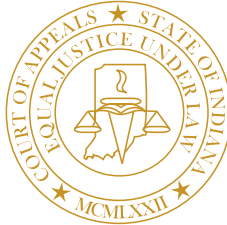


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Jasinto Carter,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

December 9, 2025

Court of Appeals Case No.
25A-CR-667

Appeal from the Marion Superior Court
The Honorable James B. Osborn, Judge

Trial Court Cause No.
49D21-2203-MR-7932

Memorandum Decision by Judge Brown
Judges Felix and Scheele concur.

Brown, Judge.

- [1] Jasinto Carter appeals his convictions for murder and attempted murder. He claims the evidence is insufficient to sustain his convictions and the trial court abused its discretion in instructing the jury. We affirm.

Facts and Procedural History

- [2] At approximately 3:30 a.m. on December 13, 2021, police responded to a report of a crash with a possible ejected person on I-465. Speedway Police Officer Scott Highland arrived at the scene and found a red or burgundy Buick which had crashed into a barrier and a man, Michael Smith, in the roadway. Officer Highland applied a tourniquet to Smith's arm. Officer Highland found the driver of the Buick, Miguel Emery, in the vehicle and determined that he was deceased. Smith and Emery had been struck by bullets, and Emery died from a gunshot wound to his neck.
- [3] Law enforcement conducted an investigation which revealed twelve perforations caused by bullets in the rear, side, and front of the Buick. The bullets recovered from Emery and Smith were consistent with the class characteristics of a Draco model firearm. A truck driver reported that he was traveling on I-465, heard gunshots, looked in his rearview mirror, saw the Buick and a blue Chevrolet Malibu, and observed that the Buick "was getting shot up," that the Malibu "was lighting up" each time he heard a gunshot, and that the Buick struck a wall. Transcript Volume III at 106.

[4] Surveillance video from Club Onyx in Indianapolis showed that Emery and Smith entered the club at approximately 10:00 p.m. on December 12, 2021. Surveillance video at an area gas station showed that Carter arrived at the station in his Malibu at 1:08 a.m. and that Dawan Glenn and Briean Brown arrived at the station in an orange Kia about five minutes later. The vehicles left the gas station at 1:23 a.m. Video from Club Onyx showed the Malibu and the Kia arrive in the parking lot at 1:25 a.m. The Malibu stopped in front of the parked Buick two times. Carter drove the Malibu to the parking lot of a nearby hotel at 1:46 a.m., and Brown and Glenn followed in the Kia six minutes later and parked near the Malibu. At some point, Brown and Glenn exited the Kia and entered the Malibu with Carter. Video showed that, just after 3:00 a.m., Emery and Smith exited Club Onyx. At 3:14 a.m., Emery and Smith exited Club Onyx's parking lot in the Buick, and the Malibu driven by Carter and containing Brown and Glenn exited the hotel parking lot. Cell phone location data tracked the path of travel of the phones belonging to Emery, Carter, Glenn, and Brown on I-465 indicating the vehicles were "traveling an average speed of about 90 miles an hour." Transcript Volume IV at 125. Several hours after the shooting, Glenn sent text messages to Brown stating "1 confirmed 1 critical," "Toe sent me article,"¹ and "[s]ee who wanna buy Draco asap." Exhibits Volume I at 172-175.

¹ "Toe" was Carter's nickname.

[5] The State charged Carter with murder, attempted murder as a level 1 felony, and criminal organization activity as a level 5 felony. The court held a jury trial.² Carter’s counsel argued that Preliminary Instruction No. 7 should include language that “mere presence at the scene” or “mere acquiescence” was not sufficient to prove accomplice liability. Transcript Volume III at 13. The court stated that it would “make those modifications.”³ *Id.* Carter’s counsel objected to Final Instruction Nos. 22 and 23 related to accomplice liability, arguing that the instructions were covered by other instructions and were confusing. The court overruled the objection and found that the instructions were accurate statements of law, applied factually, and were not confusing. The State dismissed the count alleging criminal organization activity. The jury found Carter guilty of murder and attempted murder.⁴

Discussion

I.

[6] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816,

² Carter and Glenn were tried together.

³ Preliminary Instruction No. 7 included the statement: “The Defendant’s mere presence at the scene of the crime, or mere acquiescence in the commission of the crime, is insufficient to convict for aiding, inducing, or causing the crime charged in Count II.” Appellant’s Appendix Volume II at 203.

⁴ The jury found Glenn not guilty. In a separate trial, a jury convicted Brown of murder, attempted murder, and assisting a criminal, and on appeal this Court affirmed his convictions for murder and attempted murder. *See Brown v. State*, No. 23A-CR-699, 2024 WL 2151587 (Ind. Ct. App. May 14, 2024), *trans. denied*.

817 (Ind. 1995), *reh'g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[7] Carter “acknowledges the evidence demonstrated his presence at the scene and companionship with the shooter,” but argues “neither of those factors demonstrated any intent or action on his part to participate in the crimes.” Appellant’s Brief at 27. He argues “[t]he shooting happened without planning and was over in mere seconds,” “[t]he bullets entered the rear, driver’s side, and front of the Buick,” “[n]o entry holes were found on the passenger side of the Buick,” “[t]his evidence suggests that the shooting happened either as [he] accelerated past the Buick or as the Buick passed the Malibu,” and “[n]either [he] passing the Buick or the Buick passing the Malibu would be unusual or support an inference that [he] drove in a manner to aid the commission of a crime.” *Id.* at 28. He also asserts “his sending a news article to Glenn did not support an inference that he participated in the crime” and the State failed to prove he acted with the specific intent to kill Smith “because there was no evidence [he] was aware of Smith’s presence in the Buick.” *Id.* at 29.

[8] Ind. Code § 35-42-1-1 provides that a person who knowingly or intentionally kills another human being commits murder. Ind. Code § 35-41-5-1 provides that “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime.”

[9] The State must prove that the defendant specifically intended to kill the victim for the defendant to be found guilty of attempted murder. *Owens v. State*, 246 N.E.3d 1256, 1264 (Ind. Ct. App. 2024) (citing *Rosales v. State*, 23 N.E.3d 8, 11-12 (Ind. 2015)). “Intent to kill may be inferred from the nature of the attack and the circumstances surrounding the crime.” *Kiefer v. State*, 761 N.E.2d 802, 805 (Ind. 2002). “[T]he 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.*; Ind. Code § 35-31.5-2-86 (firearm is a “deadly weapon”).

[10] Ind. Code § 35-41-2-4 provides that a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. It is not necessary that a defendant participate in every element of a crime to be convicted of that crime under a theory of accomplice liability. *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002), *reh’g denied*. “There is no bright line rule in determining accomplice liability; the particular facts and circumstances of each case determine whether a person was an accomplice.” *Jackson v. State*, 222 N.E.3d 321, 337 (Ind. Ct. App. 2023) (citing *Vitek v. State*, 750 N.E.2d 346, 353 (Ind. 2001), *reh’g denied*), *trans. denied*. In determining whether a person participated in a crime based on a theory of accomplice liability, we consider factors such as the person’s (1) presence at the scene of the crime, (2) companionship with another at the scene of the crime, (3) failure to oppose commission of the crime, and (4) course of conduct before, during, and after occurrence of the crime. *Bruno*, 774 N.E.2d at 882. The State need not show the defendant “was a party to a preconceived scheme; it must merely

demonstrate concerted action or participation in an illegal act.” *Griffin v. State*, 16 N.E.3d 997, 1004 (Ind. Ct. App. 2014). It is within the province of the jury to draw an inference of intent from the facts presented. *Whatley v. State*, 908 N.E.2d 276, 284 (Ind. Ct. App. 2009) (citing *Gibson v. State*, 515 N.E.2d 492, 496 (Ind. 1987)), *trans. denied*.

- [11] The record reveals that Carter met Brown and Glenn, and they drove their vehicles—the Chevrolet Malibu and the Kia—to Club Onyx. Carter’s Malibu stopped two times near Emery’s Buick in the club’s parking lot. The men then drove their vehicles to a nearby hotel parking lot, parked, and waited for Emery and Smith to leave the club. After Emery and Smith exited Club Onyx and drove away in the Buick, Carter together with Brown and Glenn followed in the Malibu. Carter drove at speeds reaching ninety miles per hour on I-465. Multiple shots were fired from Carter’s vehicle into the Buick, with bullets striking the front, side, and rear of the Buick and bullets striking Emery and Smith, and the Buick crashed. Later, Carter sent Glenn an article about the shooting. The State presented evidence of Carter and his companions’ conduct before the shooting and Carter’s acts in driving the Malibu, following the Buick containing Emery and Smith, traveling at a high speed, and passing the Buick, permitting one of his companions to fire numerous shots from the Malibu into the Buick. Based upon the record, we conclude the State presented evidence of probative value from which a jury could find Carter guilty beyond a reasonable doubt of the murder of Emery and the attempted murder of Smith. *See Powell v. State*, 151 N.E.3d 256, 270 (Ind. 2020) (defendant’s act of firing five or six shots

toward an occupied vehicle supported the finding that he intended to kill both occupants) (citing *Perez v. State*, 872 N.E.2d 208, 214 (Ind. Ct. App. 2007) (defendant’s act of firing three to five shots while traveling at a high rate of speed at night into a car occupied by several passengers was substantial evidence that he intended to kill the victims)).⁵

II.

[12] Carter argues the trial court abused its discretion in instructing the jury. We review a trial court’s decision to give or refuse a jury instruction for an abuse of discretion. *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015). We will not reverse unless the instructions as a whole mislead the jury. *Buckner v. State*, 857 N.E.2d 1011, 1015 (Ind. Ct. App. 2006). We consider 1) whether the instruction correctly states the law; 2) whether there is evidence in the record to support the giving of the instruction; and 3) whether the substance of the tendered instruction is covered by other given instructions. *Hernandez*, 45 N.E.3d at 376. Reversal is appropriate only where an error in giving an instruction prejudices the defendant’s substantial rights. *Id.*

A. Preliminary Instruction No. 7

⁵ Carter argues, “[u]nlike *Perez* and *Powell*, there is no evidence here that [he] was aware of Smith’s presence in the Buick.” Appellant’s Brief at 32. The State responds “that is untrue” and “[t]he jury could reasonably infer from the evidence presented that Carter, Brown, and Glenn were lying in wait specifically for Smith and Emery.” Appellee’s Brief at 24. In light of the record, we do not find *Powell* and *Perez* distinguishable.

[13] The trial court gave Preliminary Instruction No. 7 providing:

Aiding, inducing or causing attempted murder is defined by law as follows: A person who, knowingly or intentionally aids another person who is engaged, induces or causes another person to engage, in conduct that constitutes a substantial step toward killing a third person, when both have the specific intent to kill the third person, commits the offense of, aiding, inducing, or causing attempted murder. . . .

Before you may convict [Carter], the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant, Jasinto Carter
2. knowingly or intentionally
3. aided or induced Briean Brown and/or Dawan Glenn
4. in conduct that constituted a substantial step toward the killing of Michael Smith
5. and both, the Defendant, and Briean Brown and/or Dawan Glenn acted with the specific intent to kill [Smith].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of aiding, inducing, or causing attempted murder as charged in Count II.

. . . . The Defendant's conduct must have been voluntary and in concert with the other person. The Defendant's mere presence at the scene of the crime, or mere acquiescence in the commission of the crime, is insufficient to convict for aiding, inducing, or causing the crime charged in Count II.

Appellant's Appendix Volume II at 203.

[14] Carter argues that Preliminary Instruction No. 7 “erroneously instructed the jury it could convict [him] based on evidence he ‘knowingly or intentionally’ aided or induced Brown or Glenn in taking a substantial step towards killing Smith.” Appellant’s Brief at 23. Carter acknowledges that he did not object to the instruction and thus must establish fundamental error. “An error is fundamental . . . if it made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.” *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2004) (citation and quotations omitted). Fundamental error is extremely narrow and encompasses only errors so blatant that the trial judge should have acted independently to correct the situation. *Id.*

[15] The Indiana Supreme Court held:

In *Spradlin v. State*, 569 N.E.2d 948 (Ind. 1991)], we determined that a jury instruction

which purports to set forth the elements which must be proven in order to convict of the crime of attempted murder must inform the jury that the State must prove beyond a reasonable doubt that the defendant, *with intent to kill the victim*, engaged in conduct which was a substantial step toward such killing.

569 N.E.2d at 950 (emphasis added). This requirement that the State establish the defendant’s specific intent to kill in order to prove him or her directly liable for attempted murder stems from “the stringent penalties for attempted murder and the ambiguity often involved in its proof.” *Hopkins v. State*, 759 N.E.2d [633,] 637 [(Ind. 2001)]. Thus, we have “singled out attempted murder for

special treatment” in the form of the State’s heightened mens rea showing. *Id.*

The State’s need to demonstrate the defendant’s specific intent to kill remains when the State seeks a conviction for attempted murder under an accomplice liability theory. Specifically, the State must prove beyond a reasonable doubt: “(1) that the accomplice, acting with the specific intent to kill, took a substantial step toward the commission of murder, and (2) that the defendant, acting with the specific intent that the killing occur, knowingly or intentionally aided, induced, or caused the accomplice to commit the crime of attempted murder.” *Id.* (quoting *Bethel [v. State]*, 730 N.E.2d [1242,] 1246 [(Ind. 2000)]).

Rosales, 23 N.E.3d at 11-12. Under *Spradlin*, “the State must prove beyond a reasonable doubt that the defendant committed the offense [of attempted murder] intentionally, not just knowingly or recklessly.” *Powell*, 151 N.E.3d at 270 n.15.

[16] As noted above, Brown was tried separately, and this Court affirmed his convictions for murder and attempted murder. See *Brown v. State*, No. 23A-CR-699, 2024 WL 2151587 (Ind. Ct. App. May 14, 2024), *trans. denied*. On appeal, we considered the same instruction on attempted murder which Carter challenges. After discussing *Spradlin*, we stated:

In *Yerden v. State*, albeit on a theory of direct liability for attempted murder rather than accomplice liability, our Supreme Court held that the following jury instruction did not demonstrate fundamental error:

To convict the Defendant of Attempt [sic] Murder, in this case, the State must have proved each of the following elements:

1. The Defendant knowingly
2. Engaged in conduct that constituted a substantial step toward the commission of
3. Knowingly killing another human being.

The Defendant must have had the specific intent to commit Murder in order to be found guilty of Attempt [sic] Murder. Intent to kill may be inferred from the use of a deadly weapon in a manner reasonably calculated to cause death.

682 N.E.2d 1283, 1285 (Ind. 1997). Our Supreme Court held that, while that instruction was “erroneous” under *Spradlin*, the instruction nonetheless “adequately informed the jury that [the defendant] must have intended to kill [the victim]” based on its “last two sentences.” *Id.* at 1285-1286. Therefore, the Court affirmed the trial court’s instruction over the defendant’s challenge to it for fundamental error. *Id.* at 1286.

The instruction given to Brown’s jury is no worse than the instruction given in *Yerden*. Indeed, in *Yerden*, the instruction more closely connected a “knowing” mens rea to the elements that the defendant must have “[e]ngaged in conduct that constituted a substantial step toward the commission of . . . [k]nowingly killing another” *Id.* at 1285. Here, on the other hand, the knowing mens rea was at least not clearly applying to the substantial-step requirement, as the fifth element of the instruction stated that the jury had to find that Brown “acted with the specific intent to kill,” and one cannot commit a substantial-step toward a killing without having “acted” to some degree. [] But, in any event, and as in *Yerden*, the jury instruction’s direction that the jury must find that Brown “acted with the specific intent to kill [Smith]” prevented any error in the instruction from rising to the level of fundamental error.

Brown, 2024 WL 2151587 at *5.

[17] Here, the fifth element of Preliminary Instruction No. 7 stated that, in order to find that he committed attempted murder, the jury was required to find beyond a reasonable doubt that Carter “acted with the specific intent to kill” Smith. Appellant’s Appendix Volume II at 203. Like we concluded in *Brown*, “the jury instruction’s direction that the jury must find that [Carter] ‘acted with the specific intent to kill [Smith]’ prevented any error in the instruction from rising to the level of fundamental error.”⁶ See *Brown*, 2024 WL 2151587 at *5. Preliminary Instruction No. 7 does not warrant reversal.

B. *Final Instruction Nos. 22 and 23*

[18] The trial court gave the following final instructions:

FINAL INSTRUCTION NO. 22

While it is true that mere presence at the scene of a crime is insufficient to make one an accomplice, a court may consider presence in conjunction with other factors that tend to show that one acted as an accomplice to a crime. There are four factors relevant to that inquiry: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime.

⁶ In *Brown*, we noted that Brown’s claim of fundamental error “fail[ed] for a second reason,” namely, “the central issue of Brown’s defense focused on the identity, not the intent, of who was in the Malibu, as Brown repeatedly argued that he was in the Forte.” *Brown*, 2024 WL 2151587 at *6. Carter argues his case is different from Brown’s case because his defense “centered on whether he acted as an accomplice or was just driving his friend who decided to shoot at the Buick.” Appellant’s Brief at 24. Regardless of whether Carter claimed that he was not in the Malibu, in light of *Yerden* and the fifth element of Preliminary Instruction No. 7, we cannot conclude that the instruction was misleading about the requirement that the State prove that Carter had the specific intent to kill Smith.

FINAL INSTRUCTION NO. 23

It is not necessary that the evidence show the accomplice personally participated in the commission of each element of the offense. The acts of one accomplice are imputed to all. So long as the State shows that one participated in the commission of an offense as an accomplice, the accomplice is criminally responsible for everything which follows incidentally in the execution of the common design, as one of its natural and probable consequences, even though it was not intended as part of the original design or common plan.

Appellant's Appendix Volume II at 220-221.

[19] Carter argues that the court's instructions "on the elements of murder and attempted murder already provided the jury with the definition of accomplice liability" and points to Preliminary Instruction Nos. 6 and 7.⁷ Appellant's Brief at 18. We cannot say that Final Instruction Nos. 22 and 23 contained incorrect statements or that they were improperly duplicative of Preliminary Instruction Nos. 6 and 7. Further, the evidence presented at trial supported the trial court giving the instructions. We find no abuse of discretion. *See Green v. State*, 937 N.E.2d 923, 929 (Ind. Ct. App. 2010) (no abuse of discretion in instructing jury "In order to be held responsible for the actions of another, he need only have knowledge that he is helping in the commission of a crime," "He does not have to personally participate in the crime . . . , " and "Proof of a defendant's failure to oppose the commission of a crime, companionship with the person

⁷ Preliminary Instruction 6 stated in part: "Aiding, inducing or causing murder is defined by law as follows: A person who, knowingly or intentionally, aids, induces, or causes another person to commit an offense commits that offense." Appellant's Appendix Volume II at 202.

committing the offense, and conduct before and after the offense may be considered in determining whether aiding may be inferred”), *trans. denied*.

[20] For the foregoing reasons, we affirm Carter’s convictions.

[21] Affirmed.

Felix, J., and Scheele, J., concur.

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