No. 20-6382

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

_____

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARK BRYANT,

Defendant-Appellant

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

_____

BRIEF FOR THE UNITED STATES AS APPELLEE

_____

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not believe that oral argument is necessary given the straightforward nature of the issues on appeal.

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RULE:

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STATEMENT OF JURISDICTION

This appeal is from a district court's final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. This Court has jurisdiction under 28 U.S.C. 1291. The district court entered final judgment against defendant Mark Bryant on November 20, 2020. (Judgment, R. 132, PageID# 2229).[1] On

[1] Citations to "R. __" refer to documents, by number, on the district court docket sheet. Citations to "PageID# __" refer to the page numbers in the paginated electronic record. Citations to "Br. __" refer to the page numbers in Bryant's opening brief. Citations to "GX __" refer to government exhibits admitted at trial.

(continued…)

December 4, 2020, Bryant filed a timely notice of appeal. (Notice of Appeal, R. 134, PageID## 2253-2254).

STATEMENT OF THE ISSUES

The taser is an electroshock weapon. The tasers used at the Cheatham County, Tennessee jail have a built-in limit of five seconds per trigger pull, and the jail's officers were trained that they should use the taser only for the minimum duration and for the minimum number of bursts reasonably necessary to immobilize a detainee who posed an active threat. Defendant Mark Bryant, at the time a supervisory officer at the jail, nevertheless tased a restrained and non-threatening pretrial detainee on two separate occasions, once through repeated shocks for nearly a minute and a couple hours later for 11 consecutive seconds. A jury convicted Bryant of two counts of violating 18 U.S.C. 242 by willfully depriving the pretrial detainee of his due process right to be free from unreasonable force. This appeal presents the following questions:

1.a. Whether Bryant waived his claim that there was insufficient evidence to support his Section 242 convictions when he excluded the Section 242 charges from his motion for judgment of acquittal before the district court.

GX 6, 11, and 21 are recordings of surveillance footage and are contained on the CD filed concurrently with this brief. All other government exhibits cited in this brief are included in the Appendix to Brief for the United States (App.), filed concurrently.

b. Whether the evidence was sufficient for a jury to find that Bryant acted willfully when he tased a restrained and non-threatening pretrial detainee on two separate occasions, both times knowing that officers were prohibited from using more force than was necessary.

STATEMENT OF THE CASE

1. Factual Background

This case arises from the unlawful use of force committed by defendant Mark Bryant against Jordan Norris, a restrained 18-year-old pretrial detainee, at the Cheatham County Jail in Ashland City, Tennessee. As described below, on November 5, 2016, officers put Norris in a restraint chair so that he could not harm himself or others. Bryant subsequently tased Norris on two occasions, spaced a little more than two hours apart, while Norris was strapped to the restraint chair and surrounded by multiple correctional officers. Bryant tased Norris four times for a total of 50 seconds during the first incident, and then again for 11 consecutive seconds during the second incident. Bryant did so despite previously receiving repeated instructions from the jail that officers were not allowed to use more force than was necessary and specific training not to tase an inmate for more than five seconds at a time.

Viewed in the light most favorable to the jury's verdict, see *United States* v. *Maliszewski*, 161 F.3d 992, 1006 (6th Cir. 1998), cert. denied, 525 U.S. 1183, and 525 U.S. 1184 (1999), the evidence at trial established the following:

a. Bryant Knew It Was Unlawful To Tase A Restrained And Non-Threatening Detainee

Mark Bryant is a former officer with the Cheatham County Sheriff's Office. (Trial Transcript (Tr.), R. 115, PageID## 1708, 1751). After starting work at the county jail as a correctional officer, Bryant was promoted to corporal. (Tr., R. 115, PageID# 1711). In that position, he served as the direct supervisor of other correctional officers. (Tr., R. 113, PageID# 1221; Tr., R. 115, PageID# 1711).

As a Sheriff's Office employee, Bryant received instruction about the appropriate force to use when interacting with detainees in the jail. (Tr., R. 114, PageID## 1505-1506; Tr., R. 115, PageID# 1766). In particular, Bryant received the jail's written policies and completed its in-person taser certification training, both of which detailed how and when to use a taser. (Tr., R. 115, PageID## 1709-1711, 1760-1761).

From the jail's written policy and taser legal handout, Bryant knew that officers were allowed to use force only to neutralize a threat and to maintain control. (Tr., R. 113, PageID# 1228; Use of Force Policy, GX 1, ¶ 3.2, App., p. 1; Taser Legal Handout, GX 3, App., pp. 4-7). The jail's written policy mandated that officers use a taser only for "the minimum number of bursts and the minimum

duration reasonably necessary to achieve the desired effect of temporarily immobilizing the individual," with the ultimate goal of using "only the minimum amount of force necessary to control a person or situation." (Use of Force Policy, GX 1, ¶¶ 3.2, 4.5, App., pp. 1-2; Tr., R. 114, PageID## 1507-1508). The legal handout instructed that "[m]ultiple [taser] applications cannot be justified solely on the grounds that a suspect fails to comply with a command, absent other indications that the suspect is about to flee or poses an immediate threat to an officer." (Taser Legal Handout, GX 3, App., p. 5). The handout emphasized that "[t]his is particularly true when more than one officer is present to assist in controlling a situation." (Taser Legal Handout, GX 3, App., p. 5). The use of force policy further directed officers to deploy the taser "consistent with department-approved training." (Use of Force Policy, GX 1, ¶ 4.5, App., p. 2; Tr., R. 114, PageID## 1507-1508).

In addition to the written materials, Bryant received in-person taser training from Sergeant Gary Ola. (Tr., R. 113, PageID## 1226-1227; Tr., R. 114, PageID# 1513; Tr., R. 115, PageID# 1709). The United States presented testimony from Josh Marriott, who was in Bryant's training class, and from Ola, detailing the training Bryant had received. (Tr., R. 113, PageID## 1225-1230; Tr., R. 114, PageID## 1508-1532). Ola taught Bryant's class that the taser could be used in two ways: by deploying prongs, or probes, into a person, or by pressing the taser

directly against a person's body in what is called "drive-stun" mode. (Tr., R. 113, PageID## 1222-1223; Tr., R. 114, PageID# 1529). The prongs leave "little bee sting marks," but tasing in drive-stun mode hurts more and leaves a "nasty burn." (Tr., R. 114, PageID## 1510, 1529; see also Tr., R. 114, PageID# 1333 (officer describing drive-stun as causing an "intense pain")). Bryant had been tased before and therefore knew that it hurt. (Tr., R. 115, PageID# 1810).

Ola also taught Bryant the specific limits of when and how an officer should use a taser. (Tr., R. 114, PageID## 1509, 1515-1529). He instructed Bryant's class that they were not allowed to tase someone just because the person was noncompliant, and could use a taser only when a detainee was "actively resisting" and there was "nothing else * * * in lieu of deadly force" available to get a detainee under control. (Tr., R. 114, PageID# 1520). Ola told Bryant's class that officers were not allowed to tase a detainee after the detainee was fully restrained, and that it was even less justifiable to tase a detainee with multiple officers present. (Tr., R. 113, PageID## 1229-1230; Tr., R. 114, PageID## 1521-1522, 1528).

Bryant understood from the training that he was required to use the "least amount of force necessary" and that if he used more than that, he could get in trouble. (Tr., R. 115, PageID## 1710, 1762-1763). He also understood that officers were not allowed to use force to punish an inmate, to retaliate against an inmate for bad behavior that had since subsided, or simply because an inmate had

been difficult. (Tr., R. 115, PageID## 1764-1765; see also Tr., R. 113, PageID# 1228; Tr., R. 114, PageID## 1520-1521). He knew that he could not use force against someone who was no longer a threat. (Tr., R. 115, PageID# 1765).

Ola also specifically instructed Bryant that officers were not allowed to tase someone for more than three five-second cycles. (Tr., R. 113, PageID## 1228-1229; Tr., R. 114, PageID## 1522-1524; Tr., R. 115, PageID# 1585). Ola explained to the class that the taser has a built-in limit of five seconds per trigger pull. (Tr., R. 113, PageID# 1223; Tr., R. 114, PageID# 1516). Ola instructed them that the appropriate way to use the taser was to "[p]ull the trigger one time, release it, let it fire its five seconds, [and then] reassess the situation and see if you need to pull it again." (Tr., R. 114, PageID# 1516; see also Tr., R. 114, PageID# 1300). Ola told Bryant and his classmates that if instead of pulling and releasing the trigger, they continued to hold the trigger down, the taser would run continuously until the battery died. (Tr., R. 114, PageID# 1516). He also instructed Bryant that if, after using three five-second bursts, a detainee was still not under control, officers were required to look for another way to gain control. (Tr., R. 114, PageID## 1524-1525; see also Tr., R. 114, PageID## 1336-1337).

Finally, Bryant knew that officers were required to use their common sense in determining how and when to use force. (Tr., R. 114, PageID## 1395, 1437, 1508). Bryant understood that using more force than necessary was never allowed,

even if the specific mechanism of excessiveness was not expressly detailed in the training or policies. (Tr., R. 115, PageID## 1763-1764).

b. Bryant's First Interaction With Norris: At Approximately 7 p.m., Officers Secured Norris In A Restraint Chair

In the evening of November 5, 2016, 18-year-old Jordan Norris was detained in the Cheatham County Jail. (Tr., R. 113, PageID## 1231-1232; Montgomery Use of Force Report, GX 29, App., p. 10). Multiple officers testified during trial that Norris seemed unwell: he made suicidal and delusional comments and appeared to be under the influence of an unknown substance. (Tr., R. 114, PageID# 1322; Tr., R. 115, PageID## 1610, 1631-1632, 1685-1686, 1719, 1726).

Around 7 p.m., Norris began to yell and bang his head against his cell door. (Tr., R. 113, PageID## 1232, 1237-1238; Tr., R. 115, PageID## 1587-1588). Bryant, who was the supervisor on duty, and Officer Jeffrey Key decided to take Norris out of the cell. (Tr., R. 113, PageID## 1232-1233; Tr., R. 115, PageID## 1666-1667). Surveillance cameras captured the officers' extraction of Norris from his cell and the officers' subsequent interactions with him, as relevant here. (7 p.m. Video, GX 6; 8 p.m. Video, GX 11; 10:20 p.m. Video, GX 21).

During the extraction, Norris began resisting Bryant and Key, so they decided to put him in a restraint chair. (Tr., R. 113, PageID# 1233; Tr., R. 115, PageID## 1590, 1669; 7 p.m. Video, GX 6, 00:55-01:10). The restraint chair has seatbelt-like straps that secure detainees over different parts of their body. (Tr., R.

113, PageID# 1235). There are straps that go across each shoulder, wrist, and ankle, as well as across the lap. (Tr., R. 113, PageID# 1235).

Officers Josh (J.) Marriott[2] and Daniel Bratton joined Key and Bryant in attempting to bring Norris from his jail cell to the restraint chair. (Tr., R. 114, PageID## 1298-1299; Tr., R. 115, PageID# 1591; 7 p.m. Video, GX 6, 01:10-01:40). Norris continued resisting. (Tr., R. 113, PageID# 1233; Tr., R. 114, PageID## 1298-1299; 7 p.m. Video, GX 6, 01:40-02:30).

In response, Bratton tased Norris three times, for less than five seconds each time, as the officers struggled to fully secure Norris in the restraint chair. (Tr., R. 113, PageID## 1233-1234; Tr., R. 114, PageID## 1299-1302; 7 p.m. Video, GX 6, 02:30-03:00). After Bratton's brief tases, the officers succeeded in putting Norris in the chair, and they strapped him in with each of the chair's seven straps. (Tr., R. 114, PageID# 1303). Once they secured Norris in the chair, Norris calmed down for about an hour. (Tr., R. 113, PageID## 1237-1238).

No charges were filed against the officers for their use of force against Norris when they extracted him from the cell and initially secured him in the restraint chair.

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[2] We refer to Josh Marriott as "J. Marriott," and to Caitlin Marriott, another officer in the jail, as "C. Marriott."

c. The First Charged Incident: At Approximately 8 p.m., Bryant Tased Norris Four Times In Quick Succession For 50 Seconds While Norris Was Fully Restrained

Around 8 p.m., Norris became agitated again. (8 p.m. Video, GX 11, 00:00-00:15; Tr., R. 113, PageID# 1238). He started spitting, so J. Marriott put a spit mask on him. (8 p.m. Video, GX 11, 00:00-00:15; Tr., R. 113, PageID# 1239). Norris attempted to remove the spit mask, revealing that he had loosened the strap on his right wrist and created some slack in the restraint. (8 p.m. Video, GX 11, 00:15-00:23; Tr., R. 115, PageID## 1674-1675).

Key and J. Marriott approached Norris to subdue him: Key took hold of Norris's right hand, and J. Marriott grabbed Norris by the shoulders and pulled Norris's back flat against the restraint chair. (8 p.m. Video, GX 11, 00:20-00:33). As Key attempted to tighten the strap on Norris's right hand, Bryant walked over and kneeled in front of Norris. (8 p.m. Video, GX 11, 01:42-01:48). When Bryant began to help Key secure Norris's hand, Norris leaned forward toward Bryant. (8 p.m. Video, GX 11, 01:53-02:15). J. Marriott grabbed Norris's head under the jaw, and applied pressure to specific points on his jawline, pulling him back against the chair. (8 p.m. Video, GX 11, 02:15-02:30; Tr., R. 113, PageID## 1239-1240). At this point, Norris was under the three officers' control. (8 p.m. Video, GX 11, 02:30-02:59; Tr., R. 113, PageID## 1243-1244; Tr., R. 115, PageID## 1591-1595).

When Bryant first kneeled in front of Norris, the surveillance footage shows him speaking into his radio. (8 p.m. Video, GX 11, 01:48-01:53). Officer Caitlin (C.) Marriott testified that Bryant asked her to bring him a taser. (Tr., R. 115, PageID# 1593). The surveillance footage shows that when C. Marriott brought the taser, she removed the cartridge of probes that are discharged when the taser is in probe-deployment mode, so that the taser was armed to operate in the more painful and injurious drive-stun mode. (8 p.m. Video, GX 11, 02:53-02:59; Tr., R. 113, PageID# 1222; Tr., R. 114, PageID# 1510, 1529-1530; see pp. 5-6, *supra*).

By the time C. Marriott handed Bryant the taser, however, Norris was restrained by the three officers around him. (8 p.m. Video, GX 11, 02:53-03:00). J. Marriott was holding Norris's head back so that he was flat against the restraint chair and could not move his upper body. Key was holding Norris's right hand down with both of his hands. Bryant was also holding Norris's right wrist down. The rest of Norris's body was restrained by the chair's six other straps. Norris was sitting still and was no longer a threat. (8 p.m. Video, GX 11, 02:53-03:00; Tr., R. 113, PageID# 1244; Tr., R. 115, PageID# 1597).

In testifying later, the officers confirmed that at this point, Norris could not head-butt anyone, could not kick anyone, and could not move his right arm, even with the loosened strap. (Tr., R. 113, PageID## 1243-1244). Norris posed no threat to anyone, and so other officers at the scene saw no reason to tase him for

any amount of time. (Tr., R. 113, PageID# 1244; Tr., R. 115, PageID## 1593, 1597). Bryant himself testified that over the next minute, Norris did not hit, kick, or head-butt anyone; rather, Norris did not "move much at all" and did not have "enough [range of] motion * * * to injure" Bryant. (Tr., R. 115, PageID## 1773-1777, 1779-1782). Bryant attributed Norris's inability to hurt anyone to Key and J. Marriott, testifying that "[t]hey both did an excellent job making sure nobody got hurt." (Tr., R. 115, PageID## 1779-1780).

Nonetheless, Bryant took the taser from C. Marriott, put it against Norris's chest, and said to Norris "Are you ready?" and "Would you like to comply?" (8 p.m. Video, GX 11, 03:00-03:05). Norris responded by asking for some water, but did not move. (8 p.m. Video, GX 11, 03:00-03:10). As described below, Bryant then deployed the taser directly against Norris's body four times for a total of 50 seconds, using the taser's more painful and injurious drive-stun mode. (8 p.m. Video, GX 11, 03:14-04:23; Tr., R. 113, PageID## 1244-1245; Tr., R. 115, PageID## 1596-1597; Taser Log, GX 36, App., p. 13 (entries 961-964)).

First, Bryant tased Norris in the chest for five seconds. (8 p.m. Video, GX 11, 03:13-03:19). Bryant then moved the taser to Norris's restrained left thigh, and tased him again for five seconds. (8 p.m. Video, GX 11, 03:33-03:39). Three seconds later, Bryant tased Norris in the left thigh again; this time, instead of pulling the trigger and releasing it so the taser would run its five-second cycle,

Bryant held the trigger down, so that the taser continued to shoot electricity into Norris's body for 25 seconds. (8 p.m. Video, GX 11, 03:40-04:09). As Bryant held the trigger down, he told the restrained Norris to "stop resisting," and commented "I'll keep on doing it until I run out of batteries" and "this sucks, you don't like it, do you?" (8 p.m. Video, GX 11, 03:41-04:09; Tr., R. 113, PageID# 1246; Tr., R. 115, PageID# 1596). After this, Bryant moved the taser to Norris's restrained right thigh and tased him a final time, again overriding the five-second limit and tasing Norris for 15 consecutive seconds, while Norris appeared to writhe in pain. (8 p.m. Video, GX 11, 04:09-04:23). Bryant testified that he "understood [he] was hurting [Norris]" as he tased him for a combined 50 seconds. (Tr., R. 115, PageID# 1725).

Four officers, including one of Bryant's witnesses, testified that tasing Norris for so long violated the jail's policies on the use of force, and was contrary to basic common sense. (Tr., R. 113, PageID## 1245-1246, 1255; Tr., R. 114, PageID## 1436-1438; Tr., R. 115, PageID# 1681). These witnesses described feeling that Bryant's tases went on "forever," and stated the tases were "[t]oo long" and "definitely overdone." (Tr., R. 113, PageID## 1245, 1255; Tr., R. 115, PageID# 1597). After the 8 p.m. tases, Bryant himself made comments acknowledging that he had used more force than necessary. He told J. Marriott

that he was concerned he had maybe "overdone it" and "gone too far" in the force he used against Norris. (Tr., R. 113, PageID## 1247-1248).

d. The Second Charged Incident: At Approximately 10:20 p.m., Bryant Tased Norris For 11 Seconds After Norris Was Fully Restrained

Around 10:20 p.m., surveillance cameras captured officers preparing to drive Norris to a hospital for evaluation. (10:20 p.m. Video, GX 21; Tr., R. 114, PageID## 1362-1363). Norris was secured in the restraint chair, with his hands handcuffed to a metal bar attached to the booking desk rather than tied down by the chair's arm restraints. (Tr., R. 114, PageID# 1340; 10:20 p.m. Video, GX 21, 00:00-00:10). In addition to the handcuffs, Norris was secured with four other restraints: a belly-chain, which would connect the handcuffs to his waist (once they were released from the bar) and would further restrict his range of motion; a belt across his lap; a belt across his shins; and shackles on his ankles. (Tr., R. 114, PageID## 1345-1346, 1540). Six officers, including Bryant, Sergeant Ola, and Corporal Steven Montgomery, surrounded Norris. (Tr., R. 114, PageID## 1541-1542; 10:20 p.m. Video, GX 21, 00:00-00:35). A seventh officer stood by a few feet away. (Tr., R. 114, PageID# 1542; 10:20 p.m. Video, GX 21, 00:00-00:35).

To take Norris to the car, an officer had to remove the handcuffs securing Norris's arms to the bar and then re-secure his wrists in handcuffs. (Tr., R. 114, PageID## 1341-1342). When the officer removed the handcuffs, Norris began to struggle "a little bit." (Tr., R. 114, PageID# 1539; 10:20 p.m. Video, GX 21,

01:13-01:30). Bryant and the other officers converged on Norris until he calmed down. (10:20 p.m. Video, GX 21, 01:16-01:26). As the officers began to put handcuffs back onto Norris, Norris began to struggle again; Bryant tased Norris five times in quick succession while Norris struggled against the officers. (10:20 p.m. Video, GX 21, 04:02-05:00, Taser Log, GX 36, App., p. 13 (entries 967-971)). Bryant was not charged with any crime for deploying the taser while Norris was struggling.

After Norris was re-handcuffed, he calmed down and sat still in the chair, shackled and belted, for the next 80 seconds. (10:20 p.m. Video, GX 21, 05:05-06:30; Tr., R. 114, PageID## 1346, 1540-1542). Bryant then tased Norris in the right shin for 11 consecutive seconds, again holding the trigger down to override the five-second limit and using the more harmful drive-stun mode. (10:20 p.m. Video, GX 21, 06:32-06:47; Taser Log, GX 36, App., p. 13 (entry 972)). Montgomery and Ola testified that there was no reason to tase Norris at this point for any amount of time, let alone more than twice the standard taser cycle. (Tr., R. 114, PageID## 1349-1350, 1542-1543). Ola described feeling shocked when Bryant tased Norris while Norris was "completely handcuffed and subdued"; he

later felt shame that someone he trained would treat a detainee that way. (Tr., R. 114, PageID## 1542-1543, 1547-1548).[3]

e. Bryant Instructed Subordinates Not To Submit Required Use Of Force Reports And Failed To Submit His Own Use Of Force Report

Jail policy required officers to write two different reports whenever force was used against a detainee: an incident report generally describing the events and participants, and a use of force report providing additional details about the type, amount, duration, and justification for the force used. (Tr., R. 114, PageID## 1310-1311, 1318-1319, 1352, 1396). Despite these requirements, Bryant told three subordinates not to submit their use of force reports, failed to submit his own use of force report, and instead wrote inaccurate and misleading incident reports.

First, Bryant told three subordinates not to submit their use of force reports. He told J. Marriott and C. Marriott not to write use of force reports for the 8 p.m. tasings because he would "take care of it." (Tr., R. 113, PageID## 1249-1251; Tr., R. 115, PageID# 1599). Bryant also spoke to Bratton before Bratton left for the

[3] When the FBI initially interviewed Ola about Bryant's actions, Ola falsely told them that he did not see Bryant tase Norris around 10:20 p.m. (Tr., R. 114, PageID## 1548-1549). He subsequently pleaded guilty to two felony counts of willfully and knowingly making false statements in violation of 18 U.S.C. 1001, and agreed to cooperate with the government. (Tr., R. 114, PageID## 1549-1550; *United States* v. *Ola*, No. 3:18-cr-00145 (M.D. Tenn. Sept. 11, 2018), Guilty Plea Order, R. 20, PageID## 34-39). Ola was sentenced to three months' imprisonment for these crimes. (*Ola*, No. 3:18-cr-00145 (M.D. Tenn. Jan. 26, 2021), Judgment, R. 44, PageID## 116-120).

night and told him not to write a use of force report about the force used at 7 p.m., because "it would be taken care of." (Tr., R. 114, PageID# 1319). Because of Bryant's instructions, each of these officers violated policy and did not write a use of force report. (Tr., R. 113, PageID## 1248-1249; Tr., R. 114, PageID## 1318-1319; Tr., R. 115, PageID## 1599, 1616).

Second, Bryant also did not write the use of force reports required to document the force he used against Norris. (Tr., R. 115, PageID## 1800-1801). Instead, he wrote two incident reports. (Bryant 6:55 p.m. Incident Report, GX 25, App., p. 8; Bryant 10:20 p.m. Incident Report, GX 26, App., p. 9).[4]

The first incident report described the efforts of Bryant, Bratton, Key, and J. Marriott to extract Norris from his cell around 7 p.m. (Bryant 6:55 p.m. Incident Report, GX 25, App., p. 8). This report, which Bryant wrote with a heading indicating that it was describing an incident at 6:55 p.m., summarized how Norris struggled as the officers pulled him from his cell and initially attempted to put him into the restraint chair. (Bryant 6:55 p.m. Incident Report, GX 25, App., p. 8). But, even though Bryant did not tase Norris during the cell extraction, Bryant wrote: "Bratton and I tased" Norris. (Bryant 6:55 p.m. Incident Report, GX 25,

[4] The United States presented an example of a proper use of force report that Bryant previously wrote and submitted for an incident five months before Bryant tased Norris. (Bryant June 1, 2016 Use of Force Report, GX 30, App., p. 11).

App., p. 8). The report included no details about the tasings Bryant deployed against Norris at 8 p.m.

In the second incident report, Bryant summarized what happened with Norris at 10:20 p.m. (including the five tases that were not charged as crimes). (Bryant 10:20 p.m. Incident Report, GX 26, App., p. 9). Bryant stated "while moving inmate Norris from booking restraint chair to jail transport vehicle, inmate Norris did not comply with commands and I drive stun tased him multiple times to gain compliance." (Bryant 10:20 p.m. Incident Report, GX 26, App., p. 9). Bryant did not include any other details in the report's narrative.

These reports were inaccurate and incomplete. As both Sergeant Ola and Jail Administrator Johnny Hannah (the lieutenant in charge of reviewing uses of force at the jail) testified, Bryant's incident reports omitted key information, were inaccurate, and gave them no "idea of what [Bryant] really did" to Norris. (Tr., R. 114, PageID## 1395, 1412-1413, 1547). In particular, Hannah testified that when he saw that Bryant's first incident report listed the relevant time as 6:55 p.m., he pulled the video from that time, which captured the cell extraction and Bratton's use of the taser; based on that video and Bryant's incident report, Hannah determined that the use of force was justified. (Tr., R. 114, PageID## 1405-1410). Hannah did not learn that Bryant had tased Norris four additional times for a total of 50 seconds at 8 p.m. until he saw the taser log several months later. (Tr., R.

114, PageID## 1410-1413). Hannah also testified that Bryant's incident report about the 10:20 p.m. tasing failed to provide important information that he would have needed to accurately review Bryant's use of force. (Tr., R. 114, PageID## 1413-1415).[5]

2. Procedural Background

a. Initially, a federal grand jury in the Middle District of Tennessee returned a four-count indictment against Bryant. (Indictment, R. 3, PageID## 4-8). After a four-day trial resulted in a hung jury and mistrial, another federal grand jury returned a five-count superseding indictment. (Mistrial Order, R. 58, PageID## 260-261; Superseding Indictment, R. 70, PageID## 979-983). Counts 1 and 2 of the superseding indictment charged Bryant with violating 18 U.S.C. 242 by willfully depriving Norris of his due process right to be free from unreasonable force during the repeated tasings at 8 p.m. and the extended tasing at 10:20 p.m. (Superseding Indictment, R. 70, PageID# 980). The remaining three counts charged Bryant with various obstruction offenses for making false statements during the aftermath of the tasings. (Superseding Indictment, R. 70, PageID## 981-982).

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[5] Bryant's reports were the bases for Counts 3 and 4 in the superseding indictment, which charged Bryant with knowingly falsifying documents with the intent to impede an investigation in violation of 18 U.S.C. 1519. (Superseding Indictment, R. 70, PageID## 981-982). The jury found Bryant not guilty of these counts. (Verdict Form, R. 104, PageID# 1092; Tr., R. 116, PageID## 1918-1919).

b. At trial, Bryant made an oral motion for judgment of acquittal after the United States rested, and again after he presented his case. (Tr., R. 115, PageID## 1616, 1816). At the close of the United States' case, Bryant's counsel moved for acquittal and stated that he "want[ed] to talk specifically about two of the counts in the indictment." (Tr., R. 115, PageID## 1616-1617). He stated that "Counts One and Two, are really jury issues. They're going to have to wade through the credibility of the issues and determine the excessive force counts which are alleged in Counts One and Two of the superseding indictment." (Tr., R. 115, PageID# 1617). As to Count 5, he "also concede[d] that [it], which is the 1001 count, is a fact-bound determination, that they're going to have to make some credibility determinations on." (Tr., R. 115, PageID# 1617). Bryant's counsel then explained why he believed the government presented insufficient evidence on Counts 3 and 4. (Tr., R. 115, PageID## 1617-1622).

In responding to Bryant's motion, counsel for the government stated his understanding that Bryant was not challenging the sufficiency of the evidence as to the Section 242 charges in Counts 1 or 2. (Tr., R. 115, PageID# 1623). Bryant did not object to this statement. Nor did he indicate in any other way that he was moving for acquittal on the Section 242 charges as well. (Tr., R. 115, PageID## 1623-1624). The district court reserved ruling on Bryant's motion. (Tr., R. 115, PageID# 1626).

At the close of Bryant's case, Bryant renewed his motion. (Tr., R. 115, PageID# 1816). He made no additional arguments. Instead, he stated that he would "rely on all of the arguments that [he] made" previously. (Tr., R. 115, PageID# 1816). The district court denied the motion and gave the case to the jury. (Tr., R. 115, PageID# 1817).

c. The jury found Bryant guilty of Counts 1 and 2 and acquitted him on all other counts. (Tr., R. 116, PageID## 1918-1919; Verdict Form, R. 104, PageID## 1091-1092). Bryant did not make any motion in the district court challenging the jury's verdict. (Tr., R. 116, PageID## 1920-1921). The district court sentenced Bryant to 60 months in prison and one year of supervised release. (Sentencing Transcript, R. 139, PageID# 2357; Judgment, R. 132, PageID# 2230). Bryant appealed. (Notice of Appeal, R. 134, PageID# 2253).

d. On February 17, 2021, Bryant filed a motion for bond pending the resolution of his appeal to this Court. (Motion for Bond, R. 144, PageID## 2392-2407). Bryant argued that the district court should allow him to remain out on bond in part because his appeal raised a substantial question of law. (Motion for Bond, R. 142, PageID# 2392). In particular, Bryant argued that the United States failed to prove that he acted willfully for purposes of his violations of 18 U.S.C. 242—an argument Bryant claimed presented a substantial appellate question.

(Motion for Bond, R. 142, PageID## 2401-2407). Bryant had never before questioned that the government's evidence supported a finding of willfulness.

The district court denied Bryant's motion. (Order, R. 151, PageID## 2442-2449). The court specifically noted that Bryant had moved for a judgment of acquittal only on Counts 3 and 4, that Bryant had "conceded" that the Section 242 counts were "really jury issues," and that "[n]othing has changed" since Bryant's concession. (Order, R. 151, PageID## 2448-2449 (citations omitted)). Nevertheless, the court addressed the merits of the argument, concluding that "there was far more than enough evidence from which a reasonable jury could conclude that Bryant willfully deprived Norris of his constitutional rights," and thus, there was no substantial appellate question. (Order, R. 151, PageID# 2448).

SUMMARY OF ARGUMENT

This Court should affirm Bryant's convictions on Counts 1 and 2 for his unlawful tasings of Norris in violation of 18 U.S.C. 242. Bryant contends that there was insufficient evidence to support his convictions. In particular, he argues that the United States failed to present evidence that he acted willfully when he tased the restrained Norris in the two charged incidents. His challenge is without merit.

1. As an initial matter, Bryant's challenge to the sufficiency of the evidence must fail because he did not preserve this argument by moving for acquittal of

these charges before the district court. Instead, Bryant limited his motion for judgment of acquittal to Counts 3 and 4, expressly excluding Counts 1 and 2, which are at issue here. Given his waiver, this Court would be entitled to consider Bryant's appeal only if it finds that declining to do so would result in a manifest miscarriage of justice. See *United States* v. *Horry*, 49 F.3d 1178, 1179 (6th Cir. 1995). But there is no such miscarriage here, because the record is replete with evidence supporting Bryant's guilt. Bryant's convictions therefore should be affirmed. See *United States* v. *Price*, 134 F.3d 340, 350 (6th Cir.), cert. denied, 525 U.S. 845 (1998).

2. In any event, under any standard of review, the record here contains more than enough evidence to support the jury's verdict. The United States offered several categories of evidence to prove that Bryant acted willfully—that is, that he acted with the specific intent to do something the law forbids. See *Screws* v. *United States*, 325 U.S. 91, 107 (1945); *United States* v. *Krosky*, 418 F.2d 65, 67 (6th Cir. 1969).

This evidence included surveillance footage showing Norris sitting restrained in a chair at 8 p.m., as Bryant repeatedly deployed a taser into Norris's body for nearly a minute, with no apparent justification, and including tases lasting as long as 15 and 25 seconds. Additional footage showed Bryant tase Norris again at 10:20 p.m., this time for 11 consecutive seconds and, again, without any

provocation. Multiple officers testified that they knew—based on their training, experience, and common sense—that Bryant's uses of the taser against Norris were unjustified. In particular, Sergeant Ola, the senior officer who led Bryant's training, and J. Marriott, an officer who attended the same training class as Bryant, both testified that Bryant received instruction on the appropriate use of a taser and that Bryant's tasings of Norris violated those instructions. Officers also testified that Bryant instructed them not to write mandatory reports about his use of force, evidencing Bryant's consciousness of guilt. Finally, an officer testified that Bryant himself said he thought he overdid it and went too far by tasing Norris. There was therefore more than sufficient evidence for the jury reasonably to conclude that Bryant acted willfully when he tased Norris after Norris was no longer a threat.

ARGUMENT

THERE WAS AMPLE EVIDENCE TO SUPPORT THE JURY'S FINDING THAT BRYANT ACTED WILLFULLY WHEN HE TASED A FULLY RESTRAINED PRETRIAL DETAINEE WHO POSED NO THREAT

A. Bryant Waived His Challenge To The Sufficiency Of The Evidence, And Therefore This Court Should Review Bryant's Convictions Only For A Manifest Miscarriage Of Justice

Bryant waived his challenge to the sufficiency of the evidence on Counts 1 and 2, the two Section 242 counts. To preserve a claim that a conviction is supported by insufficient evidence, "a defendant must move for judgment of acquittal during trial or within seven days after the jury is discharged," pursuant to

Federal Rule of Criminal Procedure 29. *United States* v. *Horry*, 49 F.3d 1178, 1179 (6th Cir. 1995). When a defendant fails to preserve this claim, "appellate review is limited to determining whether there was a manifest miscarriage of justice." *United States* v. *Price*, 134 F.3d 340, 350 (6th Cir.), cert. denied, 525 U.S. 845 (1998); see also *Horry*, 49 F.3d at 1179. "A miscarriage of justice exists only if the record is devoid of evidence pointing to guilt." *Price*, 134 F.3d at 350 (internal quotation marks and citations omitted).

Bryant never moved for a judgment of acquittal on Counts 1 and 2. When his counsel made his oral motion for acquittal after the government rested, he acknowledged that Counts 1 and 2 were "really jury issues" dependent on the "credibility of the [witnesses]," and explicitly limited his motion to Counts 3 and 4. (Tr., R. 115, PageID# 1617). When Bryant renewed his motion after presenting the defense case, he offered no additional argument. See p. 21, *supra*.[6]

Because Bryant waived his sufficiency challenge on these counts, appellate review is limited to determining whether the record includes *any* evidence demonstrating Bryant's willfulness. See *Price*, 134 F.3d at 350; *United States* v.

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[6] In Bryant's post-trial motion for bond pending appeal, he appears to acknowledge that he did not challenge the sufficiency of the Section 242 evidence, stating the "issue [of sufficiency] came into sharper focus" as Bryant's counsel prepared the defendant's brief on appeal. (Motion for Bond, R. 142, PageID# 2401). In denying Bryant's motion, the district court also noted that he had not moved for a judgment of acquittal on the Section 242 counts. (Order, R. 151, PageID## 2448-2449; see p. 22, *supra*).

Williams, 612 F.3d 417, 423 (6th Cir.) (manifest miscarriage of justice requires proof that the record is "devoid of evidence of guilt") (internal quotation marks and citation omitted), cert. denied, 562 U.S. 1050 (2010); *United States* v. *Abdullah*, 162 F.3d 897, 903 (6th Cir. 1998) (same). As explained below, the record here easily satisfies this standard. Indeed, the evidence is more than sufficient to require affirmance even under the more defendant-friendly standard for properly preserved arguments.

B. There Was More Than Sufficient Evidence To Support Bryant's Convictions For Willfully Violating Norris's Constitutional Right, Regardless Of The Standard Of Review

If Bryant had properly preserved his challenge to the sufficiency of the evidence, this Court would evaluate that challenge by considering "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *United States* v. *Brown*, 732 F.3d 569, 576 (6th Cir.) (internal quotation marks and citations omitted), cert. denied, 571 U.S. 1000 (2013). A defendant challenging the sufficiency of the evidence for his conviction "bears a very heavy burden." *United States* v. *Davis*, 397 F.3d 340, 344 (6th Cir. 2005) (citations omitted).

Reversal of Bryant's convictions would be warranted "only if, viewing the record as a whole, the judgment is not supported by substantial and competent

evidence." *United States* v. *Blakeney*, 942 F.2d 1001, 1010 (6th Cir. 1991), cert. denied, 502 U.S. 1008, and cert. denied, 502 U.S. 1035 (1992). This Court is not in the position to "weigh the evidence, assess credibility of witnesses, or substitute [its] judgment for that of the jury." *United States* v. *Paige*, 470 F.3d 603, 608 (6th Cir. 2006) (citation omitted). Rather, "all available inferences and * * * all issues of credibility" must be drawn "in favor of the jury's verdict." *United States* v. *Maliszewski*, 161 F.3d 992, 1006 (6th Cir. 1998), cert. denied, 525 U.S. 1183, and 525 U.S. 1184 (1999). Under that standard, Bryant's arguments fail.

To prove a felony violation of Section 242, the United States must prove beyond a reasonable doubt that the defendant: (1) willfully, (2) deprived an individual of a federal right, (3) while acting under color of law, and (4) that such deprivation either resulted in bodily injury or involved the use of a dangerous weapon. 18 U.S.C. 242; see also *United States* v. *Lanier*, 520 U.S. 259, 264 (1997). Because Norris was a pretrial detainee, the federal right at issue was his due process right to be free from the use of objectively unreasonable force. *Kingsley* v. *Hendrickson*, 576 U.S. 389, 391-392, 397-402 (2015). Here, a federal jury found that Bryant violated Section 242 when he tased Norris on two different occasions after Norris was fully restrained and no longer a threat. (Verdict Form, R. 104, PageID## 1091-1092).

On appeal, Bryant argues that the United States failed to present "any supporting evidence" that Bryant acted willfully. Br. 25. Specifically, Bryant argues that the United States failed to prove "whether the defendant knew, through training or experience, that his actions were unlawful and whether he knew that they violated department policy or his own training." (Br. 17-18; see also Tr., R. 115, PageID# 1893). Bryant is wrong both in his limited view of the standard for proving willfulness and in denying that the United States presented sufficient evidence to meet that standard.

1. Bryant Misstates The Willfulness Standard

Bryant devotes nearly the entirety of his argument (Br. 18-25) to the proposition that the evidence of willfulness was insufficient here because it was not clear "whether Bryant's interactions with Inmate Norris violated [the jail's] training or policy." Br. 18.

But that is the wrong question to ask. The question in determining willfulness in a Section 242 case is whether the defendant "had the purpose to deprive [the victim] of a *constitutional* right," *Screws* v. *United States*, 325 U.S. 91, 107 (1945) (emphasis added), and not whether he intended to violate his employer's policies, see, *e.g.*, *United States* v. *Brown*, 871 F.3d 532, 537 (7th Cir. 2017) ("The excessive-force inquiry is governed by constitutional principles, not police-department regulations."). In fact, and as the district court properly

instructed the jury—based upon the parties' joint proposed instructions—"it is possible for a government employee to violate the Constitution without violating a specific policy." (Tr., R. 116, PageID# 1895).[7]

Thus, the relevant question here is whether the United States presented sufficient evidence that Bryant intended to use more force than necessary under the circumstances. See *United States* v. *Proano*, 912 F.3d 431, 442 (7th Cir. 2019); *United States* v. *Reese*, 2 F.3d 870, 885, 898 (9th Cir. 1993), cert. denied, 510 U.S. 1094 (1994); accord *United States* v. *Couch*, 59 F.3d 171, *4 (6th Cir. June 20, 1995) (table opinion) (unpublished), cert. denied, 516 U.S. 1145 (1996). Here, considering all of the categories of evidence presented during trial, the United States provided more than sufficient evidence that he did. Proof that Bryant violated his jail's policy and training, see pp. 33-36, *infra*, was one piece of evidence supporting the jury's finding of willfulness because it showed that Bryant knew better than to tase Norris for a combined 50 seconds in one incident and for 11 consecutive seconds in an additional incident, both times while Norris was restrained and non-threatening. See *United States* v. *Brown*, 934 F.3d 1278, 1296-1297 (11th Cir. 2019) (identifying evidence of training as probative of officer's

[7] The parties initially submitted these joint proposed jury instructions in preparation for Bryant's first trial in 2019. (Proposed Jury Instructions for 2019 Trial, R. 29, PageID## 122-176). In preparing for the 2020 trial, the parties jointly proposed that the district court use the same instructions it used in the initial trial. (Proposed Jury Instructions for 2020 Trial, R. 84, PageID## 1022-1029).

willfulness), cert. denied, 140 S. Ct. 2826 (2020); *Brown*, 871 F.3d at 538 (same); *United States* v. *Rodella*, 804 F.3d 1317, 1338 (10th Cir. 2015) (same), cert. denied, 137 S. Ct. 37 (2016); *United States* v. *Dise*, 763 F.2d 586, 588 (3d Cir.) (same), cert. denied, 474 U.S. 982 (1985).

But there was substantial other evidence, all of which Bryant ignores, to support the jury's finding that he acted willfully. As Bryant and the United States agreed in their proposed jury instructions, and as the district court detailed when it ultimately instructed the jury on willfulness, whether Bryant knew that his actions violated department policy or training was only one of the factors the jury could consider. (Proposed Jury Instructions for 2019 Trial, R. 29, PageID## 149-150; Tr., R. 116, PageID## 1892-1895). The jury was also entitled to consider "any facts or circumstances [they] deem[ed] relevant" to willfulness, including the evidence that the United States presented on the "manner * * * and the duration of any constitutional violation"; "what the defendant said; what the defendant did or failed to do; [and] how the defendant acted." (Tr., R. 116, PageID# 1893 (Jury Instructions)); see also *Screws*, 325 U.S. at 107 ("And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances—the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like.").

2. The Character And Duration Of Bryant's Assaults Demonstrate That He Acted Willfully

Screws instructs that willfulness may be inferred from the egregiousness of a defendant's conduct. See 325 U.S. at 106-107; see also *Williams* v. *United States*, 341 U.S. 97, 102 n.1 (1951). Here, the United States presented video evidence that allowed the jurors to view Bryant's conduct and determine firsthand if its "character and duration," *Screws*, 325 U.S. at 106, demonstrated willfulness. These videos showed Bryant tasing Norris multiple times for nearly a minute around 8 p.m. and for 11 consecutive seconds around 10:20 p.m. (8 p.m. Video, GX 11, 3:14-4:23; 10:20 p.m. Video, GX 21, 06:23-06:47). The 8 p.m. recording shows that by the time Bryant received the taser he had requested, let alone by the time he used it, other officers were restraining Norris and he no longer posed a threat to himself or anyone else. (8 p.m. Video, GX 11, 02:30-02:59; Tr., R. 113, PageID## 1243-1244; Tr., R. 115, PageID## 1591-1595).

Despite the officers' control over Norris, the video shows Bryant take a taser from a fellow officer, hold it against Norris's body, and deploy the taser in drive-stun mode into Norris's chest for five seconds. (8 p.m. Video, GX 11, 03:00-03:31). Over the next minute, the video captures Bryant tasing Norris repeatedly, three times in quick succession, for 5 seconds, for 25 seconds, and finally for 15 seconds. (8 p.m. Video, GX 11, 03:30-4:26). During the 25-second tase, the recording captures Bryant taunting Norris, stating "I'll keep on doing it until I run

out of batteries," and "you don't like it, do you?" (8 p.m. Video, GX 11, 03:41-04:09; Tr., R. 113, PageID# 1246; Tr., Testimony, R. 115, PageID# 1596). This footage—as well as Bryant's testimony that he knew as he made these comments that he was hurting Norris—allowed the jury to see for itself the particularly sadistic nature of Bryant's taunting and repeated tasing of a restrained and immobilized detainee for a combined 50 seconds. This evidence alone was sufficient to permit a reasonable jury to conclude as to Count 1 that Bryant acted willfully when he tased Norris at 8 p.m.

The same is true for the recording of Bryant's 10:20 p.m. tasing, as charged in Count 2. That video shows that Bryant tased Norris for 11 seconds after Norris was fully restrained, under the officers' control, and had been sitting still for more than a minute. (10:20 p.m. Video, GX 21, 05:05-6:47). The jury was able to see that Norris was calm and motionless, and that all the other officers had thus backed away from Norris because there was no longer any need for them to use force to control him. Nonetheless, the jury was able to see that, out of nowhere and without any provocation, Bryant tased Norris's right shin for 11 consecutive seconds, more than twice the length of the standard taser cycle. (10:20 p.m. Video, GX 21, 06:27-06:54).

Both of these recordings, and the corresponding witness testimony, provide more than sufficient evidence for a reasonable juror to conclude that Bryant acted

willfully. As in the *Screws* discussion of a state actor subjecting someone to trial by ordeal, the character and duration of Bryant's conduct was so contrary to basic concepts of constitutional law, that it was "plain" he acted "to deprive a prisoner" of his constitutional right. *Screws*, 325 U.S. at 106.

3. Bryant's Defiance Of Written Policies, Taser Training, And Common Sense Demonstrates That He Acted Willfully

In addition to the video evidence and witness testimony detailing the character of Bryant's tasings, the United States also elicited testimony from several witnesses that Bryant's actions were contrary to the jail's written policies, the jail's taser training, and common sense. A reasonable jury could have determined that Bryant was acting in open defiance of Norris's constitutional rights based upon the various violations that these other Cheatham County Sheriff's officers readily identified. See *Screws*, 325 U.S. at 105.

a. Cheatham County Sheriff's Office's Use Of Force Policy And Taser Training

The United States presented evidence that the jail's written policy and taser training prohibited tasing a restrained detainee who was no longer a threat, and that Bryant was aware of this policy and training. When a jail's policy or training instructs officers that certain conduct is prohibited, and the officer nonetheless engages in that prohibited conduct, the existence of the policy or training makes it

more "likely that [the officer] acted willfully." *Proano*, 912 F.3d at 439; see also *Dise*, 763 F.2d at 588; *Brown*, 871 F.3d at 538; *Rodella*, 804 F.3d at 1338.

1. Here, the jail's written policy, which Bryant received, instructed that "[o]fficers shall use only the minimum force necessary to control a person or situation. Once resistance is overcome, the exercise of force shall cease unless required to maintain control." (Use of Force Policy, GX 1, ¶ 3.2, App., p. 1; Tr., R. 115, PageID##1760-1761). The legal handout that accompanies the taser further stated that "[m]ultiple [taser] applications cannot be justified solely on the grounds that a suspect fails to comply with a command, absent other indications that the suspect is about to flee or poses an immediate threat to an officer. This is particularly true when more than one officer is present to assist in controlling a situation." (Taser Legal Handout, GX 3, App., p. 5).

Bryant admitted during trial and in his brief that he understood the principle underlying these documents: officers were prohibited from using more force than is necessary. (Tr., R. 115, PageID# 1710 (policy about using the taser was to "[a]lways [use] the least amount of force necessary"); Br. 14 ("Bryant understood the jail's policy to be that correctional officers should use the least amount of force necessary."). Bryant's clear understanding of the policy supports the jury's conclusion that he acted willfully when he tased Norris. At the time of each wrongful tasing, Norris was tied down, and sitting still while surrounded by

multiple officers. That is, the officers had already used force sufficient to get him under control and no additional force was necessary. Bryant acknowledged as much as to the 8 p.m. tasing, when he testified that J. Marriott and Key's uses of force kept anyone from getting hurt. (Tr., R. 115, PageID## 1779-1780). Implicit in this testimony is the understanding that Bryant's additional use of force was unnecessary because J. Marriott and Key already had Norris under control.

2. The jail policy—which, again, Bryant received (Tr., R. 115, PageID## 1760-1761)—also specifically addressed the proper use of a taser. It stated that "[o]nly the minimum number of bursts and the minimum duration reasonably necessary to achieve the desired effect * * * shall be administered." (Use of Force Policy, GX 1, ¶ 4.5, App., p. 2). And, the policy forbade tasing someone more times than was reasonably necessary and for longer than reasonably necessary. (Use of Force Policy, GX 1, ¶ 4.5, App., p. 2). Nonetheless, Bryant did just that by tasing Norris four times for a total of 50 seconds and again for 11 consecutive seconds when Norris was already under control. Bryant's violations of the policy's specific language further support the jury's finding that he acted willfully.

Additionally, the United States presented evidence that Ola trained Bryant to use a taser only when a detainee is actively resisting and never for more than three five-second bursts. (Tr., R. 113, PageID## 1228-1229; Tr., R. 114, PageID##

1520-1521, 1522-1524; Tr., R. 115, PageID# 1585). The jail policy specifically instructed officers to use tasers "consistent with department-approved training." (Use of Force Policy, GX 1, ¶ 4.5, App., p. 2; Tr., R. 114, PageID## 1568-1569). Bryant disregarded all of these limitations not only in using the taser against a restrained detainee who was under officers' control, but also by doing so for far longer than was allowed. As he testified, Bryant knew that if he pulled the trigger once, the taser would automatically stop after five seconds. (Tr., R. 115, PageID## 1782-1783). Nonetheless, he admitted at trial that he "intentionally * * * held the trigger down for 25 seconds and then for 15 more seconds" at 8 p.m., while knowing that he was hurting Norris. (Tr., R. 115, PageID## 1725, 1783). These acts were in direct opposition of the policy and training that Bryant received, and therefore, a reasonable jury could conclude that Bryant knew when he tased Norris that he was doing something the law forbid.

b. Common Sense

The Cheatham County Sheriff's Office also required their officers to use common sense in using force against detainees. (Tr., R. 114, PageID## 1437, 1508). Accordingly, the policies and training did not list every use of force that was forbidden. (Tr., R. 114, PageID## 1381, 1511-1512). Bryant understood this. (Tr., R. 115, PageID## 1763-1764). He testified that there is conduct not specifically banned by the policies or trainings that nonetheless "violates the

obvious principle" not to use "more force than necessary." (Tr., R. 115, PageID# 1764).

The United States presented the testimony of four correctional officers that Bryant's tases of Norris were unjustified based on their experience as law enforcement officers and as a matter of basic common sense. J. Marriott, who was present at the 8 p.m. tasings, testified that based on his experience as a law enforcement officer, there was no reason to tase Norris at all, let alone for as long as Bryant did. (Tr., R. 113, PageID## 1244, 1246). Hannah, who reviewed the video footage after the incident, testified that Bryant tasing Norris for a combined 50 seconds while Norris sat in a restraint chair was unjustified as a matter of good judgment and common sense. (Tr., R. 114, PageID## 1437-1438). As to the 11-second tase at 10:20 p.m., Montgomery testified that, based solely upon his experience as a law enforcement officer, there was no reason to tase Norris for 11 seconds. (Tr., R. 114, PageID# 1350). Ola testified similarly regarding that 11-second tase, stating that based solely upon his experience and common sense, there was no reason for Bryant to have tased Norris at that point for any amount of time. (Tr., R. 114, PageID## 1542-1543).

4. Bryant's Admissions And Interference With The Required Reporting Of Uses Of Force Demonstrate That He Acted Willfully

Finally, the United States presented testimony demonstrating Bryant's willfulness in the form of Bryant's own admissions and efforts to conceal the

details of his assault on Norris. J. Marriott testified that after Bryant tased Norris, Bryant admitted that he had "overdone it" and had "gone too far." (Tr., R. 113, PageID## 1247-1248).

In addition to these admissions, the United States also presented evidence that Bryant interfered with the jail's required reporting system. Despite the jail's requirement that each officer write a use of force report after using force against a detainee, Bryant instructed three of his subordinates not to write such reports. J. Marriott and C. Marriott testified that, for the first time since working with him, Bryant told them not to write a use of force report. (Tr., R. 113, PageID## 1220, 1249; Tr., R. 115, PageID# 1599). Similarly, Bratton testified that hours after he used force to help Bryant put Norris in the restraint chair, Bryant told him "not to worry about [writing a use of force report] and that it would be taken care of." (Tr., R. 114, PageID## 1319-1320). Bratton testified that even though he knew jail policy required him to write a detailed report about the force he used against Norris, he "wasn't going to argue with [his] commanding officer." (Tr., R. 114, PageID## 1318-1320). Ultimately, each of these three officers ignored the jail's report-writing policy and failed to write use of force reports because Bryant, their boss, told them not to. (Tr., R. 113, PageID# 1249; Tr., R. 114, PageID## 1319-1320; Tr., R. 115, PageID# 1616).

Bryant also did not submit his own use of force report, and instead submitted misleading and inaccurate incident reports. (Bryant 6:55 p.m. Incident Report, GX 25, App., p. 8; Bryant 10:20 p.m. Incident Report, GX 26, App., p. 9). Contrary to video evidence and witness testimony, Bryant's incident reports asserted that Bryant and Bratton tased Norris when Norris resisted being put into the restraint chair at 7 p.m., and that Bryant tased Norris at 10:20 p.m. to gain compliance. (Bryant 6:55 p.m. Incident Report, GX 25, App., p. 8; Bryant 10:20 p.m. Incident Report, GX 26, App., p. 9). These narratives were so incomplete and misleading that, for months, Jail Administrator Hannah had no understanding of the force Bryant actually used against Norris. (Tr., R. 114, PageID## 1406-1415).[8]

This evidence supports the jury's finding that Bryant acted willfully. This Court has held that "[i]ntent can be inferred from efforts to conceal the unlawful activity." *United States* v. *Davis*, 490 F.3d 541, 549 (6th Cir. 2007). Other courts considering defendants' challenges to Section 242 convictions have found similarly, holding that juries are "entitled * * * to infer that [a defendant] acted willfully" based upon his "efforts to prevent his superiors' detection of his actions." *United States* v. *House*, 684 F.3d 1173, 1202 (11th Cir. 2012), cert. denied, 568 U.S. 1249 (2013); see also *United States* v. *Boone*, 828 F.3d 705, 713

[8] Although, as noted above, Bryant was acquitted on charges relating to these reports, his actions with respect to these reports are still relevant to the issue of willfulness.

(8th Cir. 2016) (defendant's "attempt to conceal [his] use of force had significant probative value on whether [defendant] had acted willfully"), cert. denied, 137 S. Ct. 676 (2017); *United States* v. *Cote*, 544 F.3d 88, 100 (2d Cir. 2008) ("There is also evidence that, after the attack, [the defendant] falsified his incident report and attempted to persuade [another officer] to stick to the story. Such deception supports an inference that [the defendant] knew the force he used was excessive.") (internal quotation marks and alterations omitted).

C. Bryant Asks This Court To Ignore All Of This Evidence In Favor Of Part Of The Testimony Of One Witness

Bryant argues that the United States did not provide sufficient evidence of willfulness because the written policy does not expressly state how long an officer is allowed to tase a detainee. In particular, Bryant seeks reversal of his convictions because Hannah characterized this policy as "vague" and "not much of a Taser policy." Br. 24. As noted above, jail policies are not dispositive of the willfulness question. See pp. 28-30, *supra*. In any event, the jury already considered this testimony (and Bryant's interpretation of it), but Bryant asks this Court to set aside the jury's opinion and to weigh this testimony anew. This is not the role of an appellate court reviewing a record for sufficient evidence to sustain a conviction. See *United States* v. *Garcia*, 758 F.3d 714, 721 (6th Cir.), cert. denied, 574 U.S. 1000 (2014); see also *United States* v. *Price*, 258 F.3d 539, 546 (6th Cir. 2001)

(court would not overturn jury's verdict because the jury chose to accept a version of events different than what the defendant argued).

Just as in *Garcia*, Bryant argues to this Court what he argued to the jury: that the United States "[could] have presented a more convincing case" by providing proof of a more explicit policy. 758 F.3d at 722. However, just as in *Garcia*, the question is not whether the United States could have presented a "more convincing" case, but whether the evidence presented was sufficient. *Ibid.* For all of the reasons stated within this brief, the evidence was overwhelming that Bryant acted willfully and thus was guilty of violating Section 242.

* * *

Whether this Court evaluates Bryant's sufficiency challenge for a manifest miscarriage of justice—as we submit it should—or under the preserved "rational trier of fact" standard, the United States presented overwhelming evidence to prove that Bryant acted willfully.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 9933 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

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Date: May 5, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Janea L. Lamar
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ADDENDUM

ADDENDUM DESIGNATING DISTRICT COURT DOCUMENTS

Appellee United States designates the following documents from the electronic record in the district court:

Record Entry Number	Description	PageID# Range
3	Indictment	4-7
29	Proposed Jury Instructions	122-176
58	Mistrial Order	260-261
70	Superseding Indictment	979-983
84	Proposed Jury Instructions	1022-1029
104	Verdict Form	1091-1092
113	Transcript of Jury Trial, Vol. 1B	1184-1286
114	Transcript of Jury Trial, Vol. 2	1287-1578
115	Transcript of Jury Trial, Vol. 3	1579-1823
116	Transcript of Jury Trial, Vol. 4	1824-1922
132	Judgment	2229
134	Notice of Appeal	2253-2254
139	Transcript of Sentencing Hearing	2293-2361
142	Motion for Bond	2392-2407
151	Order on Motion for Bond	2442-2449