

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Roger L. Boyd, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 25, 2023

Court of Appeals Case No.
22A-CR-1914

Appeal from the Jay Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-2009-MR-5

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] Roger L. Boyd appeals his conviction for murder, a felony, claiming that the trial court abused its discretion in refusing to give his tendered instructions on self-defense. Boyd asserts that his conviction must be reversed because the trial court's refusal to give his offered instructions "prejudiced his substantial rights to present a defense and to have a fair trial." *Appellant's Brief* at 15.
- [2] We affirm.

Facts and Procedural History

- [3] On September 5, 2020, Boyd, a former police officer in Jay County, and four other individuals, were in his basement using methamphetamine. At approximately 2:00 a.m., Jimmy Miller and his girlfriend drove to Boyd's house to borrow a motorcycle key. When Miller knocked on the door, Boyd noticed him on a monitored home security camera and became "tense." *Transcript Vol. III* at 145. Boyd was angry at Miller for damaging one of his motorcycles that he had previously loaned to Miller, and Boyd "didn't want to deal with" Miller that evening. *Id.*
- [4] Miller had been knocking on the door for nearly ten minutes until another individual, Kurt Banter, arrived at Boyd's residence and walked inside. Banter told Boyd that Miller was outside and wanted to talk with him. In response,

Boyd did “a big line” of methamphetamine, grabbed a 9 mm handgun from his safe, and opened his front door. Miller “joking[ly]” stated, “[W]hat the f*ck . . . you didn’t answer the door. I’m your friend.” *Id.* at 208. Boyd and Miller walked into the garage and began talking about the motorcycle, while Nicole Burke—Miller’s girlfriend—stood outside near the doorway. Burke stated that the two were not “arguing” or “yelling” at each other. *Transcript Vol. II* at 210.

[5] At some point, Burke heard “shots fired” and saw Miller fall to the ground. *Id.* at 209-11. Miller “took one long deep breath[,] and that was it.” *Transcript Vol. IV* at 164. Boyd had shot Miller once on his right bicep, three times in his chest, once in the shoulder, and once in the neck, killing him. Immediately after the shooting, Boyd—while still armed with the handgun—ordered Burke to the basement.

[6] Boyd then removed four surveillance cameras from his residence and handed one of the cameras to an individual who had been in the basement. Boyd called 911 and reported that he had shot a burglar who was trying to break into his residence. Boyd told his girlfriend that she should tell the police that someone had “messed with the garage door a few days earlier.” *Transcript Vol. III* at 147-48.

[7] When the police arrived, Boyd was standing in the front yard with his hands in the air. One of the officers handcuffed Boyd and directed him to sit on the curb. While Boyd was seated, he reached into his pocket and performed a “factory reset” on his phone, thus erasing camera footage that involved the

shooting. *Transcript Vol. IV* at 171-72. At no time did Boyd mention the surveillance cameras to police.

[8] When the officers entered Boyd’s garage, they noticed Miller lying on the floor. Miller had no pulse and there was “nothing within his reach . . . that could’ve been used as a weapon.” *Transcript Vol. II* at 171. The officers “looked through the entire garage . . . [and] did not see any [weapons].” *Id.* at 171-72.

[9] On September 8, 2020, the State charged Boyd with murder and confinement,¹ a Level 3 felony. The State subsequently dismissed the confinement charge, and a jury trial was set for June 6, 2022. Prior to trial, Boyd filed a notice of intent to raise a self-defense claim.

[10] At trial, several witnesses testified about Miller’s violent character. For instance, some referred to Miller as a “bully” and they knew that he carried a weapon. *Transcript Vol. IV* at 16, 46-47. One of Miller’s co-workers testified that Miller was “the toughest and meanest [guy that he] ever met in his life.” *Id.* at 82.

[11] Boyd submitted several proposed final instructions, including one that involved Miller’s reputation and character. More particularly, Boyd’s “violent reputation of the deceased” instruction read:

¹ This charge alleged that Boyd confined Burke while armed with a 9 mm handgun.

You have heard evidence that the deceased, James P. Miller, had a reputation as a dangerous and violent individual. You may consider such evidence in determining whether he was the initial aggressor in this case.

Appellant's Appendix Vol. III at 56-57. Boyd also tendered an instruction regarding the reasonable use of force “from the standpoint of the defendant,” that stated:

The question of the existence of danger at the time of the incident charged, as well as the reasonableness of the amount of force used by the Defendant, *can only be determined from the standpoint of the Defendant at the time and under all existing circumstances.* However, the Defendant must have actually believed the amount of force used was necessary to protect himself or a third person from imminent danger and his belief must have been one that a reasonable person would have held under the circumstances.

Id. (emphasis added).

[12] The trial court rejected Boyd’s tendered instructions, and without objection, instructed the jury on self-defense as follows:

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, and has no duty to retreat, only 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. . . . The phrase ‘reasonably believes,’ as used in the Indiana self-defense statute, requires both subjective belief that force was necessary to prevent serious

bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances. However, a defendant may act upon appearances that reasonably seem to be threatening his life even though he may actually be mistaken.

Appellant's Appendix Vol. III at 76-77.

- [13] Boyd was found guilty as charged and was subsequently sentenced to fifty-three years of incarceration. Boyd now appeals.

Discussion and Decision

- [14] We initially observe that proper jury instructions inform the jury of the law applicable to the facts of the case so that the jury may comprehend the case clearly and arrive at a just, fair, and correct verdict. *Albert v. State*, 193 N.E.3d 1040, 1042 (Ind. Ct. App. 2022), *trans. denied*. That said, we review the trial court's instructions for an abuse of discretion, which occurs when the challenged instruction is erroneous and the instructions, taken as a whole, misstate the law or otherwise mislead the jury. *Id.* We will consider: “(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions which are given.” *Id.* (quoting *Guyton v. State*, 771 N.E.2d 1141, 1144 (Ind. 2002)).

- [15] As for Boyd's contention that the trial court abused its discretion in rejecting his proposed instructions, we note that instructions “that unnecessarily emphasize one particular evidentiary fact, witness, or phase of the case have long been

disapproved.” *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003) (citations omitted). An instruction that highlights specific evidence “invades the province of the jury by commenting on the competency or the weight to be given to the testimony of any particular witness.” *Id.* (quoting *Abbott v. State*, 535 N.E.2d 1169, 1172 (Ind. 1989)).

[16] As noted above, Boyd’s instruction regarding Miller’s character and reputation described Miller as a “dangerous and violent individual” and stated that the jury “could consider that evidence in determining whether Miller was the initial aggressor.” *Appellant’s Appendix Vol. III* at 56-57. Although some evidence presented at trial suggested that Miller was a violent person, there was also testimony that Miller was friendly and nonviolent, and was not yelling or threatening Boyd when he was shot. In essence, Boyd’s instruction sought to resolve this contradiction by informing the jury that Miller was, in fact, a violent person at the expense of the conflicting evidence. As a result, Boyd’s tendered instruction unnecessarily emphasized particular evidence, and the trial court properly refused this instruction because it invaded the province of the jury. *See, e.g., Gilmore v. State*, 415 N.E.2d 70, 74 (Ind. 1981) (holding that a proposed instruction that attached weight to certain evidence invaded the province of the jury and was properly refused).

[17] As for Boyd’s proposed instruction regarding the reasonableness of force from the defendant’s standpoint, we note that a trial court should not give an instruction that has a “significant potential to mislead.” *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001). Moreover, a proposed instruction must be a

correct statement of law. *See Evans v. State*, 81 N.E.3d 634, 637 (Ind. Ct. App. 2017).

[18] In this case, Boyd’s tendered instruction focused almost exclusively on the subjective component of reasonableness rather than explaining the subjective *and* objective aspects of reasonableness in an impartial fashion. Boyd’s instruction provided that the reasonableness of the amount of force “*can only be determined from the standpoint of the Defendant.*” *Appellant’s Appendix Vol. III* at 56-57 (emphasis added). This instruction is misleading because it was not impartial, and it obscured the objective component of reasonableness. *See Dill*, 741 N.E.2d at 1233. That is, a person’s reasonable belief in the necessity of force requires both a subjective, actual belief that force was necessary *and* “that such actual belief was one that a reasonable person would have made under the circumstances.” *Little v. State*, 871 N.E.2d 276, 279 (Ind. 2007). In other words, contrary to Boyd’s tendered instruction, reasonableness is not *only* determined from the defendant’s standpoint. *Id.* Boyd’s proposed instruction misstated the law, and the trial court properly rejected it.

[19] In sum, because Boyd’s tendered instructions were not correct statements of the law, unduly emphasized specific evidence, and/or were misleading, we conclude that the trial court did not abuse its discretion in refusing to give those instructions.

[20] Judgment affirmed.

Riley, J. and Pyle, J., concur.