

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Kenneth Darryl Dogan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 3, 2023

Court of Appeals Case No.  
22A-CR-1848

Appeal from the  
St. Joseph Superior Court

The Honorable  
Elizabeth Cardwell Hurley, Judge

Trial Court Cause No.  
71D08-2104-MR-7

**Memorandum Decision by Senior Judge Najam**  
Judges Robb and Weissmann concur.

**Najam, Senior Judge.**

## Statement of the Case

- [1] In this case where a birthday celebration turned deadly, Kenneth Darryl Dogan appeals his conviction for Murder, a felony.<sup>1</sup> Dogan argues that the evidence is insufficient to support his conviction. We disagree and affirm.

## Facts and Procedural History

- [2] Mildred “Milly” Estelle and Dogan, who was also known as “Weed,” dated for about five years and lived together at a house on Dunham Street in South Bend, Indiana. Tr. Vol. II, p. 15. Around a month prior to the events relevant to this appeal, the two ended their relationship and a no-contact order, which was entered in favor of Milly and against Dogan, was in effect in March and April of 2021.
- [3] On March 31, 2021, Milly celebrated her birthday with her family and friends at Cheers, a bar in Roseland, Indiana. Those celebrating with Milly included her friend, Lateisha Burnett, Milly’s cousin Tiffany Rayford, and Tiffany’s husband Demond Edwards. Milly and Lateisha notified people about the party via social media and word-of-mouth. After Lateisha posted a Facebook live

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<sup>1</sup> Ind. Code §35-42-1-1(1) (2018).

stream from Milly's party, Dogan posted a comment which read "What the f\*\*k." Tr. Vol. III, p. 48.

[4] Dogan later showed up at the bar with flowers and a balloon, which he gave to Milly. According to the witnesses present, Dogan was greeted by the group without incident when he arrived. However, Dogan immediately became irritated with Milly because she did not "approach him how he wanted" her to approach him. *Id.* at 49. He said to her "[D]amn[.] [N]o hug, no kiss, no nothing." *Id.* Milly responded, "[R]eally? So I hugged him. And he was like all right." *Id.* Dogan walked away from her, remained at the bar, and the party continued.

[5] Later, Dogan and Milly spoke privately on the patio of the bar and she became upset. Dogan wanted to know why Milly was not paying attention to him like she was to other people. He told her that "no matter what[, she] was always going to be his." *Id.* at 51. Kiana, another of Milly's friends, and Tiffany stepped out on the patio to ask her to return to the bar with them. Dogan "kept talking to [Milly] like he wasn't done talking." *Id.* at 52. And he "was getting a little aggressive." *Id.*

[6] Dogan and Tiffany then "had words." Tr. Vol. II, p. 64. Tiffany told Dogan to leave Milly alone and said "She ain't your girl no more." Tr. Vol. III, p. 52. Dogan said in reply, "she'll always be mine" in reference to Milly. *Id.* Next, Dogan and Demond began to argue and then started fighting. Security staff at the bar ejected the entire party.

[7] Those celebrating with Milly—minus Dogan—gathered at her house after they left the bar. Demond’s adult son, Tyrik, and some of his friends also arrived at Milly’s house, but were asked to leave. Tyrik, who was angry with Dogan about the altercation between Dogan and his father, was looking for Dogan. Tyrik left but later returned with his parents, which led to a verbal argument between Tiffany and Milly, who did not want Tyrik at her house.

[8] Dogan, though uninvited, also showed up at Milly’s party. He parked his girlfriend’s GMC Envoy behind Milly’s house near the alley. Dogan approached the front door along the narrow sidewalk between Milly’s house and the house next door, which was owned by Mary Hammond. Milly’s son Kevin saw Dogan approach Milly’s porch and also saw that he carried a blue Draco<sup>2</sup> handgun that Dogan had previously shown to him. Mary, who watched the party from her living room window, saw Dogan walk up to the front porch of Milly’s house from the rear of the house. She said he carried an assault rifle in his hand. When Dogan opened the front door of the house, Demond also saw that he held a blue Draco in his hand. Demond slammed the front door shut. When the door reopened, Demond and Tyrik shot at Dogan.

[9] People inside the house could hear a hail of gunfire directed toward the house. This caused those inside to scatter or drop to the floor. And as for shots being

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<sup>2</sup> A Century Arms Draco is a semi-automatic handgun in the .30 caliber family but has a longer barrel than a typical handgun and can fire rifle ammunition. Tr. Vol. II, pp. 233-34. This particular gun was painted blue. Casing catchers, which look like a mesh bag, are manufactured for this kind of gun to catch the shell casings when they are discharged from the firearm. *Id.* at 222.

fired at Dogan, though the evidence is unclear as to identity, a person—possibly Darnell Ford—armed with a Springfield .40 caliber handgun, fired eleven shots toward Dogan as he ran from the front of the house. Dogan was struck once through the buttock and once in the ankle, and a gunshot hit a white Jeep Commander parked across the street. Another person—possibly Tyrik Rayford—armed with a Sig Sauer .9 mm handgun, fired five shots from near the front porch of the house aimed away from the house. An unidentified third person fired seven shots from a Glock .9 mm handgun at the back door and into the kitchen area of the house.

[10] A pause in the gunfire provided Milly’s best friend Lateisha with time to run down the hallway toward the back of the house. As she did so, she shouted at Milly to get up because “Weed is shooting up your house.” Tr. Vol. III, p. 58. Milly and Tiffany followed Lateisha as they made their way toward the back of the house. The following is a floor plan for the lower level of Milly’s home.

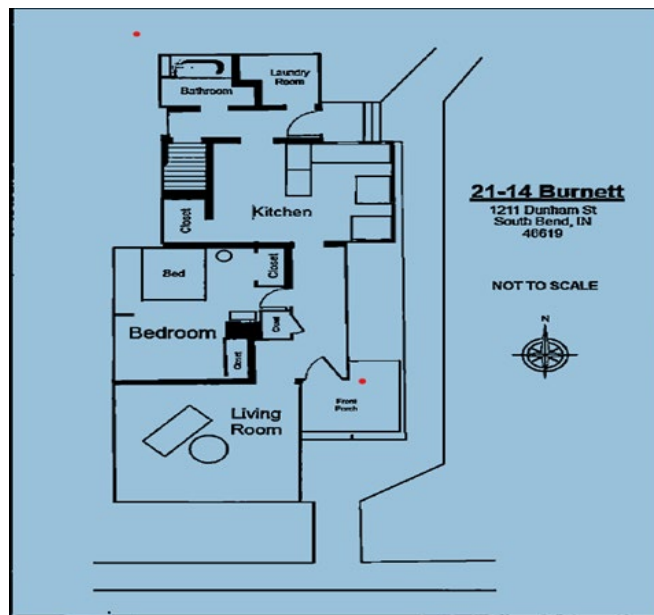


Exhibit Vol. IV, p. 218; State's Exhibit 300.

- [11] The gunfire resumed and Milly saw “so many” bullets coming in from the back window of the kitchen and the back door. Tr. Vol. III, p. 58. During another short break in the gunfire, Milly repeatedly shouted “stop shooting my house up.” *Id.*
- [12] After she passed Milly's bedroom and kitchen, Lateisha entered the bathroom and hid inside Milly's cast-iron bathtub. Milly's friend Shanice Davis jumped into the bathtub with Lateisha, and Milly fell down on the floor in front of the bathtub. As Milly fell, she heard Tiffany say, “I'm shot. I'm hit.” *Id.* at 59.
- [13] Meanwhile, after Dogan was wounded, he ran around the west side of the house toward his current girlfriend's vehicle. Along the way, he fired five shots from the Draco directly into the west side of the house, and one bullet fired from the Draco landed on the floor in the doorway of Milly's bedroom. He also fired another shot from the Draco into the back of the house. The bullet passed through the exterior of the house and the cast-iron bathtub before it entered Lateisha's upper back. The bullet fractured Lateisha's ribs, perforated a lung, and caused two holes in her heart, which killed her “on the spot.” Tr. Vol. II, p. 38. Tiffany also sustained “a shallow graze wound” to her chest. *Id.* at 71.
- [14] The Sig Sauer .9 mm handgun was recovered a short time after the shooting during a traffic stop of a white Chevy Malibu that had fled the scene. Darnell

Ford and Tyrik Rayford were present in that vehicle. The handgun was matched with all five .9 mm shell casings found in the front yard.

[15] Dogan fled the scene in the GMC Envoy and went to a hospital for treatment of his two gunshot wounds. While at the hospital, Dogan gave two conflicting statements to the police. In the first, he claimed he was shot while driving his car around in another part of town. In the second statement, Dogan admitted he was present at Cheers and had fought with Demond Edwards. He also admitted that he went to Milly's house, but claimed he was armed with only a box cutter and left when he observed men with guns there.

[16] A search of the GMC Envoy conducted five days later revealed the presence of cleaning solution, a sponge, and a brush. At some point that spring, Dogan called Kimberly Fleming, the mother of his adult son, Kenneth Lajour Dogan, to make contact with his son. This was unusual because Dogan and his son did not have a close relationship. Dogan told Fleming that he wanted to talk to his son about the fact that Dogan had "something that he wasn't supposed to have." Tr. Vol. III, p. 5. Fleming later saw her son in possession of a blue Draco handgun. Fleming took it away from her son and placed it in a closet at her home.

[17] In August 2021, police executed a search warrant at Fleming's house and recovered the blue Draco handgun. There was no fingerprint or DNA evidence which connected it to Dogan. Ballistics evidence established that the blue Draco recovered in Fleming's closet fired the .30 caliber projectile found on the

floor of Milly’s bedroom, and also had the same class characteristics—four lands and grooves with a right hand twist—as the other three .30 caliber projectiles found inside the house and the bullet fragment recovered from Lateisha’s body. All of the .30 caliber projectiles were magnetic. None of the other firearms connected to the shooting fired .30 caliber ammunition.

[18] A Glock .9 mm handgun was recovered after an unrelated search warrant was executed in March 2022 at a residence connected to Brandon Fleming and Tristan Gill. That handgun was matched to all seven .9 mm shell casings and bullets found at the back door area and inside the house.

[19] The State charged Dogan with Class A misdemeanor invasion of privacy, Level 5 felony criminal recklessness, two counts of Level 1 felony attempted murder, Level 2 felony voluntary manslaughter, and murder. At the conclusion of the jury trial, Dogan was found guilty of Class A misdemeanor invasion of privacy, Level 5 felony criminal recklessness, and murder. The court imposed concurrent sentences for a total executed sentence of sixty years. Dogan now appeals from his Murder conviction.<sup>3</sup>

## Discussion and Decision

[20] Dogan argues that “[g]iven the voluminous amount of shell casings found outside the house, and uncertainty as to the gun which fired the killing shot,

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<sup>3</sup> Dogan concedes there is sufficient evidence to support his convictions of invasion of privacy and criminal recklessness. *See* Appellant’s Br. p. 9 n. 3.



there is insufficient evidence to convict Dogan of Murder.” Appellant’s Br. p. 9.

[21] “For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact.” *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)). We will neither reweigh evidence nor judge witness credibility. *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). And we will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* Further, it is not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

[22] “A murder conviction may be based entirely on circumstantial evidence.” *Watkins v. State*, 766 N.E.2d 18, 21 (Ind. Ct. App. 2002) (citing *Franklin v. State*, 715 N.E.2d 1237, 1241 (Ind. 1999)), *trans. denied*. “Such circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt.” *Id.*

[23] To convict Dogan of Murder, a felony, the State was required to prove beyond a reasonable doubt that Dogan knowingly or intentionally killed Lateisha. *See* Ind. Code §35-42-1-1-(1). Dogan admitted that he went to Milly’s house and

approached the front door by way of the narrow sidewalk between Milly's house and Mary Hammond's house. State's Ex. 211. Three eyewitnesses—Mary, Kevin, and Demond—saw Dogan with the blue Draco handgun, which has a unique appearance. These three eyewitnesses established that Dogan was armed with the Draco that night and the Draco was later found in Dogan's ex-girlfriend's closet. The following is a picture of the blue Draco recovered by law enforcement.



Exhibit Vol. IV, p. 211; State's Exhibit 207.

[24] Ballistics evidence established that the trail of bullets fired from the Draco along the west and back side of the house matched the path Dogan admitted he took after he was wounded. The Draco fired the projectile found inside Milly's bedroom on the floor near the doorway. Evidence also showed that the Draco handgun was of the class of weapons that could have fired the bullet that struck Lateisha as she hid in the cast-iron bathtub, while the other projectiles found were not. The bullet fragment recovered from Lateisha, though badly damaged, and other projectiles found inside the house, shared the same class characteristics as the Draco—.30 caliber ammunition with four lands and

grooves with a right hand twist. The other .30 caliber ammunition found at the scene shared the distinguishing characteristic of being magnetic. And those projectiles were not connected to any of the other three firearms involved in the shooting. This evidence is sufficient to establish beyond a reasonable doubt that Dogan knowingly killed Lateisha when he shot the Draco several times into the west and back sides of Milly's house.

[25] Dogan further asserts that it is “unreasonable” to assume that “only” he could be responsible for Lateisha’s death. Appellant’s Br. p. 11. He claims that the exterior of Milly’s house was “littered with shell casing and projectiles.” *Id.* We agree with the State’s response that “[t]he fact that others could be held responsible would not negate [Dogan’s] criminal responsibility for his actions.” Appellee’s Br. pp. 12-13, n. 6. In this appeal we are concerned with Dogan’s actions and the evidence reflects that he fired the Draco handgun into Milly’s house where people had gathered to celebrate her birthday. Lateisha was shot and killed by a bullet having the same characteristics as those fired from a Draco handgun.

[26] Additionally, Dogan claims that his acquittals on the attempted murder charges regarding Milly and Demond suggest that “the jury must have determined that the State did not meet the burden of proof on those two charges.” Appellant’s Br. p. 12. His argument continues that “the jury should have arrived at the same conclusion on the Murder count.” *Id.* In other words, Dogan’s argument is that the verdicts are inconsistent.

[27] Our supreme court has held that “[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable.” *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010). And prior to that, we held that “we would not speculate on inconsistent jury verdicts and that we would not disturb the verdicts as long as there was sufficient evidence to support the convictions.” *Woods v. State*, 963 N.E.2d 632, 635 (Ind. Ct. App. 2012) (citing *Woodrum v. State*, 498 N.E.2d 1318 (Ind. Ct. App. 1986)). Further, “an acquittal on one count will not result in reversal of a conviction on a similar or related count, because the former will generally have at least one element (legal or factual) not required for the latter.” *Barber v. State*, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007), *trans. denied*. “In such instance, the jury will be presumed to have doubted the weight or credibility of the evidence presented in support of this distinguishing element.” *Id.* (internal quotation omitted).

[28] As the State aptly notes, “Murder and attempted murder have two different mens rea requirements; as charged here, murder is a knowing or intentional killing.” Appellee’s Br. p. 13. Further, attempted murder requires a specific intent to kill. *Rosales v. State*, 23 N.E.3d 8, 12 (Ind. 2015). We agree with the State’s observation that the jury could have found that Dogan knowingly killed Lateisha when he fired his Draco handgun into the back of the house, but that he did not have a specific intent to kill Milly and/or Demond when he shot at the west and back sides of the house. *See* Appellee’s Br. p. 13. The jury did, however, find that Dogan fired the Draco at the house when it found him guilty

of criminal recklessness and Lateisha's murder. Thus, there is a rational basis for the jury's allegedly inconsistent verdicts.

[29] We also observe that when you point a firearm in the direction of a house or a crowd where human being are located, and someone is killed from your gunfire, that constitutes murder, i.e., your conduct is knowing and intentional and you are responsible for the foreseeable consequences of the act. “[I]ntent may be inferred from the use of a deadly weapon in a manner likely to cause injury or death.” *Labelle v. State*, 550 N.E.2d 752, 754 (Ind. 1990). And our Supreme Court has “repeatedly upheld convictions for murder and attempted murder where the State sought to carry its burden of proof on the issue of intent by producing evidence that the defendant fired a gun in a crowd or at a group of people.” *Id.* at 754-55. While a shooter may not know his ultimate victim, if he knowingly or intentionally shoots in her direction, that fact will support a conviction for murder.

[30] The evidence is sufficient to support Dogan's Murder conviction.

[31] Affirmed.

Robb, J., and Weissmann, J., concur.