MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua E. Leffew,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 28, 2023

Court of Appeals Case No. 22A-CR-2484

Appeal from the Johnson Circuit Court

The Honorable Andrew S. Roesner, Judge

Trial Court Cause No. 41C01-2012-F5-108

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Joshua E. Leffew ("Leffew") appeals, following a jury trial, his convictions for Level 5 felony battery resulting in serious bodily injury,[1] Class A misdemeanor battery resulting in bodily injury,[2] and Class B misdemeanor disorderly conduct.[3] Leffew argues that the trial court abused its discretion when it instructed the jury on self-defense. Concluding that the trial court did not abuse its discretion, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court abused its discretion when it instructed the jury on self-defense.

Facts

[3] On the night of December 1, 2020, Leffew and Joel Saxton ("Saxton") were having dinner and drinking alcohol at a restaurant near the Greenwood Park Mall. Christopher Parker ("Parker"), Matthew Lucas ("Lucas"), Tiffany Mason ("Mason"), and Josh Kimbowa[4] ("Kimbowa") (collectively "Parker's

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[1] IND. CODE § 35-42-2-1.

[2] *Id.*

[3] I.C. § 35-45-1-3.

[4] Although the police reports, briefs, and appendices list Kimbowa's name as Joshkin Boah, the State explained to the trial court that this was the incorrect spelling of Kimbowa's name. (Tr. Vol. 3 at 176).

Group") were also having dinner and drinking alcohol at the restaurant. Kimbowa is an African-American man.

[4] At some point during the evening, Saxton began knocking over barstools in the restaurant and making "monkey noises[,]" and General Manager Daniel Bennett ("GM Bennett") asked Leffew and Saxton to leave the restaurant. (Tr. Vol. 3 at 5). Around the same time, Parker's Group were preparing to leave the restaurant.

[5] Leffew, Saxton, and one other person left the restaurant but stayed in the restaurant's parking lot to smoke cigarettes. As Parker's Group exited the restaurant, Leffew and Saxton began shouting at Parker's Group. Specifically, they shouted, among other racial slurs, "n***** lover[,]" "white power," "Heil Hitler[,]" and "you should do better than hangin' out with n******[.]" (Tr. Vol. 2 at 132; Tr. Vol. 3 at 22). Parker took out his phone and began recording the exchange. Mason attempted to rush at Leffew in defense of Kimbowa, but members of Parker's Group held her back. Leffew then told Mason to "come over n***** lover[.]" (Tr. Vol. 2 at 206). Leffew also yelled "[s]top defending the n******" and Mason then confronted Leffew, who was over a foot taller than her. Leffew continued to shout racial slurs at Parker's Group. Mason pushed Leffew. In response, Leffew struck Mason in the face, temporarily knocking her out and causing her to fall to the ground.

[6] Lucas, Mason's boyfriend at the time, rushed forward to help Mason. In response, Leffew and Saxton knocked Lucas to the ground and took turns

kicking him while he was still on the ground. Parker came over to Mason to help her get back up, but when Parker crouched down to help Mason, he was kicked and fell to the ground. When Parker attempted to stand up, Leffew punched him in the mouth, cracking two of his teeth.

[7] Leffew and Saxton then fled towards Leffew's truck. Parker stood up and followed Leffew and Saxton in order to take a picture of Leffew's license plate. When Leffew saw Parker following him, he pulled a gun from his truck and asked, "who wants to get shot?" (Tr. Vol. 2 at 143). Leffew then fired a shot into the air before getting in his truck and fleeing the parking lot. Greenwood Police Department officers arrived on the scene soon after and pulled over Leffew's truck.

[8] The State charged Leffew with Level 5 felony battery causing serious bodily injury for striking Parker, Class A misdemeanor battery causing bodily injury for striking Mason, and Class B misdemeanor disorderly conduct.[5] The trial court held a jury trial in September 2022. Leffew's theory of defense was that he had acted in self-defense. At the jury trial, the jury heard the facts as set forth above. Additionally, Leffew testified that he had only punched Parker in the face because Parker, after being kicked to the ground, had grabbed Leffew's leg.

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[5] The State also charged Leffew with Class A misdemeanor battery causing bodily injury for striking Lucas and Level 5 felony intimidation. The State dismissed the battery charge, and the jury acquitted Leffew on the intimidation charge. These charges are not relevant to this appeal.

[9] After evidence was heard and outside of the presence of the jury, the State and Leffew's counsel debated over variations of self-defense jury instructions. Specifically, Leffew requested the use of the pattern jury instructions for self-defense, whereas the State and the trial court believed that a modified self-defense jury instructions that resulted from the decision of *Gammons v. State*, 148 N.E.3d 301 (Ind. 2020) should be used. Specifically, the trial court stated that the language "an immediate causal connection" was not included in the pattern self-defense instruction. (Tr. Vol. 3 at 54). The trial court further explained that "[*Gammons*] . . . came out [and] reversed a conviction on a self[-]defense claim because the pattern instruction was deficient. [*Gammons*] said that the language in the instruction needed to include the phrase . . . immediate and causal connection." (Tr. Vol. 3 at 54). The modified self-defense instruction, which included the language set out in *Gammons*, read as follows:

FINAL INSTRUCTION NO. 24

> 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 he reasonably believes to be the imminent use of unlawful force.
>
> However, a person may not use force if:
>
> He is committing a crime and there is an immediate and causal connection between the crime and the confrontation. In other words, for the [D]efendant to lose the right of self-defense, the jury must find that, but for the Defendant's commission of a

separate crime that is immediately and causally connected to the confrontation, the confrontation resulting in injury to the victim would not have occurred;

or

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.

(App. Vol. 2 at 189).

[10] During the discussion over which jury instruction to use, the following exchange occurred:

> [DEFENSE COUNSEL]: . . . I mean, that's fine, Judge. I can just explain to the jury that . . . [*Gammons*] is a total[ly] different fact situation.
>
> THE COURT: Okay. So you're okay with 24?
>
> [DEFENSE COUNSEL]: Well, I don't . . . think it's, uh, incorrect law. The jury must find but for the Defendant's

> commission of a separate crime that . . . the immediate ca[us]al connection to the confrontation the result of an injury would not have occurred. I mean, I think that is the correct law.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: I don't know – I guess I'm objecting because I don't think it applies to this . . . case, so yeah. For the record I'll just object for that reason.
>
> THE COURT: Okay. Any response from the State?
>
> [THE STATE]: Well, if we're go[ing to] object on applying the case when we have a massive factual dispute, the State objects to the instruction being given. . . . but to be fair to [defense counsel], there's a massive factual dispute here as to whether or not . . . the circumstances that would allow self defense to apply[,] apply. If he's going to get his instruction that he wants on self defense, then they get the full instruction on self defense. The moment he asks for a self defense instruction, that language has to be in it.
>
> THE COURT: I think it's error for me not to.

(Tr. Vol. 3 at 56). The trial court noted Leffew's objection and provided the above jury instruction to the jury.

[11] At the conclusion of the jury trial, the jury found Leffew guilty of Level 5 felony battery causing serious bodily injury, Class A misdemeanor battery causing bodily injury, and Class B misdemeanor disorderly conduct and not guilty of Level 5 felony intimidation. At Leffew's sentencing hearing, the trial court sentenced him to an aggregate sentence of four (4) years, with three (3) years

executed at the Indiana Department of Correction ("the DOC") and one (1) year suspended to probation.

[12] Leffew now appeals.

Decision

[13] Leffew argues that the trial court abused its discretion when it instructed the jury on self-defense. Instructing a jury is left to the sound discretion of the trial court and is reviewed only for an abuse of discretion. *Patterson v. State*, 11 N.E.3d 1036, 1040 (Ind. Ct. App. 2014). 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), *trans. denied*. In doing so, we consider the instructions as a whole and in reference to each other and do not reverse the trial court for an abuse of discretion unless the instructions as a whole mislead the jury as to the law in the case. *McCowan v. State*, 27 N.E.3d 763-64 (Ind. 2015). The purpose of jury instructions "is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict." *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001) (cleaned up).

[14] Leffew concedes that the self-defense jury instruction given by the trial court was a correct statement of the law. However, Leffew challenges the inclusion

of the following portion of the jury instruction involving the exceptions to lawful use of self-defense:

> [h]e is committing a crime and there is an immediate and causal connection between the crime and the confrontation. In other words, for the Defendant to lose the right of self-defense, the jury must find that, but for the Defendant's commission of a separate crime that is immediately and causally connected to the confrontation, the confrontation resulting in injury to the victim would not have occurred[.]

(App. Vol. 2 at 189). Specifically, Leffew argues that this portion of the jury instruction should not have been included because "there was no allegation or argument or evidence that Leffew was committing a crime other than the confrontation[.]" (Leffew's Br. 9).

[15] We note that it is well settled that giving the pattern jury instructions is the preferred practice, but it is not required. *Ramirez v. State*, 174 N.E.3d 181, 199 (Ind. 2021). Our review of the record reveals that there was enough evidence to support giving the self-defense instruction in its entirety, and doing otherwise would not adequately inform the jury of the law applicable to the facts. *See Dill*, 741 N.E.2d at 1232. The trial court's self-defense instruction, aside from the modification of the immediate causal connection language, tracks Indiana's self-defense statute and the pattern instructions. *See* I.C. § 35-41-3-2. Furthermore, as explained by the trial court, the "immediate and causal connection" language was included based on the Indiana Supreme Court's guidance in *Gammons*. We do not find Leffew's argument that one of the

exceptions should be removed from the instruction to be convincing. Indeed, Leffew concedes that the tendered self-defense jury instruction was a correct statement of the law. Further, Leffew also cites to no case law to support the removal of the challenged language. As a result, Leffew has not established that the self-defense instruction in this case misstated the law, confused the jury, or was otherwise improper. Therefore, we find no error.

[16] Affirmed.[6]

Altice, C.J., and Riley, J., concur.

[6] Leffew also argues that "the jury could have been confused by" the State's closing argument and "rejected the self-defense claim because it perceived that Leffew was a criminal for driving away from the scene." (Leffew's Br. 16). However, Leffew provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8). Further, Leffew did not make a contemporaneous objection to the State's closing argument before the trial court. Thus, the issue is also waived on appeal for this reason. *See Sparks v. State*, 100 N.E.3d 715, 720 (Ind. Ct. App. 2018).