

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Miguel Enrique Delfin Cruz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 22, 2023

Court of Appeals Case No.
23A-CR-521

Appeal from the Kosciusko
Superior Court

The Honorable Michael W. Reed,
Judge

Trial Court Cause No.
43D01-2008-F2-547

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

- [1] Miguel Enrique Delfin Cruz was charged with and convicted of numerous offenses following a confrontation with several police officers at a laundromat in Kosciusko County. Prior to the officers' arrival, Cruz had threatened another laundromat patron. During the confrontation with the officers, Cruz resisted officers' attempts to detain him and used one officer as a shield. Cruz challenges the sufficiency of the evidence to sustain some of his convictions and argues that the trial court erred by failing to identify him as eligible for purposeful incarceration in its sentencing order. For its part, the State asserts that the evidence is sufficient to sustain the challenged convictions and that the lack of notation regarding the trial court's intentions relating to Cruz's participation in the purposeful-incarceration program can be addressed by remand for the limited purpose of clarification regarding the trial court's recommendation for Cruz's participation in the program. We agree with the State. As such, we affirm and remand with instructions.

Facts and Procedural History

- [2] On August 5, 2020, Cruz and his girlfriend had had a dispute and had broken up. That same day, Cruz had ingested some methamphetamine and drunk about five energy drinks before going to a laundromat to do some laundry. Miguel Huizar was at the same laundromat. Cruz approached Huizar and sat down next to him. Huizar, moving away, asked Cruz if he was "okay," to which Cruz responded by accusing Huizar of having touched his clothing. Tr.

Vol. II p. 127. Cruz told Huizar he was going to “kick his a[**].” Tr. Vol. II 127.

[3] Huizar attempted to de-escalate the situation by telling Cruz that he had “never touched” Cruz’s clothing. Tr. Vol. II p. 28. Huizar approached another laundromat patron and asked her to confirm that he had never been near Cruz’s clothing. Cruz responded that “he was going to go back out to his car, get footage of [Huizar,] and then he said he was going to come back in and kick [Huizar’s] a[**] if [he] was the one that touched” Cruz’s clothing. Tr. Vol. II p. 128. Huizar, unsure of what to do, called and texted his best friend and sister to tell them about what had just happened. Huizar’s best friend called the police.

[4] Upon arriving at the laundromat, police found Cruz sitting inside his vehicle, which was parked in front of the laundromat. Officer John Leeper from the Winona Lake Police Department was the first to arrive and to speak with Cruz. Officers Paige Wood and Phillip Hawks of the Warsaw Police Department arrived shortly after Officer Leeper and also spoke with Cruz. As Officers Hawks and Wood approached, Officer Hawks observed that Cruz “took extreme notice” of Officer Wood. Tr. Vol. II p. 36. Cruz deflected the officers’ questions, but “admitted to threatening” Huizar. Tr. Vol. II p. 38. While standing by Cruz’s vehicle, Officer Hawks observed a box of .38 caliber ammunition in the driver’s-side door panel. Tr. Vol. II p. 39.

[5] Initially, Officer Wood went into the laundromat and began taking witness statements while Officers Hawks and Leeper stayed outside with Cruz. When

Officer Hawks eventually entered the laundromat, he spoke with Huizar and learned that Huizar did not want to press charges, but had felt uncomfortable with Cruz present and wanted to make sure that Cruz was not “going to follow him home.” Tr. Vol. II p. 41.

[6] Officer Hawks went back outside to speak to Cruz, asking him if he still had clothes in the laundromat. When Cruz answered in the affirmative, Officer Hawks asked him to go check on his clothes, but Cruz initially refused, responding that “they’re not ready yet.” Tr. Vol. II p. 41. At that point, Officer Hawks did not intend to place Cruz under arrest but told Cruz that if he did not go collect his clothing, he would be arrested for criminal trespass.¹ Cruz initially protested and indicated that Huizar “was being racist to him,” Cruz eventually agreed to go check on his clothing. Tr. Vol. II p. 42. After observing the ammunition in Cruz’s vehicle, the officers inquired in to whether Cruz was armed. Cruz denied having a firearm on his person, claiming that it was at home. At the officer’s request, dispatch confirmed that Cruz did not have a concealed-carry permit.

[7] As Cruz approached the laundromat, he put his phone in his right front pocket. Although another officer reported seeing a “bulge in [Cruz’s] right front waistline,” Officer Hawks “assumed that [the officer] was talking about [Cruz’s]

¹ Officer Hawks subsequently testified that the owner of the laundromat did not “want any more problems at his laundromat than it already ha[d],” so he had an arrangement with the Warsaw Police Department that if officers had “problems with” patrons, the officers could call “him and make contact with him to okay it for them to be trespassed.” Tr. Vol. II p. 43.

phone.” Tr. Vol. II p. 44. Officer Wood followed Cruz into the laundromat. Officer Wood observed Cruz engage in what she “knew to be signs of pre[-]assault indicators.” Tr. Vol. II p. 89. Specifically, she observed that Cruz had “used his right palm to kind of touch the right side of his front hip a couple of times. He also was looking over his shoulders back and forth. He was swinging his arms wide[.]” Tr. Vol. II p. 89. Officer Wood, positioned on Cruz’s right side, was able to see that the phone he had placed in his right front pocket was concealing a firearm. Officer Wood further observed that “the butt stock of the firearm [was] pointed in a position where it would be drawn with the right hand.” Tr. Vol. II p. 89. Officer Wood nodded her head at Officer Hawks, which he understood to mean that she could observe a gun.

[8] After observing the firearm, Officer Wood “[p]olitely” grabbed “ahold of [Cruz’s] right arm and said I’m going to need to take that.” Tr. Vol. II p. 46. Cruz “tensed up and began to actively resist.” Tr. Vol. II p. 46. Officer Hawks

came in from behind, swooped underneath his shoulders and the back of his head and spun around to take him down to the ground to prevent [Cruz] from getting to his waistline. At that time, we fell down on the ground of the laundromat. I was on my back. [Cruz] was on my right side of my body and Officer Wood was on [Cruz’s] right side. I was struggling to keep [Cruz] from pushing up and being on top of a mount position on top of me. During the struggle, I felt multiple tugs on my right hip where my duty gun is kept. [Cruz] was trying to retrieve my duty gun with his left hand. He then wasn’t able to get it because I started pinning my hand down as we’re taught to cover my firearm. He then put his left arm on top of my chest to start standing up. I then started pulling on his head. Officer Wood

started to get behind [Cruz]. During that time, he started [to] stand up. I pulled, end up pulling his shirt over top of him and during that time he attempted to retrieve the gun from his belt line. Officer Wood was able to deflect the gun away from him. We continued to struggle.

Tr. Vol. II pp. 46–47. During the altercation, Officer Wood had also felt two “distinct” pulls on her firearm. Tr. Vol. II p. 90.

[9] After Cruz stood up, Officer Wood moved behind Cruz. Officer Wood managed to momentarily “deflect” Cruz’s firearm away from him, but he eventually recovered the firearm. Tr. Vol. II p. 47. As he secured his gun, Cruz

grabbed ahold of Officer Wood with his left arm and then put her in a semi chokehold and used her as a shield and started putting the gun to her head as he tried crawling back to prevent [Officer Hawks] from openly firing upon him. [Officer Hawks] drew [his] duty pistol and started to aim for [Cruz’s] head because that was the only thing that was available to shoot and [Cruz] saw that and he tucked his head further in behind Officer Wood’s face and while that was happening he was punching her in the head and saying I’m going to shoot this fu[***]r. Referencing Officer Wood. And he struck her in the head multiple times with his pistol. At that time, [Officer Hawks] was pointing [his] gun at [Cruz]. [Cruz] drew his gun up and pointed it towards [Officer Hawks]. [Officer Hawks] side stepped back to the left, which gave [him] a better window of opportunity to not strike Officer Wood if [he] were to fire.

Tr. Vol. II pp. 47–48. Officer Wood could feel Cruz “moving behind [her] as if [she] were being used as a shield.” Tr. Vol. II p. 91. At one point, Officer Wood tried to move herself out of the way to give Officer Hawks “a better

shot,” but Cruz overpowered her. Tr. Vol. II p. 92. Eventually, another officer “tackled [Cruz] into the double stack dryers,” allowing Officer Wood to get away. Tr. Vol. II p. 47.

[10] Cruz continued to struggle with the officers. After Officer Leeper attempted to “tase” Cruz, Officer Hawks was able to place a handcuff on Cruz’s right wrist. Tr. Vol. II p. 48. Cruz “tucked” his left arm “up underneath his body” but “after a short struggle,” officers “were able to get the left hand inside the handcuffs.” Tr. Vol. II p. 48. Officers recovered Cruz’s firearm and removed the magazine, “which was full.” Tr. Vol. II p. 49.

[11] As Cruz was being walked to the transport vehicle, he looked directly at Officer Wood who had made her way outside and told her, “I should have killed you.” Tr. Vol. II p. 50. During transport, he asked officers to “bring that lady cop over here.” Tr. Vol. II p. 120. After being booked into the jail, he made comments to the booking officer indicating that he “should’ve killed that officer,” “should’ve shot that officer,” and that he was “going to kill that officer.” Tr. Vol. II p. 117.

[12] On August 10, 2020, the State charged Cruz with Count 1–Level 2 felony criminal confinement, Count 2–Level 3 felony criminal confinement, Count 3–Level 5 felony battery on a public safety official, Counts 4 and 5–Level 5 felony disarming a law enforcement officer, Count 6–Level 5 felony intimidation with a deadly weapon, Count 7–Level 5 felony possession of methamphetamine, Count 8–Level 6 felony resisting law enforcement, Counts 9 and 10–Level 6

felony pointing a firearm, Count 11–Level 6 felony intimidation, Count 12–Class A misdemeanor carrying a handgun without a license, Count 13–Class C misdemeanor possession of paraphernalia, and Count 14–Level 5 felony carrying a handgun without a license. On January 10, 2023, Cruz pled guilty to Counts 7, 12, and 13. That same day, Cruz waived his right to a jury trial on the remaining counts.

[13] Following a bench trial, the trial court found Cruz guilty of the remaining counts. The trial court entered judgment of conviction on all guilty verdicts except Counts 2 and 12. On March 1, 2023, the trial court sentenced Cruz to an aggregate thirty-eight-and-one-half-year sentence. Although the trial court indicated orally that it had “no problem recommending purposeful incarceration,” the trial court did not include a recommendation for Cruz’s participation in a purposeful-incarceration program in its written sentencing order. Tr. Vol. II p. 183.

Discussion and Decision

[14] Cruz makes three challenges to the sufficiency of the evidence to sustain his convictions. First, Cruz contends that the evidence is insufficient to sustain his convictions under Counts 1 and Counts 3 through 11, arguing that the State failed to negate his self-defense claim. Second, Cruz contends that the evidence is insufficient to sustain his conviction for Level 2 felony criminal confinement, arguing that his conviction should be reduced to a Level 3 felony. Third, Cruz contends that the evidence is insufficient to sustain his conviction for Level 6

felony intimidation, arguing that the State failed to present evidence that he had intended to intimidate Huizar with a true threat. Cruz also challenges the trial court's sentencing order, arguing that the trial court erroneously failed to identify Cruz as eligible for purposeful incarceration in its sentencing order.

I. Sufficiency of the Evidence

[15]

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.”

Griffith v. State, 59 N.E.3d 947, 958 (Ind. 2016).

A. Cruz's Self-Defense Claim

[16] “A valid claim of defense is legal justification for an otherwise criminal act.”

Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000).

In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. In any event, a mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed.

Wilson v. State, 770 N.E.2d 799, 800–01 (Ind. 2002) (internal citations omitted).

[17] In arguing that the State failed to rebut his self-defense claim, Cruz asserts that he was “confused and intoxicated on methamphetamine during” the altercation. Appellant’s Br. p. 19. Cruz further asserts that he had not realized that the person who had grabbed him was an officer. In making these assertions, however, Cruz downplays his actions during the altercation.

[18] After he informed officers that he was not armed, officers observed a firearm in Cruz's right front pocket. When officers attempted to remove the firearm, Cruz engaged in a serious altercation with the officers, during which he attempted to gain access to two different officers' service weapons, confined Officer Wood and used her as a shield to block Officer Hawks's ability to fire his weapon at Cruz without the risk of striking Officer Wood, and continued to resist officers, even after being tased and placed in handcuffs. At the very least, Cruz was a mutual combatant, and the record does not include any indication that he had, at any point, declared an armistice. To the contrary, the evidence indicates that Cruz had escalated the situation. Based on the evidence, the trial court determined that the State had sufficiently rebutted Cruz's self-defense claim. Cruz's appellate claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See Wilson*, 770 N.E.2d at 801.

B. Criminal Confinement as a Level 2 Felony

[19] "A person who knowingly or intentionally confines another person without the other person's consent commits criminal confinement." Ind. Code § 35-42-3-3(a). The offense is a Level 3 felony if it "is committed while armed with a deadly weapon." Ind. Code § 35-42-3-3(b)(3)(A). It is a Level 2 felony if it is committed "with intent to use the person confined as a shield or hostage." Ind. Code § 35-42-3-3(b)(4)(D). To "'confine' means to substantially interfere with the liberty of a person." Ind. Code § 35-42-3-1.

[20] In challenging the sufficiency of the evidence to sustain his conviction as a Level 2 felony, Cruz argues that his conviction should be reduced to a Level 3 felony because there is no evidence that he “used Officer Wood as a shield.” Appellant’s Br. p. 19. We cannot agree. Both Officers Hawks and Wood testified that Cruz had confined Officer Wood and had used her as a shield during the altercation. Moreover, Cruz stated at trial that although he had been “high on meth” at the time of the altercation, it was his “guess” that his intent had been to “use [Officer Wood] as a shield.” Tr. Vol. II p. 145. In arguing otherwise on appeal, Cruz claims that the video recording of the altercation does not support Officers Hawks’s and Wood’s testimony that Cruz had used Officer Woods as a shield. We disagree and conclude that while the entire altercation lasted only a few moments, the video recording supports the officers’ testimony that Cruz, while armed with a firearm that was pointed in the officers’ direction, had placed himself behind Officer Wood. Cruz’s appellate challenge amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See Griffith*, 59 N.E.3d at 958.

C. Intimidation

[21] Cruz also challenges the sufficiency of the evidence to sustain his conviction for Level 6 felony intimidation. With respect to this charge, the State alleged that on August 5, 2020, Cruz had communicated “a threat to commit a forcible felony to, [Huizar], with the intent that [Huizar] be placed in fear of retaliation for a prior lawful act[.]” Appellant’s App. Vol. II p. 31. Indiana Code section 35-45-2-1(a) provides, in relevant part, that “[a] person who communicates a

threat with the intent: ... (2) that another person be placed in fear of retaliation for a prior lawful act ... commits intimidation, a Class A misdemeanor.”

However, “the offense is a: (1) Level 6 felony if: (A) the threat is to commit a forcible felony[.]” Ind. Code § 35-45-2-1(b).

[22] The definition of the word threat includes “an expression, by words or action, of an intention to: (1) unlawfully injure the person threatened[.]” Ind. Code § 35-45-2-1(c). Cruz asserts that because the crime of intimidation, as charged, threatens to punish him for his words, his federal and state constitutional free-speech protections are implicated, meaning that to prove intimidation, the State must further prove that he intended to utter a true threat. The question of whether Cruz’s statements qualified as “true threats” matters because true threats are not constitutionally protected speech. *See Brewington v. State*, 7 N.E.3d 946, 962 (Ind. 2014). “[T]rue threats’ under Indiana law depend on two necessary elements: that the speaker intend his communications to put his targets in fear for their safety, and that the communications were likely to actually cause such fear in a reasonable person similarly situated to the target.” *Id.* at 964.

[23] The evidence indicates that Cruz had twice threatened to “kick [Huizar’s] a[**].” Tr. Vol. II pp. 127, 128. It is also undisputed that Cruz was intoxicated, as he had admitted to having ingested methamphetamine prior to the altercation. Cruz does not argue that his statements were insufficient to constitute a threat to Huizar, but rather claims that due to his intoxication on methamphetamine at the time, he was unable to formulate the requisite intent

for the crime. For its part, the State asserts that Cruz’s voluntary intoxication should not be taken into consideration when considering Cruz’s intent.

[24] Indiana Code section 35-41-2-5 provides that “[i]ntoxication is not a defense in a prosecution for an offense *and may not be taken into consideration* in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of [Indiana Code section] 35-41-3-5.”

(Emphasis added). Indiana Code section 35-41-3-5 provides that

[i]t is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, *only* if the intoxication resulted from the introduction of a substance into his body: (1) without his consent; or (2) when he did not know that the substance might cause intoxication.

(Emphasis added). Cruz does not claim that the methamphetamine was introduced into his system without his consent or that he did not know that ingesting methamphetamine might cause intoxication. As such, Cruz cannot claim that his voluntary intoxication was a defense. *See* Ind. Code § 35-41-2-5. Likewise, his voluntary intoxication could not “be taken into consideration in determining the existence of a mental state that is an element of the offense.” *See* Ind. Code § 35-41-2-5. In *Sanchez v. State*, 749 N.E.2d 509, 517 (Ind. 2001), the Indiana Supreme Court stated that Indiana Code section 35-41-2-5 “is to be strictly construed.” “Thus, evidence of voluntary intoxication does not negate the mens rea requirement.” *Id.* at 520.

[25] When asked at trial whether he had intentionally threatened Huizar, Cruz responded that “I might have but I didn’t, I didn’t mean to threaten him. That’s why I had asked him if, if and only if he was playing with my clothes I was going to come back and kick his a[**].” Tr. Vol. II p. 147. To the extent that Cruz’s testimony can be read as a denial that he had intended to threaten Huizar, the trial court, acting as the trier-of-fact, was not obligated to believe Cruz’s testimony. *Wood v. State*, 999 N.E.2d 1054, 1064 (Ind. Ct. App. 2013) (providing that a factfinder is not required to believe a witness’s testimony even when it is uncontradicted), *trans. denied*. Again, the evidence demonstrates that Cruz twice accused Huizar of touching his clothing and threatened to “kick [Huizar’s] a[**].” Tr. Vol. II pp. 127, 128. The second threat came after Huizar had denied touching Cruz’s belongings. The evidence was sufficient to sustain the trial court’s determination that Cruz had intended to issue a true threat to Huizar.

II. Sentencing Statement

[26] As for his sentence, Cruz contends that the trial court failed to include a recommendation in its written sentencing order for Cruz to be placed in the purposeful-incarceration program despite it having indicated orally that it had “no problem recommending purposeful incarceration.” Tr. Vol. II p. 183. The State concedes that the trial court failed to include a recommendation regarding the purposeful-incarceration program in its written sentencing order and asserts that “Cruz’s concerns regarding the trial court’s recommendation for the purposeful[-]incarceration program can be clarified by a remand for the limited

purpose of clarifying its intentions.” Appellee’s Br. p. 21. We agree with the State and therefore remand the matter back to the trial court for the limited purpose of clarifying its intentions regarding Cruz’s placement in an available purposeful-incarceration program.

[27] We affirm the judgment of the trial court and remand with instructions.

Riley, J., and Weissmann, J., concur.