MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Terrance Kinnard
Kinnard Rowley Powers Jimenez
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeremiah Allen Hendricks, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 26, 2023

Court of Appeals Case No. 22A-CR-3015

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-2101-F1-1

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] Jeremiah Hendricks, Jr. shot at his drug dealer as he attempted to rob him. Despite attempting to convince a jury that he acted in self-defense, Hendricks was found guilty of attempted murder, among other offenses. Two weeks after his trial, Hendricks complained that one of the jury instructions on self-defense incorrectly stated the law. Because Hendricks waived this argument, we affirm.

Facts

[2] One early spring evening in 2020, Hendricks arranged to buy marijuana from Luis Miranda in the parking lot of an apartment building. The dealer arrived in his car, with his friend sitting in the passenger seat. On the floor of the car, under the dealer's seat, rested his pellet gun, which resembled a Glock handgun.

[3] Hendricks and a friend approached the dealer's car and asked to see the marijuana. When the dealer pulled out a small bag, Hendricks and his friend drew guns, set them on the car windshield pointed at the dealer, and instructed him to give them everything they had.

[4] The dealer attempted to flee by ducking down, putting his car in reverse, and backing out of the parking lot. But as the dealer backed out, Hendricks fired two shots at the car. Hendrick's friend ran away when the shooting started, and the dealer's car soon stopped. Hendricks then fired two more shots at the car. At this point, the dealer threw the marijuana to Hendricks, and having been shot, drove to a local hospital.

[5] The police investigation proceeded rapidly. Police found multiple videos and text messages from Hendricks the evening of the shooting referencing marijuana and guns. There were bullet holes in the driver's side door of the dealer's car, the driver's side window frame, and through the driver's seat. The dealer suffered bullet wounds to his arm and chest, fractured ribs, and a collapsed lung. He spent thirteen days in the hospital.

[6] The State charged Hendricks with seven crimes: Level 1 felony attempted murder; Level 2 felony conspiracy to commit robbery resulting in seriously bodily injury; Level 2 felony robbery resulting in serious bodily injury; Level 5 felony battery by means of a deadly weapon; Level 5 felony battery resulting in serious bodily injury; Level 6 felony pointing a handgun at another person; and Class A misdemeanor carrying a handgun without a license. At Hendricks's jury trial, the defense tendered three instructions pertaining to self-defense. But after discussing the relevant law with both parties, the trial court declined the defense's tendered instructions and instead gave a version of the Indiana pattern jury instruction on self-defense. The instruction read:

> It is an issue whether the defendant Jeremiah Allen Hendricks Jr. acted in self-defense. A person may use reasonable force against another person to protect himself or someone else from what he reasonably believes to be the imminent use of unlawful force. A person is justified in using deadly force and does not have a duty to retreat only if he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself or a third person. However, a person may not use force if [he] is committing a crime that is directly and immediately connected to 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, the confrontation resulting in injury to victim 1 would not have occurred. The state has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

Tr. Vol. IV, p. 47 (emphasis added).

[7] Ultimately, the jury found Hendricks guilty of attempted murder, pointing a handgun at another, and carrying a handgun without a license. Hendricks was found not guilty of the remaining charges. But two weeks after the trial's close, Hendricks requested a do-over through a motion for "Judgment on the Evidence" alleging—for the first time—that the self-defense jury instruction's reference to the "but for" test violated Indiana law under *Gammons v. State*, 148 N.E.3d 301 (Ind. 2020). After holding a hearing on the question, the trial court denied Hendricks's motion, writing that he had waived the issue by providing "no legal basis or authority for the objection" at trial, "though requested by the Court." App. Vol. II, p. 68.

Discussion and Decision

[8] On appeal, Hendricks repeats his argument that the trial court gave a jury instruction on self-defense that incorrectly stated the law. The remedy, according to Hendricks, is to vacate his conviction for attempted murder and remand for a new trial.

[9] We generally review a trial court's jury instruction for an abuse of discretion. *Batchelor v. State*, 119 N.E.3d 550, 554 (Ind. 2019). But when an instruction is

challenged as an incorrect statement of law, the review is de novo. *Id.* We reverse "only if the instruction resulted in prejudice to the defendant's 'substantial rights.'" *Id.* (quoting *Hernandez v. State*, 45 N.E.3d 373, 376 (Ind. 2015)).

I. Waiver

[10] The State argues that Hendricks waived his challenge to the self-defense jury instruction. We agree.

[11] "It is well-established in both common law and rule that a party wishing to preserve instruction error for appeal must identify the *specific grounds* for objection at the time of trial. *Kane v. State*, 976 N.E.2d 1228, 1231 (Ind. 2012) (emphasis added) (collecting cases); Ind. Trial Rule 51(c) ("No party may claim as error the giving of an instruction unless he objects thereto . . . stating distinctly the matter to which he objects and the grounds of his objection."). Specificity in an objection is necessary. To do otherwise denies the trial court its "opportunity to avoid error 'that might otherwise require reversal and result in a miscarriage of justice and a waste of time and resources.'" *Kane*, 976 N.E.2d at 1231 (quoting *McDowell v. State*, 885 N.E.2d 1260, 1262 (Ind. 2008)).

[12] Hendricks did not inform the trial court of the issue he now raises on appeal. Although the challenged jury instruction was discussed at Hendricks's trial, this discussion never addressed whether the portion of the instruction reading "but for the Defendant's commission of a separate crime" constituted good law. Tr. Vol. IV, p. 47; Tr. Vol. III, pp. 198-204. Indeed, Hendrick's proposed jury

instructions on self-defense, and the case law he cited, all dealt with different aspects of a self-defense claim. App. Vol. II, pp. 22-29. At no point did his arguments turn to the separate issue of whether a defendant may assert self-defense brought on by his engagement in criminal activity.

[13] Hendricks fails to circumvent this waiver. To be sure, when reviewing courts "have the benefit of an ensuing colloquy between the trial court and counsel, which informs us that the trial judge gave specific consideration to whether the proposed instruction was a correct statement of law," the issue may be preserved. *Kane*, 976 N.E.2d at 1231 (quoting *McDowell*, 885 N.E.2d at 1262). But that is not the case here. In *Kane*, "the most significant[]" fact for circumventing waiver was that the trial court judge "changed [the language of the proposed jury instruction] to mirror language that, in his estimation, had received judicial approval" in a separate case. 976 N.E.2d at 1231-32. In contrast, here, the trial court merely adopted the pattern jury instruction verbatim.[1] Thus, we cannot say this record demonstrates that the trial judge

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[1] Although Hendricks repeatedly asserts that the trial court "modified" the pattern jury instruction in some way, Appellant's Br., pp. 12-13, the instruction as read to the jury mirrors the language of the pattern jury instruction then in use:

> It is an issue whether the Defendant acted in [self-defense] [defense of another person].
>
> A person may use reasonable force against another person to protect (himself/herself from what he/she) or (someone else) from what the Defendant reasonably believes to be the imminent use of unlawful force.
>
> A person is justified in using deadly force, and does not have a duty to retreat, only if he/she reasonably believes that deadly force is necessary [to prevent serious bodily injury to himself/herself or a third person] [to prevent the commission of a forcible felony].
>
> [However, a person may not use force if:

gave the "specific consideration" necessary to preserve the issue for appeal. *Id.* at 1231.

[14] Finding that Hendricks waived his argument on appeal, we affirm.

Riley, J., and Bradford, J., concur.

> (he/she is committing a crime that is directly and immediately connected to the (confrontation) (use a descriptive term based on evidence). 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*, the confrontation resulting in injury to [victim's name] would not have occurred.
> . . . .

Pattern Jury Instruction 10.0300 (2022) (emphasis added); Tr. Vol. IV, p. 47 ("[I]n 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*, the confrontation resulting in injury to victim 1 would not have occurred.") (emphasis added). We note that despite making this assertion, Hendricks did not provide the text of the 2022 pattern jury instruction.