DIVISION ONE
FILED: 09/14/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JOHNNY DANIEL CAYEROS, Appellant.	)	No. 1 CA-CR 09-0743 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2005-009971-001 DT

The Honorable Maria del Mar Verdin, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
And Michael J. Mitchell, Assistant Attorney General
Attorneys for Appellee

Droban & Company PC — Anthem
By Kerrie M. Droban
Attorney for Appellant

B A R K E R, Judge

¶1 Defendant, Johnny Daniel Cayeros, appeals from his convictions after a jury trial for one count of first degree murder, a Class 1 felony, and two counts of aggravated assault with a weapon, each a Class 3 dangerous felony. The convictions arise as the result of two incidents that occurred in March 2001. The facts[1] are set forth below.

¶2 In a confrontation with a group of men on March 22, 2001, in the area of 3rd or 4th Avenue in Phoenix, John F.[2] stabbed Defendant's brother. Three days later, around midnight on March 25, 2001, Defendant confronted John as John was walking with his friends, Rey O. and Mark B., in the vicinity of 5th Avenue. Defendant shot at all three men several times with a shotgun. One shot grazed Mark on his side and back before he could run away; another shot hit Rey in his left arm before he was able to retreat. Defendant shot John four times, including one shot to the back of the head after John had fallen to the ground and was lying face down. He was lying dead in the street when police arrived. Defendant later admitted to one of his

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[1] We view the facts in the light most favorable to sustaining the convictions. *State v. Haight-Gyuro*, 218 Ariz. 356, 357, ¶ 2, 186 P.3d 33, 34 (App. 2008).

[2] We use only the victims' first names to protect their privacy as victims. *See, e.g.*, *State v. Maldonado*, 206 Ariz. 339, 341 n.1, ¶ 2, 78 P.3d 1060, 1062 n.1 (App. 2003).

friends that he had killed the victim and said of the murder on 5th Avenue, "That's all . . . on me."

¶3 On September 25, 2009, the trial court sentenced Defendant to natural life on the first degree murder charge, and to 9.25 years and 10.5 years in prison respectively on Counts 2 and 3, the two aggravated assaults of Rey and Mark, all prison terms to be served consecutively.[3] Defendant timely appealed. We have jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and -4033 (2010).

¶4 On appeal, Defendant argues that the trial court abused its discretion when it denied his (1) motion to preclude the testimony of David M., an eye-witness to the shootings; (2) request to substitute counsel; and (3) request for a *Willits* instruction regarding a white vehicle the State failed to impound. Finding no abuse of discretion, we affirm for the reasons set forth below.

Discussion

1. Eye-Witness Testimony

¶5 Defendant maintains that the trial court abused its discretion when it denied his motion to preclude the testimony of David M., an eye-witness to the shootings, and/or when it

[3] The State initially filed a notice of intent to pursue the case as a death penalty case but withdrew that notice prior to trial.

limited his cross-examination of David M. regarding "mental health issues." We review a trial court's decision to permit a witness to testify at trial for an abuse of discretion. *State v. Salazar*, 173 Ariz. 399, 405, 844 P.2d 566, 572 (1992). We apply the same standard when we review a trial court's ruling regarding the competency of a witness. *State v. Moore*, 222 Ariz. 1, 11, ¶ 45, 213 P.3d 150, 160 (2009). We find no abuse of discretion in the trial court's rulings in this matter.

¶6 In October 2007, Defendant petitioned the trial court for disclosure of information regarding David M., including some of his medical records. The trial court issued an order on July 31, 2008 that provided for an *in camera* review of David M.'s medical and mental health records and required all state agencies to provide the requested records directly to the trial court. The court gave both sides an opportunity to file objections to the order, but neither did. Thereafter, on August 4, 2008, the trial court issued a minute entry documenting that it had notified defense counsel that the "order for records" was available for him to pick up.

¶7 On May 28, 2009, defense counsel filed a motion to dismiss the charges or preclude David M. from testifying, arguing that, among other things, the State had not provided him with David M.'s mental health records. Counsel attached a minute entry to his motion that showed that on March 31, 2005,

David M. had been found "criminally incompetent" in a case pending against him and was thus "unable to understand the nature of the proceedings and/or [was] unable to assist counsel in [his] defense . . . ." The prosecutor responded that no *Brady*[4] disclosure violations occurred as to David M. and that she was collecting information for an *in camera* review to determine if additional disclosure was required.

¶8 At a hearing on June 15, 2009, the trial court heard argument on the motion to dismiss or preclude the witness. Defense counsel had recently interviewed David M. for the first time. David M. was being held in the jail on new charges. Both defense counsel and the prosecutor had learned during the interview that David M. had been taking certain medications while in jail but had chosen to discontinue them because they were "causing him great distress."

¶9 Defense counsel argued that David M.'s testimony should be precluded because his "mental health history" established that David M. was not a "competent" witness, or that, at the very least, counsel should be allowed to cross-examine David M. at trial regarding his past mental health history. Defense counsel contended that it was crucial for the jury to know about David M.'s mental health history in order to be able to evaluate his credibility. Counsel objected to the

[4] *Brady v. Maryland*, 373 U.S. 83 (1963).

trial court's *in camera* examination of the materials the State had provided the court prior to the hearing because he objected to the fact that the State and the court would be privy to information the defense did not have.[5]

¶10 At the conclusion of the hearing, the trial court denied defense counsel's motion to dismiss the charges or preclude David M.'s testimony. It noted that there was a difference between Rule 11 competency and competency as a witness. Based on the evidence before it at that point, the court ruled that it presumed that David M. was competent to testify at trial, but that it would reconsider its decision if defense counsel brought additional information to its attention or if David M. took the stand "and starts telling me that he sees little green men." It also stated that it would further consider the scope of impeachment it would grant defense counsel and make a ruling at a later date.

¶11 Prior to opening arguments on June 22, 2009, the trial court ruled on the scope of impeachment of David M. It found that David M.'s "mental health issues" at the time he witnessed the offense in 2001 and when he testified at trial were relevant

[5] Based on defense counsel's objection, as well as the State's avowal that the file did not contain any *Brady* material, the court did not examine the materials the State had provided for *in camera* examination and sealed the file. It appears from the discussion that the materials related to David M.'s pending charges.

to his credibility, but that his 2005 Rule 11 proceedings were not. Therefore, the court ruled that defense counsel could question David M. about his mental health status, including any medications he was taking, both at the time he witnessed the murder and when he testified at trial.

¶12 On June 25, 2009, prior to David M.'s testifying at trial, the trial court clarified for defense counsel that counsel could question David M. about any medications that he was prescribed, but could not refer to those medications as "psychiatric medication." When defense counsel protested that the trial court's ruling was permitting the State to present "a witness that [was] deemed incompetent in the past that has a diagnoses of bipolar schizophrenia [sic]," the trial court clarified further:

> There is a difference between competency to proceed to trial, to assist counsel, and to proceed to trial, and there is competency for a witness. Every witness is presumed to be competent unless The Court deems otherwise, and I think I indicated to you that if he got on the stand and he told me he saw little green men I might find that he was not competent to testify. We are not there, and we may not be there.
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> With respect to his medical history, his psychiatric history, you folks haven't pulled the records from there. Now, whether you thought the State should have done it or whether[] you should have done it. In any event, I don't have those documents. You don't have those documents. What I deemed relevant was what his mental state was at

> the time that he witnessed any events and at the time that he is testifying. If you know the answer to the question that he should be taking medication now, that he is under a doctor's care, that he should be taking medication, you can ask that question, counsel.

Defense counsel proposed that the parties "solve the issue right now" by questioning David M. regarding whether he was prescribed medication and what that medication was.

¶13 David M. then took the stand outside the presence of the jury and testified that he had been seen by medical staff at the jail, but that they had not recommended that he take any medications. He testified that he had been on Lithium when he was placed in the jail and had requested that he be put back on Lithium; but that the jail was only willing to prescribe the Lithium on the condition that he take two other medications, which he was told were for "bipolar." However, he refused to take the other medications because they disagreed with his body and caused him physical discomfort, including "[l]eg pains, real uncomfortable." Therefore, he was not at present on Lithium, or on any other drug, because he had "refused it." The reason he requested the Lithium was because he was "a little depressed" about being in jail, and not for any other "psychiatric mental health related complaint." He also testified that he was not told by the jail that he needed to take any medications, and

that his ability to think and understand was not impaired by the fact that he was not currently on any medication.

¶14 At the conclusion of David M.'s testimony, the trial court found that Defendant had failed to establish that David M. had "a long psychiatric history" or that David M. was taking medication or had been "prescribed" medication or "told by a doctor that he should be taking medication." Nonetheless, the court instructed defense counsel that he could ask David M. "about his depression . . . [and] whether he wished he was able to do something about the depression." Defense counsel did not ask David M. about his depression or drugs at trial.[6]

¶15 On appeal, Defendant argues that the trial court erred in not permitting him to delve into David M.'s mental health history "largely because it did not receive corroborating documentation concerning [David M.'s] diagnoses and prescribed course of treatment." He contends that the trial court abused its discretion (1) because it did not preclude David M.'s testimony altogether based on the State's *Brady* violations concerning disclosure of his mental health history, and (2) because it hampered his impeachment of David M. with his mental

[6] Defense counsel cross-examined David M. about the plea agreement David M. had reached in exchange for his testimony in this case, which had greatly reduced his potential sentence on the charge of theft of a means of transportation; about his three priors; and about the fact that the State had written a letter on his behalf asking that he be placed in protective custody while in prison.

health history. The gravamen of Defendant's argument is that David M.'s mental competency was key to his credibility as a witness. Consequently, "the facts [Defendant] presented relative to [David M's] competency should have been admissible to attack his credibility before the jury," and the trial court's failure to do so was an abuse of its discretion that deprived him of a fair trial. We disagree.

¶16 "In any criminal trial every person is competent to be a witness." A.R.S. § 13-4061. "Competency has to do with a witness'[s] capacity to observe, recollect and communicate the subject of the testimony." *State v. Roberts*, 139 Ariz. 117, 121, 677 P.2d 280, 284 (App. 1983) (emphasis omitted). "Credibility . . . is a matter for the jury," and "questions whether the witness' testimony does in fact accurately reflect what took place." *Id*. "Whether a witness is competent to testify is a legal matter solely within the discretion of the trial court." *Id*.

¶17 We address the *Brady* issues first. *Brady* requires the State to disclose evidence that is favorable to a defendant. 373 U.S. at 86. Favorable evidence is material to a trial or defense if there is a "reasonable probability" that, had it been disclosed to the defendant, the outcome of the trial would have been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985).

¶18 Contrary to Defendant's arguments, there was no evidence at trial that David M. had a "long psychiatric history" that would call his testimony about the murder into question. The evidence at trial was simply that David M. was ruled incompetent to stand trial and aid in his own defense in proceedings in 2005, and that he had requested medication to help him with depression while he was being held at the jail pending trial on new charges. Furthermore, in 2009 David M. was about to go to trial on new charges and there was no evidence of any Rule 11 issues having been raised in that proceeding. No evidence establishes that he had been unable to observe the events surrounding the murder in 2001, or that he would be unable to accurately relay them at trial in 2009.

¶19 Additionally, this is not a case in which the State is accused of playing hide the ball. At least two years prior to trial, in October 2007, Defendant was aware of David M.'s status as a "snitch" witness and of his prior convictions. One year prior to trial, in July and August 2008, Defendant sought and was granted a court order that permitted Defendant to require that governmental agencies send any current or previous medical or mental health records directly to the trial court for its *in camera* examination. However, between August 2008 and May 2009, Defendant did nothing to have the medical records sent to the trial court. In fact, defense counsel informed the trial court

at the June 15 hearing that his decision not to do so was "strategic[]" because he "could see where the State was going to sit on it's haunches and do nothing . . . not . . . investigate this witness at all and explain to the Court what kind of witness [it] had before [it]," and, in any case, the fact that he could also have gotten the material did not "absolve" the State of its responsibility to provide it. When the State submitted its records on David M. for the trial court's *in camera* review for a possible *Brady* issue, defense counsel objected to it. The court acquiesced to counsel's objection, sealed the records, and also noted that it had no evidence that any *Brady* materials were in the sealed file. Based on this evidence, we cannot say that the trial court abused its discretion in denying preclusion of David M.'s testimony based on a *Brady* failure.

¶20 Nor can we say that the trial court abused its discretion in determining that David M. was competent to testify about what he observed the night of the murder in October 2001. No evidence before it established that David M. was undergoing psychiatric treatments or taking psychiatric medication that would have impaired his ability to observe the events in 2001. Likewise, no evidence established that he was undergoing psychiatric treatment or taking psychiatric medication at the time of Defendant's trial in 2009. Contrary to Defendant's

arguments to the trial court, no evidence established that David M. had been prescribed medicine that he was *required* to take and that, consequently, David M.'s failure to take that medication called into question his mental competency in either 2001 or 2009 and his ability to relate his 2001 observances at trial in 2009. *See Roberts*, 139 Ariz. at 121, 677 P.2d at 284 (stating that competency as witness entails capacity "to observe, recollect, and communicate subject of testimony").[7]

¶21 For these same reasons, the trial court also did not abuse its discretion in limiting defense counsel's cross-examination of David M. to any prescribed drugs he was taking, or wished to take because of his depression, at the time of trial. A "trial court has broad discretion in controlling the cross-examination" of a witness, and its decision regarding whether to admit certain matters for impeachment purposes "will not be disturbed on appeal absent an abuse of that discretion." *State v. Hallman*, 137 Ariz. 31, 36, 668 P.2d 874, 879 (1983). No evidence exists that David M.'s Rule 11 issues in 2005 affected his observations in 2001 or his truthfulness and capacity to relate those observations in 2009. There is only

[7] Furthermore, we note that the trial court was able to observe David M. on June 25 when he was questioned about his medications and when he testified and, thus, to assess his demeanor and his response to questions. Had the trial court harbored any reason to question his competency at that time, it would have reconsidered its rulings, as it several times informed defense counsel.

speculation. Therefore, evidence of medical treatments or medications that he may have taken in the past, even in 2005, was not relevant. The trial court did not abuse its discretion in limiting defense counsel's questioning to David M.'s current medications, if any, and the reasons for them.

¶22 Based on our review of the record, we find no abuse of discretion in the trial court's determination that any medical treatment David M. may have received in 2005 did not affect his veracity or competency as a witness and thus that he was competent to testify at trial in this case.

2. Substitution of Counsel

¶23 Because this case was originally a death penalty case and because the trial court determined it was a complex case, Defendant's defense team consisted of two attorneys. Defendant was permitted to retain both attorneys even after the State decided not to seek the death penalty.

¶24 On April 8, 2009, Defendant filed a Motion to Appoint New Counsel in which he alleged, in broad general terms, that his counsel was ineffective, inattentive, not diligent, and not meeting the requirements of the rules of professional conduct for attorneys. On April 14, 2009, the trial court heard from Defendant and counsel regarding Defendant's request to remove both of his attorneys from his case. A transcript of this hearing is not in the record on appeal. However, the trial

court issued a minute entry in which it outlined Defendant's arguments and its reasoning for ultimately denying Defendant's request.

¶25 The trial court noted that Defendant contended that he had insufficient communication with his counsel, "notably few visits with him at the Department of Corrections." The trial court also noted, however, that it was aware that Defendant had chosen to waive his presence at various proceedings preferring to remain at DOC, and that, when a defendant was not housed at the jail and waived his appearance, it reduced the opportunity for face-to-face contact with his attorneys. It also noted that Defendant had nonetheless been present at various settlement conferences with counsel that would have provided opportunities for Defendant to be updated as well as to voice any concerns about his counsel, which he had not done. Finding that Defendant had failed to prove either a "genuine irreconcilable difference . . . or . . . a total breakdown in communication" with his trial counsel, the trial court denied his request.

¶26 On May 12, 2009, trial counsel filed a motion to withdraw. In it they noted that Defendant had been reclassified as a "known, identified gang member" and relocated from the Buckeye facility to a "much harsher 23-hour lockdown" facility in Florence. They also noted that they and a mitigation specialist had visited Defendant on March 17, 2009, to discuss a

possible plea to a second degree murder charge, and that "[t]he meeting did not go well." After that, Defendant had demanded new counsel and, after the trial court ordered him transferred to the 4th Street jail, had nonetheless refused to meet with counsel or discuss the case with them.

¶27 On May 29, 2009, the trial court heard argument from the parties. It found that Defendant alleged that communication with his attorneys remained "poor," and that defense counsel considered that communications with Defendant were "strained and limited."[8] Counsel avowed to the trial court that they were nonetheless prepared to go to trial on June 15 as scheduled, and the trial court denied the motion to withdraw. The matter then proceeded to trial with the appointed attorneys.

¶28 On appeal, Defendant maintains that the trial court abused its discretion in not granting his motion to dismiss trial counsel and in not conducting a sufficient evidentiary hearing into Defendant's allegations by evaluating all of the *Moody*[9] factors. We review a trial court's decision to deny the request for new counsel for an abuse of discretion. *State v.*

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[8] Again, no transcript of this hearing is in the record, but the trial court's minute entry contains an outline of the discussions. We assume the transcript supports the trial court's summary of the discussions leading to its conclusion. *See State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982) (stating that missing portions of record are presumed to support trial court's actions).

[9] *State v. Moody*, 192 Ariz. 505, 968 P.2d 578 (1998).

Cromwell, 211 Ariz. 181, 186, ¶ 27, 119 P.3d 448, 453 (2005). We find no abuse of discretion on either of the bases Defendant claims.

¶29 The Sixth Amendment guarantees indigent criminal defendants the right to representation by competent counsel. *State v. Torres*, 208 Ariz. 340, 342, ¶ 6, 93 P.3d 1056, 1058 (2004). However, the Sixth Amendment does not guarantee an indigent defendant either "counsel of [his] choice" or a "meaningful relationship" with his counsel. *Id*. Conflict that does not rise to the level of "an irreconcilable conflict or a completely fractured relationship between counsel and the accused" does not require the trial court to appoint new counsel, and is merely "one factor for a court to consider in deciding whether to appoint substitute counsel." *Cromwell*, 211 Ariz. at 186, ¶ 29, 119 P.3d at 453. "[T]he defendant bears the burden of demonstrating that he has a genuine irreconcilable conflict with his counsel or that . . . a total breakdown in communications" exists between them. *Torres*, 208 Ariz. at 343, ¶ 8, 93 P.3d at 1059.

¶30 To establish a colorable claim that an "irreconcilable conflict" exists, a defendant must do more than show disagreements or personality conflicts with counsel over trial strategy. *Cromwell*, 211 Ariz. at 187, ¶ 30, 119 P.3d at 454. Furthermore, a defendant may not establish an "irreconcilable

conflict" through his own conduct in refusing to cooperate with counsel. *See State v. Peralta*, 221 Ariz. 359, 363, ¶ 18, 212 P.3d 51, 55 (App. 2009) (denying relief when fracture was result of the defendant's conduct by insisting on unreasonable demands or refusing to assist counsel).

¶31 When a defendant raises a seemingly substantial complaint about counsel with specifically based allegations in support of his request, the trial court has an obligation to inquire into the factual basis for the defendant's dissatisfaction. *Torres*, 208 Ariz. at 343, ¶ 7, 93 P.3d at 1059. The nature of that inquiry will depend upon the nature of the defendant's request, and a trial court is not required to hold a full evidentiary hearing every time a dissatisfied defendant lodges a complaint about his attorney. *Id*.

¶32 The trial court here apparently held two evidentiary hearings[10] regarding Defendant's allegations, heard comments from Defendant and counsel, and concluded that Defendant had not met his burden of showing that his disagreements with counsel amounted to a "genuine irreconcilable conflict" or "total breakdown in communication" with his counsel. Defendant addressed none of the *Moody* factors in his argument and did not

[10] The court also heard additional argument from Defendant on August 28, 2009 regarding his unhappiness with counsel and their conduct.

ask the trial court to consider or make any specific findings regarding them. Nonetheless, we assume by its specific reference to the *Moody*[11] factors in its April 14 minute entry that the trial court weighed all of those factors and implicitly found that they also supported its ruling.

¶33 The trial court found that Defendant had "an experienced and qualified capital case defense lawyer." Our review of the record shows that, despite his stated dissatisfaction with counsel, Defendant and counsel consulted and communicated about trial matters throughout the trial.

¶34 Defendant suggests on appeal that he might have accepted a favorable plea agreement had he had a better relationship with his counsel, but the record reflects otherwise. The record shows that several trial judges attempted to encourage Defendant to accept a very favorable plea from the State and that counsel agreed, at the trial court's urging, to discuss a possible plea with Defendant, even when counsel anticipated that that discussion might lead to additional

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[11] These factors include:

> [W]hether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

192 Ariz. at 507, ¶ 11, 968 P.2d at 580.

tensions, simply because a plea would be to Defendant's advantage. Based on the record before us, we hold that the trial court did not abuse its discretion in denying Defendant's motion to dismiss trial counsel.

3.* Willits[12] *Instruction

¶35 Defendant argues that he was entitled to a *Willits* instruction because the State failed to impound and process a white vehicle that was situated near the murder scene. To be entitled to a *Willits* instruction, a defendant must show (1) that the State failed to preserve material evidence that was accessible and might tend to exonerate him, and (2) resulting prejudice. *State v. Davis*, 205 Ariz. 174, 180, ¶ 35, 68 P.3d 127, 133 (App. 2002). Furthermore, the instruction is warranted only if the exculpatory value of the evidence was apparent before the State failed to preserve it. *Id.* at ¶ 37. We review a trial court's decision to deny a *Willits* instruction for abuse of discretion. *State v. Fulminante*, 193 Ariz. 485, 503, ¶ 62, 975 P.2d 75, 93 (1999).

¶36 Mark B., testified that a "white car with black windows . . . pulled up" in front of the group on the night of the murder and that Defendant had exited the car with a shotgun and started shooting at them. The case agent, a Phoenix Police

[12] *State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964).

detective, testified the day after Mark. The detective was not present in court when Mark testified.

¶37 The detective stated that he had noticed a white car parked near the murder scene on the night of the crime and had interviewed its owner, who explained why the car was parked there. The detective had also asked his sergeant's permission to impound it; however, permission was denied him because his sergeant did not consider that there was sufficient probable cause at that time to believe that the car was implicated in the murder. Therefore the car was only photographed. The detective testified that the car's door was slightly ajar and that he had looked in the car on the night of the murder. He observed no blood, no weapons, no shotgun shells or any other significant objects inside.

¶38 The detective testified that on the night of the murder the police had had no evidence that the car might also have been involved in a fight that took place prior to the murder. The detective also recalled that, when he had interviewed Mark months after the murder, Mark had mentioned a "white vehicle" being present, but that he had not specifically mentioned that "anybody from that vehicle fired at him."

¶39 Defense counsel requested a *Willits* instruction based on the detective's testimony that he thought the car was "a key piece of evidence" but his sergeant denied his request to

impound it. According to counsel, the vehicle "could have very well been exculpatory." The trial court denied the request, but permitted defense counsel to argue the failure to impound the vehicle to the jury, which counsel did in his closing argument.

¶40 On appeal, Defendant maintains that the trial court's denial of his request was an abuse of discretion that deprived him of exculpatory evidence. According to Defendant, "[h]ad the car been processed for fingerprints or DNA or searched for shotgun shells or blood stains, [Defendant] would have been able to argue his absence on the night of the shooting." Defendant's argument is not convincing.

¶41 There was no evidence presented at trial that suggested that the vehicle might have contained "exculpatory evidence." The mere fact that Defendant's fingerprints, blood or DNA might not have been present in the vehicle would not establish that Defendant had "been absent on the night of the shooting." The trial court did not abuse its discretion when it denied Defendant's request for a *Willits* instruction.

Conclusion

¶42 For the foregoing reasons, we affirm Defendant's convictions and sentences.

/s/
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DANIEL A. BARKER, Judge

CONCURRING:

/s/
_____
DONN KESSLER, Presiding Judge

/s/
_____
JON W. THOMPSON, Judge