

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Frank William Zyzanski,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 8, 2024

Court of Appeals Case No.
23A-CR-2497

Appeal from the Lake Superior Court
The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-2004-MR-8

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] Frank William Zyzanski appeals his conviction for murder, arguing the evidence is insufficient to support it. We affirm.

Facts and Procedural History

- [2] In April 2020, Zyzanski was living with his ex-wife, Joan Zyzanski, and one of their sons, Randal Zyzanski, at Randal's house in Merrillville. Jared Zyzanski, who is Zyzanski and Joan's other son, lived nearby in Lake Station. Joan had moved in with Randal in March so he could take care of her while she was dying of cancer. At the time, Randal was in a custody battle with his ex-wife, Crystal Zyzanski, over their three children, A.Z., C.Z., and B.Z. Because of Crystal's history of violence toward Randal, there was a protective order in place.
- [3] On April 3, Joan passed away at home. That same day, Crystal came over with the three children. Family and friends spent the day at the house mourning and reminiscing. Early the next morning, Zyzanski and Donald Bloniarz, a family friend, went to Jared's house. When they returned to Randal's house several hours later, Crystal and the children were still there with Randal, and the five of them were sitting in the living room. Zyzanski asked Crystal to talk in the kitchen, and she followed him there. After they'd been in the kitchen for a few seconds, Crystal called out, "Randal, you better get him." Tr. Vol. III p. 110.

Seconds later, Zyzanski fired one shot, hitting Crystal in the neck and killing her. Zyzanski immediately left the house and drove off in his truck.

[4] Randal and A.Z., then nine years old, both witnessed the shooting. Randal called 911, and when officers arrived, A.Z. was crying and said “her dad’s dad shot her mom.” *Id.* at 29. Other officers searched for Zyzanski, and after accessing location data from his cell phone, they found him at the Pioneer Motel in Lansing, Illinois, and took him into custody.

[5] Dr. Zhuo Wang, a forensic pathologist at the Lake County Coroner’s Office, performed an autopsy. He determined the bullet had entered the left side of Crystal’s neck and exited through the right side, causing bleeding of the soft tissue and muscle, a complete rupture of the left jugular vein and left carotid artery, damage to the epiglottis, and an air embolism of the heart. Dr. Wang concluded the cause of Crystal’s death was a gunshot wound to the neck and the manner of death was homicide.

[6] The State charged Zyzanski with murder. On November 25, 2020, Zyzanski called a friend from the Lake County Jail. He talked to his friend about the case and said he was “gonna get a self-defense on it.” Ex. 173 at 4:25. He explained that when he got back to Randal’s house and saw Crystal was still there, he “grabbed that motherf***ing pistol and I put it on me and I went in there.” *Id.* at 7:23. He said he told Bloniarz to take the children away while he talked to Crystal so the children wouldn’t hear them arguing. Zyzanski claimed Crystal “left [him] no other alternative but to shoot her” and then remarked, “You

think I missed? Absolutely not [I]n all my years I never missed. But it's not something I wanted to do. You know, she didn't leave me a lot of f***ing choice." *Id.* at 8:10.

[7] A jury trial was held in August 2023. Randal testified that when Crystal and Zyzanski went into the kitchen to talk, they were standing face-to-face. Randal explained that seconds after Crystal called out for him, he saw Zyzanski raise a gun, point it in her direction, and fire one shot, and then Crystal reached for her neck area. Bloniarz testified that he looked into the kitchen after the shot and saw Crystal grab herself and turn away. He said he saw the barrel of a gun being pulled back but didn't see who was holding it. A.Z. testified that she saw Zyzanski point a gun at Crystal, shoot her, walk out of the house, and drive away in his truck.

[8] The defense theory was that Zyzanski shot Crystal in self-defense. Zyzanski testified that he'd had concerns about Crystal because of the protective order and her history of violence toward Randal, including hitting him in the head with a hammer, stabbing him, and breaking into his house. Zyzanski explained that when he called Crystal into the kitchen to ask her to leave, "she kept fooling with something" in her sweatpants as she was walking toward him, so he thought she had a gun. Tr. Vol. IV p. 165. He said Crystal attacked him before he pulled his gun, claiming she "lunged, almost bowled [him] over" and "tried to claw" him. *Id.* at 165, 192. He admitted shooting Crystal but asserted that he didn't intend to kill her and fired only because "her hand was still stuck in her waist" and he thought she would shoot him. *Id.* at 166.

[9] The jury found Zyzanski guilty of murder, and the trial court sentenced him to sixty-five years.

[10] Zyzanski now appeals.

Discussion and Decision

[11] Zyzanski contends the evidence is insufficient to sustain his conviction for murder. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge witness credibility. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We consider only the evidence supporting the verdict and any reasonable inferences that can be drawn from it. *Id.* We will affirm a conviction if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[12] Zyzanski's only challenge on appeal is "to the *mens rea* requirement of a knowing or intentional killing"; he explicitly states that he's not challenging the weight of the evidence on his self-defense claim. Appellant's Reply Br. p. 4. But as the State notes, Zyzanski never disputed at trial that he acted knowingly; in fact, he admitted shooting Crystal and instead maintained that he was justified in doing so. Zyzanski contends he made both arguments below, claiming he "advanced his arguments in the alternative. First, he argued that he did not commit a knowing killing and second even if he did, it was self-defense." *Id.* This is a misrepresentation of Zyzanski's defense at trial. His entire argument was that Crystal was the initial aggressor and that he only shot her after she

attacked him. *See* Tr. Vol. IV pp. 165-67, 174-75, 191-93, 197; Tr. Vol. V pp. 58-61, 64-67, 70-71. Thus, it is hard to square Zyzanski's appellate argument with his trial defense.

[13] Nevertheless, in addressing his new-found argument, we find the evidence is sufficient to sustain his conviction. To convict Zyzanski of murder as charged, the State had to prove he knowingly or intentionally killed Crystal. Ind. Code § 35-42-1-1(1); Appellant's App. Vol. II p. 26. A knowing or intentional killing may be inferred from the use of a deadly weapon in a manner likely to cause death. *Carr v. State*, 749 N.E.2d 1153, 1154 (Ind. 2001); *Hawkins v. State*, 748 N.E.2d 362, 363 (Ind. 2001), *reh'g denied*. Firing a gun in the direction of the victim is enough to infer a knowing or intentional killing. *Carr*, 749 N.E.2d at 1154 (finding sufficient evidence where defendant fired one shot in victim's direction and struck him in the upper back); *Hawkins*, 748 N.E.2d at 363 (finding sufficient evidence where defendant pointed and fired gun at victim and struck him in the neck and chest).

[14] Zyzanski claims the evidence doesn't support such an inference because he fired the gun not "in a manner in which a firearm is typically used," but in an "apparently unintentional manner" and "only off-handedly one time." Appellant's Br. p. 12. But both A.Z. and Randal saw Zyzanski point and fire the gun at Crystal. A.Z. testified that Zyzanski pointed a gun at her mother and shot her. Randal testified that Zyzanski raised the gun, pointed it in Crystal's direction, and fired, and then Crystal reached for her neck. The bullet entered one side of Crystal's neck and exited through the other, completely rupturing

her left jugular vein and carotid artery. Right after shooting Crystal, Zyzanski fled the house and left the state, which shows a consciousness of guilt. *See Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*. And Zyzanski boasted about his aim in the November 2020 jail call: “You think I missed? Absolutely not.” During the call, Zyzanski explained that he grabbed his gun before going into the house because he saw Crystal was there, and he told Bloniarz to take the kids away because he anticipated arguing with her. There was sufficient evidence for the jury to infer that Zyzanski knowingly or intentionally killed Crystal.

[15] Affirmed.

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

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