MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kamarion Antonio Moody,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 21, 2023

Court of Appeals Case No. 22A-CR-2672

Appeal from the Hendricks Circuit Court

The Honorable Daniel Zielinski, Judge

Trial Court Cause No. 32C01-2105-MR-6

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Kamarion Moody appeals his convictions and corresponding sentence for one count of murder, a felony;[1] one count of attempted murder, a Level 1 felony;[2] and two counts of criminal recklessness, as Level 5 felonies.[3] We affirm.

Issues

[2] Moody raises four issues for our review, which we revise and restate as the following three issues:

1. Whether the trial court abused its discretion when it admitted certain evidence.

2. Whether the court committed fundamental error when it allowed the State to present evidence of a prior shooting.

3. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] In July 2020, there was a shooting at the Indiana State Fairgrounds that involved Freddy Hegwood, Jr., Victor Griffin, and Johnny Alvarado, who are members of a gang called KTG. That shooting sparked a rivalry between

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[1] Ind. Code §§ 35-42-1-1; 35-41-2-4.

[2] I.C. §§ 35-42-1-1; 35-41-5-1(a).

[3] I.C. § 35-42-2-2(b)(2)(A).

members of KTG and another gang called IMG and its subgroup Davo. Davo is named after David Lowery, a member of IMG who had died in June 2020. Moody, Tyreontay Jackson, Antonio Lane, and Jeremy Perez were associated with IMG/Davo. On November 4, during a group text message between Moody, Jackson, and others, a person named Raymond Scruggs stated: "Duce a deadman on David." Ex. Vol. 5 at 174. Duce is a nickname for Hegwood. Tr. Vol. 3 at 166.

[4] In December, Hegwood had a text conversation with Lane. During that conversation, Lane and Hegwood discussed sharing each other's locations on their cell phones. At one point, on December 14, Hegwood stated: "Wya I'm outside of kam mamma s**t rn . . ." Ex. Vol. 5 at 213. Also on December 14, Jackson and Perez had a text conversation during which Perez stated: "u still tryn Shoot?" Ex. Vol. 6 at 26.

[5] In the afternoon of December 15, Hegwood picked up Griffin and drove to a friend's house in the Branches neighborhood in Brownsburg. Hegwood and Griffin arrived at the friend's house shortly before 3:00 p.m. but stayed in Hegwood's vehicle. At approximately 3:00 p.m., a school bus stopped nearby and began letting children exit. At 3:01 p.m., a black vehicle drove past Hegwood's Jeep, and the occupants of that vehicle fired multiple shots at Hegwood and Griffin before fleeing the scene.

[6] Two neighbors heard the gunshots and ran outside. One neighbor, who had heard eight to ten shots, exited her house and saw Hegwood on the ground

bleeding. That neighbor called 9-1-1. Another neighbor exited his house and saw "a bunch of children running." Tr. Vol. 2 at 169. The neighbors rendered assistance to Hegwood until medical personnel arrived. Medics determined that Hegwood had sustained one shot to his head and several shots to his leg. Medics transported Hegwood to the hospital, where he later died of his injures. Griffin was unharmed.

[7] Officers from the Brownsburg Police Department and Hendricks County Sheriff's Department ("HCSD") responded to the 9-1-1 call. During the initial investigation, officers found "bullet holes" in a nearby house. *Id* at 188. In addition, officers found eight "defects" on the driver's side of Hegwood's Jeep. *Id*. at 237. Officers also recovered bullet fragments from the Jeep and shell casings from the scene. Most of the casings recovered were 5.56- or .223-caliber, as were the bullets recovered from Hegwood's body. Officers discovered some .40-caliber casings at the scene as well.

[8] During the ensuing investigation, HCSD Detective Charles Tyree learned that the suspect vehicle was a black Chevrolet Impala that "was occupied by four (4) black males." Tr. Vol. 3 at 110. The next day, Detective Tyree learned that Moody, Perez, Jackson, and Lane had possibly been involved in the shooting. Thereafter, Detective Tyree began investigating the four individuals' social media accounts. Detective Tyree then learned that the instant shooting "might be gang related" and that it might be "some type of retaliation for the fairgrounds shooting[.]" *Id*. at 118-19.

[9] Through his search of the social media accounts, Detective Tyree discovered a photograph of Lane and another individual in front of Griffin's car with the caption: "We taking pictures outside da opps crib." Ex. Vol. 5 at 159. Detective Tyree also found conversations between Jackson and Hegwood, during which Jackson repeatedly asked Hegwood to turn on the location services on his cell phone. *See id*. at 177-192. And Detective Tyree found a conversation between Perez and Jayvon Irvin from December 15 at 2:31 p.m., approximately thirty minutes prior to the shooting, during which Irvin stated: "follow them it's only duce and victor." *Id*. at 233.

[10] Detective Tyree also searched Hegwood's phone. Detective Tyree found a video from the morning of December 14, in which Hegwood was outside of Moody's house. Hegwood repeats: "Someone tell lil Kam come home." Ex. 136 (f76).[4] Detective Tyree also found a video that Hegwood had posted to Instagram Live approximately one hour before the shooting on December 15. In that video, Hegwood read "several comments" that people were posting in real time referencing Davo as well as "threats that are made on him[.]" Tr. Vol. 3 at 128. Some of the threats included: "stay alive brotha," "finna shoot you right now," "bro say we finna die right now," and "repent now." Ex. 136 (556).

[4] There are three different videos contained within Exhibit 136: f76a221646f7434cb8dc082b3ac54deb ("f76"); 55632AB2-54F9-4B7A-9902-4E5F7ADDB7A6-0 ("556"); and IMG_1762.

[11] Then, during his search of Perez's phone and social media records, Detective Tyree found a video of Perez, Moody, Lane, and Jackson taken at 3:42 a.m. on the morning of December 15. In that video, the four individuals are standing outside of a black vehicle holding money and firearms. *See* Ex. 163. Officers also searched Moody's phone records and found a text from 3:25 p.m. on December 15, roughly twenty-five minutes after the shooting. In that text, Moody said: "We runnin from aft." Ex. Vol. 6 at 185. Moody then clarified that "atf" meant the "feds." *Id*. at 186. Officers also found photographs of a Glock firearm that Moody was attempting to sell. *See id*. at 38-46. And officers found a text from Moody on December 20, in which he said: "we goin to LA." Ex. Vol. 5 at 238.

[12] Officers also recovered some notes from Moody's phone. In one note from December 11, Moody stated: "always dissin David, that sh*t kinda lame but bi**h keep dissin David I'm gone shoot yu in yo brain[.]" *Id*. at 174. In another note, written December 21, Moody wrote:

> that backdoor sh*t fr, facts we get his Lo[5] we at his crib like we deliver dash want beef deliver fast. got on live we caught his a*s, we 456[6] his a*s, neva been da type too spin ah night I'm just gone hit you a*s. blitz em cappin onnat Insta fa dem bi**hes now yu wit em, we just bought hella glocks go ask da opps ok they feel em, my main opp just got dropped bi**h I'm in Cali with dem killers, ni**as goofy all on live didn't know we stocked

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[5] "Lo" means location. Tr. Vol. 4 at 2.

[6] 456 is the beginning of Hegwood's Instagram handle. Tr. Vol. 4 at 4.

> em till we kilt em like f*c it let's get onna fed sh*t. Ik ni**as shiddy deucy dead that boy ah dead bi**h hit all in his f***ing head heard they made his head twist. well what about vj nem they next onnat dead list shsssshh pop sum. Heard he do tattoos we get his drop then we gone drop sum

Ex. Vol. 6 at 118.

[13] Then, on December 22, Moody created another note that said:

> I was dat lil ni**a ona 10 wit ah killer 13 with ah stick tryna catch me opp. Ni**as like dissin get his lil a*s popped wit whole lotta killers dats whole lotta glocks, 12 hit da lights all gas no stop 4 heats inna car dats whole lotta shots. . . . 456 got his a*s blicked up, all inna party wit da opps sticked up, leave one in is bi**h wit his head Lyft up, ova clapp opps get they a*s patched up, 12/26 still getting wrapped up, shordy dissed David got his a*s clapped up holes in his body dig his lil ass up, opp hit da cut got his lil ass popped . . . .

Id.

[14] And Moody made a note on his phone on January 21, 2021, that said: "I heard ni**as said f*c David & got left rt where he was, 55.6 7.62 made 456 get it in blood, . . . he said f*c David & got smoked & they still don't know who it was brrrddd f*c lil deuce he inna mud." *Id*. at 178.

[15] At some point, officers recovered a Glock firearm from Chicago. Subsequent testing confirmed that the Glock was a match for the .40-caliber casings found at the scene of the shooting. Officers were able to discern that the firearm had certain visible "defects" that matched the gun Moody had attempted to sell

online. Tr. Vol. 3 at 239. On February 4, officers located the suspect Impala and searched it. The vehicle belonged to Moody's mother and had items belonging to Moody inside it. Officers also found .40-calber casings in the Impala, which matched those recovered from the scene.

[16] Officers obtained arrest warrants for all four individuals. Officers arrested Lane first. Following Lane's arrest, a news station posted a news story with the images of the four suspects. Moody posted a screen shot from that news story with hearts superimposed over the faces of Lane, Jackson, and Perez. In the caption, Moody wrote: "if they loyal it ain't ah thing I wouldn't do for em." Ex. Vol. 6 at 46.

[17] Officers ultimately located Moody on July 13. When officers arrived at Moody's location, Moody "jumped out of the back window of the second story of the apartment" and attempted to flee. Tr. Vol. 3 at 63. However, officers were ultimately able to apprehend him. The State charged Moody with murder, a felony; attempted murder, a Level 1 felony; and two counts of criminal recklessness, as Level 5 felonies.[7]

[18] The court held a jury trial on Moody's charges. During the State's opening argument, it argued that Hegwood and Griffin were members of a gang called KTG and that Moody, Jackson, Perez, and Lane were members of a gang

[7] The State also filed a criminal organization enhancement and an enhancement based on Moody's alleged use of a firearm during the commission of the offenses. But the jury found Moody not guilty of either enhancement.

called IMG or Davo. The State then argued that there had been a "gang rivalry" between the two groups "from the summer of 2020 until it culminated on December 15, 2020, with Freddie Hegwood being gunned down." Tr. Vol. 2 at 150.

[19] During the trial, an officer with the Indianapolis Metropolitan Police Department ("IMPD") testified that there was a "rivalry" between IMG and KTG. Tr. Vol. 3 at 59. IMPD intelligence analyst Marc Garcia testified that gang members will often use music videos "to call someone else out from a different group[.]" *Id*. at 75. He further testified that, in his investigation of Moody's social media accounts, he discovered posts that were "associated" with Davo. *Id*. at 78.

[20] During Garcia's testimony, the State moved to admit Exhibits 185 and 186, which were rap videos Moody had made. Moody objected to both exhibits on the ground that they were not relevant and were highly prejudicial, but the court overruled his objection and admitted the videos. Exhibit 185, which is titled "Davo Story," is a tribute to Lowery, who was killed in June 2020. In the video, Moody raps: "Ever since you die we've been at war with that whole side for you." Ex. 185. And Exhibit 186 was another rap video titled "Black Drake & Josh," and it depicted Moody rapping with several other people holding guns. The video also showed an image of Alvarado's head bouncing around the screen and being placed in the oven.

[21] The State then questioned Garcia about the shooting that had occurred at the State Fairgrounds. Garcia testified that he "associate[d]" members of KTG to that shooting. Tr. Vol. 3 at 86. Specifically, he testified that Alvarado, Hegwood, and Griffin "were stopped leaving the fairgrounds . . . with firearms[.]" *Id*. When the State asked if anyone from IMG was connected to that shooting, Garcia stated that he could not recall.

[22] The State then called Detective Tyree as a witness. Detective Tyree testified about his investigation and search of the social media accounts. During this testimony, the State moved to admit several exhibits, to which Moody objected on hearsay grounds. In particular, the State had admitted conversations between Jackson and Hegwood in which Jackson repeatedly asked Hegwood to turn on his location services on his cell phone. *See* Ex. Vol. 5 at 177-192. And the State had admitted a conversation between Hegwood and Lane, during which those two discussed sharing each other's locations. The State then had admitted a message from the evening of December 15 in which Perez stated: "N**ga on sum police sh*t." Ex. Vol. 6 at 26.

[23] In its closing argument, the State again argued that there was a "rivalry" between IMG and KTG that had begun "in the summer of 2020[.]" Tr. Vol. 4 at 116. At the conclusion of the trial, the jury found Moody guilty of murder, attempted murder, and both counts of criminal recklessness. Following a sentencing hearing, the court found the following aggravating circumstances: that the "victim was hunted down," that the offense "was clearly premeditated," and that Moody "had absolutely [n]o regard for human life,

shooting guns in front of children[.]" Appellant's App. Vol. 2 at 24-25. The court did not identify any mitigating factors. Accordingly, the court sentenced Moody to consecutive terms of sixty years for the murder conviction and thirty-five years for the attempted murder conviction. The court also imposed concurrent sentences of one year for each of the criminal recklessness convictions, for an aggregate sentence of ninety-five years in the Department of Correction. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[24] Moody first contends that the court abused its discretion when it admitted certain evidence. As our Supreme Court has stated:

> Generally, a trial court's ruling on the admission of evidence is accorded "a great deal of deference" on appeal. *Tynes v. State*, 650 N.E.2d 685, 687 (Ind. 1995). "Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion" and only reverse "if a ruling is 'clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.'" *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)).

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015). On appeal, Moody challenges the court's admission of nine pieces of evidence. Moody claims that two pieces of evidence—Exhibits 185 and 186—were irrelevant and highly prejudicial, and he

claims that seven exhibits—Exhibits 142, 145, 146, 148, 151, 154, and 190—were inadmissible hearsay. We address each argument in turn.

Exhibits 185 and 186

[25] Moody first challenges the admission of Exhibits 185 and 186, which were two videos that featured Moody rapping. Moody contends that those videos were irrelevant and prejudicial. Indiana Evidence Rule 401 provides that evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence." Indeed, our Supreme Court has explained that "[e]vidence is relevant when it has any tendency to prove or disprove a consequential fact. This liberal standard for relevancy sets a low bar, and the trial court enjoys wide discretion in deciding whether that bar is cleared." *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017) (quotation marks and citations omitted). However, even if evidence is relevant, a court may exclude it "if its probative value is substantially outweighed by a danger of" unfair prejudice. Ind. Evidence Rule 403.

[26] Moody contends that Exhibit 185, the video titled "Davo Story," and Exhibit 186, the video called "Black Drake & Josh," were not relevant because neither video "had any tendency to make a fact relating to the events of December 15, 2020[,] more or less probable." Appellant's Br. at 14. In particular, Moody asserts that Exhibit 185 was simply "a music video that paid tribute to David Lowery" while Exhibit 186 only "showed a picture of Johnny Alvarado bouncing around the screen." *Id*. Thus, he maintains that "the videos did not

have any probative value in identifying Moody, or anyone for that matter, as responsible for the shooting on December 15, 2020[.]" *Id*. at 15.

[27] However, Exhibit 185 demonstrated that Moody was connected with Davo. Indeed, the entire video was a tribute to David Lowery, whose nickname is Davo. Further, during the video, Moody rapped: "Ever since you die we've been at war with that whole side for you." Ex. 185. That evidence was further relevant to demonstrate the ongoing rivalry between IMG/Davo and KTG. And Exhibit 186 contained an image of Johnny Alvarado's head bouncing around the screen and ultimately being placed in the oven. Alvarado was a member of KTG. That video also showed the rivalry between IMG/Davo and KTG, which rivalry was the motive for the instant shooting. And "evidence of a motive is always relevant in the proof of a crime." *Cadiz v. State*, 683 N.E.2d 597, 599 (Ind. Ct. App. 1997). The trial court was thus within its discretion to find that the videos were relevant.

[28] Still, Moody contends that the potential for prejudice from those videos outweighed any probative value. Specifically, Moody asserts that the exhibits were "entire music videos showing [him] surrounded by individuals in hoodies and masks holding multiple, and at times, very large guns." Appellant's Br. at 16. He maintains that those videos prejudiced him in the eyes of the jury, which prejudice outweighed any probative value.

[29] Evidence Rule 403 "requires that the danger of unfair prejudice *substantially* outweigh the probative value before the evidence must be excluded[.]" *Cadiz*,

683 N.E.2d at 598 (quotation marks omitted, emphasis in original). "As with relevance under Rule 401, this balancing is committed to the trial court's discretion." *Snow*, 77 N.E.3d at 179. And, "[o]ften," those "determinations can be resolved either way." *Id*. at 177.

[30] As for Exhibit 185, the only prejudice that came from that video was Moody's statement that they've been "at war with that whole side" since Lowrey's death. However, there is no indication of what Moody meant by "that side," nor does that video implicate Moody in any crime, let alone the December 15, 2020, shooting of Hegwood. The trial court was therefore in its discretion to determine that any unfair prejudice did not outweigh the probative value of the video showing Moody's connection to Davo.

[31] Regarding Exhibit 186, Moody is correct that the video shows numerous people around him holding guns while he rapped. We also agree with Moody that his association with people with guns reflected poorly on him and was, to some extent, prejudicial. However, Moody himself never held a gun in that video. And, again, Moody does not say anything in that video to link him to Hegwood's murder. We thus decline to second-guess the trial court's determination that the video's relevance to Moody's gang affiliation and motive for the shooting was not substantially outweighed by the danger of unfair prejudice. We therefore affirm the court's admission of Exhibits 185 and 186.

Alleged Hearsay Exhibits

[32] Moody next challenges the admission of Exhibits 142, 145, 146, 148, 151, 154 and 190. Exhibit 142 was a picture of Lane and another individual in front of Griffin's car with the caption: "We taking pictures outside da opps." Ex. Vol. 5 at 159. Exhibit 145 was a group Instagram message between Jackson, Moody, and others during which Scruggs stated: "Duce a deadman on David." *Id*. at 174. Exhibit 146 was a text conversation between Jackson and Hegwood in which Jackson repeatedly asked Hegwood to turn on his location services on his phone. *See id*. at 177-192. Exhibit 148 was a conversation wherein Hegwood and Lane discuss each other's locations. Exhibit 151 included a message from 2:31 p.m. on December 15, approximately thirty minutes before the shooting, where Jayvon Irvin stated to Perez: "follow them it's only duce and victor." *Id*. at 233. Exhibit 154 included a message from Perez to Jackson the day prior to the shooting asking: "u still tryn Shoot." Ex. Vol. 6 at 26. It also included a message from Perez saying: "n**ga on sum police s**t." *Id*. Finally, Exhibit 190 was a short video of Lane outside of Griffin's house in which Moody is briefly visible. *See*. Ex. 190.

[33] Moody asserts that the trial court abused its discretion when it admitted those exhibits because they contained inadmissible hearsay. The Indiana Rules of Evidence define hearsay as "a statement that: (1) is not made by the declarant while testifying at the trial . . . , and (2) is offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Hearsay is generally not admissible in evidence. *See* Evid. R. 802.

> Evidence Rule 801(d), however, specifies that certain statements that would otherwise constitute hearsay are, by rule, not hearsay at all. For example, an opposing party's statement is not hearsay. Evid. R. 801(d)(2). This is so when the opposing party is himself making the statement. Evid. R. 801(d)(2)(A). It is also the case when an opposing party's coconspirator is making the statement. Evid. R. 801(d)(2)(E).

M.T.V. v. State, 66 N.E.3d 960, 964 (Ind. Ct. App. 2016), *trans. denied*. Importantly, "the State must introduce independent evidence of the conspiracy before a coconspirator's statement will be admissible as non-hearsay." *Id*. (quotation marks omitted).

[34] Here, the trial court admitted the challenged exhibits as statements of a coconspirator. On appeal, Moody asserts that the State failed to produce any independent evidence of a conspiracy such that the challenged exhibits were inadmissible hearsay. The State responds and simply asserts that the statements do not contain hearsay at all.

[35] However, we need not decide whether the exhibits contained hearsay or were nonhearsay statements of a coconspirator because any error in the admission of those exhibits was harmless. It is well settled "that a claim of error in the admission or exclusion of evidence will not prevail on appeal 'unless a substantial right of the party is affected.'" *Troutner v. State*, 951 N.E.2d 603, 612 (Ind. Ct. App. 2011) (quoting *Pruitt v. State*, 834 N.E.2d 90, 117 (Ind. 2005)), *trans. denied*. That is, even if the trial court errs in admitting or excluding evidence, this Court will not reverse the defendant's conviction if the error is

harmless. *See id*. An error in the admission of evidence is harmless where the "probable impact" of the erroneously admitted evidence, "in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights" of the defendant. Ind. Appellate Rule 66(A).

[36] Here, none of the challenged exhibits implicate Moody or otherwise tend to prove his involvement with the offense. Exhibit 142 features Lane and another individual in front of Griffin's car with a statement that they are taking pictures outside "da opps." Ex. Vol. 5 at 159. That exhibit in no way implicates Moody in any crime, let alone the murder of Hegwood. At worst, that picture links Lane and the other person to Griffin. While Exhibit 145 contained a likely threat to Hegwood ("duce a deadman"), it was sent by Scruggs, not Moody, and thus does not link Moody to any crime. *Id*. at 174. Exhibits 146 and 148 were simply conversations between Hegwood and Jackson or Lane discussing each other's locations. Those would tend to show that Jackson and Lane were attempting to track Hegwood down, not Moody. Exhibit 151 was a message from Irvin to Perez thirty minutes before the shooting telling Perez to follow "duce and victor." *Id.* at 233. Again, that evidence implicates Perez in Hegwood's murder, not Moody. Exhibit 154 was a message from Perez to Jackson asking if he was "still tryn Shoot" and stating: "n**ga on sum police s**t." Ex. Vol. 6 at 26. That links Jackson and Perez to a shooting, not Moody. And, finally, while Exhibit 190 shows a video of Lane and very briefly Moody outside of Griffin's house on some unknown date, that video does not in any way link Moody to the shooting of Griffin.

[37] Further, there is ample properly admitted evidence to link Moody to the shooting. Indeed, the suspect car belonged to Moody's mother and contained items belonging to Moody. Further, the .40-caliber casings recovered from the scene matched those found inside of Moody's vehicle. And officers found a gun in Chicago that matched those casings. The firearm contained visible defects that officers were able to determine matched those found on a firearm Moody attempted to sell online.

[38] In addition, four days before the shooting, Moody wrote a note on his phone that said: "bi**h keep dissin David I'm gone shoot yu in yo brain[.]" Ex. Vol. 5 at 174. Also, Perez posted a video of himself, Moody, Lane, and Jackson shortly before 4:00 a.m. on the morning of the offense outside of a black vehicle holding money and firearms. *See* Ex. 163. Then, approximately one hour before the offense, Hegwood posted a video on Instagram live during which he read comments he was receiving in real time. Those comments both referenced Davo and contained threats such as "finna shoot you right now" and "repent now." Ex. 136 (556). Then, roughly twenty-five minutes after the shooting, Moody sent a text that stated: "We runnin from atf," which he clarified to mean the "feds." Ex. Vol. 6 at 186.

[39] Further, on December 21, Moody wrote another note that said, in relevant part: "got on live we caught his a*s, we 456 his a*s"; "my main opp just got dropped"; "I'm in Cali with dem killers"; and "deucy dead that boy ah dead b**ch hit all in f**king head[.]" *Id*. at 118. On December 22, Moody created another note that said: "456 got his a*s blicked up" and "shordy dissed David

got his a*s clapped up." *Id*. And, on January 21, 2021, Moody wrote on his phone: "I heard ni**as said f*c David & got left rt where he was, 55.6 7.62 made 456 get it in blood, . . . he said f*c David & got smoked & they still don't know who it was brrrddd f*c lil deuce he inna mud." *Id*. at 178. "456" is the first part of Hegwood's Instagram name, and Duce or Deuce is his nickname. In other words, in those notes, Moody described the shooting of Hegwood.

[40] In light of all of the evidence before the court—including the evidence linking Moody to the vehicle used and to at least one of the firearms, a text twenty-five minutes after the shooting saying he was running from police, and the notes on his phone that discussed killing Hegwood—we can say with confidence that the probable impact of the challenged evidence, which does not directly implicate Moody in any way, was sufficiently minor so as not to affect Moody's substantial rights. *See Caesar v. State*, 139 N.E.3d 289, 292 (Ind. Ct. App. 2020) Accordingly, we conclude that any error in the admission of those seven exhibits was harmless.

Issue Two: Fundamental Error

[41] Next, Moody contends that the court committed fundamental error when it did not *sua sponte* prohibit the State from arguing or eliciting testimony about the shooting that had occurred at the State Fairgrounds in July 2020. According to Moody, the State "did not present one piece of evidence that Moody, or his alleged gang, were connected in any way to the State Fair shooting." Appellant's Br. at 28. Moody asserts that the "State Fair shooting was an entirely separate crime which [he] was required to refute." *Id*. at 29. Moody

did not object to either the State's references to that shooting during its opening or closing arguments, nor did he object when any witness testified about the shooting or the fact that it was the motive for Hegwood's murder.

[42] As our Supreme Court has previously stated:

> A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. The fundamental error exception is extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process. This exception is available only in egregious circumstances.

Brown v. State, 929 N.E.2d 204, 207 (Ind. 2010) (quotation marks and citation omitted).

[43] On appeal, Moody's argument is, in essence, that the court committed fundamental error in the admission of evidence. However, "fundamental error in the evidentiary decisions of our trial courts is especially rare." *Merritt v. State*, 99 N.E.3d 645, 652 (Ind. 2018). That is because fundamental error

> is extremely narrow and encompasses only errors so blatant that the trial judge should have acted independently to correct the situation. At the same time, *if the judge could recognize a viable reason why an effective attorney might not object, the error is not blatant enough to constitute fundamental error*.

Durden v. State, 99 N.E.3d 645, 652 (Ind. 2018) (emphasis added; quotation marks and citations omitted).

[44] An attorney's decision not to object to certain evidence or lines of questioning is often a tactical decision, and our trial courts can readily imagine any number of viable reasons why attorneys might not object. *Cf. Merritt*, 99 N.E.3d at 710 ("The risk calculus inherent in a request for an admonishment is an assessment that is nearly always best made by the parties and their attorneys and not *sua sponte* by our trial courts."). Fundamental error in the erroneous admission of evidence might include a claim that there has been a "fabrication of evidence," "willful malfeasance on the part of the investigating officers," or otherwise that "the evidence is not what it appears to be." *Brown*, 929 N.E.2d at 207. But absent an argument along those lines, "the claimed error does not rise to the level of fundamental error." *Id*.

[45] Moody does not assert that the evidence against him was not what it appeared to be. Rather, his argument is simply that the purportedly erroneous admission of this evidence made the State's evidence appear stronger than it might have actually been. *See* Appellant's Br. at 28-30. But Moody's argument on this issue would turn fundamental error from a rare exception to the general rule for appellate review. "There are often tactical reasons for an attorney not to object to the admission of evidence or the questioning of witnesses, and, however discerning our trial courts may be, they are not expected or required to divine the mind of counsel." *Nix v. State*, 158 N.E.3d 795, 802 (Ind. Ct. App. 2020).

Accordingly, we reject Moody's argument on this issue and conclude that it fails to meet the high bar of fundamental error.

Issue Three: Appropriateness of Sentence

[46] Finally, Moody contends that his sentence is inappropriate in light of the nature of the offenses and his character.[8] Indiana Appellate Rule 7(B) provides that "[t]he 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." This Court has held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

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[8] At the beginning of his argument on this issue, Moody contends that the "court failed to give his age any weight at all." Appellant's Br. at 31. To the extent Moody attempts to assert that the court abused its discretion when it failed to identify his age as a mitigating factor, he has failed to make a cogent argument and has, thus, waived any such claim for our review. In any event, it is clear that the crux of his argument is that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." *Id.* at 31.

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[47] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[48] The sentencing range for murder is forty-five years to sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. The sentencing range for a Level 1 felony is twenty to forty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4(b). And the sentencing range for a Level 5 felony is one year to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Here, the court identified as aggravators the fact that the "victim was hunted down," that the offense "was clearly premeditated," and that Moody "has absolutely [n]o regard for human life, shooting guns in front of children[.]" Appellant's App. Vol. 2 at 24-25. And the court did not find any mitigators.

Accordingly, the court sentenced Moody to consecutive terms of sixty years for the murder conviction and thirty-five years for the attempted murder conviction. The court then sentenced Moody to concurrent terms of one year for each of the criminal recklessness convictions, for an aggregate sentence of ninety-five years.

[49] On appeal, Moody does not make any argument regarding the nature of the offenses. Rather, he asserts that his sentence should be revised to concurrent terms because of his "youthful age[.]" Appellant's Br. at 32. In particular, Moody asserts that, because he was only seventeen years old at the time of the offenses, his "maturity, vulnerability to negative influences, and character are not those of an adult." *Id*. In other words, Moody asks that we revise his sentence simply because he was seventeen years old at the time he committed the offenses.

[50] However, Moody has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Moody and three others tracked Hegwood and Griffin down using his location services, followed them to a neighborhood in Brownsburg, and proceeded to fire numerous shots at the two, seemingly in retaliation for acts that Hegwood and Griffin's gang had taken the previous summer. As a result of Moody's actions, Hegwood was shot four times and ultimately died from his injuries. In addition, there were multiple middle school-aged children exiting their nearby school bus at the time. Moody has not presented any evidence to show any

restraint or regard on his part or any compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.3d 111, 122.

[51] As for his character, we acknowledge that Moody was only seventeen years old at the time he committed the offenses. However, despite his young age, Moody had already amassed a juvenile record that included adjudications for resisting law enforcement and dangerous possession of a firearm. Further, Moody was on juvenile probation at the time he committed the instant offenses. And, while he was incarcerated awaiting trial for the current offenses, he struck another inmate without provocation. The fact that Moody was seventeen years old at the time he committed the offenses is not compelling evidence of his character. *See id*. We affirm Moody's sentence.

Conclusion

[52] The trial court did not abuse it discretion when it admitted the nine challenged exhibits, and the court did not commit fundamental error when it did not *sua sponte* prohibit the State from discussing or eliciting testimony about the State Fairgrounds shooting. In addition, Moody's sentence is not inappropriate in light of the nature of the offenses and his character. We therefore affirm the trial court.

[53] Affirmed.

Tavitas, J., and Kenworthy, J., concur.