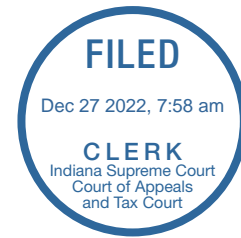


MEMORANDUM DECISION

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

Charles B. Douglas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 27, 2022
Court of Appeals Case No.
22A-CR-971
Appeal from the St. Joseph
Superior Court
The Honorable John M.
Marnocha, Judge
Trial Court Cause No.
71D02-1910-MR-11

Weissmann, Judge.

[1] While Ruben Waters sat in the driver’s seat of his car, Charles Douglas, sitting directly behind him, shot Waters in the back of the head. At his trial, despite admitting that he intentionally shot Waters in self-defense, Douglas asked for a jury instruction on reckless homicide. Finding no serious evidentiary dispute about Douglas’s mens rea, the trial court judge refused to do so. The jury convicted Douglas of murder and he now claims the trial court erred in instructing the jury. Finding no error, we affirm.

Facts

[2] On the morning of the killing, Douglas met with Juan Rojas and Ruben Waters to smoke marijuana and “chill.” Tr. Vol. III, p. 12. Waters drove his car and picked up Douglas and Rojas at Rojas’s house. Douglas climbed into the backseat, and Rojas sat in the passenger seat next to Waters. Douglas and Rojas entered the car carrying handguns.

[3] The three drove around for some time, eventually parking in Douglas’s driveway to smoke marijuana. But once there, a struggle broke out between the three. Rojas and Douglas both drew their guns and shot Waters; with Douglas shooting Waters once in the back of the head, and Rojas shooting twice hitting Waters in the head and neck. Waters died at the scene.

[4] Douglas and Rojas fled inside Douglas’s house, where they tried to hide their guns in a closet ceiling. A few hours later, a neighbor discovered Waters’s body slumped over in the car and called 911. Police obtained a search warrant to investigate Douglas’s house and discovered the handguns hidden in the closet.

A ballistics investigation confirmed that the guns were of the type used to kill Waters.

[5] The State charged Douglas with murder.¹ At trial, Douglas claimed he acted in self-defense. According to Douglas, Waters tried to kill Rojas first and Douglas only shot Waters “because [he] was scared for [his] life.” *Id.* at 26-27. Douglas also requested that the trial court instruct the jury on reckless homicide, a lesser-included offense to murder. The trial court refused Douglas’s proposed reckless homicide instruction, finding there was no serious evidentiary dispute about Douglas’s mental culpability that would justify instructions on any offense other than murder. But the court did instruct the jury on Douglas’s self-defense claim.

[6] The jury found Douglas guilty of murder. He then pleaded guilty to a firearm enhancement and received a 55-year sentence.

Discussion and Decision

[7] Douglas appeals, arguing the trial court judge erred by not instructing the jury on reckless homicide. We disagree and affirm the trial court’s finding that there was no serious evidentiary dispute over Douglas’s state of mind in killing Waters.

¹ The State also charged Rojas with murder. He was found guilty by a jury, and his conviction affirmed by this court in a separate case. *See Rojas v. State*, 165 N.E.3d 107 (Ind. Ct. App. 2021) (mem.).

- [8] Because “[i]nstructing a jury is left to the sound discretion of the trial court,” we review its decision for only an abuse of that discretion. *Washington v. State*, 997 N.E.2d 342, 345 (Ind. 2013). To do this, we “view the evidence in a light most favorable to the decision, and determine whether the trial court’s decision can be justified in light of the evidence and circumstances of the case.” *Leonard v. State*, 80 N.E.3d 878, 885 (Ind. 2017).
- [9] In deciding whether to instruct the jury on a lesser-included offense, trial courts apply a three-part analysis. The first two parts consider whether the lesser included offense is inherently included in the crime charged and then, if the answer is no, whether it is factually included. *Webb v. State*, 963 N.E.2d 1103, 1106 (Ind. 2012). The parties have no disagreement that the first two parts are satisfied as it is well settled that “reckless homicide is an inherently included lesser offense of murder.” *Id.* This case thus only implicates the third part of this test for lesser included instructions: whether a “serious evidentiary dispute exists whereby the jury could conclude that the lesser offense was committed but not the greater.” *Culver v. State*, 727 N.E.2d 1062, 1070 (Ind. 2000).
- [10] Given that the only difference between murder and reckless homicide is the defendant’s state of mind, or mens rea, the relevant evidentiary dispute is whether Douglas could have “recklessly” killed Waters rather than “knowingly” killing him, as charged. A person acts “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.” Ind. Code § 35-41-2-2(c). In contrast, a person acts

“knowingly” if “when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(a).

[11] The trial court found no serious evidentiary dispute over whether Douglas acted knowingly, reasoning:

Douglas flat out said he shot to protect his life and the life of his friend. He did not shoot to scare. He did not, not know what he was doing. He had a purpose. The purpose was to defend himself. He shot the victim in the back of the head. I don't think there's sufficient evidentiary dispute distinguishing the elements of [reckless homicide and murder].

Tr. Vol. III, p. 54.

[12] Adequate evidence justifies the trial court's decision. The testimony establishing Douglas's state of mind when he shot Waters cuts in only one direction: he acted knowingly. Douglas's own testimony establishes that he shot Waters in the back of the head “because he was scared for his life.” *Id.* at 26-27. Douglas was also fully aware of what harm might result from his actions. Courts have consistently found that this act—firing a gun at the victim at close range—is an axiomatic example of the defendant acting “knowingly.” *See, e.g., Sanders v. State*, 704 N.E.2d 119, 122-23 (Ind. 1999) (“There was no serious evidentiary dispute that [the defendant] knowingly shot [the victim] because [the defendant] must have known that firing directly at a person at such close range is highly probable to result in death.”); *McKinney v. State*, 873 N.E.2d 630, 644 (Ind. Ct. App. 2007) (stating it “cannot be seriously disputed” that the defendant acted

knowingly when he “held a gun to [the defendant’s] head and pulled the trigger”).

[13] Accordingly, the trial court did not abuse its discretion in declining to give a reckless homicide instruction. We affirm the trial court’s judgment.

May, J., and Crone, J., concur.