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**IN THE  
COURT OF APPEALS OF INDIANA**

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JEFFREY WHITSEY, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-0808-CR-673

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia J. Gifford, Judge  
Cause No. 49G04-0704-MR-58687

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**May 29, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Jeffrey Whitsey (“Whitsey”) appeals his convictions for two counts of Murder.<sup>1</sup> We affirm.

### **Issue**

Whitsey presents the sole issue of whether the evidence is insufficient to support his convictions because the State failed to prove that he possessed the specific intent to kill.

### **Facts and Procedural History**

Shortly after 9:00 p.m. on March 31, 2007, Whitsey was part of a group of approximately twenty people socializing and playing basketball at the Amber Woods apartment complex in Indianapolis. A verbal disagreement arose and escalated into a fistfight. The group moved into an adjoining parking lot.

At some point, Rodney and Lucky<sup>2</sup> were getting the best of Whitsey’s friend, DeAndre.<sup>3</sup> Whitsey exclaimed, “Man, F this” and pulled a gun from his pocket. (Tr. 79.) He fired three shots at Rodney and Lucky as they fled in the direction of an apartment occupied by Jamitra Mitchell (“Mitchell”). One bullet entered a window, struck Mitchell in the head, and killed her. The State charged Whitsey with murder. After an autopsy revealed that Mitchell was carrying a viable fetus, the State charged Whitsey with a second count of murder.

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<sup>1</sup> Ind. Code § 35-42-1-1. Whitsey does not challenge his misdemeanor conviction for Carrying a Handgun Without a License.

<sup>2</sup> The transcript does not reveal surnames for Rodney or Lucky.

<sup>3</sup> The transcript does not reveal DeAndre’s surname.

On June 16, 2008, Whitsey was tried in a bench trial. He was convicted as charged and sentenced to an aggregate term of forty-five years imprisonment. He now appeals.

## **Discussion and Decision**

### Standard of Review

We will affirm a conviction unless no reasonable fact-finder could have found the evidence and reasonable inferences proved the defendant's guilt beyond a reasonable doubt. Winn v. State, 748 N.E.2d 352, 357 (Ind. 2001). We view the evidence and the inferences therefrom in the light most favorable to the judgment, and we neither reweigh the evidence nor reassess the credibility of the witnesses. Id.

### Analysis

Whitsey argues that his convictions for murder are not supported by sufficient evidence, because the State did not establish that he had the specific intent to kill when he discharged his handgun.<sup>4</sup> He relies upon Spradlin v. State, 569 N.E.2d 948, 950 (Ind. 1991), and its progeny, which held that a jury considering an attempted murder charge is to be instructed that the State must establish beyond a reasonable doubt that the defendant intended to kill a human being and took a substantial step to do so.

However, the culpability requirements for attempted murder and for murder are not the same. A conviction for attempted murder requires proof of specific intent to kill. Taylor

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<sup>4</sup> He contends that he should have been convicted of a single offense of reckless homicide, as a lesser-included offense of murder, for the killing of Mitchell. The statutory definition of reckless homicide does not include the killing of a fetus.

v. State, 840 N.E.2d 324, 342 n.3 (Ind. 2006). By contrast, “[e]ither an intentional or a knowing killing is required for murder.” Ritchie v. State, 809 N.E.2d 258, 270 (Ind. 2004).<sup>5</sup> Thus, unlike attempted murder, murder may be committed knowingly, which occurs when the person engages in conduct while aware of the high probability that he or she is doing so. Rogers v. State, 827 N.E.2d 78, 81 (Ind. Ct. App. 2005), trans. denied. Here, the State alleged that Whitsey acted knowingly.

Whitsey does not dispute the fact that he fired the shot that killed Mitchell. In order to establish that Whitsey acted knowingly, as charged, the State introduced evidence that he pursued Rodney and Lucky as they fled, and fired multiple shots in their direction. Both intentional and knowing actions may be inferred from the circumstances. Ritchie, 809 N.E.2d at 270. Shooting a handgun meets a test of “knowing” and one who fires a handgun may be found to be “aware of a high probability” that death will result. Id. Too, intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury. Bethel v. State, 730 N.E.2d 1242, 1245 (Ind. 2000). Sufficient evidence for conviction has been found when the evidence indicated that a weapon was fired in the direction of the victim. Id.

Here, the firing of multiple shots in the direction of fleeing persons is sufficient evidence from which the factfinder could conclude that Whitsey acted with the requisite mens rea, i.e., knowingly. By operation of the doctrine of transferred intent, Whitsey’s

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<sup>5</sup> Indiana Code Section 35-42-1-1 provides that a person “who knowingly or intentionally kills another human being” or “knowingly or intentionally kills a fetus that has attained viability” commits murder.

culpability as to Rodney and Lucky transfers to those actually killed, Mitchell and her unborn child. See Blanche v. State, 690 N.E.2d 709, 712 (Ind. 1998) (explaining that, “under the doctrine, a defendant’s intent to kill one person is transferred when, by mistake or inadvertence, the defendant kills a third person”).

Affirmed.

DARDEN, J., and ROBB, J., concur.