



## STATEMENT OF THE CASE

Walter Burroughs appeals his conviction, after a bench trial, of attempted murder, a class A felony.

We affirm.

### ISSUE

Whether Burroughs' conviction is supported by sufficient evidence of his intent to kill the victim, Steve Whitley.

### FACTS

On December 9, 2003, at approximately 8:00 p.m., Whitley arrived at his house in Indianapolis with his wife and daughter. Whitley parked in front of the house, from which a security light shone outward toward the street, illuminating the area. As Mrs. Whitley stood facing the street to open the vehicle door to remove her daughter, she saw Burroughs running "across the street" toward Whitley, "aiming his gun at [him]. (Ex. 12, p. 84). She yelled at Whitley, who was standing by the vehicle with his back to the street, and she saw Burroughs "shoot the gun." *Id.* In the meantime, Whitley had turned to look, and he "immediately recognize[d]" Burroughs as the man coming toward him. (Tr. 38). After Whitley was shot in the arm, he began to run away; more shots were fired as he ran; Whitley stumbled and fell in a neighbor's yard, and was then struck by a second shot -- in his buttock; Whitley regained his feet and continued to run as more shots were fired. Mrs. Whitley called the police to report the shooting, and officers responded quickly.

Within minutes, Officer Jeffrey Collier located Whitley, who had collapsed behind a garage several blocks away, lying on his stomach and bleeding. Collier asked Whitley who had shot him, and Whitley told him that it was “Mudder.” (Tr. 153). Officer Collier broadcast the nickname “Mudder,” and another officer reported that it was Burroughs’ nickname.

An ambulance transported Whitley to the hospital. He was hospitalized for nine days. According to Whitley, medical staff “thought the bullet in [his] butt went through [his] colon, and they couldn’t find it,” necessitating surgery. (Tr. 43).

On December 10, 2003, Detective Daniel Asher was assigned to investigate. He assembled a photo array, which included Burroughs’ picture. On December 15, 2003, Asher showed the photo array to Whitley and to Mrs. Whitley, separately, and each positively identified Burroughs as the shooter.

On December 24, 2003, the State charged Burroughs with attempted murder, a class A felony.<sup>1</sup> The instant trial of Burroughs was to the bench on April 24, 2009. The foregoing evidence was heard. Also, Whitley testified -- confirming his photo array identification of Burroughs as the man who had shot him; and that he had previously told two juries and Detective Asher “that Walter Burroughs was the person who shot [him],” and that was “the truth.” (Tr. 35). Whitley and his wife both testified that the shooter’s

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<sup>1</sup> The State also charged Burroughs with carrying a handgun without a license, a class A misdemeanor; another charging information alleged that Burroughs had been convicted of a felony within fifteen years before the current offense, so as to elevate the handgun offense to a class C felony.

face was clearly visible to them, each noting the illumination from the security light and demonstrating his proximity. Whitley testified that eight to ten shots were fired at him.

Burroughs testified that he was known by the nickname “Mudder,” and that he had had previous conflicts with Whitley. Burroughs denied, however, that he had shot Whitley, and insisted that he was with a female companion in Kokomo that night.

The trial court found that the State had “met its burden of proving” that Burroughs committed the offense of attempted murder, a class A felony.<sup>2</sup> (Tr. 170).

### DECISION

Burroughs argues that the evidence is insufficient to support his conviction for attempted murder. He reminds us that the evidence showed that Burroughs fired multiple shots, yet Whitley was “only shot” in the arm and buttock, and got away “without getting shot again.” Whitley’s Br. at 15. He asserts that such establishes Burroughs “had ample opportunity to have killed Whitley, if that had been his conscious intent.” *Id.* Thus, he argues that the evidence fails to establish that Burroughs “acted with the required conscious objective of killing Whitley when he shot and wounded Whitley with a deadly weapon,” and that the evidence merely establishes that his “intent was to batter/injure Whitley.” *Id.* at 11. We disagree.

When reviewing the sufficiency of the evidence to support the conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence

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<sup>2</sup> The trial court also found that the State had proven that Burroughs committed the offense of carrying a handgun without a license, a class A misdemeanor. The State then elected not to proceed with the handgun charge.

to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

A person commits the offense of murder when he “knowingly or intentionally kills another human being.” Ind. Code § 35-42-1-1. Further, “[a] person attempts to commit a crime when acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.” I.C. § 35-41-5-1(a). Hence, to convict a defendant of attempted murder, the State must prove “a specific intent to kill.” *Kiefer v. State*, 761 N.E.2d 802, 805 (Ind. 2002). “Intent to kill may be inferred from the nature of the attack and the circumstances surrounding the crime.” *Id.* (citing *Nunn v. State*, 601 N.E.2d 334 (Ind. 1992)). “Additionally, the trier of fact may infer intent to kill from the use of a deadly weapon in a manner likely to cause death or great bodily harm.” *Id.* (citing *Wilson v. State*, 697 N.E.2d 466 (Ind. 1998)).

In *Gall v. State*, 811 N.E.2d 969, 975 (Ind. Ct. App. 2004), *trans. denied*, Gall fired shots at a car driving away from his house after he and the car's driver had been engaged in an altercation. Appealing his conviction of attempted murder, Gall argued “that the State failed to prove that he had the specific intent to kill” the driver. *Id.* We

noted that when he fired the shots, the driver “was driving away,” and that “after firing several warning shots in the air, Gall continued firing and struck [the driver]’s car several times,” and that one bullet had struck a passenger “directly behind [the driver] in the car.” *Id.* at 975, 976. We found these facts and circumstances sufficient to prove Gall’s intent to kill the driver.

Here, Mrs. Whitley saw Burroughs “aim[] . . . and point[] his gun” at Whitley as he ran toward Whitley. (Ex. 12, p. 84). Burroughs began firing at Whitley, and a bullet struck Whitley in the arm. Burroughs continued to fire as Whitley was running away. After Whitley fell down, another bullet struck him in the buttock. As Whitley regained his feet and continued to run, Burroughs continued firing at him. Burroughs’ repeated firing of a handgun, a deadly weapon, at Whitley is a circumstance tending to show his intent to kill him. Further, the gunshot wounds to Whitley’s arm and to his buttock were injuries that could cause great bodily harm or death. Accordingly, we find the facts and circumstances here sufficient to prove that Burroughs fired his handgun at Whitley with the intent of killing him.

Affirmed.

MAY, J., and KIRSCH, J., concur.