take him to renew his driver's license the next morning. Shortly after midnight, while Bell was at Bubba's,

Kirschbaum sent her several text messages which, in part and verbatim, read “Well once again i cant get [] my license because ur laying [] up[] in a [] bar all nite[,]” “Hope u [] burn in hell b[\*\*\*\*,]” “F[\*\*\*] u controling b[\*\*\*\*,]” “F[\*\*\*] you drunk[,]” “Die you w[\*\*\*\*,]” and “Die w[\*\*\*\*] die w[\*\*\*\*] die [] plea[s]e[.]” State’s Exs. 2, 4, 5. Bell eventually turned off her telephone and continued drinking.

[3] After returning home some time later, Bell, who was aggravated at Kirschbaum, took a handgun outside and apparently fired it. Kirschbaum emerged from his apartment, screaming at Bell to put her handgun down. Kirschbaum took the handgun from Bell and unloaded it. Bell returned to the main house. At approximately 4:00 a.m., Bell was sitting in her usual chair in her television room when two bullets entered the room from outside, one striking the back of her television and becoming lodged in it. Evaluation of the bullet’s trajectory indicated that it would have passed just over the chair in which Bell was sitting, likely striking her, had it not been stopped by the television.

[4] Bell called 911 and reported that Kirschbaum was shooting into her house and had threatened her earlier. As Bell waited for officers to arrive, Kirschbaum entered the house and screamed at her, “You will f[\*\*\*\*\*] die. I swear to God I will shoot you right in place.” Tr. Vol. II at 12, 44; State’s Ex. 1. Seymour Police Officer Christopher McCoy was the first to respond, and he observed Kirschbaum walk from around the back of the house and into the garage apartment, yelling about a “crazy woman[.]” Tr. Vol. II at 17. As Officer

McCoy approached, Kirschbaum exited the apartment, and the officer detained him. Kirschbaum was angry and upset and smelled of alcoholic beverage.

- [5] Officers found several spent shell casings on the ground near Kirschbaum's garage apartment behind the house. Pursuant to a search warrant, officers found three handguns in Kirschbaum's apartment, one of which was determined to be the gun to have ejected the shell casings found on the ground. The shell casings found outside the garage apartment were consistent with somebody having fired a handgun toward the back corner of the house where the television room was located. As Jackson County Sheriff's Deputy Clint Burcham transported Kirschbaum to jail, he remarked, "Attempted murder, next time I'll kill the f[\*\*\*\*\*]' b[\*\*\*\*\*]." Tr. Vol. II p. 168. Kirschbaum also stated, "I wish I would've shot that b[\*\*\*\*\*] in the face." Tr. Vol. II p. 175. While being booked, Kirschbaum said "Bonnie Bell, that b[\*\*\*\*\*] is dead" and "I guess I'll see you guys [in] thirty (30) years. I murdered her so I won't be seeing you anytime soon.'" Tr. Vol. II pp. 168, 176.

- [6] On May 7, 2018, the State charged Kirschbaum with Level 1 felony attempted murder, Level 5 felony intimidation, Level 5 felony criminal recklessness, and Level 6 felony pointing a firearm. On June 16, 2020, Kirschbaum was tried to the bench. The trial court found Kirschbaum guilty as charged, stating,

Now your rage, your uncontrollable rage at Ms. Bell that night caused this situation. So the Court has to find, based on the totality of all the facts, not only what you did but your intent behind it. Together with your text messages of threatening her life, together with your out of control anger, the fact that you shot numerous rounds into that house and specifically that you

fired that gun into the very room where you kn[e]w Ms. Bell to be, I believe the State has proved beyond a reasonable doubt that you in fact intended to kill Bonnie Bell that evening. Again, at that moment, the act and the intent merged.

Tr. Vol. II p. 210. The trial court entered judgment of conviction for attempted murder and intimidation. On August 4, 2020, the trial court sentenced Kirschbaum to an aggregate sentence of thirty years of incarceration, with twenty years executed and ten years suspended (five of those to probation).

## Discussion and Decision

[7] Kirschbaum contends that the State failed to produce sufficient evidence to support his conviction for attempted murder. When a defendant challenges the sufficiency of the evidence used to convict him of a crime, we consider only the probative evidence and reasonable inferences arising therefrom supporting the conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will affirm a conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Young v. State*, 973 N.E.2d 1225, 1226 (Ind. Ct. App. 2012), *trans. denied*. Put another way, reversal of a defendant's conviction "is appropriate only when a reasonable trier of fact would not be able to form inferences as to each material element of the offense." *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017), *aff'd on reh'g*, 2018 WL 522813 (memorandum decision on rehearing). This standard of review does not permit us to reweigh the evidence or allow us to judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Where there is

conflicting evidence in the record, we consider the evidence in the light most favorable to the judgment. *Drane*, 867 N.E.2d at 146.

[8] Kirschbaum first contends that the State failed to produce sufficient evidence that he was the person who had shot into Bell's house. We disagree. First, Kirschbaum himself testified that he and Bell were the only two persons anywhere in the vicinity of the incident. The trial court also heard evidence that Kirschbaum had told Bell in text messages earlier that morning that he hoped she would die and that the two had had a confrontation behind the house after Bell returned home from Bubba's. The State produced evidence that a handgun found in Kirschbaum's apartment was the one that had ejected the casings located just outside his garage apartment, the location of which indicated that someone had stood outside Kirschbaum's garage apartment and had fired into the main residence. Finally, the trial court heard evidence of Kirschbaum's intense anger and continued threats toward Bell during and after the 911 call and on his way to jail. This evidence amply supports the trial court's finding that Kirschbaum was the shooter. Kirschbaum's argument that Bell had perhaps shot a gun into her own house is nothing more than a request to reweigh the evidence, which we will not do. *McCallister*, 91 N.E.3d at 558.

[9] Kirschbaum also challenges the trial court's finding that he had acted with the specific intent to kill Bell. In order to support a conviction for attempted murder, the State must prove beyond a reasonable doubt that the defendant was acting with the specific intent to kill and engaged in an overt act which constituted a substantial step toward the commission of the crime. *Robinson v.*

*State*, 730 N.E.2d 185, 194–95 (Ind. Ct. App. 2000), *trans. denied*. Intent may be proven by circumstantial evidence alone, *Specht v. State*, 838 N.E.2d 1081, 1095 (Ind. Ct. App. 2005), *trans. denied*, and it may be inferred from the nature of the attack and circumstances surrounding the crime. *Perez v. State*, 872 N.E.2d 208, 214 (Ind. Ct. App. 2007) (citing *Corbin v. State*, 840 N.E.2d 424, 429 (Ind. Ct. App. 2006)), *trans. denied*. The trier of fact may infer that the defendant acted with the conscious objective to kill from the circumstances surrounding the deliberate use of a deadly weapon in a manner likely to cause death or serious bodily injury. *Booker v. State*, 741 N.E.2d 748, 756 (Ind. Ct. App. 2000). Finally, “discharging a weapon in the direction of a victim is substantial evidence from which the [factfinder] could infer intent to kill.” *Perez*, 872 N.E.2d at 213–14 (quoting *Corbin*, 840 N.E.2d at 429).

- [10] We conclude that the record contains ample evidence to support a finding that Kirschbaum intended to kill Bell when he shot into her house. Kirschbaum’s text messages to Bell showed that he was threatening her life earlier that morning, and his threatening statements continued even after the shooting. It was reasonable to infer that Kirschbaum knew that Bell was home, as the two had had an earlier confrontation. Bell testified that she routinely sat in a specific chair in the television room at the back of the house and that Kirschbaum had full access to the residence because his garage apartment lacked any plumbing. Moreover, Bell testified that Kirschbaum had resided inside the main residence for an extended period of time when he had assisted Bell with the care of her husband. It was reasonable for the trial court to infer

from this evidence that Kirschbaum knew that Bell regularly sat in a particular chair in the television room. One of the projectiles had entered high on the wall in the corner of the television room and had grazed the ceiling, while the second projectile entered the room through the exterior wall near the height of the television, and, had the television not stopped it, would likely have struck—or very nearly struck—Bell. It may be inferred from this evidence that Kirschbaum intentionally fired into the television room in the direction of the chair in which Kirschbaum knew Bell to routinely sit. *See Perez*, 872 N.E.2d at 214 (concluding that evidence of ongoing hostilities between parties and use of a deadly weapon was sufficient to prove Perez had the specific intent to kill when he fired shots at a car containing rival gang members). Kirschbaum’s claim that he was highly intoxicated and shooting blindly at the roof of the house is nothing more than an invitation to reweigh the evidence, which we will not do. *McCallister*, 91 N.E.3d at 558.

[11] We affirm the judgment of the trial court.

Vaidik, J., and Brown, J., concur.