MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Antonio Jamaine White,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

May 1, 2024

Court of Appeals Case No.
23A-CR-2804

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause No.
71D03-2207-MR-11

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Antonio Jamaine White appeals his conviction for murder. White raises four issues for our review, which we consolidate and restate as whether White is able to show that the trial court committed reversible error in its admission of certain evidence. We affirm.

Facts and Procedural History

[2] During the morning hours of July 13, 2022, White borrowed Kathy Barber's green SUV to go to a blood bank in South Bend. Seth Lipscomb accompanied White.

[3] As they were leaving the blood bank, White drove the SUV, and a dark-colored sedan driven by Jon Senour "cut [White] off." Tr. Vol. 3, p. 5. The incident caused White to have "road rage." *Id.* White followed Senour into a nearby alley, got out of the SUV, and shot Senour twice. One of the gunshots went through Senour's neck, and he died in the sedan. After shooting Senour, White returned to the SUV, backed out of the alley, struck another car, and then fled from the scene.

[4] Law enforcement officers quickly identified White as the perpetrator of Senour's death, located him, and arrested him. The State charged White with murder. At his ensuing jury trial, Barber testified that White and Lipscomb had borrowed her SUV on the day in question. A female witness who was in the alley that day testified that she had observed a man matching White's description and driving a vehicle matching the description of Barber's vehicle

had shot and killed Senour. Lipscomb likewise testified that White had shot and killed Senour. White's girlfriend on the day in question testified that White had told her that he had "followed the guy into the alleyway and shot him." *Id.* at 37. White had also used his girlfriend's cell phone to search about a "South Bend shooting." *Id.* And the State introduced physical evidence of White's operation of Barber's SUV and data-location evidence that showed White's whereabouts on July 13.

[5] During re-direct examination of Lipscomb, the State asked the following questions, with our enumeration:

> [1] Is this a hard task for you to do today?
>
> * * *
>
> [2] [D]o you want to give up your friend?
>
> * * *
>
> [3] But when the police spoke to you . . . , did you tell the police what happened?
>
> * * *
>
> [4] Did you tell the police that you were at [Barber's home] that evening?
>
> * * *

[5] Did you tell detectives that your father was there in the evening?

* * *

[6] Did you tell the detectives that your father left and you stayed . . . ?

* * *

[7] Did you tell the detectives that the defendant came to [Barber's] with [another] individual . . . ?

* * *

[8] Did you tell the detectives that the next morning you left [Barber's] house?

* * *

[9] Did you tell the detectives that you left with the defendant?

* * *

[10] Did you tell the detectives that you went to the blood bank?

* * *

[11] Did you tell the detectives that you drove to the blood bank?

* * *

> [12] Did you tell detectives that you and the defendant [switched] places in the vehicle?
>
> * * *
>
> [13] Did the defendant the rest of that day remain in the driver's seat?
>
> * * *
>
> [14] [D]id you tell police that the defendant drove the truck down the alley?
>
> * * *
>
> [15] Did you tell police that the defendant fired a gun into the other guy's car?

Id. at 21-24, 26-27. White objected to each of those fifteen questions as improperly leading, which objections the trial court overruled.

[6] The State continued its re-direct examination of Lipscomb by moving to admit State's Exhibit 136, a photograph of White and Lipscomb in Barber's SUV. As the foundation for that exhibit, the State asked Lipscomb if the photograph accurately depicted him and White, and he agreed that it did. White then objected to the admission of the photograph on two grounds: that the State had not established a proper foundation for the photograph, and that the admission of the photograph was outside the scope of the cross-examination. The trial court overruled the objections and admitted the photograph.

[7] Later in the trial, the State moved to admit various photographs and text that had been posted to White's Facebook page. Those photographs showed White in possession of a Smith & Wesson 9mm handgun, which matched the murder weapon, and the text showed White referring to his possession of the same near the time of the murder. Two of the photographs, State's Exhibits 203C and 203D, also showed the Smith & Wesson alongside a second, similar firearm. White objected to the admission of the photographs on the ground that their probative value was substantially outweighed by the danger of unfair prejudice, which objection the trial court overruled.

[8] Finally, during the testimony of an investigating detective, the State moved to admit a "booking packet" from law enforcement records that included photographs of White near the day in question as well as an interview transcript between the detective and White. *Id.* at 81. The relevant exhibits here included State's Exhibits 151C, 152C, and 152D, which were the photographs, and State's Exhibit 202, which was the transcript. White objected to those exhibits on the ground that their probative value was substantially outweighed by unfair prejudice resulting from the implication that he had been in police custody. The trial court admitted the exhibits into evidence.

[9] The jury found White guilty as charged, and the trial court entered its judgment of conviction and sentenced White accordingly. This appeal ensued.

Discussion and Decision

[10] On appeal, White challenges the trial court's admission of certain testimony and exhibits into evidence. A trial court has broad discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). A trial court abuses its discretion only where its ruling was clearly against the logic and effect of the facts and circumstances before it. *Id.*

[11] And not all error is reversible error. As our Supreme Court has made clear:

> When an appellate court must determine whether a non-constitutional error is harmless, [Indiana Appellate] Rule 66(A)'s "probable impact test" controls. Under this test, the party seeking relief bears the burden of demonstrating how, in light of all the evidence in the case, the error's probable impact undermines confidence in the outcome of the proceeding below. Importantly, this is not a review for the sufficiency of the remaining evidence; it is a review of what was presented to the trier of fact compared to what should have been presented. And when conducting that review, we consider the likely impact of the improperly admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case. Ultimately, the error's probable impact is sufficiently minor when—considering the entire record—our confidence in the outcome is not undermined.

Hayko v. State, 211 N.E.3d 483, 492 (Ind. 2023) (citations omitted).

[12] White first asserts that the trial court erroneously allowed the State to ask purportedly leading questions of Lipscomb during re-direct examination.[1] But, assuming only for the sake of the argument that the fifteen questions were improperly leading, White makes no showing of how any error in the form of those questions amounts to reversible error on this record. *See id.*; Appellant's Br. at 8. Indeed, during the State's direct examination of him, Lipscomb testified, without objection, to the substance of each of his responses to the fifteen questions asked during re-direct examination. *See, e.g.*, *Stewart v. State*, 167 N.E.3d 367, 374 (Ind. Ct. App. 2021) ("it is well-settled that the erroneous admission of evidence which is cumulative of other evidence admitted without objection does not constitute reversible error"), *trans. denied*. Accordingly, there is no reversible error here.

[13] White next asserts that the trial court improperly admitted State's Exhibit 136, the photograph of White and Lipscomb in Barber's SUV. White asserts that the State's foundation was not sufficient for the admission of the exhibit and,

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[1] For the first time on appeal, White asserts that the fifteen questions asked by the State during the re-direct examination of Lipscomb also "were hearsay" and "violated [his] right of confrontation" under the Sixth Amendment to the United States Constitution. Appellant's Br. at 8-9. White did not object in the trial court to the questions on hearsay or confrontation grounds. He therefore has not preserved those arguments for appellate review. And White's one-sentence assertion that any error was fundamental error is not an argument supported by cogent reasoning. *See* Ind. Appellate Rule 46(A)(8)(a). We therefore do not consider White's hearsay or confrontation arguments.

further, that the State's request to admit the exhibit during Lipscomb's re-direct examination was outside the scope of the cross-examination.[2]

[14] But, again, White makes no argument as to why any error in the admission of State's Exhibit 136 should undermine our confidence in his conviction. *See Hayko*, 211 N.E.3d at 492; Appellant's Br. at 8-9. To the contrary, he acknowledges—properly—that there was no dispute that he and Lipscomb were using Barber's SUV on the day in question. Appellant's Br. at 9. Accordingly, there is also no reversible error here.

[15] White next challenges the trial court's admission of State's Exhibits 203C and 203D. These two exhibits were the same photograph in two different sizes and showed the Smith & Wesson alongside a second, similar firearm. White does not dispute that those two exhibits had probative value; rather, he asserts that the probative value of those photographs was substantially outweighed by the danger of unfair prejudice due to the second firearm. *See* Ind. Evidence Rule 403.

[16] We cannot agree. State's Exhibit 203C showed not just the posted photograph but also the time at which it was posted, and State's Exhibit 203E, which is not challenged on appeal, showed that, about forty-five minutes later, White made a reference to the "Smitty"—or the Smith & Wesson—in that photograph. Ex.

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[2] White's additional reference in his brief to the silent-witness theory is not an argument supported by cogent reasoning, and we do not consider it. *See* App. R. 46(A)(8)(a).

Vol. 4, pp. 147-49. State's Exhibit 203D then showed the same photograph but larger and without the corresponding time and text data.

[17] Thus, State's Exhibit 203C, and the cumulative enlargement of that photograph in State's Exhibit 203D, was highly probative in that it correlated the visual evidence of the Smith & Wesson with White's own written reference to it. While our Supreme Court has noted that, "[a]s a general proposition, . . . the introduction of weapons not used in the commission of the crime and not otherwise relevant to the case may have a prejudicial effect," *Hubbell v. State*, 754 N.E.2d 884, 890 (Ind. 2001), Evidence Rule 403 commits to our trial courts the proper balancing of probative and prejudicial values, *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017). We cannot say that the trial court's balancing of those values here was so egregious as to require our second-guessing of it, and we affirm on this issue as well. *See id.* at 179.

[18] Last, White challenges the admission of State's Exhibits 151C, 152C, and 152D, which were the booking photographs, and State's Exhibit 202, which was the ensuing transcript of White's booking interview with a detective. Again, White asserts that those exhibits should have been excluded based on their probative value being substantially outweighed by the danger of unfair prejudice, namely, prejudice that the jurors would readily conclude from the exhibits that White had been in police custody. There was some dispute at trial over how White appeared on the day in question and how he appeared at trial, and, thus, the exhibits were highly probative of his appearance near the day in question. And we again have no reason to second-guess the trial court's

weighing of that probative value against the value of the purported unfair prejudice. *See id.* Accordingly, we affirm on this issue as well.

[19] For all of these reasons, we affirm the trial court's admission of the challenged evidence as well as White's conviction.

[20] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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