

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Bernadette A. Kovacs
Rahman Law Office
Ferdinand, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Christopher T. Britton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023

Court of Appeals Case No.
22A-CR-1802

Appeal from the Vanderburgh
Superior Court

The Honorable Leslie C. Shively,
Judge

Trial Court Cause No.
82D01-2109-F1-4903

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] Christopher Britton appeals his conviction for Attempted Murder, a Level 1 felony.¹ We affirm.

Issues

- [2] Britton presents three issues for review:
- I. Whether the trial court erroneously permitted an amendment to the charging information one week prior to trial;
 - II. Whether sufficient evidence supports the conviction for Attempted Murder; and
 - III. Whether the trial court abused its discretion in the admission of evidence.

Facts and Procedural History

- [3] During the early morning of September 6, 2021, Evansville Police Sergeant Jeff Kingery was traveling on an insolated stretch of highway when he glimpsed a leg at the side of the road. Suspecting that an impaired person had fallen over the guard rail, Sergeant Kingery made a U-turn and pulled over to investigate. He discovered K.C., who had been shot thirteen times. Fearing that her

¹ Ind. Code §§ 35-42-1-1, 35-41-5-1.

assailant had returned, K.C. initially pretended to be dead; she began to respond after Sergeant Kingery identified himself. K.C. stated that she knew her attacker by his Snap Chat user name of Da Don, and she provided a partial home address for him.

[4] Sergeant Kingery called for an ambulance, and K.C. was rendered unconscious during the initial treatment for her severe injuries. K.C. regained consciousness five days later, after having endured extensive surgeries. She wrote a message on a dry erase board indicating that she had been raped.²

[5] The ensuing investigation led police officers to Britton. When K.C. was presented with a photographic array, she identified Britton as her assailant. On September 9, 2021, the State of Indiana charged Britton with Attempted Murder and Rape, as a Level 1 felony,³ and filed a habitual offender allegation.⁴ One week prior to the trial, the State requested an amendment of the charging information to include an allegation that a firearm was used in the commission of Attempted Murder, supporting a sentence enhancement.⁵

[6] Britton's jury trial commenced on May 23, 2022. K.C. testified that a man she knew as Da Don contacted her through SnapChat; they agreed to spend some

² Because of the extent of K.C.'s injuries, a sexual assault examination was not conducted.

³ I.C. § 35-42-4-1.

⁴ I.C. § 35-50-2-8.

⁵ I.C. § 35-50-2-11.

time together; and Da Don drove K.C. to his residence. K.C. further testified that the man raped her, stole her cell phone, forced her out of his vehicle, and fired multiple shots into her. K.C. identified Britton as her assailant.

- [7] On May 25, the jury found Britton guilty of Attempted Murder and acquitted him of Rape. Britton admitted to the propriety of a firearm enhancement and admitted his status as a habitual offender. On June 29, Britton was sentenced to thirty-five years for Attempted Murder, enhanced by seven years due to his status as a habitual offender, and by eight years due to the use of a firearm in the commission of the offense. Britton now appeals.

Discussion and Decision

Amendment of the Charging Information

- [8] On May 17, 2022, the trial court conducted a hearing on the State's request to amend the charging information to include a firearm enhancement allegation. Defense counsel objected, stating that "we're six days away from trial" and counsel advised Britton, who was appearing telephonically, that his "remedy in that situation is a continuance." (Tr. Vol. II, pg. 5.) Britton responded: "The State had enough time to file. ... I'm not asking for no continuance because I'm prepared to go to trial on Monday." (*Id.* at 5-6.) The trial court permitted the amendment and Britton's counsel did not request a continuance.
- [9] Britton now contends that the trial court erred in allowing the State to amend the charging information to include the firearm sentencing enhancement

allegation because the amendment prejudiced his substantial rights. He claims that he was denied a reasonable opportunity to prepare for and defend against the allegation.

[10] The purpose of a charging information is to advise the accused of the particular charge against him so that he can prepare a defense and be protected from being placed in jeopardy twice for the same offense. *Absher v. State*, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007). Pre-trial amendment of an information is governed by Indiana Code Section 35-34-1-5(b), which provides:

The indictment or information may be amended in matters of substance and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant at any time:

(1) up to:

(A) thirty (30) days if the defendant is charged with a felony; or

(B) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date; or

(2) before the commencement of trial;

if the amendment does not prejudice the substantial rights of the defendant. When the information or indictment is amended, it shall be signed by the prosecuting attorney or a deputy prosecuting attorney.

In turn, subsection (c) provides that: “Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.”

[11] A defendant’s substantial rights include the right to sufficient notice and an opportunity to be heard regarding the charge. *Erkins v. State*, 13 N.E.3d 400, 405 (Ind. 2014). If an amendment does not affect a particular defense or change a position of one of the parties, the amendment does not violate those rights. *Id.* “‘Ultimately, the question is whether the defendant had a reasonable opportunity to prepare for and defend against the charges.’” *Id.* at 405-06 (quoting *Sides v. State*, 693 N.E.2d 1310, 1313 (Ind. 1998), *abrogated on other grounds by Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007)). Whether an amendment affects a defendant’s substantial rights presents a question that the Court reviews de novo. *Blythe v. State*, 14 N.E.3d 823, 829 (Ind. Ct. App. 2014).

[12] We observe that, although defense counsel objected to the State’s request for amendment as untimely, Britton insisted upon proceeding to trial without a continuance. In accordance with Britton’s expressed wishes, defense counsel did not request a continuance after the amendment was permitted. “[A] defendant’s failure to request a continuance after a trial court allows a pre-trial substantive amendment to the charging information over defendant’s objection results in waiver.” *Wilson v. State*, 931 N.E.2d 914, 918 (Ind. Ct. App. 2010),

trans. denied. Accordingly, Britton’s argument regarding the amendment of the charging information is waived.

[13] Notwithstanding waiver, Britton would not prevail. Regarding the firearm enhancement, Britton did not assert a position contrary to that of the State, which was that K.C. was shot with a firearm. Britton’s defense was one of misidentification; he claimed that an individual named Darius Taylor shot K.C. This defense was equally available to Britton before and after the amendment; his position did not change. The amendment of the information did not prejudice Britton’s substantial rights; he was not denied a reasonable opportunity to prepare for and defend against the sentencing enhancement allegation. *See Erkins*, 13 N.E.3d at 405-06. The trial court did not err in allowing the amendment of the information.

Sufficiency of the Evidence

[14] One who knowingly or intentionally kills another person commits Murder. I.C. § 35-42-1-1. Pursuant to Indiana Code Section 35-41-5-1(a), “A person attempts to commit a crime when, acting with the culpability required for commission of the crime, the person engages in conduct that constitutes a substantial step toward commission of the crime.” To convict Britton of Attempted Murder, as charged, the State was required to establish beyond a reasonable doubt that Britton, acting with intent to kill, shot K.C., which conduct constituted a substantial step toward the commission of Murder. (App. Vol. II, pg. 20.)

[15] The standard by which we review a claim of insufficient evidence is well-settled:

Upon a challenge to the sufficiency of evidence to support a conviction, a reviewing court does not reweigh the evidence or judge the credibility of the witnesses, and respects “the jury’s exclusive province to weigh conflicting evidence.” ... We have often emphasized that appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. Expressed another way, we have stated that appellate courts must affirm “if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.”

McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005) (internal citations omitted).

[16] K.C. testified that she accepted a social invitation and ride from Britton and then spent time at his home, where he intimidated and attacked her. K.C. further testified that, during the car ride that followed, K.C. called Britton a rapist and a monster; he forced K.C. out of the vehicle; and he shot her multiple times. This is sufficient evidence from which a reasonable trier of fact could find Britton guilty of Attempted Murder beyond a reasonable doubt. Britton argues that the evidence is insufficient because “[K.C.’s] initial description of the perpetrator did not match Britton” and “it was clear that the bullets found at Britton’s house did not match the bullet removed from K.C.” Appellant’s Brief at 20. Britton simply extends an invitation to reweigh the evidence, which we decline.

Admission of Evidence

[17] Testimony from the firearms examiner indicated that K.C. had been shot by a 9 mm handgun, and that the weapon could have been a Bersa.⁶ Over Britton's objections of irrelevance and undue prejudice, the trial court admitted into evidence State's Exhibit 38, which was generated from a forensic examination of Britton's phone. The exhibit indicated that, three weeks before K.C. was shot, a Google shopping search was conducted on Britton's phone relative to a magazine and an extended magazine for a Bersa mini 9 Firestorm.

[18] According to Britton, "the introduction of State's Exhibit 38 was highly prejudicial to [him], outweighing any probative value" because it provided "a tenuous connection between Britton and a Bersa firearm." Appellant's Brief at 18.

It is well-established that the decision to admit evidence is within the sound discretion of the trial court and is afforded a great deal of deference on appeal. We review evidentiary determinations for an abuse of discretion and will not reverse such decisions unless the decision is clearly against the logic and effect of the facts and circumstances before the court.

Wilson, 931 N.E.2d at 919 (internal citations omitted).

⁶ According to the firearms examiner, all bullets that entered K.C.'s body were fired from the same weapon. The bullet under examination was from a 9 mm Luger weapon; its visible characteristics were of the type shared by firearms manufactured or marketed by Bersa, Canik, Intratec, Thompson Center, and J & R Engineering.

[19] Relevant evidence is evidence having “any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action.” Ind. Evidence Rule 401. In general, relevant evidence is admissible at trial. Evid. R. 402. However, a trial court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice. Evid. R. 403. “All evidence that is relevant to a criminal prosecution is inherently prejudicial, and thus the Evidence Rule 403 inquiry boils down to a balance of the probative value of the proffered evidence against the likely unfair prejudicial value of that evidence.” *Duvall v. State*, 978 N.E.2d 417, 428 (Ind. Ct. App. 2012), *trans. denied*. “When determining the likely unfair prejudicial impact, courts will look for the dangers that the jury will (1) substantially overestimate the value of the evidence or (2) that the evidence will arouse or inflame the passions or sympathies of the jury.” *Carter v. State*, 766 N.E.2d 377, 382 (Ind. 2002) (citing *Evans v. State*, 643 N.E.2d 877, 880 (Ind. 1994)).

[20] The value of evidence that, recently before K.C. was shot with a 9 mm handgun, Britton had been interested in acquiring a magazine for a 9 mm handgun, was significant. That said, the firearms examiner testified before the jury that she could not definitively identify the weapon used. This lessened the likelihood that the jury would substantially overestimate the value of the evidence. Moreover, K.C., who had spent hours face-to-face with her attacker, made an in-court identification of Britton as the shooter. This likewise made it unlikely that the jury overestimated the value of the Google search evidence in

determining Britton's guilt. The admission of State's Exhibit 38 was not unfairly prejudicial.

Conclusion

[21] The trial court did not err in permitting the amendment to the charging information. Sufficient evidence supports Britton's conviction for Attempted Murder. Britton has not demonstrated that the trial court abused its discretion in the admission of evidence.

[22] Affirmed.

Brown, J., and Weissmann, J., concur.