

IN THE
INDIANA SUPREME COURT

No. 24A-CR-909

AJAYLAN SHABAZZ,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the Allen Superior Court,

No. 02D06-2111-MR-000020,

The Honorable David M. Zent,
Judge.

STATE'S BRIEF IN OPPOSITION TO TRANSFER

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

JODI KATHRYN STEIN
Deputy Attorney General
Attorney No. 16849-49

OFFICE OF INDIANA ATTORNEY
GENERAL TODD ROKITA
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204-2770
Telephone: 317-232-6249
Jodi.Stein@atg.in.gov

Counsel for Appellee

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BRIEF IN OPPOSITION TO TRANSFER

This Court should deny Defendant’s petition to transfer. The factual dispute of whether good cause existed to allow a witness to testify remotely does not rise to the level of a basis for transfer under Indiana Appellate Rule 57(H). As to his other two claims of error, Defendant fails to present an argument of how the Court of Appeals erred—either factually or legally—by affirming the trial court’s rulings on the lesser included offense and evidence of a witness’s suicide. Last, Defendant’s plea that this Court reweigh the evidence and vacate his murder conviction would violate this Court’s long-standing precedent of sufficiency review.

ARGUMENT

I.

The Court of Appeals properly found no reversible error when a witness testified remotely under Indiana Administrative Rule 14(c).

Over Defendant’s objection, the trial court allowed a State’s witness to testify remotely from the Department of Correction after finding good cause (Tr. Vol. I 16-18; II 105-13). On appeal, Defendant claimed a violation of Indiana Administrative Rule 14(c), challenging the finding of good cause (Appellant’s brief at 22, 24). The majority of the Court of Appeals found that the trial court’s ruling was based on “case-specific circumstances that made physical transport unfeasible” because the witness’s “uncertain location within the DOC initially prevented transport arrangements, and once [the witness] was located, resource and time constraints prevented the eight-hour round trip.” *Shabazz v. State*, 255 N.E.3d 533, 542, 24A-CR-909, slip op. at 11 (Ind. Ct. App. March 18, 2025). As to his claims of

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constitutional violations, which were unsupported by cogent argument, the majority found that Defendant's constitutional rights were provided through his "rigorous" cross-examination of the witness, that the jury and Defendant could see and hear the witness, and that the witness provided cumulative testimony of Defendant's jailhouse admissions. *Id.* at 542, slip op at 8, 11. Defendant simply disagrees with this factual finding, which does not provide a basis for transfer under Indiana Appellate Rule 57(H) (Petition at 9).

Disagreeing on the merits, the concurring opinion agreed that any error was harmless beyond a reasonable doubt. *Id.* at 554, slip op at 37-38 (Tavitas, J. concurring in result).¹ This was based on the same facts relied upon by the majority: the witness was not an eyewitness, the witness gave cumulative testimony of Defendant's admissions, the witness admitted that he was released on home detention in exchange for testifying, and the other significant evidence against Defendant. *Id.* Defendant's sole suggestion that "harmless error" should not be employed to "cleanse" a constitutional violation is not supported by authority

¹ While the majority recognized that Defendant failed to make a cogent argument of Sixth Amendment or Indiana constitutional violations, the concurrence failed to do so (Appellant's brief at 20-25). *Shabazz*, 255 N.E.3d at 542, 554, slip op at 8, 30-38. Instead, the concurring opinion made that argument for Defendant, offering both the argument and the result. *Id.* at 550-54, slip op. at 30-38. This was improper. *See Wohlt v. Wohlt*, 245 N.E.3d 611, 620 (Ind. 2024) (noting that "we typically limit our review to the arguments the parties make in their principal appellate brief"); *Thomas v. State*, 965 N.E.2d 70, 77 n.2 (Ind. Ct. App. 2012) (an appellate court should not "make up its own arguments" when a "party has not adequately presented them" because this causes the court to become "an advocate rather than an adjudicator") (quoting *Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997)), *trans. denied*.

(Petition at 10). The Court of Appeals properly found that permitting the witness to testify remotely under these facts resulted in no prejudice to Defendant.

The concurring opinion offers no basis for transfer under Appellate Rule 57(H), as the majority and the concurrence agree on the law. *Shabazz*, 255 N.E.3d at 550-54, slip op. at 30-38. The finding of a constitutional violation by the concurring opinion was based solely on its disagreement that there was a case-specific finding under the facts here for remote testimony. *Id.* at 551-52, slip op. at 32, 34-35. This factual dispute does not rise to the level of a transfer consideration.

II.

On all other issues raised on transfer, Defendant fails to show that the Court of Appeals erred.

The Court of Appeals' resolution of Defendant's two evidentiary issues—the trial court's refusal of his lesser-included instruction and the exclusion of evidence that a witness died by suicide—is unchallenged. Defendant makes no argument in his petition that the Court of Appeals erred on either issue (Petition at 10-13).² As such, the State relies on its argument in the Brief of Appellee (Appellee's brief at 26-35).

The State also relies on its argument in the Brief of Appellee that details the overwhelming evidence of Defendant's guilt (Appellee's brief at 40-43). Defendant's sufficiency argument asks this Court to reject the testimony of witness Terry Smith as incredible, find his own testimony more credible, and override the jury's rejection

² Instead, he simply asserts that "the Court of Appeals erred in affirming the trial court" (Petition at 12).

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of his duress defense (Petition at 14-15). These arguments cut against this Court's well-established standard of reviewing sufficiency claims. *See Konkle v. State*, 253 N.E.3d 1068, 1090 (Ind. 2025). This Court should deny transfer.

CONCLUSION

This Court should deny Defendant's petition for transfer.

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

/s/ Jodi Kathryn Stein
JODI KATHRYN STEIN
Deputy Attorney General
Attorney No. 16849-49

Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on May 20, 2025, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

Gregory L. Fumarolo
Foom225@gmail.com

/s/ Jodi Kathryn Stein
JODI KATHRYN STEIN
Deputy Attorney General

OFFICE OF INDIANA ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6249
Facsimile: (317) 232-7979
E-mail: Jodi.Stein@atg.in.gov