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IN THE
COURT OF APPEALS OF INDIANA

Chris Lawrence Rochefort,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 29, 2021

Court of Appeals Case No. 21A-CR-770

Appeal from the Lake Superior Court

The Honorable Samuel L. Cappas, Judge

Trial Court Cause No. 45G04-1904-F6-796

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Christopher Rochefort (Rochefort), appeals his conviction for failure to return to lawful detention, a Level 6 felony, Ind. Code § 35-44.1-3-4(c).

[2] We affirm.

ISSUES

[3] Rochefort presents the court with two issues, which we restate as:

(1) Whether the trial court abused its discretion when it denied Rochefort's motion for a mistrial; and

(2) Whether the trial court abused its discretion when it rejected his proffered final instruction on the defense of necessity.

FACTS AND PROCEDURAL HISTORY

[4] On February 26, 2019, Rochefort pleaded guilty to Level 5 felony burglary and was sentenced according to the terms of his plea agreement to three years, to be served with the Lake County Community Corrections, Kimbrough Work Release Program (work release) in Crown Point, Indiana. Inmates serving sentences on work release are not permitted to come and go from the work release facility at will. Inmates are allowed to leave the work release facility to work and are sometimes issued passes to obtain outside services. It is generally the responsibility of the inmate to secure transportation to and from work and

outside services, although work release at times provides transportation if a staff member is available.

[5] On April 9, 2019, Rochefort was issued a pass to leave work release to attend a mental health appointment at 3:00 p.m. at Edgewater Systems (Edgewater) in Gary, Indiana. The pass indicated that Rochefort was to leave for the appointment at 2:00 p.m. and would be transported there by work release staff. The pass further indicated that Rochefort was to return to the work release facility by 5:30 p.m. that day. The pass did not indicate that Rochefort was to be transported back to the facility by work release staff.

[6] Rochefort was transported to Edgewater by a work release staff member, who dropped him off and left. No one from work release returned to transport Rochefort back to the facility. After his appointment was completed, Rochefort telephoned work release and was told to take the bus back to the facility. Rochefort did not alert work release that he did not have any money or a bus pass, nor did he inform work release that he did not know how to get back to the work release facility.

[7] Rochefort walked to the transit center in Gary, where he boarded the South Shore Limited train to Chicago. The South Shore Limited stops in Hammond, Indiana, before reaching Chicago, but Rochefort did not disembark there. Instead, Rochefort traveled to Chicago, where he stayed for approximately three months. Rochefort then traveled by bus and train to Cleveland, Cincinnati, and then to a relative's home in Newton County, Indiana, where he

remained for nine-to-ten months. After April 9, 2019, Rochefort did not attempt to contact work release, law enforcement, his attorney, or the trial court about his whereabouts.

[8] On April 11, 2019, the State filed an Information, charging Rochefort with Level 6 felony failure to return to lawful detention. A warrant was issued for Rochefort's arrest. On May 28, 2020, the arrest warrant was served on Rochefort after he was detained in Newton County.

[9] On March 8, 2021, the trial court convened Rochefort's two-day jury trial. Due to Rochefort's tendency to address the trial court and the deputy prosecutor directly, his counsel twice moved to withdraw before the opening of the evidence, motions which the trial court denied when Rochefort confirmed that he did not intend to represent himself during the trial. Before the State called its first witness, the trial court advised Rochefort not to talk in front of the jury. During the presentation of the State's case, Rochefort interjected at times when his counsel attempted to argue motions or make an offer-of-proof, which again prompted his counsel to move to withdraw. Rochefort also interrupted the trial court during these interjections.

[10] Rochefort elected to testify. Prior to taking his testimony and outside the presence of the jury, the trial court explained to Rochefort that the trial was being recorded and that it was important that only one person talk at a time so that the court reporter could make an accurate record. Rochefort acknowledged that he understood the trial court's instruction. The trial court

also explained to Rochefort that his counsel's questions would be tailored such that his testimony would advance his defense and avoid imperiling his case, so it was important to answer the questions as posed by his counsel.

[11] During Rochefort's testimony regarding how his work release case managers had treated him, the deputy prosecutor objected that Rochefort's response was non-responsive and narrative. Rochefort immediately began arguing with the deputy prosecutor in front of the jury, which caused the trial court to direct Rochefort not to respond to the deputy prosecutor. Rochefort went on to testify that on April 9, 2019, he understood that he was to be transported to and from his Edgewater appointment by work release staff. According to Rochefort, when he was told to take the bus back to work release, he had no money, no bus pass, and no knowledge of how to return to work release on foot or by bus. Nevertheless, he walked to the Gary transit center, where he stated he was told to take the South Shore Limited and was given fare money by someone at the transit center. Rochefort testified that, when he boarded the train, he intended to return to work release. However, after discovering that the train was headed toward Chicago and away from the work release facility, he decided not to return to work release because he felt that he was being harassed and threatened by fellow inmates, the staff did not want him there and thought he belonged in an insane asylum, and he had been refused any medication or treatment for debilitating tension headaches he had suffered.

[12] When his counsel asked Rochefort why he thought the staff at work release did not want him at the facility, the deputy prosecutor objected that the question

called for speculation. Rochefort began arguing with the deputy prosecutor and then interrupted the trial court as it ruled on the objection, after which the following exchange occurred:

> Trial Court: Oh, thank you, Mr. Rochefort.
>
> Defense Counsel: Mr. Rochefort, Mr. Rochefort, please. Look, okay. [The deputy prosecutor] and I, we listen to the [j]udge. When the [j]udge talks, we try not to talk. And if we do, we readily apologize.
>
> Rochefort: I apologize. I didn't mean to speak when you were speaking.
>
> Trial Court: If you keep doing it – because I try to run this in an orderly fashion. [Defense Counsel and the deputy prosecutor] conduct themselves in a respectful, gentlemanly manner. If you don't do that, because I consider it rude for someone, anyone, to interrupt me when I'm talking because it's probably very – I can't think of anyone else in this courtroom whose words are more important than mine, not to sound egotistical, because I run the court. You don't. If you keep interrupting me, I'm going to hold you in contempt of court. Do you understand that?
>
> Rochefort: Judge, I don't know what the full meaning of what that means, but I –
>
> Trial Court: It means you can face up to [a] $1,000 fine or [six] months in jail for interrupting me. And I'm warning you now not to do it. So if you keep doing it after I warn you, I'm going to consider your actions to be rude and disrespectful to the [c]ourt, and I'm going to punish you for that. Is that clear?

> Rochefort: Yes.
>
> Trial Court: So don't interrupt me when I'm talking.
>
> Rochefort: Okay, [j]udge. I wasn't doing that intentionally at the time. It's just –
>
> Trial Court: Well, when you're talking over me and interrupting me, I don't know how it could anything but intentional. So don't interrupt me. Yes?
>
> Rochefort: Yes.

(Transcript Vol. II, pp. 81-82) (names substituted throughout). Defense counsel immediately requested a sidebar and moved for a mistrial because the trial court had addressed Rochefort's behavior in the presence of the jury. The trial court denied the motion for a mistrial, but at the State's request, it admonished the jury that it periodically had to make such comments when someone disrupted the courtroom, it was not treating Rochefort any differently than someone else who engaged in such conduct, and that the jury was not to take its comments to Rochefort into account in determining his guilt on the charged offense. During cross-examination, Rochefort continued to interrupt the deputy prosecutor, repeatedly testified without a question before him, argued with the deputy prosecutor, and interposed his own objections to the deputy prosecutor's questions.

[13] Defense counsel proffered a final instruction on the defense of necessity which did not mirror the Indiana pattern instruction. After hearing argument, the trial

court declined to give the proffered necessity instruction because it found that there was insufficient evidence to support it. The jury found Rochefort guilty as charged. On March 30, 2021, the trial court sentenced Rochefort to two years and three months with the Department of Correction.

[14] Rochefort now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Mistrial*

A. *Standard of Review*

[15] Rochefort contends that the trial court abused its discretion when it denied him a mistrial after warning he would be held in contempt if he continued to interrupt while the trial court spoke. "The decision to grant or deny a mistrial motion is left to the sound discretion of the trial court." *Vaughn v. State*, 971 N.E.2d 63, 67 (Ind. 2012). Therefore, we review a trial court's denial of a motion for mistrial for an abuse of discretion, which only occurs when the trial court's ruling is clearly against the logic and effect of the facts and circumstances before the court. *Id*. at 67-68. We afford "great deference" to the trial court's decision, as the trial court is in the best position to assess the circumstances of an event and its impact on the jury. *Lawson v. State*, 664 N.E.2d 773, 781 (Ind. 1996). In order to prevail on appeal, a defendant must show that "the conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected[,]" and he must demonstrate that nothing other than a mistrial could

have remedied that perilous situation. *Kelley v. State*, 555 N.E.2d 140, 141 (Ind. 1990). We will assess the gravity of the peril by considering the persuasive effect of the alleged misconduct on the jury, not the degree of the impropriety of the conduct. *Id*.

B. *Judicial Bias*

[16] Rochefort claims that he was placed in peril because the trial court's remarks demonstrated partiality against him in the presence of the jury, which deprived him of a fair trial. "A trial before an impartial judge is an essential element of due process." *Everling v. State*, 929 N.E.2d 1281, 1287 (Ind. 2010). A trial court judge is presumed to be unbiased. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). "[T]o rebut that presumption, a defendant must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy." *Id.* A defendant makes this showing "only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding." *Id.* A defendant cannot make the requisite showing of bias merely by making that assertion. *Id*. In assessing whether a judge has exhibited partiality, we examine both the judge's actions and demeanor. *Tharpe v. State*, 955 N.E.2d 836, 839 (Ind. Ct. App. 2011), *trans. denied*.

[17] Here, we cannot conclude that the trial court abandoned its impartiality or improperly denied Rochefort a mistrial based on its admonishment to him to refrain from interrupting. The trial court did not demonstrate actual bias, as there was no uncontested matter at issue, and it expressed no opinion on the merits of the case before it. *See Smith*, 770 N.E.2d at 823. Therefore, Rochefort

cannot rebut the presumption that the trial court was unbiased. *See id.* Indeed, by the time the trial court made its comments, Rochefort had interrupted his own counsel, the deputy prosecutor, and the trial court on numerous occasions. The trial court had warned Rochefort not to speak out in front of the jury, and it had explained to Rochefort the importance of only one person speaking at a time so that an accurate record could be made. Nevertheless, Rochefort interrupted the trial court as it ruled upon an evidentiary objection by the State. The trial court used measured and civil language to inform Rochefort of its power to hold him in direct contempt. There was nothing improper about this admonishment. Trial courts are given discretion to manage trial proceedings. *Timberlake v. State*, 690 N.E.2d 243, 256 (Ind. 1997). In order to effectuate that discretion, a trial court may hold in direct contempt anyone who disturbs the business and proceedings of a court of record while it is open for and engaged in the transaction of its business. *See* I.C. § 34-47-2-1(a); *see also Carroll v. State*, 54 N.E.3d 1081, 1087 (Ind. Ct. App. 2016) (considering Carroll's multiple interruptions of the trial court in affirming the trial court's contempt finding). The trial court did not demonstrate bias against Rochefort in this instance or during the remainder of the trial. Rather, our review of the record revealed that the trial court was extremely accommodating of Rochefort's desire to play an active role in his defense and only admonished him in the presence of the jury after he had repeatedly contravened the trial court's authority.

[18] Rochefort likens the facts of his case to that of *Stellwag v. State*, 854 N.E.2d 64, 66 (Ind. Ct. App. 2006), wherein the trial court, in the presence of the jury,

threatened to immediately jail Stellwag if he continued to make faces and speak out in court. However, we do not find *Stellwag* to be persuasive, as here the trial court only mentioned the possible sanctions for a contempt finding after Rochefort stated he did not know what a contempt finding meant. In addition, in *Stellwag* we found that the trial court's cumulative behavior, which included *sua sponte* admonishments to defense witnesses and suggested objections which seemingly benefitted the State, had crossed the line between acceptable courtroom control into the appearance of partiality. *Id*. at 69. Here, Rochefort complains of only one brief exchange before the jury. Therefore, the trial court's behavior at issue in *Stellwag* was qualitatively and quantitatively different than that presently before us.

[19] However, even if the trial court had exhibited partiality in its comments to Rochefort, at the request of the State, the trial court issued an admonishment to the jury explaining why it had made its remarks and instructing the jury that it should not take its comments into account when determining Rochefort's guilt. "When the trial judge admonishes the jury to disregard an event which has occurred at trial, it is usually an adequate curative measure, so that the denial of a grant of mistrial does not constitute reversible error." *J.L.H. v. State*, 642 N.E.2d 1368, 1370 (Ind. 1994). The jury had also been provided with a preliminary instruction[1] which directed that its verdict should be based only

[1] The trial court's final instructions are not part of the record on appeal.

upon the evidence and instructions before it and that "[n]othing that the [c]ourt says or does is intended to recommend what facts or what verdict you should find." (Appellant's App. Vol. II, p. 68). As a general matter, we presume that a jury follows the trial court's instructions. *Hendricks v. State*, 162 N.E.3d 1123, 1135 (Ind. Ct. App. 2021), *trans. denied*. Rochefort does not address the trial court's admonishment and instruction to the jury, let alone rebut the presumption that they cured any prejudice flowing to him from the trial court's remarks. As such, we affirm the trial court's denial of Rochefort's mistrial motion for the additional reason that Rochefort has failed to demonstrate that a mistrial was necessary because he had been placed in grave peril by the trial court's comments directing him to refrain from interrupting. *See Kelley*, 555 N.E.2d at 141.

II. *Jury Instruction*

A. *Standard of Review*

[20] Rochefort also challenges the trial court's rejection of his final instruction on the defense of necessity. Jury instruction is left to the sound discretion of the trial court, and we review a trial court's instructional decisions only for an abuse of discretion. *Washington v. State*, 997 N.E.2d 342, 345 (Ind. 2013). In reviewing a trial court's rejection of an instruction, we look to whether (1) the tendered instruction correctly stated the law; (2) there was evidence in the record to support giving the instruction; and (3) the substance of the tendered instruction was covered by other instructions. *Id*. at 345-46.

B. *Necessity*

[21] The defense of necessity may apply where:

> (1) the act charged as criminal was the result of an emergency and was done to prevent a significant harm;
>
> (2) there was no adequate alternative to the commission of the act;
>
> (3) the harm caused by the act was not disproportionate to the harm avoided;
>
> (4) the Defendant had a good-faith belief that his/her act was necessary to prevent greater harm;
>
> (5) the Defendant's belief was objectively reasonable under all the circumstances of the case; and
>
> (6) The Defendant did not substantially contribute to the creation of the emergency.

Hernandez v. State, 45 N.E.3d 373, 376-77 (Ind. 2015) (citing *Toops v. State*, 643 N.E.2d 387, 390 (Ind. Ct. App. 1994)). A defendant is entitled to a jury instruction on necessity if there is some foundation of probative evidence for it, even if that evidence is weak and inconsistent. *Id*. at 376.

[22] Our supreme court first formally recognized the existence of the defense of necessity in a criminal context in *Walker v. State*, 269 Ind. 346, 381 N.E.2d 88 (1978). Walker had been held for six months in modified solitary confinement in the Indiana State Prison at Michigan City. *Id*. at 346, 88. He and five other

inmates escaped from their cells, took the warden and his family hostage in their family station wagon, crashed through the prison gates, and were quickly recaptured after they crashed the station wagon. *Id*. at 346-47, 88. At his subsequent trial on kidnapping charges, Walker relied exclusively on the defense of necessity, arguing that his prolonged solitary confinement would have inevitably resulted in "severe psychological and spiritual damage to himself" and thus justified the kidnapping. *Id*. at 347-48, 88-89. The defense was not successful. *Id*. at 346, 88. On appeal, the court affirmed, holding that

> [w]ith the exception hereinafter noted, we categorically reject that one under restraint of judicial decree or lawful arrest may justify an act of violence against another person, upon the premise that it was necessary to avoid harm he himself was suffering, or would suffer, in direct or incidental consequences of such restraint. The lone exception to this would be if such violence was reasonably necessary in lawful defense and direct against the person then creating the need.

Id. at 348, 89. The court noted that, while Walker did not argue it directly, he assumed that his justification for the initial escape would also justify the kidnapping. *Id.* The court further observed that other jurisdictions had rejected the "unsanitary, unhealthful, or inhumane condition of confinement" as justification for prison escape, and the court, therefore, did not hesitate to reject those justifications for the much graver offense of kidnapping. *Id*. at 349, 89.

[23] In *Toops*, this court first applied the defense to reverse a conviction. Toops, who had been drinking, grabbed the wheel of the car which had begun to careen when the driver, who had also been drinking and was underage, dove into the

back seat upon observing a police car turn around and follow them. *Toops*, 643 N.E.2d at 388. Toops was charged with a variety of alcohol-related traffic offenses, and the trial court refused to give his tendered necessity defense instruction at trial. *Id*. The *Toops* court acknowledged that the confines of the necessity defense varied among jurisdictions, but that "the central element involves the emergency nature of the situation." *Id*. at 389. The court reasoned that Toops had been entitled to the instruction because there was no question that the evidence presented in the case was adequate to raise a jury question regarding whether his control of the car while intoxicated was necessary to prevent the greater harm of a potential automobile collision. *Id*. at 390.

[24] In the more recent *Hernandez* case, the defendant committed a crime when he was responding to a life-or-death situation. The car in which Hernandez was a passenger was stopped for a traffic infraction, and Hernandez surrendered a gun to law enforcement at the site of the stop. *Hernandez*, 45 N.E.3d at 375. At his subsequent trial on a charge of carrying a handgun without a license, Hernandez testified that he had only taken possession of the gun because when they were stopped, the driver of the car told Hernandez he would not go back to jail and that Hernandez had to take possession of the gun "or else," which Hernandez testified he took to mean he or someone else at the scene would be shot if he did not take possession of the gun. *Id*. at 374-75. Therefore, Hernandez was responding to the immediate threat of gunfire. Our supreme court held that, in light of this evidence, it was reversible error for the trial court to have rejected Hernandez's instruction on necessity. *Id*. at 377-78.

[25] In light of *Walker*, *Toops*, and *Hernandez*, we conclude that, in order for the defense of necessity to apply to a criminal offense, the defendant must be responding to a true emergency, meaning a situation which is then occurring in his presence and requires an immediate response, and that simply avoiding the conditions of incarceration is inadequate to support the defense. Here, Rochefort argues that the emergency situation which necessitated his escape was that "[h]e had been, in essence, abandoned in the inner-city" with no way back to work release, other inmates "threatened him with harm, calling him crazy and weird," and that "due to this harassment, mistreatment, and his psychological ailments [] he did not return." (Appellant's Br. pp. 16-17).

[26] However, there was no evidence at trial showing that any of these circumstances presented the type of immediate and present danger required to justify the defense. As to his being abandoned at Edgewater, there was no evidence put forth that this presented any immediate danger to Rochefort. He did not testify that he had been physically menaced in any way at Edgewater or the transit center. Indeed, the uncontradicted evidence at trial was that Rochefort only decided not to return to work release after he discovered the train he had boarded was headed the wrong way. Therefore, the defense would only be potentially applicable to the period after he was already on the train—*i.e.*, after any emergency flowing from being stuck at Edgewater had dissipated, as he had somehow procured the money to purchase a fare on the South Shore Limited, money which he could have used to return to work release.

[27] Rochefort's other justifications were equally unsupported by the evidence. Regarding being threatened or harassed by other inmates, Rochefort testified as to only one specific incident which occurred sometime during his first two weeks at work release when an inmate followed him into the restroom and "said he wanted to break my neck because he said I was a snitch or something like that." (Tr. Vol. III, p. 68). Rochefort testified that that inmate had been removed from work release. Therefore, the inmate did not present any danger to Rochefort. Lastly, Rochefort fails to explain on appeal how his "psychological ailments" constituted an immediate emergency on April 9, 2019, that necessitated his failure to return to work release. (Appellant's Br. p. 17). Rochefort testified that he had suffered from tension headaches for which he had been refused medication, but there was no evidence he had a tension headache at the time he was on the South Shore Limited and decided not to return to work release. Rochefort also testified that he had a panic attack at Edgewater, but again, there was no evidence presented that this attack persisted until the time he was on the train and decided not to return to lawful detention. Given the absence of evidence showing that at the time he absconded from lawful detention he was responding to an emergency, the trial court did not abuse its discretion in refusing to give the necessity instruction. *See Hernandez//*, 45 N.E.3d at 376; *Washington*, 997 N.E.2d at 345.

CONCLUSION

[28] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it denied Rochefort's motion for a mistrial or when it rejected his proffered instruction on the defense of necessity.

[29] Affirmed.

[30] Najam, J. and Brown, J. concur