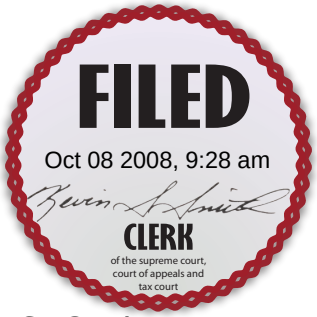

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IN THE COURT OF APPEALS OF INDIANA

JERMAINE D'SHANN DODD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0802-CR-87
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
CRIMINAL DIVISION
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-9811-CF-211

October 8, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jermaine D. Dodd (Dodd), appeals his conviction for murder, a felony, Ind. Code § 35-42-1-1.

We affirm.

ISSUES

Dodd presents three issues for our review, which we restate as:

(1) Whether the trial court abused its discretion by limiting the testimony of the pathologist who performed the autopsy of the victim;

(2) Whether the trial court abused its discretion by denying the motion for a continuance made by Dodd on the first morning of the trial; and

(3) Whether the trial court abused its discretion by denying Dodd's motion for separate trials for him and his co-defendant.

FACTS AND PROCEDURAL HISTORY

On the night of November 5, 1998, gunshots rang out as a blue Oldsmobile passed a parked vehicle occupied by Jerome Thomas (Thomas), Oscar Crenshaw (Oscar), and Patrick Crenshaw (Patrick), in Gary, Indiana. The window of the driver's door of Thomas' car sustained three bullet holes but did not completely shatter. Thomas, who was in the driver's seat, was shot and eventually died. The next day, Dr. Young Kim (Dr. Kim), a pathologist with the Lake County Coroner's Office, performed an autopsy on Thomas. Dr. Kim

determined that Thomas had died of a gunshot wound to the chest.[1] The bullet entered the left side of Thomas' chest, traveled upward and frontward, and ended up in the right side of Thomas' neck.

Oscar, who had been sitting in the front passenger seat of Thomas' vehicle when the shooting began, told an investigator that he did not know the driver of the blue Oldsmobile but that he recognized the passenger as Eric Fitzgerald (Fitzgerald). Oscar knew Fitzgerald because Fitzgerald was dating Oscar's sister, Arlishaw Crenshaw (Arlishaw). Oscar told the detective that he saw both Fitzgerald and the driver of the blue Oldsmobile firing shots toward Thomas' car. The investigator then interviewed Fitzgerald. Fitzgerald admitted to being in the blue Oldsmobile at the time of the shooting and identified the driver as his step-brother, Dodd. Fitzgerald did not admit to firing any shots himself but told the investigator that Dodd had fired a gun at Thomas' vehicle.

On November 7, 1998, the State filed an Information charging Dodd and Fitzgerald with murder, I.C. § 35-42-1-1. On March 21, 2000, Dodd filed a motion for separate trials, alleging that his defense is "irreconcilable" with Fitzgerald's. (Appellant's App. p. 34). On April 11, 2000, Dodd filed a Verified Motion for Expert Witness Fees, in which he requested funds with which to hire a pathologist and a ballistics expert. He claimed that "[a]ssistance by such experts is essential to [Dodd's] defense that he did not murder [Thomas]."

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[1] Dodd repeatedly asserts that Thomas was shot in the "lower back." (Appellant's Br. pp. 7, 13-15). However, none of the record pages that he cites contain any such evidence.

(Appellant's App. p. 36). On May 12, 2000, following a hearing, the trial court granted Dodd's motion for funds to hire a pathologist, and it kept under advisement Dodd's motions for separate trials and for funds to hire a ballistics expert. At that time, a jury trial was set for June 12, 2000.

On May 30, 2000, Dodd filed a motion for a continuance of the trial. Dodd's attorney noted that the parties were negotiating a non-trial disposition of the case and that he had two other trials scheduled. He also wrote:

> The parties disagree as to the manner in which [Thomas] was killed. The State's position is that, while [Dodd] and [Fitzgerald] drove by in [Dodd's] car, [Dodd] and [Fitzgerald] fired guns at the car in which [Thomas] sat and [Thomas] was hit with a bullet fired by [Dodd] or [Fitzgerald]. [Dodd's] position is that neither he nor [Fitzgerald] fired a bullet that struck and killed [Thomas]. [Dodd's] position is that [Thomas] was shot by someone other than [Dodd] or [Fitzgerald], and that [Dodd's] position is supported by the autopsy report in this case and the location of the shell-casings retrieved in this case. The State of Indiana has, in effect, rejected the autopsy report prepared by [Dr. Kim], and is expected to hire a pathologist from the I.U. Medical School to review Dr. Kim's autopsy report. Likewise, [Dodd] will attempt to hire a forensic pathologist to also examine Dr. Kim's autopsy findings.

(Appellant's App. pp. 40-41, 44-45). The trial court granted the motion and vacated the June 12, 2000, trial date. On June 28, 2000, the trial court granted Dodd leave to hire a forensic pathologist, Dr. Robert Kirschner. However, on December 1, 2000, Dodd notified the trial court that he no longer planned to call Dr. Kirschner as a witness.

On January 17, 2001, the trial court determined that Dodd's attorney was in conflict with Fitzgerald's attorney and ordered Dodd's attorney to withdraw from the case. On February 7, 2001, Dodd's eventual trial attorney took over Dodd's defense. On March 23, 2001, the trial court set a trial date of June 11, 2001. On May 2, 2001, Fitzgerald filed a

motion for separate trials. On May 15, 2001, the trial court held a hearing and denied the motion.[2]

On June 11, 2001, the first day of trial, Dodd's trial attorney renewed prior counsel's motion for a firearms or ballistics expert:

> [W]e had discussion concerning -- with the court prior to this concerning the retention of an expert witness on behalf of [Dodd]. Prior counsel had, as I understand it, some communication with an expert witness. That communication did not result in that expert being retained by the defense. I think this case is a case whereby an expert or a couple of experts a firearms expert or ballistics expert would be helpful to [Dodd]. On that basis we're asking that the court continue the trial and give us some opportunity to to [sic] explore looking at an expert and attempting to retain one.

(Transcript pp. 5-6). The trial court denied the motion, stating:

> The Court would note that considering the length of time that this case has been pending, I recognize that there has been a change of counsel, nevertheless this is an issue that certainly could have been disposed well before now. I'm not faulting present counsel for that, but as a practical matter, this is an issue that should have been put to rest well before now.

(Tr. p. 7). The defendants also renewed their motions for separate trials, which the trial court again denied.

At trial, Arlishaw testified that the shooting had taken place in front of her parents' house. She testified that, earlier in the day, she and Fitzgerald had been sitting in a car in front of the house when Thomas pulled up and started talking to her. According to Arlishaw, Fitzgerald became angry, so Arlishaw drove away. Later that night, Arlishaw was attempting to start her car so that she could go and visit a friend, and Dodd and Fitzgerald pulled up in

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[2] The chronological case summary in this cause includes an entry on November 22, 2000, suggesting that Dodd's motion for separate trials had been granted. (Appellant's App. p. 5). Judging by the subsequent

the blue Oldsmobile. Fitzgerald got out of the car and asked her where she was going. Arlishaw told him that she was not going anywhere. Fitzgerald took the keys out of Arlishaw's hand and said, "I'll make sure you're not going anywhere." (Tr. p. 63). Around that time, Thomas and Oscar pulled up in Thomas' car, and Patrick pulled up in his car. Fitzgerald dropped Arlishaw's keys in the grass, and Arlishaw went into the house. After Dodd and Fitzgerald left, Oscar told Arlishaw that Fitzgerald had an attitude problem, so Arlishaw called Fitzgerald's older brother and told him that there was "probably going to be trouble." (Tr. p. 66). Thomas, Oscar, and Patrick got into Thomas' car. Thomas was in the driver's seat, Oscar was in the passenger seat, and Patrick was in the back seat.

After Arlishaw hung up the phone, she looked out the window and saw the blue Oldsmobile driving slowly up the street. When the blue Oldsmobile was next to Thomas' car, with the drivers' sides of the vehicles facing each other, Arlishaw saw the flame of gunshots coming from the driver's side of the blue Oldsmobile. Specifically, she saw guns being fired from the driver's seat and the back seat on the driver's side. Arlishaw testified that six or seven shots had been fired but that she did not see any shots coming from Thomas' car or any shots being fired inside Thomas' car. However, Arlishaw did testify that Oscar carries a gun and that her father owns more than one gun.

Oscar testified that, after Dodd and Fitzgerald left the house, he, Thomas, and Patrick were sitting in Thomas' car drinking beer, with the windows rolled up. Oscar had a loaded .45 Ruger automatic handgun on his side. Oscar testified that his father owned a .357 caliber

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motion and hearing on the matter, and the eventual joint trial, that was not actually the case.

revolver, but that he did not have that gun with him that night and that neither Patrick nor Thomas had a gun that night. As they were sitting in Thomas' car, Oscar saw headlights approaching, and "[n]ext thing I know, [Thomas] pushed my head down and glass start falling into the car and I started hearing gunshots." (Tr. p. 97). According to Oscar, Thomas "ducked" and "laid next to me." (Tr. p. 98). Oscar testified that Dodd and Fitzgerald were the only two people in the blue Oldsmobile when the shooting occurred and that he knew the shooting was coming from two guns "[b]ecause it was like rapid fire." (Tr. p. 126). Furthermore, when the shooting occurred, the blue Oldsmobile was so close to Thomas' car that Thomas would have struck the blue Oldsmobile if he had opened the driver's door. After the shooting stopped, Oscar got out of the car and pulled his own gun. Oscar saw Dodd driving with a gun in his hand and saw Fitzgerald hanging out the back window on the driver's side. According to Oscar, Fitzgerald began firing back at Thomas' car.

When the gunfire resumed, Oscar "dived" back into Thomas' car with his gun in his hand. (Tr. p. 107). When Oscar dove into the car, Thomas "was laying across [the middle console] a little bit." (Tr. p. 109). Oscar dove "right on top of [Thomas]." (Tr. p. 109). After the blue Oldsmobile was gone, Thomas, Oscar, and Patrick exited their vehicle. Thomas started coughing and fell to the street.

According to Oscar, he never had his hand on the trigger of his gun, and his gun "never went off that night." (Tr. p. 122). More specifically, when the prosecutor asked, "Is it possible that while you were [diving] in the car that your gun accidentally discharged and shot [Thomas]?" Oscar responded, "No, my gun had a safety on it and would not fire." (Tr.

p. 134). Oscar also testified that it was not possible that he could have accidentally shot Thomas after they all got out of Thomas' car.

Patrick testified that there were two or three feet between the two cars when the shooting occurred and that there were "probably two" guns being fired from the blue Oldsmobile because the shots "were right behind each other like rapid fire." (Tr. p. 150). Patrick also testified that he did not own a gun at the time of the shooting and that he did not have a gun in the car with him. Finally, Patrick testified that nobody had discharged a gun inside Thomas' car and that neither he nor Oscar shot at Thomas after they all exited the vehicle.

Milan Trisic (Trisic), an evidence technician with the Lake County Crime Laboratory, processed the two vehicles involved and found two spent .9 millimeter bullet casings on the floorboard of the blue Oldsmobile. Trisic also found four spent .9 millimeter casings in the street at the scene of the shooting.

The State called Kevin Judge (Judge), a firearm and toolmark examiner with the Lake County Crime Laboratory, to testify. Judge testified that the bullet that killed Thomas was fired from a .9 millimeter, a .38 Special, or a .357 Magnum, all of which are in the ".35 family caliber." (Tr. p. 214). Those guns are all ".35 family caliber" because they all fire bullets that have a base that is 35/100 of an inch in diameter. (Tr. pp. 214-215). A .45 caliber gun, such as Oscar's, could not have fired the fatal bullet. As for the six .9 millimeter bullet casings recovered by Trisic, the two that were found in the blue Oldsmobile were from one gun, and the four that were found in the street were from a second gun.

Judge also explained that one of his duties as a firearm examiner was "distance determinations in that I look to analyze gun powder residue on clothing to try to determine the distance that the muzzle of the firearm was from that article of clothing at the time of discharge." (Tr. pp. 209-10). When asked whether the soot and smoke from a gunshot can pass through an object, Judge responded, "It can follow the bullet through an object . . . once a hole is created, some of that material can follow through." (Tr. p. 229). A gunshot could leave detectable amounts of such residue on the target "if the target was close enough." (Tr. p. 229). Such residue could also be left on the target by bullet wipe, which is a dark ring around the bullet hole left by a bullet that has collected residue as it traveled down the barrel of the gun; the bullet is wiped as it enters its target. Finally, when specifically asked whether he would expect a .35 family caliber bullet that passes through a car window to leave amounts of gun powder and soot on the target that are detectable to the naked eye, Judge testified that he would be surprised to find such residue "[u]nless it was extremely close range." (Tr. p. 230).

The State's next witness was Dr. Kim, the pathologist who performed Thomas' autopsy. Dr. Kim testified that "[t]here was a powder burn and seared margin at the entrance wound," which he said indicated a "contact gunshot wound." (Tr. pp. 250-51). On cross-examination, Fitzgerald's attorney asked Dr. Kim whether it is possible that the bullet that caused the wound passed through an object. The State objected, arguing that the question was "more of a question for a firearms examiner than a pathologist." (Tr. pp. 255-56). The

trial court agreed, concluding that the question went beyond the scope of Dr. Kim's expertise. As such, the trial court refused to allow Dr. Kim to answer the question.

Fitzgerald's younger brother, Mark, who is also Dodd's step-brother, testified that he talked to Dodd the morning after the shooting. According to Mark, Dodd admitted that he was involved in the shooting and said, "I knew I had to get him. I was too close to miss him." (Tr. p. 296). Mark also testified that Dodd said that he was shooting because something that transpired during Dodd and Fitzgerald's first visit to the Crenshaw house made him feel that the people there were "disrespecting him." (Tr. p. 307).

Dodd's co-defendant, Fitzgerald, testified in his own defense. He testified that he never carries a gun, that he did not have a gun on the night of the shooting, and that he was not involved in the shooting. He claimed that Dodd and an unnamed person in the back seat had guns and fired them at Thomas' car, which was only three or four feet away from the blue Oldsmobile. Fitzgerald also alleged that the occupants of Thomas' car had fired shots at the blue Oldsmobile. As for his role, Fitzgerald testified that he simply got down when the shooting started because he was afraid. When confronted about an incident during which he allegedly pointed a gun at Arlishaw because he suspected that she was cheating on him, Fitzgerald denied that any such thing had happened.

Dodd's girlfriend, Shaunda Drane (Drane), who was pregnant with one of Dodd's children at the time of the shooting and another at the time of trial, testified that she was present when Mark says Dodd allegedly confessed to the shooting but that she heard no such confession. She also testified that Fitzgerald was at her house late on the night of the

shooting, that he was drunk, and that he had a gun. Drane claimed that Dodd had told her that Fitzgerald had done the shooting. Furthermore, contrary to Fitzgerald's testimony and Dodd's alleged statement to Mark, Drane testified that she never saw a third person with Dodd and Fitzgerald that night.

Finally, Dodd's attorney called Arlishaw as a defense witness. Contrary to Fitzgerald's testimony that he never carried a gun, Arlishaw described an incident preceding the shooting in this case during which Fitzgerald pointed a gun at her head, inserted his finger in her vagina "to make sure [she] wasn't having sex," then fired the gun at the wall. (Tr. p. 453). Arlishaw also described an incident during which Fitzgerald pointed a gun at her "[b]ecause [she] had make up on." (Tr. p. 459). Additionally, Arlishaw testified that Fitzgerald hit her on a regular basis when they were together.

On June 15, 2001, the jury found both Dodd and Fitzgerald guilty of murder. On July 18, 2001, the trial court sentenced Dodd to sixty years in prison.

Dodd now appeals.[3] Additional facts will be provided as necessary.

[3] Dodd's journey to this point was long and complicated, beginning with his initial notice of appeal to this court on August 17, 2001, and culminating in the grant of his petition for writ of habeas corpus by the U.S. District Court for the Northern District of Indiana on January 3, 2008. The details of that journey have no bearing on our resolution of the issues before us, but they can be found in *Dodd v. Knight*, 533 F. Supp. 2d 844 (N.D. Ind. 2008).

DISCUSSION AND DECISION

I. *Dr. Kim's Testimony*

Dodd first argues that the trial court should have let him ask Dr. Kim, the pathologist who performed the autopsy, whether the bullet that killed Thomas could have first passed through an object.

A. *Standard of Review*

Dodd asserts that we should review this matter *de novo* because the trial court's decision infringed on his right to confront a witness against him under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Indiana Constitution. Dodd misframes the issue. The trial court prohibited Dodd from answering the question because it concluded that the question went beyond the scope of Dr. Kim's expertise. It is within the trial court's sound discretion to decide whether a person qualifies as an expert witness. *Kubsch v. State*, 784 N.E.2d 905, 921 (Ind. 2003). As such, we will review such a decision for an abuse of discretion. *Turner v. State*, 720 N.E.2d 440, 444 (Ind. Ct. App. 1999). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. *Fentress v. State*, 863 N.E.2d 420, 423 (Ind. Ct. App. 2007).

B. *No Offer of Proof*

Initially, we note that Dodd failed to make an offer of proof with regard to Dr. Kim's proposed testimony. An offer of proof is necessary to enable both the trial court and the appellate court to determine the admissibility of the testimony and the prejudice which might

result if the evidence is excluded. *Woods v. State*, 892 N.E.2d 637, 641-42 (Ind. 2008). "The purpose of an offer of proof is to convey the point of the witness's testimony and provide the trial judge the opportunity to reconsider the evidentiary ruling." *Id*. Equally important, it preserves the issue for review by the appellate court. *Id*. "When a defendant does not make an offer of proof, he has not adequately preserved the exclusion of witness' testimony as an issue for appellate review." *Wisehart v. State*, 491 N.E.2d 985, 991 (Ind. 1986).

However, even if a defendant fails to make an offer of proof, we may reverse if the excluded evidence is clear from the context. *Woods*, 892 N.E.2d at 641. That is not the case here. Dodd emphasizes the fact that Dr. Kim was asked the same question during a pre-trial deposition and apparently answered that the bullet that caused Thomas' wound could not have passed through an object. (We say "apparently" because we have not been provided with a transcript of that deposition). But the prosecuting attorney told the trial court that no foundation was laid for Dr. Kim's answer during the deposition and that Dr. Kim kept saying, "I think the firearms expert has to be asked." (Tr. p. 256). Under the circumstances, it is not "clear from the context" what Dr. Kim's answer would have been at trial. Because Dodd failed to make an offer of proof and it is not clear from the context what Dr. Kim's answer would have been, Dodd has not adequately preserved this issue for appellate review.

C. *No Abuse of Discretion*

Even if we assume, *arguendo*, that Dr. Kim would have testified that the bullet that killed Thomas could not have first passed through an object, we conclude that the trial court would have been within its discretion to exclude that answer. Fitzgerald's attorney said that

he was asking Dr. Kim "to make a distance determination and the question is designed for him to give some information concerning the range[.]" (Tr. p. 258). But by that point, the State had already inquired of Dr. Kim, "In order to make any kind of a determination in terms of distance, tell us what is required." (Tr. p. 251). Dr. Kim responded, "I think combination [sic] you do the firearm expert, they have to have a gun, and the bullet they fired, they check for that." (Tr. p. 251). These facts, along with the prosecuting attorney's unchallenged statement that Dr. Kim had said, during his deposition, "I think the firearms expert has to be asked," support the trial court's conclusion that the question of whether the bullet could have first passed through an object "more appropriately is one for a fir[]earms expert." (Tr. p. 257).

II. *Motion for Continuance*

Next, Dodd asserts that the trial court should have granted his motion for a continuance for the purpose of hiring a ballistics or firearms expert. Dodd does not argue that he was entitled to a continuance by statute, namely, Indiana Code section 35-36-7-1. Rulings on non-statutory motions for continuance lie within the discretion of the trial court and will be reversed only for an abuse of that discretion and resultant prejudice. *Jackson v. State*, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001). Again, an abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.*

In ruling on Dodd's motion, the trial court acknowledged that the change in counsel likely contributed to the delay in settling the expert witness arrangement, stating, "I'm not

faulting present counsel[.]" (Tr. p. 7). Nonetheless, it noted that "this is an issue that certainly could have been disposed [of] well before now." (Tr. p. 7). The trial court was right. Dodd's trial attorney took over Dodd's defense more than four months before the case went to trial. Still, he waited until the first morning of trial to renew prior counsel's fourteen-month-old motion for a firearms or ballistics expert. We agree with the trial court that the issue should have been settled well before the first day of trial. As our supreme court has noted, continuance motions made on the first morning of trial are not favored because granting them causes substantial loss of time for jurors, witnesses, lawyers, and the court. *See Roberts v. State*, 500 N.E.2d 197, 199 (Ind. 1986).

Perhaps more importantly, Dodd's motion for a continuance lacked merit. Again, Dodd's trial attorney told the trial court, "I think this is a case whereby an expert or a couple of experts a firearms expert or ballistics expert would be helpful to the defendant." (Tr. p. 5). Merely saying that an expert "would be helpful to the defendant" is not a sufficient ground for granting a continuance. "Continuances for additional time to prepare for trial are generally disfavored, and courts should grant such motions only where good cause is shown and such a continuance is in the interest of justice." *Jackson*, 758 N.E.2d at 1033. Moreover, Dodd himself cites our opinion in *Beauchamp v. State*, 788 N.E.2d 881, 888 (Ind. Ct. App. 2003), for the proposition that a defendant seeking the appointment of an expert must specify precisely how he would benefit from the requested expert services. Dodd's counsel failed to show good cause for a continuance and failed to specify precisely how he would benefit from the requested expert services.

For these reasons, the trial court did not abuse its discretion by denying Dodd's day-of-trial motion for a continuance.

III. *Motion for Separate Trials*

Finally, Dodd argues that the trial court should have ordered separate trials for him and Fitzgerald because their defenses were mutually antagonistic. Defendants have no absolute right to a separate trial or severance, but they may ask the trial judge to exercise his or her discretion to grant such a motion. *Rouster v. State*, 705 N.E.2d 999, 1004 (Ind. 1999), *reh'g denied*. An abuse of discretion occurs when a court denies a defendant's properly filed motion for separate trials and the parties' defenses are mutually antagonistic to such a degree that acceptance of one party's defense precludes the acquittal of the other. *Id*. "Defenses reach that level of antagonism necessary to warrant severance if the jury, in order to believe the core of one defense, must necessarily disbelieve the core of the other, or if the defense of one party, if believed, necessarily indicates the guilt of the other party, or if acceptance of one party's defense precludes acquittal of the other party." *Id.* at n.3 (quoting 22A C.J.S. Criminal Law § 569 (1989)). A defendant is not, however, entitled to a separate trial merely because a co-defendant implicates the defendant. *Rouster*, 705 N.E.2d at 1004.

Dodd contends that his and Fitzgerald's defenses were mutually antagonistic because his defense was that Fitzgerald was the only shooter, while Fitzgerald testified at trial that Dodd fired a weapon at Thomas' car. But acceptance of one of those defenses would not have precluded the acquittal of the other defendant. There were other defenses presented. Fitzgerald testified that there was a third gunman in the blue Oldsmobile. In addition, both

defendants tried to convince the jury that nobody from the blue Oldsmobile could have fired the fatal shot, and there was evidence to support that defense. Kevin Judge, the firearm examiner with the Lake County Crime Laboratory, testified that he would be surprised to find detectable amounts of gun powder and soot on a target after a .35 family caliber bullet passed through a car window unless it was extremely close range. Likewise, Dr. Kim testified that the markings on the wound indicated a contact gunshot wound. The jury could have relied on this evidence to conclude that neither Dodd nor Fitzgerald nor anyone else in the blue Oldsmobile could have fired the shot that killed Thomas. The jury simply did not.

As we stated in Fitzgerald's direct appeal, wherein Fitzgerald made the same argument that Dodd makes here:

> [T]he theories that defendants presented at trial did not solely assert that either Fitzgerald or Dodd fired the lethal shots. Rather, Fitzgerald also alleged that he was seated in the passenger seat of Dodd's car and that an unknown third person was in the backseat, and that he heard gunfire from the backseat, implying that the backseat occupant may have fired the lethal shots. Alternatively, both Fitzgerald and Dodd argued that the fatal shot may have come from one of the occupants of [Thomas'] car. In short, while there was both overlap and distinction in the legal theories advanced by Fitzgerald and Dodd, they both suggested factual scenarios that could have resulted in the acquittal of both men.

Fitzgerald v. State, No. 45A03-0108-CR-275 (Ind. Ct. App. July 12, 2002). Just as in *Fitzgerald*, we hold that the trial court did not abuse its discretion by denying the request for separate trials.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by (1) limiting Dr. Kim's testimony, (2) denying Dodd's day-of-trial motion for a continuance, or (3) denying Dodd's motion for separate trials.

Affirmed.

BAILEY, J., and BRADFORD, J. concur.