

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Talisha Griffin  
Indianapolis, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Jodi Kathryn Stein  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Sammy Tinnin,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 13, 2023

Court of Appeals Case No.  
23A-CR-628

Appeal from the Marion Superior  
Court

The Honorable Mark Stoner,  
Judge

Trial Court Cause No.  
49D32-2108-MR-26083

**Memorandum Decision by Judge Riley**  
Judges Crone and Mathias concur.

**Riley, Judge.**

## **STATEMENT OF THE CASE**

[1] Appellant-Defendant, Sammy Tinnin (Tinnin), appeals his conviction for murder, a felony, Ind. Code § 35-42-1-1(1).

[2] We affirm.

## **ISSUES**

[3] Tinnin presents this court with three issues, which we restate as:

(1) Whether the trial court abused its discretion by denying his motion for a continuance;

(2) Whether fundamental error occurred when two exhibits were not formally admitted into evidence; and

(3) Whether the State proved beyond a reasonable doubt that Tinnin was the person who committed the murder.

## **FACTS AND PROCEDURAL HISTORY**

[4] On August 12, 2020, shortly before 5:00 a.m., John Shockley (Shockley) was on his way to work and stopped at the combination McDonald's/BP gas station on Emerson Avenue just north of I-70 on the east side of Indianapolis, Indiana. Shockley went through the McDonald's drive through and then parked on the north side of the building's parking lot to eat his breakfast. The McDonald's/BP's business premises is monitored by several surveillance cameras. Shortly after Shockley parked, Tinnin entered the parking lot driving a black Nissan Xterra with distinctive rear driver's side taillight damage.

Tinnin passed Shockley's car, drove on, exited the parking lot, turned around, reentered the parking lot, and then backed into a parking spot next to Shockley's parked car. Tinnin, who was wearing a light blue face mask of the type commonly used during the COVID-19 pandemic, exited the Xterra and shot Shockley twice, wounding him in the neck and torso. Tinnin then fled the scene in the Xterra. Shockley died in his car, where he was discovered hours later. Investigators found two spent cartridge cases at the scene. One of the cases was head stamped "Federal 40 S&W" and was located on the ground at the rear driver's side of Shockley's car; the other spent cartridge case was head stamped "Speer 40 S & W" and was found in Shockley's lap. (Exh. Vol. pp. 18, 19).

[5] Tinnin's movements through the parking lot and the murder itself were all recorded by surveillance cameras mounted at various locations on the McDonald's/BP business premises, although Tinnin's face is not plainly identifiable in the footage. After viewing the footage, investigators connected the Xterra with an encounter law enforcement had had with the Xterra at 5:48 a.m. that same morning. At that time, Faith Banks (Banks) was driving the Xterra alone not far from what was later discovered to be Tinnin's home address. Investigators spoke with Banks later in the day on August 12, 2020, and impounded the Xterra pursuant to a search warrant. The Xterra had taillight damage that matched damage discernable in the surveillance footage from the McDonald's/BP. During a search of the Xterra, investigators found a pay stub belonging to Tinnin in the front passenger seat backside pocket. A

blue face mask was discovered on the floor of the Xterra's back passenger side seat that was later found to have Tinnin's DNA on the white side of the mask. Tinnin's finger and palm prints were located along the exterior of the driver's side door.

[6] On August 15, 2020, Tinnin was apprehended in Anderson, Indiana. When Tinnin was taken into custody, he had a live Federal brand .40 S&W bullet on his person. The State originally charged Tinnin with Shockley's murder on August 19, 2020. On September 26, 2020, Banks died.<sup>1</sup> During the fall of 2020, Tinnin was housed at the Marion County Jail (MCJ) with Edwin Rodriguez (Rodriguez), who was being held on a parole violation. The two conversed, and Tinnin learned that Rodriguez expected to be released from custody soon. Tinnin told Rodriguez that he was a suspect in a murder. Tinnin asked Rodriguez to contact the mother of Tinnin's child, go with her to the McDonald's/BP parking lot, and have the woman drive the same route as Tinnin had driven through the parking lot. While the woman recreated Tinnin's route through the parking lot, Rodriguez was supposed to watch the surveillance camera monitors inside the BP to see if Tinnin's face could have been visible. Tinnin was worried about the visibility of his face because he could not recall whether he was wearing a mask or not. On September 11, 2020, Rodriguez was released, but instead of following through on Tinnin's request, he contacted law enforcement and was referred to the lead detective

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<sup>1</sup> As of the trial in this matter, there was nothing connecting Tinnin to Banks' death.

working on Shockley's murder. In September 2020, the detective took Rodriguez's statement, which included details which had not been reported in the probable cause affidavit for Tinnin's arrest, such as Tinnin's route of travel through the parking lot in the Xterra, the fact that the suspect was wearing a mask, and the location of cameras around the parking lot. Rodriguez also identified Tinnin from a photographic array. Even though Rodriguez had voluntarily offered this statement, initially, he was unwilling to testify against Tinnin. On February 26, 2021, the State dismissed the murder charge against Tinnin. In April 2021, after Rodriguez was arrested on another parole violation, he became willing to testify against Tinnin.

[7] On August 23, 2021, the State refiled its Information, charging Tinnin with Shockley's murder. Discovery was exchanged between the parties, and on May 23, 2022, Tinnin deposed Rodriguez. In November 2022, Tinnin was housed at the MCJ with James Patrick (Patrick). Tinnin convinced Patrick to testify at Tinnin's trial as an impeachment witness to discredit Rodriguez, and, in exchange, Tinnin would protect Patrick from some people who were threatening him. On December 21, 2022, Tinnin listed James Patrick (Patrick) as a witness in his upcoming murder trial. The substance of Patrick's proposed testimony was to be that while Patrick and Rodriguez had been housed together at the Westville Correctional Facility (WCF), Rodriguez had told Patrick that Rodriguez had fabricated the story about Tinnin asking him to recreate his drive through the McDonald's/BP parking lot and that Rodriguez's motivation for doing so was to receive a sentencing modification. Also on December 21,

2022, Tinnin filed a motion for a speedy trial, although his trial had already been set for January 23, 2023. On December 26, 2022, the trial court ordered that Tinnin's speedy trial deadline was March 1, 2023.

[8] Investigators quickly learned that Rodriguez and Patrick had never been at the WCF at the same time. On January 6, 2023, the State gave notice to Tinnin that it would take Patrick's taped statement on January 12, 2023. Tinnin's counsel attended Patrick's statement, during which Patrick was confronted with the fact that he and Rodriguez had not been at the WCF at the same time. Given that Patrick could potentially face perjury charges, he was assigned a public defender.

[9] On January 13, 2023, the State filed an additional discovery notice listing Department of Correction location information for Rodriguez and Patrick, the Offender Management System information for Tinnin and Patrick for 2022, and the Inmate Housing history for Tinnin and Rodriguez for 2020. The State also provided Tinnin with notice that the State would call Patrick as a witness at trial. On January 17, 2023, the State filed a motion to transport Patrick to Tinnin's trial scheduled to begin on January 23, 2023, and on January 18, 2023, the State filed its final witness list which included Patrick. Also on January 18, 2023, Tinnin filed a motion in limine seeking to prohibit any argument or testimony that Tinnin "instructed [] Patrick to make up a story or lie for him." (Appellant's App. Vol. II, p. 100).

[10] On January 23, 2023, the trial court convened Tinnin's jury trial. Prior to the selection of the jury, the parties discussed Patrick's potential appearance at trial. The deputy prosecutor represented to the trial court that Patrick's public defender had only been able to speak with Patrick that morning and that the public defender had related that Patrick was willing to testify that Tinnin put him up to discrediting Rodriguez and that Patrick was willing to do so because he had been threatened with a gang hit unless he did. The deputy prosecutor had immediately informed Tinnin's counsel of Patrick's proposed testimony. Tinnin's counsel informed the trial court that Tinnin would not be calling Patrick as a witness and objected to any testimony pertaining to gang involvement as being highly prejudicial to Tinnin. Tinnin also objected that Patrick's proposed testimony was irrelevant to Tinnin's murder charge. The trial court ruled that any references to gang activity were inadmissible. The trial court asked Tinnin's counsel if he was moving for a continuance, and Tinnin's counsel responded, "That will depend on whether or not [] Patrick is allowed in, Judge. And to the extent of his testimony that is going to be allowed. If everything the State wants is coming in, then, yes." (Transcript Vol. II, p. 42). The trial court ruled as follows:

Well, first off, the [c]ourt's going to deny the motion to continue. It is an August of 2020 case, and we are here, in terms of its priority, because [Tinnin] had requested [a] speedy trial. The actions that are being involved are being attributed to [Tinnin] potentially obstructing justice. And so to put everyone in the position of [a] speedy trial and then to find that a potential attempt to obstruct justice, to give [Tinnin] more time to prepare, would not seem to be appropriate.

(Tr. Vol. II, pp. 42-43). The trial court informed the parties it would make no further rulings regarding the admissibility of Patrick's testimony and that each party would have an opportunity to interview Patrick prior to him taking the stand. The parties then argued Tinnin's motion in limine. In response to the trial court's question about how Tinnin could have filed a pretrial motion in limine prohibiting any references to Tinnin asking Patrick to lie, Tinnin's counsel stated that he had anticipated that Patrick would testify that Tinnin had put him up to lying about Rodriguez but had not anticipated any references to gang activity. The trial court took that portion of Tinnin's motion in limine under advisement.

[11] Rodriguez testified at trial about Tinnin's request that he help re-enact the murder and was extensively cross-examined about his hopes for a sentencing modification. Later during the trial, the State had a stipulation entered into evidence providing the foundation for the admissibility of photographs and other evidence produced during Shockley's autopsy, including the actual bullets that were removed from Shockley's torso and jaw. The bullets were identified in the stipulation as State's Exhibits 66 and 67. During the subsequent testimony of the forensic pathologist who conducted Shockley's autopsy, the trial court reminded the State to move its Exhibits 57 through 64, the autopsy photographs, into evidence, but it did not similarly remind the State to move Exhibits 66 and 67, the bullets, into evidence. Without objection from Tinnin, the forensic pathologist provided extensive testimony about the bullets' paths through Shockley's body and the cause of Shockley's death. On cross-



examination, Tinnin’s counsel asked about the paths of the bullets through Shockley’s body, and the pathologist testified that toxicology tests done on Shockley found no drugs in his system.

[12] Patrick was scheduled to testify at the end of the State’s case, by which time both parties had had an opportunity to interview him. Tinnin’s counsel asked for a ruling on the admissibility and limits of Patrick’s testimony but did not ask for a continuance. The trial court ruled that Patrick’s testimony was admissible “as consciousness of guilt or knowledge of guilt[.]” (Tr. Vol. III, pp. 165-66). The trial court granted Tinnin’s continuing objection to Patrick’s testimony that it was irrelevant and overly prejudicial in light of its low probative value. Patrick testified that Tinnin had put him up to the false testimony about Rodriguez in exchange for protection from a threat Patrick had received.

[13] During closing argument, neither party mentioned the bullets that had been removed from Shockley’s body. At the close of the evidence, the jury found Tinnin guilty as charged. On February 24, 2023, the trial court sentenced Tinnin to sixty years in the Department of Correction.

[14] Tinnin now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Denial of Continuance*

[15] Tinnin contends that the trial court abused its discretion when it denied<sup>2</sup> his motion to continue his trial in light of Patrick being called as a witness for the State. We review a trial court’s denial of a non-statutory continuance motion for an abuse of the trial court’s discretion. *Vaughn v. State*, 590 N.E.2d 134, 136 (Ind. 1992). Assessing a trial court’s denial of a non-statutory continuance is essentially a two-step process. *Ramirez v. State*, 186 N.E.3d 89, 96 (Ind. 2022). First, we determine whether the trial court properly evaluated and compared the parties’ interests and how those interests would be impacted by altering the schedule of the trial. *Id.* If we find that the trial court did not do so, we must determine whether the denial of the continuance resulted in prejudice. *Id.* “A defendant can establish prejudice by making *specific showings* as to why additional time was necessary and how it would have benefitted the defense.” *Id.* (emphasis added). There is a strong presumption that the trial court acted within its discretion in ruling on a continuance motion. *Laster v. State*, 956 N.E.2d 187, 192 (Ind. Ct. App. 2011).

[16] Here, on December 21, 2022, Tinnin first discovered Patrick to the State as a witness who would impeach Rodriguez’s credibility. On January 6, 2022, the

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<sup>2</sup> The State contends that Tinnin did not move for a continuance. However, the parties discussed a continuance based on Patrick being called as a witness for the State, and the trial court denied Tinnin a continuance. Therefore, we will address the issue.

State provided Tinnin with notice that it would take Patrick's statement, and, on January 12, 2023, eleven days before trial, Patrick's interview with the State took place wherein Patrick was confronted with his lie about speaking with Rodriguez at the WCF. Tinnin's counsel was present at this interview. The State listed Patrick as a witness on January 13, 2023, ten days before trial, and it disclosed its information detailing the whereabouts of Tinnin, Rodriguez, and Patrick while they were in custody. It is clear from the record that Tinnin knew about and recognized the import of this evidence, as on January 18, 2023, he filed a motion in limine seeking to prohibit any references to the fact that he "instructed [] Patrick to make up a story or lie for him." (Appellant's App. Vol. II, p. 100). Tinnin did not move for a continuance prior to trial. The only new information that was disclosed to Tinnin on the morning of trial was that Patrick would say that he had been threatened with a gang hit in order to make him testify in favor of Tinnin. Tinnin never specified exactly how much additional time he required in order to prepare for Patrick's testimony. The State did not consent to any continuance, the jury pool was present, and the State was ready with its witnesses.

[17] Against this factual backdrop, in denying Tinnin a continuance, the trial court noted that the case was over two years old and that the trial date had been prioritized because Tinnin had requested a speedy trial. The trial court ruled that, given that it appeared that Tinnin had attempted to obstruct justice by convincing Patrick to testify falsely in his favor, it would be inappropriate to provide Tinnin with a continuance. Although this was not an extensive

recitation and evaluation of the parties' competing interests, the record reflects that the trial court did not summarily deny Tinnin's request without providing any reasoning specific to the circumstances before it. *Compare Ramirez*, 186 N.E.3d at 96 (holding that the trial court's statement that the defendant's motion was untimely and that it saw no reason for a continuance did not reflect a proper evaluation and comparison of the parties' respective interests in continuing the trial).

[18] However, even if this evaluation and comparison of the parties' interests was inadequate, it is Tinnin's burden on appeal to demonstrate that he was prejudiced by specifically showing why he required more time to prepare for Patrick's testimony and how additional time would have benefitted his defense. *Id.* Tinnin claims that he was prejudiced because "he was forced to proceed with trial ignorant to the extent of Patrick's testimony and unprepared to defend against it." (Appellant's Br. pp. 14-15). Tinnin also asserts that, even though the trial court allowed him time within the trial to interview Patrick, he had insufficient time to prepare to defend against Patrick's testimony because he needed to investigate the findings, discuss the matter with his counsel, and decide whether he wished to proceed with trial, all matters he maintains were vital to the preparation of his defense.

[19] We do not find these arguments to be persuasive. At the time of his continuance motion, Tinnin was aware of the substance of Patrick's testimony apart from the fact that he would testify that he was threatened with a gang hit. The trial court ruled that no references to gang activity would be permitted, so

Tinnin has failed to demonstrate how he was prejudiced by being unaware of what Patrick would say at trial. In addition, unsurprisingly in light of the fact that Patrick would only testify regarding what he and Tinnin had discussed, Tinnin does not specifically identify what findings he needed more time to investigate, what matters he required more time to discuss with his counsel, or how more time would have benefitted his defense. Therefore, he has failed to meet his burden on appeal to make “specific showings” of prejudice. *Compare id. at 98* (finding that Ramirez had made such specific showings in light of late-disclosed evidence, where he detailed what witnesses he needed to depose, what further investigation was required, and what evidence he was required to reevaluate in light of the impact of the new evidence on his defense strategy); *see also Robinson v. State*, 682 N.E.2d 806, 808-09 (Ind. Ct. App. 1997) (finding no reversible error in the denial of a continuance to depose an eyewitness disclosed on the first day of Robinson’s murder trial, where Robinson had the opportunity to depose the witness before she testified and Robinson demonstrated no prejudice). Because Tinnin has failed to demonstrate that he was prejudiced by the denial of his request for a continuance, he has failed to overcome the presumption of correctness of the trial court’s ruling on his continuance motion. *See Laster*, 956 N.E.2d at 192. As such, we find no abuse of the trial court’s discretion in denying Tinnin a continuance.

## II. *Exhibits 66 and 67*

[20] Tinnin’s next argument centers on Exhibits 66 and 67, the actual bullets taken from Shockley’s body at autopsy, which were identified at trial but were never

formally admitted into evidence.<sup>3</sup> Tinnin’s specific claim is that, although the trial court reminded the State to move other exhibits into evidence, it did not do the same for Exhibits 66 and 67, and, as a result, the jury was improperly allowed to consider evidence that had not been formally admitted. Tinnin did not object at trial to the fact that the State did not formally move Exhibits 66 and 67 into evidence. On appeal, Tinnin contends that the alleged error constituted fundamental error. Fundamental error is an extremely narrow doctrine that only applies to error that is a “substantial, blatant violation of basic principles of due process rendering the trial unfair to the defendant.” *Carter v. State*, 754 N.E.2d 877, 881 (Ind. 2001). The doctrine only applies where the actual or potential harm cannot be denied; in other words, the error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. *Id.*

[21] Tinnin cites several cases from this and other jurisdictions for the premise that a defendant has a constitutionally guaranteed right to have his guilt or innocence determined solely on the basis of evidence introduced at trial. *See, e.g., Meadows v. State*, 785 N.E.2d 1112, 1123 (Ind. 2003); *Southern v. State*, 878 N.E.2d 315, 320 (Ind. Ct. App. 2007), *trans. denied*; *Taylor v. Kentucky*, 436 U.S. 478, 485, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978). While we agree with this general premise, and it is undisputed that Exhibits 66 and 67 were identified but not actually

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<sup>3</sup> The stipulation providing the foundation for the admission of these Exhibits did not include any agreement between the parties that those Exhibits were admissible or that they should be deemed admitted at trial.

moved into evidence, we cannot agree with Tinnin's argument that the fact that the Exhibits were not formally admitted alone entitles him to the reversal of his murder conviction. Rather, he must still demonstrate that this error was such a substantial and blatant violation of his due process rights that a fair trial was impossible. *Carter*, 754 N.E.2d at 881.

[22] Here, the manner of Shockley's death was not in controversy at trial. The parties executed a stipulation that was entered into evidence regarding the source, handling, and storage of the bullets. Photographs of the bullets were admitted into evidence, and Tinnin does not contend that Exhibits 66 and 67 were inadmissible for any reason. The parties treated the challenged Exhibits as though they were admitted, and Tinnin had the opportunity to cross-examine the State's expert witnesses regarding its forensic and ballistics testimony, which showed that the bullets could not be definitively tied to the cartridge cases that were found at the scene. The State did not mention the actual bullets in its closing argument. In addition, none of the cases cited by Tinnin on appeal involved the reversal of a criminal conviction where evidence was identified at trial, treated by the parties as though it were admitted, and the defendant failed to object at trial, and our own research uncovered none. Given these circumstances, we cannot conclude that Tinnin was deprived of a fair trial by what was at most an inadvertent error on the State's part that did not impact the proceedings. Accordingly, we find no fundamental error.

### III. *Sufficiency of the Evidence of Identification*

[23] Tinnin’s final challenge to his murder conviction is that the State did not prove beyond a reasonable doubt that it was he who shot Shockley. We review such claims pursuant to our well-settled standard of review of sufficiency of the evidence claims: We do not reweigh the evidence or assess witness credibility, we consider only the evidence and reasonable inferences that support the verdict, and we will affirm if there is evidence of probative value from which the defendant’s guilt could be inferred beyond a reasonable doubt. *Oldham v. State*, 779 N.E.2d 1162, 1168 (Ind. Ct. App. 2002), *trans. denied*. It is also well-settled that a conviction for murder may be sustained based only on circumstantial evidence. *See Green v. State*, 587 N.E.2d 1314, 1315-16 (Ind. 1992) (affirming the jury’s verdict that it was Green who murdered his victim based exclusively on circumstantial evidence). “If a reasonable inference can be drawn from the circumstantial evidence, the verdict will not be disturbed.” *Smoot v. State*, 708 N.E.2d 1, 3-4 (Ind. 1999).

[24] The video surveillance footage taken during Shockley’s murder showed that the person who killed Shockley was wearing a blue COVID mask and was driving a Nissan Xterra with distinctive rear taillight damage. The same day as Shockley’s murder, law enforcement impounded a Nissan Xterra with similar taillight damage that was later found to have Tinnin’s finger and palm prints on its driver’s side exterior door. A blue COVID mask with Tinnin’s DNA on it was also found in the interior of the Xterra. Tinnin’s cell phone records showed that he was moving around the east side of Indianapolis around the time of the



murder and was not at home in bed around 5:00 a.m. when the murder took place. In addition, when Tinnin was apprehended in Anderson, a live bullet matching the caliber and brand as one of the spent cartridge casings found at the murder scene was found on Tinnin's person. After Tinnin's arrest, Tinnin told Rodriguez that he was a suspect in a murder case and asked Rodriguez to help re-enact the crime at the McDonald's/BP because Tinnin could not remember whether he was wearing a mask and was concerned that his face could have been visible. We conclude that the jury could have reasonably inferred from this circumstantial evidence that Tinnin was the person who drove the Xterra, exited the Xterra, and shot Shockley while wearing a blue COVID mask, all as seen on the surveillance footage of the murder. This is especially true in light of the fact that Tinnin implicitly admitted his guilt when asking Rodriguez to re-enact the offense.

[25] On appeal, Tinnin asserts that the video surveillance showed multiple people in the Xterra at the time of the offense, he cannot be readily identified from the footage, other people's DNA was found in and on the Xterra, no murder weapon was introduced at trial, without Exhibits 66 and 67 there was no proof of the type of bullets used to kill Shockley, and the bullet found on his person was of a common caliber and brand and could not be traced to the bullets that killed Shockley. Tinnin also baldly asserts that Rodriguez's testimony was not adequate to establish his guilt when considered along with the other circumstantial evidence presented by the State. However, these arguments are not persuasive, as they require us to consider evidence that does not support the

jury's verdict and to reweigh the evidence, which is contrary to our standard of review. *See Oldham*, 779 N.E.2d at 1168. Having concluded that the jury could have reasonably inferred from the circumstantial evidence presented by the State that it was, beyond a reasonable doubt, Tinnin who shot Shockley, we do not disturb the jury's verdict.

## **CONCLUSION**

[26] Based on the foregoing, we hold that the trial court did not abuse its discretion in denying Tinnin a continuance, that no fundamental error occurred as a result of Exhibits 66 and 67 not being formally admitted into evidence, and that the State proved beyond a reasonable doubt that Tinnin murdered Shockley.

[27] Affirmed.

[28] Crone, J. and Mathias, J. concur