MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

William E. Jenkins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 18, 2024

Court of Appeals Case No.
23A-CR-1033

Appeal from the
Marion Superior Court

The Honorable
Angela D. Davis, Judge

Trial Court Cause No.
49D27-1908-MR-31045

Memorandum Decision by Senior Judge Najam
Judges Mathias and Brown concur.

Najam, Senior Judge.

Statement of the Case

[1] William E. Jenkins ("Jenkins") was convicted of murder after a jury trial and sentenced to sixty years in the Department of Correction. He appeals, raising four grounds for reversal of his conviction. Finding no reversible error, we affirm.

Facts and Procedural History

[2] Jenkins and Yolanda Moffitt-Santiago were in a romantic relationship, but she had ended it. Beginning in the early morning hours of July 1, 2019, throughout the remainder of that day, and during the early morning hours of July 2, 2019, Jenkins sent Moffitt-Santiago numerous Facebook messages and requests for video chats reacting to her having ended their relationship. He also repeatedly called her. Jenkins alternately begged and ordered Moffitt-Santiago to return to him, but she rejected most of his attempts to communicate and told him to leave her alone.

[3] A selection of his messages is illuminating. Starting at 4:27 on the morning of July 1, Jenkins asked Moffitt-Santiago where she was and stated, "I can't live without yu [sic][.]" Tr. Ex. Vol., Ex. 49, p. 48. He also stated, "Quit bringing

up [sic] new boy friend tryna [sic] b [sic] funny I dnt [sic] wanna hurt yu [sic] or prank like yu [sic] make so mad [sic] baby cuz [sic] ik [sic] you hurt[.]" *Id.* Jenkins also referred to Moffitt-Santiago as his "wife," although they were not married. *Id.* He was angered by her lack of response to his messages and calls over the following hours, telling her, "Girl [sic] stop it now[.]" *Id.* at 50.

[4] Later on July 1, Jenkins told Moffitt-Santiago he loved her and expressed regret for prior hurtful things he had said to her, but he also accused her of being "mean" by ignoring him. *Id.* at 53. He called her a "whore," *id.* at 59, but also said that he needed her by his side. He told her to "stop playn [sic] cuz [sic] once I'm done I'm really done . . [. .]" *Id.* Later, Jenkins messaged Moffitt-Santiago: "Quit ignoring me yu [sic] see what happen [sic] last time[.]" *Id.* at 69. He later said, "Yu gotta stop over thinking Yolanda yu [sic] all I ever wanted in a woman. Baby that's why I can't let go[.]" *Id.* He also said, "Ill [sic] never love nobody [sic] like I love yu [sic] that's why I'm so crazy[.]" *Id.* at 70.

[5] Ten hours after beginning his barrage of text messages, video chat requests, and phone calls, Jenkins again accused Moffitt-Santiago of being "mean." *Id.* at 72. She responded, "I'm not mean 2 you! your [sic] mean 2 me all the time and I'm sick of it." *Id*. He then said, "Ima [sic] work on dat [sic] tell me whT [sic] is it u [sic] do that makes yu [sic] feel dat [sic] way[.]" *Id.* A short time later, after Jenkins again professed his love for Moffitt-Santiago, she messaged him, "Stop lying[.]" *Id.* at 74. He accused her of "misunderstand[ing]" him and describing his past treatment of her as "prank[s][.]" *Id.* Jenkins again said, "I

want you to myself[.]" *Id.* at 76. After further text exchanges, Moffitt-Santiago responded, "No [sic] you Stop now!" *Id.* at 77.

[6] Later, Jenkins suggested they should get a room and live together, but Moffitt-Santiago rejected his offer, accusing him of seeing another woman. A long series of text messages, video chat requests, and attempted phone calls from Jenkins followed. He stated, "I'm not gone [sic] let yu [sic] go . . . [g]et that in yo [sic] head." *Id.* at 87.

[7] Around midnight, Moffitt-Santiago messaged Jenkins, "Stop calling me, ok!!" *Id.* at 88. He responded, "Man stop acting mean[,]" and "Ily[.]" *Id.* She repeated, "Stop[.]" *Id.* When Jenkins stated, "We gon [sic] get married nd [sic] live that life . . . I promise," Moffitt-Santiago rejected him: "No [sic] go back to yo [sic] bitch." *Id.* A few minutes later, she messaged him, "Now this free bitch is going to do whatever I want 2 do lol[.]" *Id.* at 96. He responded, "Baby stop . . . You not [sic] free[.]" *Id.*

[8] Moffitt-Santiago then sent Jenkins a series of pictures of another woman, pictures of herself, and memes, some of which discussed dealing with stress and being resilient. Around 12:30 a.m. on July 2, he messaged her to demand "Come see yo [sic] man . . . Come see me and yu [sic] can leave[.]" *Id.* at 157. He also offered to give her "the money for [her] phone." *Id.* at 158. He repeatedly asked her where she was, but she refused to answer. Jenkins made a final unanswered call to Moffitt-Santiago at 3:49 a.m. on the morning of July 2. Tr. Vol. 6, p. 95; Tr. Ex. Vol. p. 107, Ex. 49, p. 166.

[9] In the early morning hours of July 2, Moffitt-Santiago was attending a party at the home of Linda Stockdale on Ruckle Street in Indianapolis. Suddenly, Jenkins "[w]alked right in" without notice. Tr. Vol. 5, p. 129. He confronted Moffitt-Santiago in the bathroom, where she was talking with Tawanna Stockdale, Linda's daughter.[1] Jenkins' hair was in "dreads," and he was wearing a white T-shirt and jeans. *Id.* at 132, 157. Jenkins would not let Linda into the bathroom or let Tawanna out. After about an hour, Jenkins "grabb[ed] [Moffitt-Santiago] and drug her" out of the house, onto the front porch. *Id.* at 129. He stated loudly, "She's my bitch. She's my bitch." *Id.* at 129-30.

[10] Jenkins was carrying a handgun. While on the porch, Jenkins attempted to give the firearm to Tawanna, stating "take the gun, take the gun so I won't shoot her. So I won't shoot her." *Id.* at 130. Tawanna refused to take it, on Linda's advice, and Linda told Jenkins to leave. Jenkins and Moffitt-Santiago left on foot, rather than taking her car. They walked toward the intersection of 37th Street and Central Avenue. *Id.* at 155.

[11] Tommy Leavell also left the party and followed them on his bicycle. He noted that Jenkins was wearing a white T-shirt and black jeans. Leavell determined that Jenkins and Moffitt-Santiago were "[w]alking and talking." *Id.* at 206. He left them after Jenkins and Moffitt-Santiago said "everything was good," *id.,* but Leavell was still concerned because it was his understanding that Moffitt-

[1] We refer to Linda and Tawanna by their first names to avoid confusion.

Santiago had not wanted to go with Jenkins. Linda had asked Leavell to call the police, but he declined. Instead, he threw a brick through the window of a nearby residence, "hoping that would get somebody's attention . . . ." *Id.* Leavell then rode away.

[12] Tawanna also left the party, by car, and found Jenkins and Moffitt-Santiago walking down the street. Tawanna stayed with them for a while until Moffitt-Santiago insisted that she leave. After she left them, Tawanna heard a gunshot while she was still in the area.

[13] At 5:18 a.m. a person placed a 911 call from the location of 37th and Central Avenue, reporting a woman laying on a sidewalk. Several police officers were dispatched and found Moffitt-Santiago on the ground in front of a nursing home. Paramedics took her to the hospital, where she died. A forensic pathologist later determined the cause of Moffitt-Santiago's death was a gunshot wound to the back of her head.

[14] Later, as Tawanna was returning to the area after shopping at two stores, she saw the police tape at the scene of the shooting, in front of the nursing home. A crime scene investigator examined the site and discovered Moffitt-Santiago's purse near where her body had been found. The purse contained Jenkins' Indiana Identification Card.

[15] Meanwhile, homicide detective Ryan Clark arrived at the scene at about 6:30 a.m. and canvased the area for witnesses, going door-to-door. Clark located Matthew Carter, who lived at 3610 Central Avenue, near the nursing home.

Carter later provided Clark with two film clips from his home surveillance cameras, which had recorded a gunshot near 5:00 a.m. on two cameras and a man in "a white shirt running away quickly, shortly after that." Tr. Vol. 6, p. 17; Tr. Ex. Vol. pp. 68-69, Exs. 13, 14.

[16] Clark located another nearby resident, Reegan Scott, who lived less than a block away from the nursing home where Moffitt-Santiago was found. In the early morning hours of July 2, 2019, Scott "heard a loud noise" between 5:00 and 5:15 a.m. Tr. Vol. 5, p. 110. Her dog was barking "really crazy [sic]." *Id.* She looked out her front-door window and saw a man walk by her house, heading east, away from the location of the shooting. He had dreadlocks and wore a white shirt and black pants.

[17] Meanwhile, Amber Partlow lived with her then-boyfriend on 21st Street in Indianapolis. In the early morning hours of July 2, 2019, Partlow's boyfriend asked her to drive to the vicinity of 30th Street and Keystone Avenue to pick up Jenkins, whom she knew as her boyfriend's friend. She drove to that area and found Jenkins walking. Partlow picked Jenkins up and returned with him to her home.

[18] Tawanna gave Jenkins' cell phone number to Clark. This was the same number that Jenkins had mentioned early on the morning of July 1 when he messaged Moffitt-Santiago, "Can you call my 384 number so we can talk?" Tr. Ex. Vol, Ex. 49, p. 56. Next, Clark obtained Facebook and cell phone records for

Jenkins and Moffitt-Santiago and cell phone records for Partlow and her boyfriend for the relevant time period.

[19] FBI Special Agent Nicole Robertson used the records to conduct a cell phone site location analysis, which tracked the movements of several persons' cell phones from 4:15 a.m. to 6:30 a.m. on the morning of July 2. The analysis showed the approximate location of the phones and the approximate distance of the phones from each cell tower as they moved between different towers' coverage zones. Agent Robertson determined that during that time period, Jenkins' phone moved from the area of Linda's home on Ruckle Street to the area where Moffitt-Santiago was murdered on Central Avenue, and then to the area of Partlow's home on 21st Street. In addition, Robertson's analysis shows Partlow's cell phone was at her home at 5:41 a.m., then moved to an area near Jenkins' cell phone, before returning to her residence by 6:11 a.m., along with Jenkins' phone.

[20] In 2019, the State charged Jenkins with murder, a felony, and unlawful possession of a firearm by a serious violent felon, a Level 4 felony. In 2021, he was tried but the jury was unable to reach a verdict on the murder count, and the trial court declared a mistrial.

[21] In 2023, the State tried Jenkins a second time on only the murder charge. Around three hours after beginning deliberations, the jury reported it was "stuck at 11-1" and requested guidance. Appellant's App. Vol. III, p. 20. The trial court directed the jury to keep deliberating, and to let the court know "if

you get to a point where you absolutely believe no further deliberation will change anybody's views, one way or the other, doesn't matter." Tr. Vol. 6, p. 175. Later, the jury returned a guilty verdict. The trial court entered a judgment of conviction and imposed a sixty-year sentence. Jenkins now appeals.

Issues

[22] Jenkins raises these issues on appeal:

I. Whether Jenkins was denied due process when a witness allegedly lied in her in-court identification of him;

II. Whether the State committed prosecutorial misconduct while questioning a witness;

III. Whether the State failed to prove every element of the crime of murder beyond a reasonable doubt; and

IV. Whether the trial court fundamentally erred in directing jurors to keep deliberating after they reported being "stuck."

Discussion and Decision

I. Due Process – Witness Testimony

[23] During the first trial, Linda Stockdale could not identify Jenkins in the courtroom. She successfully identified him during the second trial. Jenkins contends Linda "undeniably perjured herself" by making a false in-court identification of him at the second trial. Appellant's Br. p. 15. He concludes he

was deprived of due process of law under the Fourteenth Amendment because his conviction was based on perjured testimony.

[24] Before we turn to the merits of Jenkins' due process claim, the State claims that Jenkins offered only a generic objection to Linda's identification testimony at the second trial, thus failing to provide the specificity required to preserve any error for appellate review. Indiana Evidence Rule 103(a)(1)(B) requires a litigant to state a specific reason for an objection unless the reason was apparent from the context. Further, "appellate review presupposes that a litigant's arguments have been raised and considered in the trial court." *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). "[A]s a general rule, a party may not present an argument or issue on appeal unless the party raised that argument or issue before the trial court." *Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004). "In such circumstances the argument is waived." *Id.* Having reviewed the record, we agree with the State that Jenkins objected to Linda's identification testimony without stating a specific reason, and the due process claim he raises on appeal was not apparent from the context of the objection. Even so, we prefer to address issues on their merits where possible. *See Hoback v. State*, 225 N.E.3d 208, 211 (Ind. Ct. App. 2023) (considering appellant's speedy trial argument despite defects in Appellant's Brief).

[25] Turning to Jenkins' due process claim, "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 1177, 3 L. Ed. 2d 1217 (1959). "Active or passive behavior by the State

that hinders the jury's ability to effectively act as the fact-finder is impermissible and may violate a defendant's due process rights." *Smith v. State*, 34 N.E.3d 1211, 1220 (Ind. 2015). "When there is a reasonable likelihood that the judgment of the jury could have been affected by testimony known to be false, the conviction must be set aside." *St. John v. State*, 523 N.E.2d 1353, 1357 (Ind. 1988). Thus, the challenged testimony must be both false and material. *Napue*, 360 U.S. at 269, 79 S. Ct. at 1177 (stating the conviction must be "obtained" through false evidence). And "the burden of proving materiality lies with the defendant." *United States v. Ausby*, 916 F.3d 1089, 1093 (D.C. Cir. 2019).

[26] During Jenkins' first trial in 2021, the prosecutor asked Linda if she saw Jenkins in the courtroom. She responded, "I don't know. Where he [sic] supposed to be at?" Tr. Vol. 3, p. 147. She also stated, "I don't see him," complaining she could not see his face. *Id.* Next, outside the presence of the jury, the trial judge had everyone remove their masks. The prosecutor again asked Linda if Jenkins was in the courtroom, and she said, "I think that's him. I don't even know." *Id.* at 149. Linda then pointed at a man sitting in the gallery of the courtroom. *Id.* at 150, 164. She later stated, "I reckon who should be point [sic] to should have on a jail suit." *Id.* at 164.

[27] At the second trial, in 2023, the prosecutor asked Linda if she saw Jenkins in the courtroom and the following exchange occurred:

> [State]: Do you see him in the courtroom today?
>
> [Linda]: He – oh, god.

[State]: Got to answer out loud.

[Linda]: Is that him?

[Trial Judge]: Okay, but if you're going to point your finger, you've got to just say yes or no, okay.

[State]: Okay, you pointed to your right. Can you describe an article of clothing?

[Linda]: It's got to be. It's got to be.

[Jenkins]: Your Honor –

[Linda]: It's got to be.

[State]: Okay. Is that a yes, or a no?

[Linda]: Yes.

[State]: Okay. What color shirt's he wearing?

[Linda]: Blue.

[State}: Your Honor, may the record reflect the in-court identification of the Defendant?

Tr. Vol. 5, pp. 125-26. The court granted the State's request. But Jenkins raised a general objection and asked Linda the following preliminary questions:

[Jenkins]: Ma'am, from your mannerisms, you're not sure whether this is William Jenkins, right?

[Linda]: Yes, I am.

[Jenkins]: You're saying that's him or are you unsure?

[Linda]: I see him. There ain't nobody else here. That's him.

[Jenkins]: Well, are you identifying this person as William Jenkins because you're saying there's nobody else in here that could be him?

[Linda]: No, I know how he look [sic].

[Jenkins]: Okay. No further questions.

[Trial Judge]: The Court will show that she's identified the Defendant over your objection.

Id. at 126-27.

[28] Jenkins claims Linda's successful identification of him was based not on her personal knowledge but on "clearly learn[ing]" from the first trial that Jenkins could not be sitting in the gallery. Appellant's Br. p. 18. Jenkins thus concludes Linda's identification was false, and the trial court should not have allowed it. Whether an answer is false is a function of both the question and the answer in relation to each other. For example, "[a] perjury conviction may not be sustained by lifting a statement of the accused out of its immediate context so that it has a meaning 'wholly different than that which its context clearly shows.'" *Griepenstroh v. State*, 629 N.E.2d 887, 890 (Ind. Ct. App. 1994) (quoting *Van Liew v. United States*, 321 F.2d 674, 678 (5th Cir. 1963)), *trans. denied*. "The dispositive question is whether the words involved, read in their immediate context, are susceptible to more than one reasonable interpretation and 'whether the witness' [sic] answer truthfully responds to his reasonable interpretation of the words.'" *Id.* (quoting *People v. Wills*, 71 Ill. 2nd 138, 147, 374 N.E.2d 188, 192 (1978)).

[29] Here, when considering both the question and the answer, Jenkins has not shown that Linda lied when she identified Jenkins at the second trial. Neither the State nor Jenkins asked Linda whether she remembered Jenkins "as the man at her home with Moffitt-Santiago the night she was murdered" or "from the night in question." Instead, the State asked her only to identify Jenkins in the courtroom. And Linda confirmed her identification during Jenkins' preliminary questions. It may well be that the first trial refreshed her memory of his appearance, or she may have simply remembered him from the first trial. As Jenkins notes, the jury did not know she had been unable to identify him at the first trial. And, of course, Jenkins could not impeach Linda by referring to her prior inconsistent identification testimony. Because Linda's answer is open to more than one reasonable interpretation of the question she was asked, Jenkins has not shown she lied when she identified him. *See Griepenstroh*, 629 N.E. 2d at 891 (Griepenstroh's statement was subject to more than one interpretation and did not, without more, prove falsity).

[30] Even if were we to assume for the sake of argument that Linda's testimony was false, Jenkins has also not shown the falsehood was material. There was no serious evidentiary dispute about Jenkins' identity as the person who came to Linda's residence and left with Moffitt-Santiago. Also, Linda's identification of Jenkins was redundant and cumulative, because Tawanna, Partlow, and Leavell also identified Jenkins in court during the second trial.

[31] In addition, Linda's testimony was not about the identity element of the charged offense and was not offered to identify Jenkins as the perpetrator of the

crime. It might be a different matter if she claimed to have witnessed the murder but could not identify Jenkins from "the day in question." Instead, the State simply asked Linda whether she could identify Jenkins in the courtroom. There is no reasonable likelihood that Linda's identification of Jenkins, even if it were false, affected the jury verdict. *See U.S. v. Are*, 590 F.3d 499, 510 (7th Cir. 2009) (no *Napue* violation in State failing to clear up question about whether the police searched a witness's car; the search "was an entirely collateral matter" and not relevant to witness's key testimony), *cert. denied*. Linda's in-court identification of Jenkins did not deprive him of due process.

II. Prosecutorial Misconduct

[32] In a related issue, Jenkins contends the State committed prosecutorial misconduct in eliciting perjured testimony when it asked Linda to identify Jenkins. He argues "[t]here can be no doubt" that Linda's testimony was false because of her failure to identify Jenkins during the first trial. Appellant's Br. p. 22.

[33] The State claims Jenkins failed to preserve this claim for appellate review. "When a party believes there is misconduct, the correct procedure is to object and request the trial court to admonish the jury." *Lowden v. State*, 51 N.E.3d 1220, 1224 (Ind. Ct. App. 2016), *trans. denied*. "If the party is not satisfied with the admonishment, then he or she should move for mistrial." *Id.* Failure to request an admonishment or to move for mistrial results in waiver of the claim. *Jerden v. State*, 37 N.E.3d 494, 498 (Ind. Ct. App. 2015). None of this occurred

in Jenkins' case. Further, Jenkins does not allege the prosecutor's actions or inactions resulted in fundamental error.

[34] Waiver notwithstanding, when reviewing a claim of prosecutorial misconduct, this Court considers: "(1) whether the prosecutor engaged in misconduct; and (2) whether, considering all the circumstances, the misconduct put the defendant 'in a position of grave peril to which he should not have been subjected.'" *Paschall v. State*, 717 N.E.2d 1273, 1275-76 (Ind. Ct. App. 1999) (quoting *Roberts v. State*, 712 N.E.2d 23, 34 (Ind. Ct. App. 1999), *trans. denied*). "The gravity of the peril is measured by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct." *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006).

[35] Jenkins' claim of prosecutorial misconduct begins with the same premises as his due process claim: that Linda lied when she identified Jenkins in court during the second trial, that her false testimony was material to Jenkins' conviction, and that her false testimony impacted the jury verdict. Appellant's Br. p. 23. We rejected those premises in our previous discussion because Linda's identification testimony was susceptible to more than one reasonable interpretation and was, therefore, not necessarily false. And Jenkins points to no other evidence showing her testimony was false. It follows that the State did not sponsor false testimony and, as such, did not commit prosecutorial misconduct.

[36] We need not address the question of the probable persuasive effect of Linda's testimony on the jury. Still, we emphasize that not only did three other witnesses identify Jenkins, but Linda's identification of Jenkins was not material to his conviction. And as we discuss below, there is ample evidence to sustain Jenkins' conviction There is no reasonable likelihood that her identification of Jenkins affected the jury's verdict.

III. Sufficiency of the Evidence - Identity

[37] Jenkins contends that the State failed to prove every element of the crime of murder, specifically, that he was the person who killed Moffitt-Santiago. He correctly notes that the State must prove a conviction beyond a reasonable doubt, and the requirement of such proof is a substantive constitutional right. *See In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368 (1970) ("the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged"). "In addressing a claim of insufficient evidence, an appellate court must consider only the probative evidence and reasonable inferences that support the judgment, without reweighing the evidence or assessing witness credibility, and determine whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Smith*, 34 N.E.3d at 1221.

[38] Jenkins emphasizes that the "State was unable to connect him to the crime with fingerprints, ballistics, or DNA," that there was no physical evidence to connect him to the murder, and that there was no witness to the murder. Appellant's

Br. pp. 12, 25-26. By this he means there was no direct evidence, which is evidence that is "'based on personal knowledge or observation and that if true, proves a fact without inference or presumption." *Hampton v. State*, 961 N.E.2d 480, 489 (Ind. 2012) (quoting Black's Law Dictionary 636 (9th ed. 2009)). At the same time, he discounts the probative value of circumstantial evidence, which is evidence that is ''based on inference and not on personal knowledge or observation.'" *Id.* (citing Black's Law Dictionary 636). There is no reference to "circumstantial evidence" in Jenkins' appellate briefs.[2]

[39] A guilty verdict may depend solely on circumstantial evidence. *See Pierce v. State*, 705 N.E.2d 173, 175 (Ind. 1998) (affirming murder conviction based on circumstantial evidence surrounding a shooting death despite the lack of eyewitnesses). And, on appellate review, we "need not determine that circumstantial evidence is adequate to overcome every reasonable hypothesis of innocence, but only that an inference may reasonably be drawn which supports the finding." *Id*.

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[2] The trial court properly instructed the jury on circumstantial evidence, as follows:

> It is not necessary that facts be proved by direct evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. *A conviction may be based solely on circumstantial evidence where proof of guilt is by circumstantial evidence only.* It must be so conclusive and point so convincingly to the guilt of the accused that the evidence excludes every reasonable theory of innocence.

Tr. Vol 6, p. 167. (Emphasis added.) In his closing argument, Jenkins correctly told the jury that, "It is not necessary [sic] the facts be proved by direct evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof." Tr. Vol. VI, p. 154.

[40] Here, there is ample circumstantial evidence to support Jenkins' conviction for murder beyond a reasonable doubt. Jenkins repeatedly sent Moffitt-Santiago text messages, and he also incessantly attempted to contact her via phone calls and video chat requests, during a twenty-four-hour period before her murder. Jenkins claims, "[h]e never threatened her." Appellant's Br. p. 26. While he did not verbalize an outright threat, there was an aggressive tone to his messages that could be considered menacing. For example, Jenkins ordered Moffitt-Santiago to "stop playn [sic] cuz [sic] once I'm done I'm really done . . [. .]" Tr. Ex. Vol., Ex. 49, p. 59. Later, he said: "Quit ignoring me yu [sic] see what happen [sic] last time[.]" *Id.* at 69.

[41] In addition, when Moffitt-Santiago rejected his entreaties that they reconcile, Jenkins was adamant and unrelenting in his insistence that they rekindle their romantic relationship. He made many statements showing that he was possessive of her and intended to maintain control over her. Jenkins said, "I can't live without yu [sic][.]" *Id.* at 48. Most ominously, he told her, "I'm not gone [sic] let yo [sic] go . . . [g]et that in yo [sic] head." *Id.* at 87. He harassed her with a barrage of text messages, which alternated between words of affection and outright demands.

[42] Jenkins repeatedly demanded to know Moffitt-Santiago's location, but she never told him. Instead, he found her at Linda's house where she was visiting, barged into the house uninvited, and immediately found her in a bathroom. He was agitated, urgent, and caused a "commotion" in the house for about an hour. Tr. Vol. 5, p. 142. Jenkins forcibly removed Moffitt-Santiago from

Linda's house, telling others "She's my bitch. She's my bitch." *Id.* at 130. Once on the porch, he tried to give his handgun to Tawanna, saying she should "take the gun so [he] won't shoot her." *Id.* When Tawanna refused, Jenkins walked away with Moffitt-Santiago, taking her and the handgun with him down the street.

[43] Jenkins was the last person seen with Moffitt-Santiago by two eyewitnesses before she was killed, and one of those witnesses, Tawanna, heard a gunshot after she left them, while she was still in the area. Both witnesses and cell phone tracking data place Jenkins at or near the scene of the crime when the crime occurred. No one else was seen on the street in the area around that time, and a person living in the area saw someone matching his description walk by shortly after she heard a loud noise. Another neighbor's camera showed a person in a white T-shirt crossing the street in the area near the shooting, around the time the shooting occurred.

[44] Further, notwithstanding Jenkins' strenuous efforts over the previous day to convince Moffitt-Santiago to reunite and be with him, he left her not long after they departed from Linda's house and asked a friend to come pick him up to expedite his exit from the area. While the jury was not given a flight instruction, we note that evidence of flight "may be considered as circumstantial evidence of consciousness of guilt." *Brown v. State*, 563 N.E.2d 103, 107 (Ind. 1990).

[45] Jenkins points to discrepancies in the descriptions witnesses gave of him as he appeared on the morning of July 2. They gave different descriptions of his clothing such as whether he was wearing a white shirt or a black shirt. But it is the role of the jury to resolve conflicts in testimony. *Williams v. State*, 439 N.E.2d 1142, 1143 (Ind. 1982).

[46] Jenkins argues, "It is entirely possible that William and Yolanda did part ways prior to the shooting." Appellant's Br. p. 28. And during closing arguments, Jenkins told the jury, "Indianapolis is a dangerous place." Tr. Vol. 6, p. 161. But the jury could well have rejected as unreasonable a theory of innocence based on the mere possibility that shortly after they had parted, a random person approached Moffitt-Santiago in the early morning hours of July 2 and shot her in the back of the head for no apparent motive or reason. The nature and circumstances of the crime implicate Jenkins. We can say with confidence that the circumstantial evidence was sufficient for a reasonable trier of fact to conclude that Jenkins was guilty of murder beyond a reasonable doubt.

IV. Jury Instruction – "Allen" Instruction

[47] Finally, Jenkins contends that the trial court erred during its interactions with the jury after the jury reported being stuck and requested the court's guidance. Specifically, he claims the court improperly coerced the jury to keep deliberating, thereby violating his Sixth Amendment right to an impartial jury.

[48] In general, "the manner of instructing the jury lies within the sound discretion of the trial court." *Hero v. State*, 765 N.E.2d 599, 602 (Ind. Ct. App. 2002),

trans. denied. But Jenkins concedes he did not object when the trial court asked the jury to keep deliberating. He instead claims the trial court's decision amounted to fundamental error. Appellant's Br. p. 30. "Fundamental error is a substantial, blatant violation of due process." *Clay v. State*, 766 N.E.2d 33, 36 (Ind. Ct. App. 2002). "To qualify as fundamental error, an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible." *Id.* The doctrine of fundamental error applies only "on rare occasions." *Shoun v. State*, 67 N.E.3d 635, 640 (Ind. 2017).

[49] Jenkins argues the trial court's direction to jurors to keep deliberating amounted to an impermissible *Allen* charge. An *Allen* charge is "an instruction given to urge an apparently deadlocked jury to reach a verdict."[3] *Hero*, 765 N.E.2d at 604. Appellate courts closely scrutinize such instructions "to ensure that the court did not coerce the jury into reaching a verdict that is not truly unanimous." *Id.* When a jury reports difficulty in reaching a verdict, the better practice is for the trial court to "reread all instructions" given to the jury before deliberations began rather than give a single instruction. *Lewis v. State*, 424 N.E.2d 107, 111 (Ind. 1981).

[50] In *Fuentes v. State*, 10 N.E.3d 68, 73 (Ind. Ct. App. 2014), *trans. denied*, the jury requested instructions on how to proceed if jurors were split on one count against Fuentes. Without objection from the parties, the trial court told the

[3] The phrase is derived from the United States Supreme Court's decision in *Allen v. State*, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).

jury, "May I suggest that you continue to deliberate to see if you are able to reach a verdict?" *Id.* The jury later found Fuentes guilty, and he argued on appeal that the trial court unfairly pressured the jury to reach a verdict, resulting in fundamental error. This Court disagreed, noting the jurors had not stated that they were deadlocked, only split and in need of further direction. In addition, this Court noted the trial court had not placed "any pressure on the jury to force it to reach a verdict," choosing instead to only suggest continued deliberations. *Id.* at 74. In sum, the trial court's response did not amount to fundamental error. *Id.* at 75.

[51] In the current case, after about three hours of deliberating, the jury sent the trial judge a note stating, "We are stuck at 11-1. What do we do?" Appellant's App. Vol. III, p. 20. The trial court brought the jury back into the courtroom, and the following exchange occurred:

> The Court: I'm going to tell you that you have to continue to deliberate. Do you believe further deliberation will help you reach a verdict?
>
> The Foreperson: I don't think so.
>
> The Court: Well, we're going to try.
>
> The Foreperson: Okay.
>
> The Court: And if you get to a point where you absolutely believe no further deliberation will change anybody's views, one way or the other, doesn't matter. But then you let us know.
>
> The Foreperson: Okay.

> The Court: And if that's in five minutes or however long it is. I mean, I – but I want you to think about if further deliberation will – [sic] before we do anything else.
>
> The Foreperson: Okay. We will talk more, and we'll let you know.

Tr. Vol. 6, p. 175.

[52] We conclude, as the Court did in *Fuentes*, that the trial court did not coerce the jury to reach a verdict but merely asked the jury to keep talking to see if they could reach a verdict, without suggesting what the verdict should be. Neither did the court comment on or emphasize any matters of evidence, nor mandate that the jury act and deliberate in any certain manner or intimidate the minority of jurors into voting with the majority to reach a conclusion of the case, even though they might feel inclined to decide the case otherwise. *Cf. Lewis*, 424 N.E.2d at 110 (reversing conviction due to trial court's instruction to keep deliberating; instruction "dangerously approache[d] commenting on the evidence and conduct of the trial" by stating the case "could not be tried again any better . . . ."). Under these circumstances, we conclude that the trial court did not give an *Allen* charge to the jury, that there was no error in the court's instruction that the jury continue to deliberate, and thus there was no fundamental error.

Conclusion

[53] Jenkins has not demonstrated that Linda lied when she identified him or, in any event, that her identification of him was material to his conviction or that there

was a reasonable likelihood her identification affected the jury verdict. For the same reasons, the State did not commit prosecutorial conduct when it sponsored her testimony. The State proved by circumstantial evidence beyond a reasonable doubt that Jenkins committed Moffitt-Santiago's murder. And the trial court's instruction that the jury continue to deliberate was not an *Allen* charge and did not amount to fundamental error.

[54] Affirmed.

Mathias, J., and Brown, J., concur.

ATTORNEYS FOR APPELLANT

Talisha R. Griffin
Marion County Public Defender Agency
Indianapolis, Indiana

Susan D. Rayl
Harshman Ponist Smith & Rayl, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Deputy Attorney General
Indianapolis, Indiana