

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Paul E. Jarosik,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 24, 2024

Court of Appeals Case No.
23A-CR-1186

Appeal from the Lake Superior Court
The Honorable Samuel L. Cappas, Judge
Trial Court Cause No.
45G04-2012-MR-51

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

[1] Following a jury trial, Paul E. Jarosik was convicted for the murder¹ of his girlfriend, Michelle Brown. Jarosik now appeals, raising three issues for our review:

1. Did the trial court err in refusing to instruct the jury on reckless homicide?
2. Did the trial court admit evidence in violation of Indiana Evidence Rule 404(b)?
3. Does sufficient evidence support Jarosik's conviction?

We affirm.

Facts and Procedural History

[2] Jarosik and Brown began dating in 2015. Around this time, Brown lived with her best friend, Jessica Lamb. Jarosik visited Brown often at Lamb's house. Sometime in 2018, Lamb asked the couple to move out because she did not want to expose her young children to Jarosik's and Brown's drinking and volatile relationship. Soon after, Brown and Jarosik rented an apartment in Schererville, Indiana. Only Jarosik's name was on the lease.

¹ Ind. Code § 35-42-1-1(1) (2018).

- [3] During the spring of 2020, Jarosik worked the morning shift—4:00 a.m. to 12:30 p.m.—at a warehouse retail store. Brown worked at a motel, but her hours were cut because of the COVID-19 pandemic. Around 3:00 a.m. on April 2, 2020, Jarosik left the apartment and drove to work. Jarosik clocked in at 4:02 a.m. and clocked out at 12:32 p.m. After completing his shift, Jarosik returned home. Upon entering his apartment, Jarosik noticed an unresponsive Brown lying on the couch. Jarosik called 9-1-1.
- [4] Schererville Police Officer Scott Savich arrived at the apartment around 1:00 p.m. and saw Jarosik attempting to perform CPR on Brown as her body lay on the floor in front of the couch. A nearly empty bottle of vodka and a small trashcan were near Brown’s head. Jarosik told Officer Savich that Brown had developed a drinking problem after her work hours were reduced and she was not taking medication for her high blood pressure. Photos taken at the scene revealed bruising under Brown’s right eye and on the bridge of her nose. Jarosik explained Brown had bruised the bridge of her nose by running into a closet door. Police observed no signs of forced entry and recovered no weapon or blunt force object.
- [5] Over the next twenty-four hours, Jarosik speculated about the cause of Brown’s death. For example, after arriving a few hours late to work the next day, Jarosik told one co-worker Brown had died from falling and hitting her head. He shared a different story with his neighbors, conveying Brown had died from not having her insulin. Further, Jarosik explained to Brown’s sister that Brown had been mixing her blood pressure medication with alcohol.

- [6] While Jarosik was at work on April 3, police arrived and requested he come to the police station for an interview. During the interview, Jarosik shared he and Brown often argued, but claimed it was never physical. While interviewing Jarosik, police received a call from the Lake County Coroner's Office informing them the injuries on Brown's body required further investigation. Now believing Brown's death could warrant a criminal investigation, the interviewing officers gave Jarosik *Miranda* warnings. After receiving these warnings, Jarosik said he and Brown often fought and admitted he had shoved her in the past. Jarosik returned home after the interview.
- [7] That same day, police searched Jarosik's apartment. Police seized Brown's cell phone and identified a crack near the bedroom doorknob and broken glass near the stove.
- [8] Dr. Zhou Wang, a physician in the Lake County Coroner's Office, conducted an autopsy of Brown's body. Dr. Wang first examined photos taken of Brown's body in the apartment. He concluded Brown's body was experiencing rigor mortis—a postmortem body change which can cause muscle stiffness for up to twenty-four hours after death. During an external examination of Brown's body, Dr. Wang located purple to red contusions around her eyes and on her left buttocks. Dr. Wang also identified “extensive bleeding” underneath Brown's scalp, which he believed was caused by multiple blunt force impacts from different directions. *Tr. Vol. 4* at 92. Brown's injuries were unlike those caused by a fall or a hit from a tool or weapon. Rather, a softer object—such as a body part—likely dealt the fatal blows. Dr. Wang ruled Brown's death a

homicide and concluded she died from multiple blunt force trauma inflicted within twelve hours of when she was found.

[9] In December 2020, Jarosik was arrested and charged with Brown’s murder. During Jarosik’s jury trial, several witnesses detailed Jarosik’s physical abuse of Brown. Lamb testified she kept in contact with Brown after Brown moved out and continued to observe the physical effects of Brown and Jarosik’s relationship. Lamb recounted an incident where she witnessed Jarosik slam Brown’s head into a door during an argument. Brown also told Lamb that Jarosik had punched her and pushed her into counters and cabinets. Lamb explained it was “pretty routine” for Jarosik to physically injure Brown—including an instance which required Brown to get staples in her head. *Id.* at 3. Brown and Jarosik’s neighbor also overheard an argument between the couple. The neighbor recounted Brown running around the apartment complex “screaming bloody murder” exclaiming “[h]elp . . . He’s going to beat my effing ass.” *Id.* at 50. Soon after, the neighbor saw Brown walking with a limp and with bruises on her face.

[10] Brown’s sister, Evette Beckman, also testified at Jarosik’s trial. Beckman described a text message she received from Brown a few days before Brown’s death. Brown asked, “Can I borrow [\$]1000 I owe [Jarosik] and he says if I don’t pay he’s kicking me out.” *Ex. Vol. 1* at 73. Beckman told Brown she did not have “that kind of money just sitting around” and asked if Jarosik could “wait until the stimulus checks come in a week or so.” *Id.*

[11] Jarosik testified in his own defense. According to Jarosik, when he left for work around 3:00 a.m. on April 2, 2020, Brown was alive and in bed. Jarosik then explained the next time he saw Brown was when he returned home from work around 1:00 p.m. and discovered her unresponsive on the couch.

[12] At the close of evidence, Jarosik requested the trial court instruct the jury on reckless homicide. After defense counsel could not identify any evidence that would warrant giving the requested instruction, the trial court denied Jarosik's request, concluding "[t]here's no evidence of recklessness." *Tr. Vol. 5* at 79. The jury found Jarosik guilty as charged and the trial court sentenced him to sixty years imprisonment. Additional facts are provided when necessary.

1. No Error in Refusing to Instruct the Jury on Reckless Homicide

[13] Jarosik first claims the trial court erred in refusing to instruct the jury on reckless homicide. When asked by a party to instruct the jury on a lesser included offense to the crime charged, the trial court must engage in a three-part analysis. *Leonard v. State*, 80 N.E.3d 878, 885 (Ind. 2017); *see also Wright v. State*, 658 N.E.2d 563, 566–67 (Ind. 1995) (establishing the three-part test). Steps one and two require the trial court to determine whether the lesser included offense is inherently or factually included in the greater offense. *Leonard*, 80 N.E.3d at 885. "If it is, 'then the trial court must determine if there is a serious evidentiary dispute regarding the element that distinguishes the lesser offense from the principal charge.'" *Id.* (quoting *Isom v. State*, 31 N.E.3d 469, 485 (Ind. 2015)).

[14] As to the first two prongs of this three-part framework, the only distinguishing element between murder and reckless homicide is the defendant's state of mind: reckless homicide occurs when the defendant "recklessly" kills another human being, and murder occurs when the killing is done "knowingly" or "intentionally." *Compare* I.C. § 35-42-1-5, *with* I.C. § 35-42-1-1(1). "Thus, reckless homicide is an inherently included lesser offense of murder." *Webb v. State*, 963 N.E.2d 1103, 1106 (Ind. 2012). So, here, the third prong of the framework is determinative: did the evidence create a serious evidentiary dispute about Jarosik's state of mind that would justify giving the requested instruction?

[15] In evaluating whether there is a serious evidentiary dispute, the trial court "examines the evidence presented by both parties regarding the element(s) distinguishing the greater offense from the lesser one." *Leonard*, 80 N.E.3d at 885. "This involves evaluating the 'weight and credibility of [the] evidence,' and then determining the 'seriousness of any resulting dispute.'" *Id.* (quoting *Fish v. State*, 710 N.E.2d 183, 185 (Ind. 1999)). When, as here, the trial court finds no serious evidentiary dispute existed, we will reverse only if that finding was an abuse of discretion. *Id.* In conducting our review, "we accord the trial court considerable deference, 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." *Id.* (quoting *Fish*, 710 N.E.2d at 185).

[16] In essence, Jarosik claims he was entitled to a reckless-homicide instruction because there was a serious evidentiary dispute permitting the jury to find he recklessly but not knowingly or intentionally killed Brown. “Intentionally,” “knowingly,” and “recklessly” are statutorily defined terms. A person engages in conduct “intentionally” if, “when he engages in the conduct, it is his conscious objective to do so.” I.C. § 35-41-2-2(a). And a person engages in conduct “knowingly” if, “when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-2-2(b). By contrast, a person engages in conduct “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.” I.C. § 35-41-2-2(c).

[17] Presenting an alibi defense “does not automatically bar instructions on a lesser included offense.” *Young v. State*, 699 N.E.2d 252, 256 (Ind. 1998). But when a defendant raises “the classic ‘I didn’t do it because I wasn’t there’ defense,” a court may consider it in determining whether a serious evidentiary dispute exists regarding the element differentiating the greater offense from the lesser, even if it bears only tangentially on the issue. *Webb*, 963 N.E.2d at 1107; *see also Young*, 699 N.E.2d at 256.

[18] Jarosik directs our attention to *Webb*, in which the Indiana Supreme Court reversed Webb’s murder conviction, determining the trial court erroneously rejected Webb’s proposed jury instruction on reckless homicide as a lesser included offense. *Webb*, 963 N.E.2d at 1108–09. The *Webb* Court concluded it

was unclear whether Webb knew the gun he used to fatally shoot his girlfriend had a round in the chamber. *Id.* at 1108. Based on this evidence, our Supreme Court determined there was a serious evidentiary dispute about whether Webb acted knowingly or recklessly. *Id.* at 1108–09.

[19] No such dispute exists here, however. Jarosik did not claim Brown’s death was an accident or that he recklessly dealt the fatal blows to her head. Instead, Jarosik maintained he did not cause Brown’s death at all, stating Brown was alive when he left for work and dead when he returned. And the State only presented evidence to support its charge that Jarosik knowingly or intentionally killed Brown. Based on the evidence presented by both parties, there was no serious evidentiary dispute over Jarosik’s state of mind that would justify giving a reckless homicide instruction. *Cf. id.* at 1108 (determining a reckless homicide instruction was warranted because the evidence of the defendant’s state of mind was “at best ambiguous”).

2. Any Error in Admitting the Challenged Evidence was Harmless

[20] Next, Jarosik argues the trial court erred in admitting two pieces of evidence: (1) an exchange of text messages between Brown and her sister, Beckman; and (2) Lamb’s testimony about observing Jarosik and Brown physically fight and argue between 2015 and 2018. We review a trial court’s ruling on the admissibility of evidence for an abuse of discretion. *Bowman v. State*, 51 N.E.3d 1174, 1180 (Ind. 2016). A trial court abuses its discretion only if its ruling is “clearly against the logic and effect of the facts and circumstances and the error

affects a party's substantial rights.” *Id.* (quoting *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014)). When determining whether evidence was properly admitted, “[w]e consider only evidence that is either favorable to the ruling or unrefuted and favorable to the defendant.” *Id.* (quoting *Pierce v. State*, 29 N.E.3d 1258, 1264 (Ind. 2015)).

[21] Jarosik claims the challenged evidence was admitted in violation of Indiana Evidence Rule 404(b), which deems evidence of a crime, wrong, or other act “not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Ind. Evid. Rule 404(b); *see also Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019) (noting Rule 404(b) “prevents the jury from indulging in the forbidden inference that a criminal defendant’s prior wrongful conduct suggests present guilt”) (internal quotation omitted), *cert. denied*. The State counters, arguing the challenged evidence was properly admitted to show motive and intent—admissible purposes under Indiana Evidence Rule 404(b)(2). Ultimately, we need not determine whether the evidence was properly admitted because, even assuming it was error, it was harmless.

[22] “An error is harmless when it results in no prejudice to the ‘substantial rights’ of a party.” *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021) (quoting *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018)); *see also* Ind. Appellate Rule 66(A) (explaining an error is harmless “where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties”). Whether an error in admitting evidence was harmless in

a particular case depends on a host of factors, including: “the presence or absence of other, corroborating evidence on material points; whether the impermissibly admitted evidence was cumulative; the overall strength of the prosecution’s case; the importance of the impermissible evidence in the prosecution’s case; and the extent of cross-examination or questioning on the impermissibly admitted evidence.” *Zanders v. State*, 118 N.E.3d 736, 745 (Ind. 2019).

[23] According to Jarosik, the text messages between Brown and Beckman were admitted to show he was of bad character. At the same time, Jarosik provides a non-prejudicial reason for admitting the messages: to “show[] that [Brown] and Jarosik had an arrangement whereby each would be responsible for one-half of the rent.” *Appellant’s Br.* at 25. Jarosik’s first interpretation of the text messages goes too far. An equally plausible reading is, as Jarosik seems to suggest, Jarosik and Brown agreed to split rent. And when Brown fell behind on her payments, Jarosik sought her share. No matter how we parse the purpose of the text messages, the prejudicial effect was so slight as to not affect Jarosik’s substantial rights. In other words, any error in its admission was harmless. *See* App. R. 66(A).

[24] Next, we turn to the challenged portions of Lamb’s testimony. In part, Lamb described incidents of physical abuse Jarosik inflicted on Brown while the couple lived together in Lamb’s home—around 2015 to 2018. At its core, however, this evidence was cumulative. “Cumulative evidence is evidence that ‘supports a fact established by the existing evidence,’ especially existing

evidence that ‘does not need further support.’” *Zanders*, 118 N.E.3d at 752 (quoting Black’s Law Dictionary 675 (10th ed. 2014)). The State presented substantial evidence to establish Jarosik and Brown’s relationship was marked by verbal and physical altercations. For example, during portions of Lamb’s testimony not challenged on appeal, she detailed an instance in November 2019 where she saw Jarosik push Brown. Lamb also recalled Brown telling her Jarosik “smashed [Brown’s] head into a cabinet.” *Tr. Vol. 4* at 2. And Lamb explained Brown had an injury every time she saw her between 2019 and 2020.

[25] Neighbors also heard Jarosik and Brown argue, including an instance where Brown ran around the apartment complex yelling Jarosik was going to physically hurt her. Moreover, Jarosik admitted to police he and Brown “argued and yelled a lot” and he had shoved Brown in the past. *Id.* at 183. Put simply, evidence apart from the challenged portions of Lamb’s testimony showed the volatility and violence of Brown and Jarosik’s relationship. The challenged evidence was therefore cumulative and any error in admitting it into evidence was harmless.

3. Sufficient Evidence Supports Jarosik’s Conviction

[26] Lastly, Jarosik claims the State presented insufficient evidence to support his murder conviction. A sufficiency-of-the-evidence claim warrants a “deferential standard of appellate review, in which we ‘neither reweigh the evidence nor judge witness credibility[.]’” *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). Instead,

we respect the fact-finder's exclusive province to weigh conflicting evidence, *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018), and consider only the probative evidence and reasonable inferences that support the judgment of the trier of fact, *Hall*, 177 N.E.3d at 1191. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Teising v. State*, 226 N.E.3d 780, 783 (Ind. 2024). "It is not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Sallee v. State*, 51 N.E.3d 130, 133 (Ind. 2016) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)).

- [27] To convict Jarosik as charged, the State was required to prove beyond a reasonable doubt Jarosik knowingly or intentionally killed Brown. See I.C. § 35-42-1-1(1). A defendant may be convicted for murder based solely on circumstantial evidence if that circumstantial evidence supports a reasonable inference of guilt. See *Hall*, 177 N.E.3d at 1192.
- [28] Dr. Wang determined Brown died from multiple blunt force impacts inflicted from different directions by a soft object, like a body part. Dr. Wang did not consider Brown's injuries consistent with those caused by a fall and determined she likely died within twelve hours of being found. Jarosik and Brown's relationship was fraught with verbal and physical altercation. Several witnesses described the frequent physical injuries Jarosik inflicted on Brown, which included injuries to her head. Plus, Jarosik was the last person to see Brown alive and the police did not identify signs of forced entry into the apartment. At bottom, Jarosik asks we reweigh evidence and judge witness credibility. These

are tasks we cannot undertake. *See Owen*, 210 N.E.3d at 264. When pieced together, the evidence was sufficient to support a reasonable inference of Jarosik's guilt.

Conclusion

- [29] The trial court did not err in refusing to instruct the jury on reckless homicide, any error in the admission of evidence was harmless, and sufficient evidence supports Jarosik's conviction.
- [30] Affirmed.

Altice, C.J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

R. Brian Woodward
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana