

## 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

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Trayvon Rogan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 8, 2022

Court of Appeals Case No.  
21A-CR-2557

Appeal from the  
Allen Superior Court

The Honorable  
David M. Zent, Judge

Trial Court Cause No.  
02D06-2002-MR-4

**Vaidik, Judge.**

## Case Summary

- [1] Trayvon D. Rogan was convicted of murder and a firearm enhancement and sentenced to eighty years. He now appeals, arguing the evidence is insufficient to support his murder conviction and his sentence is inappropriate. We affirm.

## Facts and Procedural History

- [2] On the afternoon of May 24, 2019, twenty-four-year-old Rogan was at the Fort Wayne apartment of his mother, Sheri Rogan, and her boyfriend of twenty years, Korta Queary. Tionna Rogan, who was Sheri and Queary's teenage daughter, was also there. Although Queary wasn't Rogan's biological father, he was "like his father." Tr. Vol. II p. 52.
- [3] At some point that afternoon, Rogan and Queary argued about "a cigarette" or "[Rogan] disrespecting his mom." *Id.* at 103, 106, 172. Rogan shot Queary in his left temple with an AK-47-style long rifle, killing him. The bullet exited the back of Queary's head, causing an "explosive type wound." *Id.* at 139. No one called 911. A neighbor heard "frantic" screaming in the hallway, opened her door, and saw Rogan carrying his shoes in his hand. The neighbor heard a female tell Rogan, "I can't believe you did that, why did you do that, bro? Why did you kill him? I can't believe this, this is not right, this is not right." *Id.* at 37, 38 (cleaned up).
- [4] Rogan left the apartment and went to the home of his good friend, Demetrius Robinson. When Rogan arrived at Robinson's house, he was "antsy," carried

his shoes in his hand, and smelled like bleach. *Id.* at 101. Robinson asked Rogan what was wrong, and Rogan said, “I didn’t mean to do it, I shot [Queary] in the head.” *Id.* at 104. Rogan told Robinson that his family planned to concoct a story about a break-in. After about ten minutes, Rogan’s uncle picked him up, and Rogan went to Texas.

[5] Meanwhile, Sheri stayed back at the apartment to work on a cover-up. After making sure everyone was gone, Sheri left. She called her sister and said Rogan shot Queary “in the back of the head” and she couldn’t “believe he F’ing did it.” *Id.* at 168, 169. Sheri said she was “scattering everybody to parts unknown” and that “no son of hers is gonna go to M F prison no matter what she has to do.” *Id.* at 169. Sheri also said she was going to have the gun buried (the police later found the gun buried in a relative’s yard).

[6] Sheri returned to her apartment and called 911 at 1:58 p.m. When the police arrived, Sheri said that when she got home around 1:30 p.m., the front “door was cracked and had kick marks on it” and Queary was shot dead on the floor. *Id.* at 124. The police, however, didn’t find any damage to the door.

[7] The investigation into Queary’s shooting continued into 2020. In January, Robinson told the police he had information about the case. *See id.* at 105-06. Later that month, the police talked to Rogan. Rogan said he wasn’t at the apartment on May 24, 2019, and “had nothing to do with” Queary’s shooting. Tr. Vol. III p. 30. The next month, February 2020, the State charged Rogan with murder and a firearm enhancement.

[8] A jury trial was held in September 2021. Tionna didn't testify because she had since been killed in "a shooting unrelated to this case." Tr. Vol. II p. 50. Sheri testified, but she didn't "remember anything" about the shooting or the events that followed. *Id.* at 58. Robinson testified as detailed above. The jury was instructed on murder and the lesser-included offense of reckless homicide. *See* Appellant's App. Vol. II pp. 113-14, 116. During closing arguments, defense counsel admitted Rogan shot Queary in the head but claimed it was an "accident" given his statement to Robinson that he "didn't mean to do it." Tr. Vol. III p. 65. He asked the jury to find Rogan guilty of reckless homicide, not murder. The State argued the shooting wasn't accidental; it highlighted that Rogan shot a "huge" AK-47-style long rifle, which was "inherently dangerous" and "made to kill people," at Queary's head. *Id.* at 71. The jury found Rogan guilty of murder and the firearm enhancement.

[9] At the sentencing hearing, the trial court found three aggravators: (1) the nature and circumstances of the crime, including that Rogan shot his father figure in the head with a large gun and then tried to conceal it; (2) Rogan had a criminal history consisting of four misdemeanors (resisting law enforcement, visiting a common nuisance, possession of marijuana, and operating a motor vehicle without ever receiving a license); and (3) prior rehabilitative efforts had failed, including that Rogan was on probation when he committed this offense. The court found no mitigators. The court sentenced Rogan to sixty years for murder enhanced by twenty years for using a gun, for a total sentence of eighty years.

The court noted the maximum sentence of eighty-five years wasn't warranted since Rogan had "no prior felony convictions." *Id.* at 100.

[10] Rogan now appeals.

## Discussion and Decision

### I. Sufficiency of the Evidence

[11] Rogan first contends the evidence is insufficient to support his murder conviction.<sup>1</sup> When reviewing such claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the verdict and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed 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] Rogan doesn't dispute that he shot Queary in the head; rather, he argues the evidence is insufficient to prove he did so knowingly or intentionally. 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." Ind. Code § 35-41-2-2(b). A

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<sup>1</sup> In his statement of the issue, Rogan says the evidence is insufficient to support the firearm enhancement. However, he only makes an argument about his murder conviction.

person engages in conduct “intentionally” if, when he engages in the conduct, “it is his conscious objective to do so.” *Id.* at (a).

[13] Rogan says no reasonable jury could have found him guilty of murder given his statement to Robinson that he “didn’t mean to do it.” He claims the jury should have convicted him of a “lesser” offense, although he doesn’t say what that offense is. *See* Appellant’s Br. p. 17. The defense theory at trial was that Rogan accidentally shot Queary and was guilty of reckless homicide. The jury rejected this theory and found Rogan guilty of murder. The evidence supports the jury’s verdict. Rogan and Queary argued about cigarettes or Rogan disrespecting his mother, and Rogan shot Queary in the head with an AK-47-style long rifle. *See Young v. State*, 761 N.E.2d 387, 389 (Ind. 2002) (“A knowing killing may be inferred from the use of a deadly weapon in a way likely to cause death.”). Neither Rogan nor his family called 911. Instead, as Rogan himself acknowledges on appeal, he used bleach to clean himself, fled the apartment with his shoes in his hand to avoid leaving footprints, and fled to Texas. *See Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014) (“Flight shows consciousness of guilt.” (quotation omitted)), *trans. denied*; *Davis v. State*, 635 N.E.2d 1117, 1120 (Ind. Ct. App. 1994) (“An accused’s attempt to conceal his participation in a crime may be considered by the jury as evidence of guilt.”). Rogan’s family then concocted a story (which Rogan knew about) about a break-in and buried the rifle. When the police interviewed Rogan several months after the shooting, he said he had nothing to do with it. This evidence is sufficient to prove Rogan knowingly killed Queary.

## II. Inappropriate Sentence

[14] Rogan next contends his eighty-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate.” *Id.* at 160 (quotation omitted).

[15] The sentencing range for murder is forty-five to sixty-five years, with an advisory sentence of fifty-five years. I.C. § 35-50-2-3. In addition, if a person knowingly or intentionally uses a firearm during the commission of certain offenses, including murder, the trial court may enhance the sentence by five to twenty years. I.C. § 35-50-2-11. Here, the trial court imposed a sixty-year sentence for murder enhanced by twenty years for using a gun. Rogan’s total sentence is eighty years, five years short of the maximum. Rogan asks us to reduce it to sixty-five years.

[16] The nature of the offense is brutal and callous. After an argument about cigarettes or disrespect, Rogan shot his father figure in the head with not just any gun but an AK-47-style long rifle that caused an “explosive type wound.”

Rogan didn't call 911. Rather, he tried to conceal his crime and then fled the state while his family lied to the police about who killed Queary. When the police interviewed Rogan several months later, he denied any involvement in the shooting.

[17] As for Rogan's character, we acknowledge this is his first felony conviction. But at age twenty-four Rogan had four misdemeanor convictions and several failed attempts at rehabilitation. He had been sentenced to community service, probation, and jail time. As the trial court highlighted, Rogan "had probation modified, had a suspended sentence revoked, [and was] on probation when [he] committed this offense." Tr. Vol. III p. 100. In addition, Rogan's efforts to conceal his crime also reflect poorly on his character.

[18] This is not an exceptional case that warrants a sentence revision.

[19] Affirmed.

Crone, J., and Altice, J., concur.