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IN THE  
COURT OF APPEALS OF INDIANA

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William Dejuan Antonio  
Galloway, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 24, 2022  
Court of Appeals Case No.  
21A-CR-1127  
Appeal from the Lake Superior  
Court  
The Honorable Diane Ross  
Boswell, Judge  
Trial Court Cause No.  
45G03-1909-F1-46, 45G03-1909-  
F6-1974

**Altice, Judge.**

### Case Summary

- [1] William Dejuan Antonio Galloway, Jr., appeals his convictions for three counts of criminal recklessness, a Level 5 felony, and one count of attempted

murder, a Level 1 felony. Galloway claims that the admission of a statement of a deceased witness into evidence at trial violated his right to confrontation under the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution.

[2] We affirm.

### **Facts and Procedural History**

[3] In September 2019, Stephanie Parks was renting a house on South Pierce Street in Gary. Parks's son, Sean Baker, and his girlfriend, Jachela Emery and Emery's daughter were staying with Parks. Parks's two daughters, Kenya and Ebonie, and her aunt were also living there.

[4] Parks returned to her residence from work at approximately 12:00 a.m. on September 18, 2019. Parks fell asleep on a couch downstairs and woke up when she heard a knock at the door. Baker checked to see who was there and he noticed Galloway, with whom he was acquainted, standing at the door. When Baker opened the door, Galloway stated that his phone was dead. Galloway said that he needed gas money and asked to borrow Baker's cell phone to make a call.

[5] Baker retrieved his cell phone from the bedroom and returned to the living room. Galloway immediately pulled a handgun from his waistband, aimed the weapon at Baker's chest, and demanded money. As Baker attempted to push Galloway out of the house, Parks became involved in the altercation. At some

point, Galloway pushed Parks to the floor and pointed the gun at her. Baker ran to the kitchen to grab a knife, and Galloway shot Parks several times.

[6] Galloway ran out the front door, and Ebonie called 911 around 2:20 a.m. While she was speaking with the dispatcher, Galloway approached Baker's bedroom window and fired numerous shots into the room. Baker and Emery laid down on the floor to avoid being shot. Shortly thereafter, Baker and the others in the residence heard a car speed away. Baker told Ebonie that "Buddha" was the shooter. Ebonie knew that Galloway's nickname was Buddha.

[7] Parks was transported by ambulance to a hospital, where it was determined that she had been shot four times. Parks required surgery, and she remained in the hospital for nearly a week. Several months after her discharge, it was discovered that a bullet had lodged in Parks's leg. That bullet was removed following additional surgery.

[8] During the police investigation, Parks and Baker identified Galloway as the shooter from a photo array, and Baker provided a statement to police describing what had occurred. Baker informed Detective Gregory Wolf that Galloway came to his door during the early morning hours and drew a gun. Baker told Detective Wolf that Galloway shot his mother during an altercation. Baker also stated that Galloway then "sat on the front lawn and fired rounds into the residence." *Transcript Vol. II* at 10, 11.

[9] When the incident occurred, Galloway was on house arrest with GPS monitoring, and his ankle bracelet was programmed to report its location every ten minutes. The monitoring company had received an alert on September 18, 2019, that Galloway had left his residence without authorization at 1:27 a.m. The tracking data indicated that Galloway was approximately 310 feet from Parks's house at 2:14 a.m., that he was four or five blocks away from that location at 2:24 a.m., and that he returned home ten minutes later. The company also received an alert that Galloway's GPS ankle bracelet had been removed sometime thereafter. The device was subsequently discovered in some shrubs approximately one block from Galloway's residence.

[10] On September 20, 2019, the State charged Galloway under cause number F1-46 with four counts of Level 1 felony attempted murder, one count of Level 2 felony attempted armed robbery, one count of Level 3 felony attempted armed robbery, one count of Level 3 felony aggravated battery, and three counts of Level 5 felony criminal recklessness. Five days later, Galloway was charged under cause number F6-1974 with Level 6 felony escape and Class B misdemeanor criminal mischief. The trial court subsequently granted the State's motion for joinder.

[11] Baker was shot and killed sometime after the September 19 incident. Gary Police Detective Silas Simpson was assigned to investigate Baker's death on October 31, 2019. Detective Simpson canvassed the neighborhood where Baker was killed, and "[e]verybody kept telling [him]" that "Buddha" had shot Baker. *Transcript Vol. 2* at 19. Detective Simpson knew that Galloway's alias is

“Buddha.” *Id.* at 19-20. Detective Simpson was not able to locate an eyewitness to Baker’s shooting who would provide a statement.

[12] Sometime in early 2020, Detective Kristopher Adams told Detective Simpson that he had spoken with Dontaineun Cain, an inmate at the Lake County Jail. During that conversation, Cain informed Detective Adams that Galloway admitted killing Baker. This information confirmed Detective Simpson’s initial suspicion that Galloway had been involved in Baker’s shooting.

[13] On July 14, 2020, the State filed a motion for forfeiture by wrongdoing, which requested the admission of Baker’s statements to police regarding the shooting at Parks’s residence. The State asserted that Baker’s statement was admissible at trial because Galloway was responsible for Baker’s inability to testify.

[14] On August 11, 2020, the trial court conducted a hearing regarding the admissibility of Baker’s statement. Detective Simpson, Investigator Gregory Wolf, Detective William Poe, and Cain all testified. Cain testified that he had known Baker and Galloway since they were children. Cain testified that he was incarcerated in the Lake County Jail with Galloway’s brother, Giovante, in September of 2019. At one point, Cain overheard Giovante talking with Galloway on the jail telephone. After the phone conversation ended, Giovante told Cain that Galloway had killed Baker. Sometime later after Galloway was arrested, he and Cain were housed in a segregation unit at the jail. Cain testified that he confronted Galloway at the jail, whereupon Galloway “nodded his head up and down” when Cain asked if he had killed Baker. *Transcript Vol.*

2 at 56-58. During that conversation, Galloway threatened to kill Cain and stated that he had “bodies.” *Id.* at 55. Cain provided this information to police, and Detective Poe concluded that Cain’s statements were consistent with his investigation.

[15] At the hearing, Galloway’s counsel argued the admission of Baker’s statement to police identifying Galloway as Parks’s shooter would violate Galloway’s right of confrontation under the “Indiana Constitution and the United States Constitution.” *Id.* at 115, 117. The trial court took the matter under advisement and subsequently determined that Galloway had caused Baker’s unavailability to testify at trial. Thus, the trial court concluded that Baker’s statement was admissible at trial under the “forfeiture by wrongdoing exception.” *Appellant’s Appendix Vol. III* at 46-48. Galloway’s counsel objected to the admission of Baker’s statement at trial, which the trial court overruled.

[16] Following the presentation of evidence, the jury found Galloway guilty of Count II, Level 1 felony attempted murder where Baker was the victim, guilty of Count VI, Level 3 felony aggravated battery where Parks was the victim, and guilty of Level 5 felony criminal recklessness in Counts VII, VIII, and IX, in which Baker, Emery, and Emery’s daughter were the victims, under F1-46. The jury also found Galloway guilty of Level 6 felony escape and Class B misdemeanor criminal mischief under F6-1974.

[17] At the May 19, 2021 sentencing hearing, the trial court merged the finding of guilt on Count VII, criminal recklessness, with the conviction on Count II for

attempted murder. The trial court imposed an aggregate sentence of fifty-five years on the convictions under F1-46 and two-and-one-half-years under F6-1974 and ordered the sentences to run consecutively.

[18] Galloway now appeals.

## Discussion and Decision

[19] Galloway argues that the trial court erred in admitting Baker’s out-of-court statement into evidence. Specifically, Galloway claims that the admission of the statement violated his right of confrontation under the “Sixth Amendment to the United States Constitution, as well as Article I, Section 13 of the Indiana Constitution.” *Appellant’s Brief* at 14.

[20] In general, trial courts have broad discretion whether to admit or exclude evidence, and we disturb a trial court’s evidentiary ruling only upon an abuse of that discretion. *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013). However, when a defendant challenges the admission of evidence as a constitutional violation of rights, the issue is reviewed de novo. *Cardosi v. State*, 128 N.E.3d 1277, 1286 (Ind. 2019); *Smoots v. State*, 172 N.E.3d 1279, 1286 (Ind. Ct. App. 2021).

[21] The Confrontation Clause of the Sixth Amendment to the United States Constitution provides in relevant part that “in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.” This right “allows the admission of an absent witness’s out-of-court statement only if the witness is unavailable, and the defendant has had an opportunity to

cross examine the witness.” *Smoots*, 172 N.E.3d at 1286 (citing *Crawford v. Washington*, 541 U.S. 36, 59 (2004)). Article 1, Section 13 of the Indiana Constitution states that “in all criminal prosecutions, the accused shall have the right to . . . meet the witnesses face to face. . . .”

[22] Our Supreme Court has recognized that the right of confrontation under both the federal and state constitutions are co-extensive to a considerable degree. *Brady v. State*, 575 N.E.2d 981, 987 (Ind. 1991). On the other hand, Indiana has placed a premium on live testimony and the ability of the defendant to question witnesses at trial in a face-to-face manner. *See id.* And such a right has been invoked under circumstances beyond its federal counterpart. *See, e.g., Brady*, 575 N.E.2d at 989 (holding that the defendant’s right of confrontation was violated by closed-circuit television and not in person); *Casada v. State*, 544 N.E.2d 189, 194 (Ind. Ct. App. 1989) (holding that a chalk board placed between a witness and the defendant violated the defendant’s right to confront the witness “face-to-face”).

[23] An exception to the right of confrontation exists when the defendant’s “own wrongdoing caused the declarant to be unavailable to testify at trial.” *Smoots*, 172 N.E.3d at 1279; *Scott v. State*, 139 N.E.3d 1148, 1153 (Ind. Ct. App. 2020), *trans. denied*. Additionally, a party who has rendered a witness unavailable for cross-examination through a criminal act—such as a homicide—may not object to the introduction of hearsay statements by the witness on Confrontation Clause grounds. *Roberts v. State*, 894 N.E.2d 1018, 1024 (Ind. Ct. App. 2008), *trans. denied*. This “forfeiture by wrongdoing



doctrine” is designed to protect the integrity of the judicial process, and when a defendant attempts to undermine that process by procuring or coercing silence from witnesses, the Sixth Amendment right to confrontation may be forfeited. *Davis v. Washington*, 547 U.S. 813, 833 (2006); *Smoots*, 172 N.E.3d at 1279. As the United States Supreme Court observed in *Reynolds v. U.S.*:

The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.

98 U.S. 145, 158 (1878).

[24] Simply put, when a defendant performs an act that is designed to prevent a witness from testifying, he or she may not reap the benefits of that wrongdoing. *See id.* To hold otherwise would certainly erode the effectiveness of the judicial process. *See Scott*, 139 N.E.2d at 1155.

[25] For a defendant to have forfeited his confrontation rights by wrongdoing, “the defendant must have had in mind the particular purpose of making the witness unavailable.” *Smoots*, 172 N.E.3d at 1286 (citing *Giles v. California*, 554 U.S. 353, 367 (2008)). The State bears the burden of showing by a preponderance of the evidence that the defendant forfeited his right to confrontation under this theory. *Davis*, 547 U.S. at 833; *Smoots*, 172 N.E.3d at 1287.

[26] Contrary to Galloway’s assertion, we see no reason to differentiate between the federal and state constitutions regarding the forfeiture by wrongdoing doctrine. That is, Indiana guarantees “face to face” confrontation only of witnesses, not declarants. *Ward v. State*, 50 N.E.3d 752, 756 (Ind. 2016). In other words, the “face to face” language has not always been interpreted literally. Otherwise, the testimony of all absent witnesses, whether unavailable through death or illness or threat, “would never be admissible at trial.” *Id.* As our Supreme Court declared in *Pierce v. State*, “in the case of typical hearsay where a live witness reports what the declarant said the constitutional reference to meeting the ‘witness’ is literally fulfilled because the witness reporting the hearsay is on the stand.” 677 N.E.2d 39, 49 (Ind.1997). In that situation the declarant is not the witness. *Id.* That is the case here, as the witnesses who recounted Baker’s out-of-court statements was the detective who testified under oath and whom Galloway confronted face to face. For this reason, we cannot say that Galloway’s constitutional right of confrontation was violated under the Indiana Constitution.

[27] Proceeding to the merits of Galloway’s claim, we note that because our review is de novo, we consider the evidence from the forfeiture by wrongdoing hearing and the trial to independently assess whether the State satisfied its burden of proving by a preponderance of the evidence that Galloway’s conduct warranted forfeiture of his confrontation rights. *See Scott*, 139 N.E.3d at 1154.

[28] The evidence in the record establishes that Baker identified Galloway from a photo array as the shooter at Parks’s residence. Baker then gave a detailed

statement to police describing Galloway's actions during the shooting. Shortly after Baker's cooperation with police, he was shot and killed, whereupon Detective Simpson canvassed the neighborhood where Baker died, and "[e]verybody kept telling" him that "Buddha" killed Baker and that "Buddha" is Galloway's alias. *Transcript Vol. 2* at 19.

[29] In 2020, Detective Adams informed another detective who was investigating the case that he had spoken with Cain, who was incarcerated with Galloway. Cain reported that Galloway's brother—Giovante—had informed him that Galloway had killed Baker. Cain also told the detective that Galloway admitted shooting Baker, and that Galloway "was gonna kill him too." *Transcript Vol. 2* at 54.

[30] In our view, Galloway's statement to Cain amounted to a tacit acknowledgement that he had killed Baker. That is, Galloway's statement suggested that he had already killed one person. *See, e.g., West v. State*, 755 N.E.2d 173, 182 (Ind. 2001) (holding that the defendant's statement, "you see him, I'm going to kill him too," directed to a deputy sheriff when pointing to a photo of a jailhouse informant while awaiting trial for murder and robbery charges, constituted direct evidence of guilt). Similarly, as the statement at issue here was made during the discussion of Galloway's role in Baker's death, such was direct evidence of Galloway's guilt. *Id.*

[31] The evidence further established that Galloway informed Cain that he had "bodies," and Galloway nodded his head when Cain asked Galloway if he had

killed Baker. *Transcript Vol. 2* at 55. Although Galloway claims that he might have misunderstood what Cain was saying, it is reasonable to conclude from the circumstances that when Cain confronted Galloway as to whether he killed Baker, Galloway's head nod was in the affirmative.

[32] In light of the foregoing, we conclude that the State sufficiently proved by a preponderance of the evidence that Galloway engaged in conduct to “procure [Baker’s] absence from the trial and to prevent him from testifying against him.” *See Smoots*, 172 N.E.3d at 1287. Galloway may not take advantage of Baker’s inability to testify, which was the natural consequence of his own misconduct—shooting and killing him. Thus, Galloway’s wrongdoing forfeited his right to confront Baker’s statement to law enforcement and, as a result, his confrontation rights under the Sixth Amendment and Indiana Constitution were not violated by the admission of Baker’s statement at trial.

[33] Judgment affirmed.

Vaidik J. and Crone, J., concur.