MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Johanna McGhehey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 15, 2021

Court of Appeals Case No. 20A-CR-861

Appeal from the Marion Superior Court

The Honorable Helen Marchal, Judge

Trial Court Cause No. 49G15-1809-F6-31207

Weissmann, Judge.

[1] When Johanna McGhehey arrived at Methodist Hospital by ambulance, she smelled of alcohol and had a head injury. The hospital wanted to treat McGhehey. She wanted to leave. The hospital prevailed but not before McGhehey kicked a nurse and a security officer in her raucous protest. Rejecting McGhehey's claim of self-defense, a jury found her guilty of disorderly conduct and two counts of battery on a public safety officer. She appeals the resulting convictions, alleging errors in the jury instructions and lack of evidence of disorderly conduct. Finding no error, we affirm McGhehey's convictions.

Facts

[2] McGhehey arrived at Methodist around midnight after her husband reportedly hit her in the head with a metal pipe or pole. McGhehey had dried blood on her scalp upon her arrival, but her condition was not deemed life threatening. McGhehey had slurred speech, smelled of alcohol, could not sit up straight in her bed, and was "belligerent and loud." Tr. Vol. II, pp. 83, 94. McGhehey admitted she had drunk "a lot of alcohol" but did not wish to specify the amount. Tr. Vol. II p. 82. Her blood alcohol level was 0.14%. Tr. Vol. II p. 90.

[3] Shortly after arriving at Methodist, McGhehey began yelling and demanding to leave. McGhehey's loud protests led other nurses to leave their posts to check on McGhehey's primary nurse, Autumn Bowman. Other patients told McGhehey to "shut up" and "cooperate." Tr. Vol. II p. 155. McGhehey's

anger escalated when she learned a brain scan was needed, as McGhehey was uninsured. When McGhehey tried to leave her bed, Bowman and another nurse struggled with McGhehey to hold her down.

[4] Despite the arrival of a charge nurse and two hospital police officers, McGhehey remained belligerent, loud, and uncooperative. Nurse Bowman told McGhehey to be quiet, and one of the police officers instructed her to stop yelling and fighting. McGhehey did not comply. A physician who examined McGhehey directed Nurse Bowman to sedate McGhehey for McGhehey's own safety. The police officers held McGhehey down while Nurse Bowman injected her with two sedatives. McGhehey responded by calling Nurse Bowman a vulgar name.

[5] Neither the sedatives nor isolation in a locked room for 15 minutes stopped McGhehey's outbursts. During a struggle to return her to the bed, an officer released his grip on McGhehey when she implied that she would stop scuffling. McGhehey seized the moment and kicked him in the abdomen. The officers then held McGhehey down while the charge nurse injected her with a second dose of sedatives. McGhehey screamed expletives as she kicked the nurse in the abdomen to avoid the injection.

[6] By the end of the ordeal, McGhehey was charged with disorderly conduct, a Class B misdemeanor, and two counts of battery on a public safety official, both level 6 felonies. A jury convicted McGhehey on all three counts, and the trial court sentenced McGhehey to an aggregate sentence of 365 days, with 237 days

suspended to probation. On appeal, McGhehey questions whether the trial court properly instructed the jury. She also challenges the sufficiency of the evidence supporting her conviction for disorderly conduct.

I. Jury Instructions

[7] McGhehey challenges the trial court's dual decisions to instruct the jury on voluntary intoxication and to reject McGhehey's proposed instruction on refusal of medical treatment. We find no error.

A. Standard of Review

[8] A trial court has discretion when instructing the jury. *Winkleman v. State*, 22 N.E.3d 844, 849 (Ind. Ct. App. 2014), *trans. denied*. We review the trial court's choice of instructions for an abuse of that discretion. *Id.* Whether the challenged instruction was given or rejected, we consider whether it correctly states the law, is supported by the evidence at trial, and contains directives not covered by other instructions. *Id.*; *McCowan v. State*, 27 N.E.3d 760, 763-64, 766 (Ind. 2015). The trial court abuses its discretion by rejecting a requested instruction meeting those requirements. *McCowan*, 27 N.E.3d at 764. Giving a challenged instruction is an abuse of discretion where the instruction does not meet those requirements and the instructions, taken as a whole, misstate the law or otherwise mislead the jury. *Brooks v. State*, 895 N.E.2d 130, 132 (Ind. Ct. App. 2008).

B. Refusal of Medical Treatment Instruction

[9] McGhehey first challenges the trial court's refusal of her proposed instruction on refusal of medical treatment, which follows:

> Indiana Code § 16-36-4-7 provides:
>
> (a) A competent person may consent or refuse consent for medical treatment, including life prolonging procedures.
>
> (b) No health care provider is required to provide medical treatment to a patient who has refused medical treatment under this section.
>
> (c) No civil or criminal liability is imposed on a health care provider for the failure to provide medical treatment to a patient who has refused the treatment in accordance with this section.
>
> App. Vol. II p. 108.

[10] The trial court refused the instruction based on the testimony of Nurse Bowman. Tr. Vol. II p. 173. She testified that a patient has a right to refuse treatment only when "fully alert and oriented." Tr. Vol. II p. 77. If the patient's "judgment is impaired in any way," according to Bowman, the treating physician determines whether the patient is competent to make medical decisions. *Id.* Bowman specifically testified that McGhehey was not free to leave prior to receiving treatment because her judgment was impaired as a result of her intoxication. Tr. Vol. II, pp. 84, 91. Also, before McGhehey could leave, the hospital needed to rule out a brain bleed arising from the blow to

McGhehey's head, as such a condition also impacts mental state. Tr. Vol. II, pp. 84-85.

[11] Bowman's testimony tracked state law governing patient consent. Indiana Code § 16-36-1-3 specifies that an adult may consent to her own health care "unless incapable of consenting" under Indiana Code § 16-36-1-4. The latter statute provides that "an individual . . . may consent to health care unless, in the good faith opinion of the attending physician, the individual is incapable of making a decision regarding the proposed health care." I.C. § 16-36-1-4. Consent to treatment "is not required in an emergency or when the patient is too intoxicated to give consent." *State v. Eichhorst*, 879 N.E.2d 1144, 1150 (Ind. Ct. App. 2008), *trans. denied*.

[12] McGhehey's proposed instruction is correct insofar as it goes, but it does not go far enough. Its failure to mention the limitations on patient consent in Indiana Code §§ 16-36-1-3 and -4 renders it incomplete and misleading. The proposed instruction suggests any patient may refuse treatment. Yet, in an emergency, hospitals are authorized to treat persons who have not consented. I.C. §§ 16-36-1-3, -4. Hospitals also may treat patients without their consent when they are too intoxicated to give it. *Id.*; *Eichhorst*, 879 N.E.2d at 1150.

[13] Both circumstances were present in this case. That McGhehey had been taken to the hospital by ambulance suggested an urgent need for treatment. An emergency existed because McGhehey had a head injury and the hospital needed to rule out a brain bleed before releasing her. McGhehey also admitted

drinking a lot of alcohol, and Nurse Bowman specifically testified that McGhehey was too impaired by her own intoxication to consent to treatment. Tr. Vol. II, pp. 83-84, 91-92.

[14] McGhehey's incomplete instruction was misleading and therefore did not correctly state the law. Therefore, the trial court did not abuse its discretion in rejecting the instruction. *See Lopez v. State*, 528 N.E.2d 1119, 1131 (Ind. 1998) (proffered instruction need not fully state the law, but trial court may reject instruction with "the tendency to mislead or confuse the jury").

C. Voluntary Intoxication Instruction

[15] McGhehey next challenges the trial court's instruction specifying that voluntary intoxication is not a defense to battery on a public safety official. App. Vol. II p. 136. The instruction, which is identical to Indiana Pattern Jury Instruction 10.1400, also informed the jury that it could not consider McGhehey's voluntary intoxication when determining whether she acted knowingly, intentionally, or recklessly. *Id.*

[16] Conceding the voluntary intoxication instruction is a correct statement of the law and not covered by the other instructions, McGhehey only attacks the instruction as unsupported by the evidence. Appellant's Br., p. 27. Repeating her trial objection, McGhehey claims the evidence is silent as to whether her alleged intoxication was voluntary. Tr. Vol. II, pp. 174-75. Even if such evidence existed, McGhehey claims mere intoxication is not enough to justify a voluntary intoxication instruction. Citing *Gibson v. State*, 516 N.E.2d 31, 33

(Ind. 1987), and *Bowen v. State*, 478 N.E.2d 44, 45 (Ind. 1985), McGhehey claims a voluntary intoxication instruction would have been appropriate only if the evidence showed her intoxication was so great as to deprive her of the ability to form the necessary intent.

[17] The foundation of McGhehey's claim is unsound. McGhehey said she drank a lot of alcohol, and tests showed her blood alcohol content was 0.14%. Tr. Vol. II, pp. 82, 90-91. The record contains no evidence that she was forced to drink the alcohol or that she did not know she was drinking alcohol. Nor did the evidence spark any such reasonable inferences of involuntary intoxication. *See* Ind. Code § 35-41-3-5 (specifying intoxication is a defense "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."). The evidence and reasonable inferences were sufficient to establish that the source of McGhehey's intoxication was her voluntary alcohol consumption.

[18] At trial, McGhehey did not argue that mere evidence of voluntary intoxication is not enough to support the voluntary intoxication instruction. Therefore, she has waived that claim. *See Jackson v. State*, 712 N.E.2d 986, 988 (Ind. 1999) § McGhehey's argument fails.

[19] The precedent upon which she relies—*Gibson* and *Bowen*—predates abolishment of the voluntary intoxication defense. In 1997, the Indiana General Assembly amended Indiana Code § 35-41-2-5 to specify 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 . . . ." *See* 1997 Ind. Acts P.L. 210, § 4 (effective July 1, 1997).

[20] *Gibson* and *Bowen*—both decided when the voluntary intoxication defense remained viable—established that evidence of intoxication must reach a particular threshold before the defendant could raise a voluntary intoxication defense. *Gibson*, 516 N.E.2d at 33; *Bowen*, 478 N.E.2d at 45. Such decisions ensured juries would be instructed on voluntary intoxication only when that defense potentially applied.

[21] In this case, however, the instruction served the opposite purpose: to *prevent* the jury from considering an abolished defense. Whether sufficient evidence existed to support a voluntary intoxication defense is irrelevant here because that defense is no longer available. Therefore, McGhehey's reliance on *Gibson* and *Bowen* and the threshold requirements for the voluntary intoxication instruction is misplaced.

[22] The comment to Pattern Jury Instruction 10.1400 is consistent with that view. It specifies that the voluntary intoxication instruction "is to be given when the charged crime was committed on or after July 1, 1997 and evidence that the defendant was intoxicated has been admitted." That comment does not specify a particular threshold of intoxication is required before the instruction should be given. Instead, mere evidence of intoxication is sufficient to trigger its use.

[23] The trial court employed the pattern jury instruction exactly as contemplated by that comment. *See Gravens v. State*, 836 N.E.2d 490, 493 (Ind. Ct. App. 2005), *trans. denied* (preferred practice is to use pattern jury instructions). As McGhehey has failed to establish the evidence did not support the instruction, we conclude the trial court properly instructed the jury.

II. Sufficiency of Evidence

[24] McGhehey also contends the State did not prove beyond a reasonable doubt that she committed disorderly conduct. When reviewing a claim of insufficient evidence, we neither judge the credibility of the witnesses nor reweigh the evidence. *McCoy v. State*, 157 N.E.3d 28, 31 (Ind. Ct. App. 2020). We consider only the evidence most favorable to the judgment and any resulting inferences. *Id.* We will affirm the judgment if it is supported by substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt. *Id.*

[25] A conviction for Class B misdemeanor disorderly conduct requires proof beyond a reasonable doubt that the accused recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. Ind. Code § 35-45-1-3(a)(2). McGhehey argues the evidence of unreasonable noise was insufficient.

[26] Unreasonable noise is "decibels of noise" too loud for the circumstances. *Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 2003). McGhehey claims she reasonably believed hospital personnel were illegally restraining her and forcing

her to undergo treatment. She asserts, without citation to authority, that "there is no level of volume inappropriate in the context of fending off an attack by an aggressor." Appellant's Br. p. 30.

[27] Considering the circumstances as a whole, we find adequate evidence to establish beyond a reasonable doubt that McGhehey knowingly, intentionally, or recklessly made unreasonable noise after being asked to stop. McGhehey's excuses for her conduct are not well taken. The hospital had the right to treat McGhehey without her consent, given her intoxication and head injury. I.C. §§ 16-36-1-3, -4. Therefore, McGhehey was not "fending off an attack by an aggressor" but, rather, refusing to comply with directives necessary to ensure her safety.

[28] The record establishes without conflict that McGhehey's clamorous objections and personal attacks escalated in volume during her hospital stay to such a degree that other patients felt compelled to intervene by shouting instructions to her to cooperate. Even after at least two hospital staff directed her to be quiet, she continued her vocal raging. McGhehey's loud fuming, punctuated by expletives and offensive name-calling, drew other nurses and two hospital police officers into her hospital room and disrupted other patients. Hospitals are sanctuaries for the sick, places where peace and quietude are expected. *See Radford v. State*, 640 N.E.2d 90, 93 (Ind. Ct. App. 1994) (affirming disorderly conduct conviction where defendant engaged in abusive and harmful speech in hospital), *trans. denied*. McGhehey knowingly, intentionally, or recklessly engaged in unreasonable noise—that is, noise too loud for the circumstances—

after she was told to stop. The evidence supports her conviction for disorderly conduct.

[29] As the trial court's instructions were proper and the evidence underlying McGhehey's disorderly conduct conviction was sufficient, we affirm the trial court's judgment.

[30] Mathias, J., and Altice, J., concur.