MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew Lee Barnett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 24, 2023

Court of Appeals Case No. 22A-CR-1841

Appeal from the Vanderburgh Superior Court

The Honorable Robert R. Aylsworth, Special Judge

Trial Court Cause No. 82D03-2006-F1-3288

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Andrew Lee Barnett appeals his convictions for attempted aggravated battery as a level 3 felony, resisting law enforcement and criminal recklessness as level 6 felonies, and possession of a firearm by a serious violent felon as a level 4 felony. He argues the trial court erred in admitting certain video recordings and photographs. We affirm.

Facts and Procedural History

[2] On May 30, 2020, police received information that Barnett was waving a gun near an apartment building. Evansville Police Officer Mike Jolly arrived at the scene, approached Barnett, and instructed him to not walk away, Barnett started to reach in his pocket, and Officer Jolly instructed him not to reach in his pockets and explained why he was there. Evansville Police Officers Brian Aker and Jacqueline Duff arrived at the scene, Barnett started to run, and the officers pursued him. Officer Aker deployed his taser, "one prong" hit Barnett, and he appeared to have no reaction. Transcript Volume II at 139. Barnett stopped, turned toward Officer Aker, reached with his right hand toward his right side, displayed a firearm, extended his arm, and pointed the firearm at or in the direction of Officer Aker from approximately seven to ten feet away. When he saw the firearm, Officer Aker "fired the second cartridge" of his taser, and Barnett discharged his firearm. *Id*. at 147. Officer Aker started "to duck away" to avoid being shot. *Id*. at 144. Barnett fell to the ground and was subdued. Officer Jolly looked at Barnett and "made sure he was okay." *Id*. at 166. Barnett told Officer Jolly that he could not feel his legs, and the probes of the taser were removed from his arms.

[3] The State charged Barnett, in an amended information, with: Count I, attempted murder as a level 1 felony; Count II, resisting law enforcement as a level 6 felony; Count III, criminal recklessness as a level 6 felony; and Count IV, unlawful possession of a firearm by a serious violent felon as a level 4 felony. The State also filed an information alleging Barnett was eligible for a sentencing enhancement for committing a felony while using a firearm. The court ordered a bifurcated proceeding on Count IV.

[4] In June 2022, the court held a jury trial. Prior to opening statements, Barnett's counsel stated:

> I think the State might want to introduce . . . some pictures, basically a sequence of events, still-shots from the body cameras, . . . and then there was also given to me some slowed-down videos of the body cams. So, in regards to both of those things, I am not sure how many pictures there are, but there were probably about 40 if I had to guess or something like that. . . .
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> I would make [a] . . . relevance objection first of all, it doesn't make any other fact more or less likely. I think they're sort-of duplicative in nature. I know that the State wants to introduce them as sort-of a sequence of events to get some context, . . . but as the Court knows, we are talking about a few seconds here. I do think that they are duplicative; and I understand that the State would like to introduce them sort-of in a sequence but I'm not sure that all of them are going to be necessary . . . I think at that point it would just be kinda (sic) belaboring . . . the point. You know the Jury is going to have the chance to . . . go back and watch the video over and over. They can watch it in full speed; they can slow it down; they can watch it in frame by frame if they would like to; . . . I am just not sure that we need all of that . . . specifically the slowed down videos and I understand that there are some stilled shots that are certainly going to be relevant and probably the basis of the State's argument here. . . . I

> just feel like . . . it's going to be sort-of belaboring the point when you're taking it down frame by frame when you could use maybe a couple of pictures to show that he pulled the gun up and was pointing at or in some direction of the Officer. So I would make the same objection on the pictures and on the slowed-down video.

Id. at 112-113. In response, the prosecutor argued:

> I mean, I can play the defenses; well the entire defense is going to say that the Defendant did not intend on pulling the trigger and then basically narrow this down to a split second case. . . . [T]he prosecution's theory of the case is that there is a whole lot more that happened that shows the Defendant's specific intent to kill in this case . . . the photographs and . . . the slow-mo (sic) video, basically just focuses slowly on the chase of Mr. Barnett, and then there are twenty photographs from Officer Aker and twenty photographs from Officer Duff that kinda (sic) capture the critical moment of the Defendant turning around, reaching down, pulling the gun up, and extending his arm; and I think that that's necessary to show his specific intent to discharge a firearm at Officer Aker, which is sufficient for a Jury to find that he had the intention to kill. So, I think that that is going to be helpful to the Jury. I think that it's going to be probative of the facts. It is not prejudicial. It is evidence that would otherwise be already admitted, it's just making it in an easier to digest form for them rather than having them all get up really close to the T.V. and click on the button and things like that.

Id. at 113. The court ruled: "So long as the authenticity of the photographs and the video is established, the Court will allow that . . . upon Offered by the State over the Defendant's objection." *Id*. at 113-114.

[5] During the State's opening statement, the prosecutor stated:

> . . . . You are going to hear from . . . a gun expert . . . . You are going to find that this particular gun is a revolver, the 38-special, 5 shots. . . . This isn't a hair trigger. . . . [S]he is going to tell you what the trigger pull weight is . . . . The double action weight in this is 12 pounds, which is a lot.
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> * * * * *
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> So, at the end of the day, . . . you are going to see everything that happened. You are going to see every single action and choice that the Defendant chose to make when he had a gun, was waiving [sic] it around, decided to flee from the Police and then pull the gun out of his side and point it. I am going to give you a couple different kinds of evidence and I will show you all of them, but you will have the opportunity to re-watch or look at them. I am going to provide you a full-speed video so that you will kinda (sic) get the Officer's view . . . . I will provide a slower-speed video so that you can . . . take a look back and do the replay. I am going to provide you frame-by-frame stills of the pertinent moment when the Defendant was pulling the gun out and . . . pointing.

Id. at 125-126. During the defense's opening statement, Barnett's counsel stated:

> When they get there, they meet with Mr. Barnett. Some words were exchanged, and upon seeing a few white male Police Officers and female, . . . Mr. Barnett takes off running. [A]fter he takes off running, there is a pursuit and it ends with a gun being pointed in the general direction of Officer Aker. The evidence is going to show you that the entire time between him running, being tased, was three seconds long. Just three seconds. That might seem insignificant at this point in time but I want you to remember that.
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> The evidence is also going to show that he was tased once, two seconds went by and he was ta- sorry, he was tased with the first prong of the taser, two seconds went by and the second prong went

> in all before the gun went off. . . . [T]he State had mentioned that they were going to show . . . body cam footage of the officers and they are going to show still-shots. So, please take every piece of that evidence and weigh is [sic] carefully and weight is [sic] separately.
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> The evidence is going to show that after Mr. Barnett was tased, . . . he fell to the ground. He was told to drop his gun, . . . and he did drop his gun. Then he was told to roll over and he did roll over. You are not going to see evidence of the gun going off more than once today. You are also going to see that after the gun went off, Mr. Barnett, wasn't sure that it was the gun that was in his hand that went off and that when he tried to stand up he lost function in his leg, legs, after being tased. There is not much here outside what we have already discussed but . . . please pay careful attention to everything and . . . weigh everything equally.

Id. at 127-128.

[6] The State elicited testimony from Officers Aker and Duff. It also presented the testimony of a forensic firearm examiner who testified that testing of Barnett's firearm showed it was functioning as designed and had a trigger pull weight of 12 to 12.5 pounds, which "requires a decent amount of force." *Id*. at 201. The court admitted video recordings taken from the body cameras of Officers Jolly, Aker, and Duff. The State also introduced, and the court admitted over Barnett's objection, two slow-motion video recordings, one taken from Officer Aker's body camera and the other taken from Officer Duff's body camera, and a number of still images taken from the videos.

[7] During closing argument, the prosecutor argued "[t]he Defense . . . their argument is . . . he didn't pull the trigger; he didn't mean to" but that was "not what the evidence shows." *Id*. at 234. Barnett's counsel argued:

> [H]ere are the facts . . . during the pursuit [Officer] Aker pulls his department issued taser, . . . he fires the first prong and hits Mr. Barnett in one of his forearms. Two seconds later, if you watch the full body camera, it is two seconds later, the second probe of the taser hits the other arm as he is holding the gun. Okay? What happens is that connects the circuit between the two prongs. . . . Once that current is connected, that is when the tasing happens and that is exactly when the gun goes off. Watch the body camera just before the gun goes off and you can literally hear the second prong being fired into Mr. Barnett. . . .
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> . . . . The entire time from the time that the first probe entered Mr. Barnett's body to the time that he is on the ground and had given up . . . is three seconds. That's what it is. You can watch the full speed body camera; its [sic] three seconds long; and that's what you're going to have to take a look at today and determine the guilt of Mr. Barnett over a three second encounter.
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> . . . . It is absolutely reasonable to believe that while he is being actively tased and as soon as the second prong enters his body that the Defendant would have tensed up and could've pulled the trigger.
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> * * * * *
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> Mr. Barnett obviously draws the gun, you've seen all the still-shots, you've seen all the body camera; he draws the gun and points it in the general direction of Officer Aker. But, he does not intentionally pull the trigger. That is essentially done by the taser.

Id. at 242-244.

[8] The jury found Barnett guilty of attempted aggravated battery as a level 3 felony as a lesser included offense under Count I, resisting law enforcement as a level 6 felony under Count II, and criminal recklessness as a level 6 felony under Count III, and it found that he was eligible for the sentencing enhancement. Barnett admitted to possession of a firearm by a serious violent felon as a level 4 felony under Count IV.

Discussion

[9] Barnett asserts the trial court erred in admitting "the same video evidence in multiple forms over the course of trial." Appellant's Brief at 9. He argues that, "[b]y adding a slow-motion version and the still shots, the State created drumbeat repetition of the same evidence," the videos were provided to the jury in their original forms, and the remaining exhibits "are simply the State's attempt to bolster one single point by showing the same evidence repeatedly." *Id*. at 10. He requests this Court to remand "for a new trial excluding the cumulative evidence." *Id*. at 11. The State maintains "the resolution of the case was narrowed to a 'split second' when Barnett fired his firearm and was tased the second time." Appellee's Brief at 10 (citing Transcript Volume II at 113). It argues the evidence was probative to establish that Barnett acted purposefully when he shot at Officer Aker.

[10] The trial court has broad discretion to rule on the admissibility of evidence. *Bradley v. State*, 54 N.E.3d 996, 999 (Ind. 2016). A trial court's ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015), *reh'g denied*.

[11] Ind. Evidence Rule 401 provides that evidence is relevant if it has 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 402 provides in part that irrelevant evidence is not admissible. Ind. Evidence Rule 403 provides the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Also, the Indiana Supreme Court has held, in the context of the admission of photographs, that a defendant is not entitled to a sanitized presentation of the evidence. *See Reaves v. State*, 586 N.E.2d 847, 859 (Ind. 1992).

[12] The record reveals the prosecutor stated the evidence would show the officers were in pursuit of Barnett, Officer Aker tased Barnett, and Barnett stopped, pulled his gun, brought his arms up in a shooting stance, and shot. Defense counsel stated the evidence would show there was a pursuit which "ends with a gun being pointed in the general direction of Officer Aker," "the entire time between him running, being tased, was three seconds," and "he was tased with the first prong of the taser, two seconds went by and the second prong went in all before the gun went off." Transcript Volume II at 127.

[13] The officers testified in detail as to their interactions with Barnett and their observations and recollections of the sequence of events leading to Barnett firing his weapon. Officer Duff indicated the deployment of Officer Aker's taser the second time and the discharge of Barnett's firearm occurred within "tenths of a second" of each other. *Id*. at 183. The State introduced video recordings taken

from the officers' body cameras at regular speed, which Barnett did not challenge. It also introduced the slow-motion versions of the recordings taken from the body cameras of Officers Aker and Duff and still images taken from the recordings. The recordings and images depict Barnett's position and movements relative to Officer Aker over the relevant period and the timing of the discharge of Barnett's firearm relative to the deployment of Officer Aker's taser. The challenged recordings and images are not particularly gruesome or sensational. The court had wide latitude in weighing the probative value of the evidence against the possible prejudice of its admission. Based upon the record, we cannot say the trial court abused its discretion in admitting the challenged evidence.

[14] For the foregoing reasons, we affirm Barnett's convictions.

[15] Affirmed.

Bailey, J., and Weissmann, J., concur.