

## MEMORANDUM DECISION

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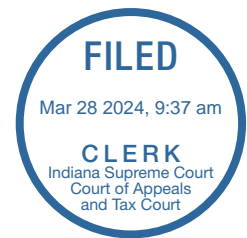


IN THE  
**Court of Appeals of Indiana**

Shawn James Harris,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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March 28, 2024

Court of Appeals Case No.  
23A-CR-1940

Appeal from the Marion Superior Court  
The Honorable James B. Osborn, Judge

Trial Court Cause No.  
49D21-2009-F5-30386

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**Memorandum Decision by Judge Pyle**  
Judges Bailey and Crone concur.

**Pyle, Judge.**

## **Statement of the Case**

[1] Shawn James Harris (“Harris”) appeals, following a bench trial, his conviction for Level 5 felony reckless homicide.<sup>1</sup> Harris argues that there was insufficient evidence to support his conviction. Concluding that there was sufficient evidence to support his conviction, we affirm the trial court’s judgment.

[2] We affirm.

## **Issue**

Whether there was sufficient evidence to support Harris’ conviction.

## **Facts**

[3] Harris and Christian Goods (“Goods”), who had been friends since childhood, shared an apartment together in Speedway, Indiana. Faith Banks (“Banks”) was Goods’ girlfriend and had been living at the apartment with Harris and Goods. Banks was seven-months pregnant.

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<sup>1</sup> IND. CODE § 35-42-1-5.

- [4] On September 26, 2020, Banks and Goods got into an argument. Banks “got in [Goods’] face [and was] yelling at [him].” (Tr. Vol. 3 at 144). Banks told Goods that she “wanted to leave” and started “packing her stuff[.]” (Tr. Vol. 3 at 144). Goods helped Banks move her belongings into the hallway outside of the apartment. At one point, Banks, while standing in the doorway of the apartment, “hit [Goods] in [his] face[.]” (Tr. Vol. 3 at 144). Goods went back inside, retrieved Banks’ handgun from the apartment, and placed it on the ground outside of his apartment door. Goods then re-entered his apartment.
- [5] Harris, who came home and heard the argument between Goods and Banks, began audio recording the argument from his bedroom. Harris was trying to sleep because he had to go to work early the next morning. Because of the commotion, Harris looked out of his bedroom window and saw Banks walking back and forth from the apartment to her car. Harris saw Banks “going back and forth” while yelling and “flailing around[.]” (Tr. Vol. 3 at 198).
- [6] A few minutes later, Harris heard the sound of glass shattering. Meanwhile, Goods sat at the living room table and heard “glass being . . . shattered” in his bedroom. (Tr. Vol. 3 at 145). Harris grabbed his AK-47-style rifle (“rifle”), walked out of his room into the hallway, and pointed his rifle through Goods’ bedroom door and towards Goods’ bedroom window. The blinds on the window were closed, and Harris did not see anyone. Harris fired his rifle four times through Goods’ bedroom window, hitting and killing Banks as well as hitting a parked car three times. Multiple neighbors heard the gunshots and called the police.

[7] Speedway Police Officer Scott Highland (“Officer Highland”) arrived on the scene. Officer Highland saw “[Banks] 1[.] lying on the . . . steps” surrounded by “large pools of blood” and Goods standing next to her. (Tr. Vol. 3 at 10, 15). Officer Highland saw that Goods was “frantic[.]” (Tr. Vol. 3 at 10). Officer Highland grabbed his medical bag and attempted to administer aid to Banks, who “had no pulse” and who was not moving. (Tr. Vol. 3 at 14). Officer Highland saw that Banks had a chest wound on her upper chest. Immediately after, Officer Jeffrey Griffin (“Officer Griffin”) arrived and began performing CPR on Banks. Thereafter, medics arrived on the scene and transported Banks to the hospital, where she was pronounced dead.

[8] Police officers secured the scene. During this time, the officers discovered Banks’ handgun and magazine on the ground near where her body had been, bullet holes in Goods’ bedroom window, glass along the front windowsill and on the bushes in front of the window, three bullet holes in a car in the parking lot, and Banks’ idling car.

[9] Officer Robert Fekkes (“Officer Fekkes”) and Officer Redding (“Officer Redding”) entered the apartment. The officers saw Harris sitting in the living room area. Officer Fekkes saw Harris “playing video games” on his phone. (Tr. Vol. 3 at 44). Harris was “relatively calm” and seemed “pretty relaxed[.]” (Tr. Vol. 3 at 45). Officers also found shell cartridges in the hallway of the apartment. In Goods’ bedroom, officers found four bullet holes in Goods’ bedroom window. Additionally, officers saw that the blinds were damaged and closed. Finally, officers found Harris’ rifle in his bedroom.

[10] Crime scene technicians recovered four cartridges that had been fired from inside the apartment from Harris' rifle. Crime scene technicians also recovered Banks' handgun from the grass next to the entry steps where Banks' body had been discovered. Crime scene technicians did not find any other fired cartridges on the scene. Additionally, the only bullet holes found in the apartment were the four in Goods' bedroom window, which were the ones made by Harris' rifle.

[11] Police officers took Harris to the police station for additional questioning. Initially, Harris refused to speak with the police. Four or five hours later, Lieutenant Jim Thiele ("Lt. Thiele") interviewed Harris. Harris told Lt. Thiele that he thought that he had heard "six or seven gunshots" followed by glass breaking. (State's Ex. 68). Harris "let out some shots" through the window in the direction of where he had heard the loud noises. (State's Ex. 68). Harris said that he was unaware of who was standing outside of the window. Harris did not know if the person outside of the window had a weapon. Harris stated that, after he had fired his rifle at the window, he walked out of his apartment into the foyer area. When he looked through the glass exterior door, he saw a body lying in a pool of blood on the outside steps leading into the building. Harris walked back into his apartment and told Goods that "the threat [had been] neutralized[.]" (State's Ex. 68). Goods left the apartment and saw Banks lying in a pool of blood just outside of the exterior door of the building. He panicked and returned to the apartment. Harris told Goods to "put pressure on the wound" and to "handle that[.]" (State's Ex. 68). Harris stated that he then

went back into his bedroom and put away his rifle. He did not call the police but instead, texted “some people” that “he was probably going to jail[.]” (State’s Ex. 68). During the interview, Harris was “unemotional.” (Tr. Vol. 3 at 98).

[12] The State charged Harris with Level 5 felony reckless homicide. The trial court held a bench trial in June 2023. The trial court heard the facts as set forth above. Additionally, Forensic Scientist Firearm Examiner Timothy Spears testified that the four shell cartridges found in the apartment had been fired from Harris’ rifle. Lt. Thiele testified that he believed that the shots had been fired “from inside the [apartment][.]” (Tr. Vol. 3 at 122).

[13] Harris’ theory of defense was that he had fired his rifle in self-defense. Goods testified that he had “never” seen a rifle in Harris’ hands and that he had never previously seen Harris’ rifle. (Tr. Vol. 3 at 186). Goods also testified that he was sure that he had heard gunshots before Harris had fired his rifle through Goods’ window. On cross-examination, the State impeached Goods with statements that he had made to the police on the evening of Banks’ death. Specifically, Goods had told the police that he had not known if “[Banks] was shooting in” and that he had not “see[n] anything.” (Tr. Vol. 3 at 190).

[14] Harris also testified in his own defense. Harris testified that he had been trying to sleep while Banks and Goods were fighting in the apartment. Harris testified that he had been trying to go back to sleep and had been woken up by multiple loud pops and glass breaking. Harris testified that he had grabbed his rifle, had

walked into the hallway, had looked into Goods' room, and had seen "a dark figure . . . that was trying to get into [his] apartment." (Tr. Vol. 3 at 199).

Harris further testified that the dark figure had been "trying to hit or trying to get in[.]" (Tr. Vol. 3 at 211). Harris also testified that he had not seen the dark figure shooting into the apartment, but he had seen the figure making a swinging motion at the window.

[15] On cross-examination, the State impeached Harris. Specifically, the State questioned Harris about why he had not told police during his police interview about a dark figure that had been trying to break into his apartment. Harris explained that he had not told Lt. Thiele about the shadowy figure in the window because he "[had been] distraught." (Tr. Vol. 3 at 212). Harris also admitted that he had not called for help or called the police after shooting Banks.

[16] At the conclusion of the bench trial, the trial court rejected Harris' self-defense claim and found Harris guilty. Specifically, the trial court stated:

I don't believe [Harris]. I think . . . Harris' story at trial is that – a story. I think he was reacting to a situation he didn't like, a fight that he wanted to stop, and that is why he shot through the window. Now, I don't think that is justified. I don't think shooting at sound is a justifiable reason for shooting out your apartment window, and that is what . . . Harris said he did that night, when he talked to the police. When he . . . talked to the Court, he said something different. And that is a reason to not believe his story, because he has told two stories.

(Tr. Vol. 4 at 9).

[17] At Harris’ sentencing hearing, the trial court sentenced Harris to three (3) years, with one (1) year served at the Department of Correction, one (1) year served with community corrections, and one (1) year suspended to probation.

[18] Harris now appeals.

## **Decision**

[19] Harris argues that there is insufficient evidence to support his reckless homicide conviction. Specifically, he contends that the State failed to rebut his claim that he had shot and killed Banks in self-defense. We disagree.

[20] 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 reached by the trier of fact, then the verdict will not be disturbed. *Id.*

[21] A valid claim of self-defense is legal justification for an otherwise criminal act. *Id.* “A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” IND. CODE § 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.



[22] 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 the evidence in its case in chief. *Id.* Whether the State has met its burden is a question of fact for the factfinder. *Id.* Generally, in the absence of an imminent threat against the defendant, deadly force is not justifiable when used against a person trespassing upon property. *Geralds v. State*, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995), *trans. denied*. 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).

[23] Our review of the record reveals that Harris, after he thought he heard gunshots and glass breaking in his apartment, grabbed his rifle and walked into the hallway. From there, Harris stood in the doorway of Goods’ bedroom and fired at Goods’ window four times, hitting and killing Banks. The blinds on the window were closed, and Harris could not see anyone. Instead, Harris had fired towards the sounds that had woken him up. There was no evidence found on the scene suggesting that anyone had fired into the apartment. The only shell cartridges recovered from the scene were the four that Harris had fired from his rifle.

[24] Harris argues that the firing of his rifle towards the blind-covered window was reasonable because he thought he had heard gunshots, had seen a dark figure

outside of Goods' window, and he believed that the figure was attempting to break into his apartment. However, Harris made this argument at trial, and the trial court heard Harris' version of events and did not find it credible. Even if Harris' narrative were true, the trial court determined that Harris' use of force was not reasonable or justified, and we agree with the trial court. Harris responded to the sound of glass breaking by firing a rifle four times in the direction of the sound. Firing four times at a shadowy figure seen through a blinded window is an unreasonable use of force. *See Geraldts*, 647 N.E.2d at 373 (holding that deadly force is not justifiable when used against a person trespassing upon property, in the absence of an imminent threat against the defendant). *See also Birdsong*, 685 N.E.2d at 46 (holding that defendant's killing of an armed intruder holding a gun by its barrel was an unreasonable use of force).

[25] Therefore, we conclude that there was sufficient evidence provided by the State to rebut Harris' claim of self-defense. Accordingly, we affirm the trial court's judgment.

[26] Affirmed.

Bailey, J., and Crone, J., concur.

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