MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Derek Oechsle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 3, 2022

Court of Appeals Case No. 21A-CR-989

Appeal from the Marion Superior Court

The Honorable Shatrese M. Flowers, Judge

Trial Court Cause No. 49D28-1912-MR-46127

Weissmann, Judge.

[1] In response to a sarcastic question from a member of a bachelor party, an intoxicated Derek Oechsle drew a gun, hit the stranger on the head, and then shot and killed the prospective groom as he approached. Oechsle claimed he acted in self-defense, but the jury found him guilty of murder. On appeal, Oechsle renews his self-defense claim, challenges the court's instruction on self-defense, and urges us to reduce his 55-year sentence. We affirm.

Facts

[2] In late November 2019, Christopher Smith was celebrating his impending marriage with a group of friends at Jake's Pub. Oechsle, who later admitted to drinking 16 beers that day, was sitting at the Pub's bar and staring at the group. A member of the bachelor party, Raymond Cerna, asked Oechsle from across the bar, "Do you think I'm cute?" An angry Oechsle pushed his bar stool out of the way and approached Cerna.

[3] Oechsle drew his gun, prompting Cerna to turn away to ask the waitress to call police. Oechsle hit Cerna twice on the back of the head while saying "You guys are not going to jump me." Tr. Vol. II, p. 228. Oechsle also pointed his gun at others in the bar, yelling "[Y]ou motherf***ers aren't going to jump me." Tr. Vol. III, p. 13. As the prospective groom walked quickly toward Oechsle, Oechsle shot twice, killing the groom.

[4] Another person in the bachelor party—Dustin Jones—drew his gun as Oechsle pointed his gun at Jones and others. Jones fired six shots, hitting Oechsle twice. Oechsle ran into another room and left the bar. Another bar patron found

Oechsle on the ground and held him there until police arrived. Oechsle recovered, but the prospective groom died from his gunshot wounds. Oechsle's medical records reflect his blood alcohol content was .271. Exhs., p. 90.

[5] The State charged Oechsle with murder, attempted murder, battery by means of a deadly weapon, and criminal recklessness. The State dismissed the attempted murder and criminal recklessness counts, and Oechsle was convicted of murder and battery by means of a deadly weapon after a jury trial. The trial court sentenced Oechsle to an aggregate 55 years' imprisonment.

Discussion and Decision

[6] Oechsle raises three issues on appeal. First, he argues the trial court improperly instructed the jury on self-defense. Next, he contends the evidence was insufficient to support his convictions because the State failed to rebut his self-defense claim. Finally, Oechsle asserts his sentence is inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and his character. We affirm because the jury instruction was proper, the State rebutted Oechsle's self-defense claim, and Oechsle's sentence was appropriate.

I. Self-Defense Instruction

[7] Oechsle first challenges the trial court's choice of a jury instruction on self-defense.[1] A trial court has discretion to instruct the jury, and we will reverse only upon an abuse of that discretion. When reviewing a challenge to a jury instruction, we consider whether: 1) the instruction is a correct statement of the law; 2) there was evidence in the record to support giving the instruction; and 3) the substance of the instruction is covered by other instructions given by the court. *Boney v. State*, 880 N.E.2d 279, 293 (Ind. Ct. App. 2008).

[8] Oechsle contends the trial court abused its discretion by giving Final Instruction No. 19 instead of the pattern jury instruction on self-defense. Jury instructions should inform the jury regarding the law without being misleading. *Filice v. State*, 886 N.E.2d 24, 37 (Ind. Ct. App. 2008). The instructions also should allow the jury to understand the case so that it may reach a just and correct verdict. *Id.* Although pattern jury instructions are preferred in Indiana, they are not required. *See*, *e.g.*, *R.T.*, 848 N.E.2d at 332 (approving instruction differing from pattern jury instruction).

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[1] Oechsle makes multiple constitutional claims which he fails to support with argument. He therefore has waived these constitutional claims. *See Chappell v. State*, 966 N.E.2d 124, 132 n 7 (Ind. Ct. App. 2012) (finding waiver where appellant failed to develop constitutional argument); *see also* Ind. Appellate Rule 46(A)(8)(a) (specifying that the argument section of the appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and "be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . .").

[9] Oechsle indicated to the trial court that he was "fine" with Final Instruction No. 19 except for some language that he now concedes on appeal was correct. Tr. Vol. IV, p. 121. Oechsle thus invited any error by agreeing to the parts of the instruction that he now challenges. *See Brantley v. State*, 91 N.E.3d 566, 573 (Ind. 2018) (finding invited error where the defendant told the trial court the instructions were correct and met the defense's satisfaction).

[10] Invited error notwithstanding, Oechsle fails to demonstrate how the differences in the instructions impacted him. Instead, he merely claims that the Pattern Jury Instruction was clearer than Final Instruction No. 19, which he describes as "a Frankenstein's monster patchwork of an instruction" because it, in various parts, repeats, modifies, omits, or supplements the language of the pattern instruction. Appellant's Br., p 13. Though the pattern instruction cited by Oechsle is more precise, both instructions contained essentially the same information, presented in a different manner.[2]

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[2] Oechsle cites Indiana Pattern Jury Instruction 10.03A as the instruction he sought at trial. But Indiana Pattern Jury Instruction 10.03A was replaced with the similar, but not identical, Indiana Pattern Jury Instruction 10.0300 in 2015—six years before Oechsle's trial. *See* 1 New Ind. Pattern Jury Instruction Crim. Special Alert (Matthew Bender & Co. 2022). The record does not reveal which version was at issue. Given the similarities between the two pattern jury instructions and Oechsle's particular claim, our finding of no instructional error would not change even if Indiana Pattern Jury Instruction 10.0300 were at issue.

We note that our Supreme Court has disapproved of language found in both versions of the self-defense pattern jury instruction, as well as in Final Instruction No. 19. *See Gammons v. State*, 148 N.E.3d 301, 304 (Ind. 2020) (ruling that an instruction on self-defense informing the jury that the crime and confrontation must merely be "directly and immediately related" or "directly and immediately connected" weakens "the causal connection required to preclude a claim of self-defense" and is "an imprecise statement of law"). Oechsle does not challenge Final Instruction No. 19 on that basis and, therefore, has waived that claim. *Chupp v. State*, 830 N.E.2d 119, 126 (Ind. Ct. App. 2005).

Final Instruction No. 19	Indiana Pattern Jury Instruction 10.03A
It is an issue whether the Defendant acted in self-defense. A Defendant is justified in using reasonable force against another person to protect himself or a third person from what the Defendant reasonably believes to be the imminent use of unlawful force. No person in this state shall be placed in legal jeopardy of any kind for protecting himself or a third person by reasonable means necessary. The existence of the danger and the amount of force required to defend oneself can only be determined from the standpoint of the Defendant in light of the surrounding circumstances. The danger of harm to the Defendant need not be real, but the Defendant must reasonably believe that it exists. To determine whether the Defendant acted reasonably, you must consider the facts and circumstances known to the Defendant at the time of the incident and balance those circumstances against what a reasonable person would believe under the same circumstances. A person is justified in using deadly force and does not have a duty to retreat, if: *he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself or a third person or to prevent the commission of a forcible felony; and he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself or a third person or to prevent the commission of a forcible felony; and *he acted without fault; and *he is in a place he has a right to be. However, a person may not use force if: *he is committing a crime that is directly and immediately related to the confrontation; *he provokes unlawful action by another person, with intent to cause bodily injury to the other person; or *he enters into combat with another person or is the initial aggressor unless he withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action. Once a defendant claims self-defense, the State bears the burden of disproving self-defense beyond a reasonable doubt for the defendant's claim of self-defense to fail. App. Vol. II, pp. 106-07.	It is an issue whether the defendant acted in self-defense. A person may use reasonable force against another person to protect himself from what the defendant reasonably believes to be the imminent use of unlawful force. A person is justified in using deadly force only if he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself or a third person. However, a person may not use force if: *he is committing a crime that is directly and immediately connected to the confrontation; *he is escaping after the commission of a crime that is directly and immediately connected to the confrontation; *he provokes a fight with another person with intent to cause bodily injury to that person; or *he has willingly entered into a fight with another person or started the fight unless he withdraws from the fight and communicates to the other person his intent to withdraw and the other person nevertheless continues or threatens to continue the fight. The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

[11] Final Instruction No. 19 is more thorough than the pattern instruction. But, as Oechsle acknowledges, pattern jury instructions may be supplemented without resulting error. *See R.T. v. State,* 848 N.E.2d 326, 332 (Ind. Ct. App. 2006), *trans. denied*. And Oechsle does not suggest that Final Instruction No. 19 misstated the law. Instead, he merely asserts, without any supporting evidence, that "the jury was inevitably misled by a more confusing instruction than the pattern." Appellant's Br., p. 14.

[12] As Oechsle has not established that the blended instruction in this case misstated the law, confused the jury, or otherwise was improper, we find no error.

II. Sufficiency of Evidence

[13] Oechsle next claims the State did not rebut his claim of self-defense and the evidence therefore did not support the guilty verdicts. A valid claim of self-defense is legal justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). A person is justified in using deadly force and does not have a duty to retreat if the person reasonably believes that force is necessary to prevent serious bodily injury to himself or a third person or the commission of a forcible felony. Ind. Code § 35-41-3-2(c).

[14] When self-defense is asserted, the defendant must prove he was in a place where he had a right to be, acted without fault, and reasonably feared or perceived death or great bodily harm. *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021). "The State must then negate at least one element beyond a reasonable

doubt 'by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.'" *Id.* (quoting *Lilly v. State*, 506 N.E.2d 23, 24 (Ind. 1987)).

[15] Oechsle acknowledges the evidence showed he struck the first blow after Cerna asked his sarcastic question. He also admits he drew and fired the first shots before anyone else showed a firearm. A person is not entitled to use either reasonable or deadly force in his defense if he is the initial aggressor unless he withdraws from the encounter, communicates that withdrawal to the other person, and the other person persists or threatens to persist in unlawful actions. I.C. § 35-41-3-2(g)(3).

[16] The jury reasonably could have determined the State rebutted Oechsle's self-defense claim based on the substantial evidence that Oechsle was the initial aggressor. It also could have rejected Oechsle's claim that he withdrew before the decedent's approach based on evidence that Oechsle continued to point his gun at the bar patrons as he backed toward the exit. Alternatively, the jury reasonably could have viewed Oechsle's alleged "withdrawal" as, instead, his escape after committing the crime of battery against Cerna. Self-defense does not apply when the person uses force while escaping the commission of a crime. I.C. § 35-41-3-2(h)(1). Lastly, the State presented sufficient evidence from which the jury could have found that Oechsle's belief of an impending attack was not reasonable and, therefore, self-defense did not apply. The State adequately rebutted Oechsle's claim of self-defense.

III. Sentencing

[17] Oechsle's final claim is that his aggregate 55-year sentence was not appropriate under Indiana Appellate Rule 7(B). That rule authorizes this Court to "revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B). When reviewing a sentence under Appellate Rule 7(B), we give substantial deference to the trial court because the principal role of review is to attempt to leaven the outliers, rather than achieve a perceived correct sentence. *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021).

[18] The advisory sentences are the starting points that the legislature has selected as an appropriate sentence for the crimes committed. *Kunberger v. State*, 46 N.E.3d 966, 973 (Ind. Ct. App. 2015). When the death penalty or life without parole are not sought, the penalty for murder ranges from 45 to 65 years imprisonment, with an advisory sentence of 55 years. Ind. Code § 35-50-2-3. The sentencing range for battery by means of a deadly weapon, a Level 5 felony, is 1 to 6 years, with an advisory sentence of 3 years. Ind. Code § 35-50-2-6(b). The trial court sentenced Oechsle to concurrent terms of 55 years imprisonment for murder and 3 years for battery.

[19] The nature of the offense was the killing of a man celebrating his impending marriage. Oechsle admitted drinking 16 beers, arming himself, and going to the bar while armed. While there, he drew his gun in response to Cerna's question

and then struck Cerna twice with the gun after Cerna turned away to seek police intervention. Still pointing his gun at the bar patrons and backing toward the door, Oechsle then shot the prospective groom as he approached. Although Oechsle continues to maintain that he acted in self-defense, the jury rejected that claim.

[20] Contrary to Oechsle's argument, the spontaneous nature of his actions does not justify a more lenient sentence. Fueled by excessive alcohol, Oechsle's violent reaction to a sarcastic question from a stranger was excessive and unnecessary, with tragic consequences. Oechsle easily could have left but instead drew his weapon and fired repeatedly inside the crowded bar.

[21] As to the character of the offender, Oechsle drank alcohol excessively and used drugs for years prior to the shooting. His substance abuse continued after his conviction for operating a motor vehicle while intoxicated a decade ago. Oechsle points to his remorse, employment, and support from friends and family as reasons for greater leniency. He also argues that the circumstances of these offenses are not likely to reoccur and that his sentence should be "closer to" the minimum 45-year sentence. Appellant's Br., p. 23. None of his arguments persuade us that his sentence in inappropriate in light of the nature of the offense and the character of the offender.

[22] The judgment of the trial court is affirmed.

Najam, J., and Vaidik, J., concur.