MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew M. Stutz,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023

Court of Appeals Case No. 21A-CR-2478

Appeal from the Franklin Circuit Court

The Honorable Clay M. Kellerman, Judge

Trial Court Cause No. 24C02-2107-F5-671

Memorandum Decision by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

[1] Andrew M. Stutz, ("Stutz") appeals his convictions, following a jury trial, of Level 6 felony resisting law enforcement[1] and Level 6 felony intimidation.[2] He argues that the trial court violated his constitutional right to self-representation and that there is insufficient evidence to support his conviction for Level 6 felony resisting law enforcement. Concluding that Stutz was not denied his constitutional right to self-representation and that there is sufficient evidence to support his conviction, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether the trial court violated Stutz's constitutional right to self-representation.
2. Whether there is sufficient evidence to support Stutz's conviction for Level 6 felony resisting law enforcement.

Facts

[3] The facts most favorable to the verdicts reveal that on July 21, 2021, while incarcerated at the Franklin County Security Center, twenty-eight-year-old

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[1] INDIANA CODE § 35-44.1-3-1.

[2] I.C. § 35-45-2-1.

Stutz, who was described as a big man, became involved in an altercation with another inmate. When jail officer Katie Schuler ("Officer Schuler") approached Stutz following the altercation, Stutz became argumentative and loud and told Officer Schuler that if she "tried to do anything he would beat [her] ass." (Tr. Vol. 3 at 45). Officer Schuler escorted Stutz to a holding cell, where Stutz threatened to break the sprinkler system and flood the cell. After Officer Schuler had left the holding cell, Stutz created a security risk by covering the cell's surveillance video camera with toilet paper.

[4] When Franklin County Sheriff's Department Deputies Tyler Ford ("Deputy Ford") and Kyle Hartman ("Deputy Hartman") (collectively "the deputies") entered the holding cell to check on Stutz, the deputies found him lying on his back on the floor. Stutz, who was twiddling his thumbs, told the deputies to "[g]et the fuck out." (Tr. Vol. 3 at 53). Stutz threated to "beat [the deputies'] asses[]" and told them not to "fucking touch [him]." (Tr. Vol. 3 at 53). When the deputies told Stutz to roll over onto his stomach and to place his hands behind his head, Stutz refused and continued to curse at and threaten the deputies. Although the deputies were eventually able to roll Stutz over onto his stomach, Stutz placed his hands under his chest and interlocked his fingers.

[5] When Deputy Ford attempted to pull Stutz's arm out from under his chest, Stutz bit Deputy Ford. As the deputies further attempted to handcuff Stutz, Stutz thrashed his legs and "thr[ew] his shoulders any way he could." (Tr. Vol. 3 at 111). When the deputies were finally able to handcuff Stutz, he then refused to stand up. As the deputies attempted to lift Stutz, he "just went dead

weight." (Tr. Vol. 3 at 176). The deputies were eventually able to lift Stutz off the ground and had to "pin him up against the wall to hold that weight." (Tr. Vol. 3 at 176). Once Stutz was on his feet, he kicked Deputy Hartman in the leg and threatened to "pay a visit to [Deputy Hartman's] wife and kids." (Tr. Vol. 3 at 179). The deputies placed shackles on Stutz, and Stutz then went dead weight again to make it more difficult for the deputies to move him to a restraint chair. With the assistance of another officer, the deputies were able to carry Stutz and place him in the restraint chair. However, when the deputies attempted to strap Stutz in the chair, Stutz remained combative, arched his back, continued to thrash around, and did "everything in his power to not let [the deputies] put those straps on." (Tr. Vol. 3 at 118).

[6] At the end of July 2021, the State charged Stutz with Level 6 felony resisting law enforcement and Level 6 felony intimidation.[3] At the August 2021 initial hearing, the trial court asked Stutz if he wanted the court to appoint attorney Mark Jones ("Attorney Jones"), who was representing Stutz in two other cases, to represent him in this case. Stutz responded that he would like Attorney Jones as his counsel, and the trial court appointed him. Also at the hearing, Stutz requested a speedy trial.

[3] The State also charged Stutz with two counts of Level 5 battery resulting in bodily injury to a public safety official. The trial court granted Stutz's motion for a directed verdict on one of the counts, and the jury found Stutz not guilty on the other count.

[7] At another hearing a week later, Attorney Jones asked the trial court for permission to withdraw from all three of Stutz's cases because Stutz was not satisfied with his representation. Attorney Jones further explained that Stutz had indicated that he had filed disciplinary complaints against Attorney Jones, the prosecutor's office, and the trial court. The trial court denied Attorney Jones' request to withdraw from Stutz's cases.

[8] On September 7, 2021, Stutz tendered to the trial court a handwritten pro se motion to withdraw and substitute counsel. In this motion, Stutz complained that Attorney Jones had failed to communicate with him. Stutz asked the trial court to "appoint him counsel of competence and professionalism." (App. Vol. 2 at 39). Stutz did not ask to represent himself. The trial court ordered that the motion be stricken from the record because Stutz was represented by counsel.

[9] At the September 14, 2021, pre-trial conference, Attorney Jones told the trial court that Stutz had written two additional motions, including a motion for change of venue from the judge and another motion asking the trial court to replace Attorney Jones as counsel. Attorney Jones further told the trial court that he did not intend to file either motion but that Stutz had wanted him to mention the motions to the trial court. The trial court responded that it would only consider motions filed by Attorney Jones and asked Attorney Jones if he wanted to instruct Stutz that he was his "attorney and that [he was] the one that speaks on [Stutz's] behalf in Court and files things." (Tr. Vol. 2 at 19). Before Attorney Jones had the opportunity to respond, Stutz stated, "[w]ell, I want to represent myself." (Tr. Vol. 2 at 19). Stutz further stated, "I want him taken off

my case today[.] I have already started an investigation on you because of his ineffectiveness[.] [Y]ou've given other people other attorneys before." (Tr. Vol. 2 at 19). The trial court explained that "[p]eople are entitled to Court[-]appointed counsel and we've appointed you counsel and Mr. Jones is capable counsel and . . . [d]efendants who ask for Court-appointed counsel and are granted that don't get to pick and choose who they want." (Tr. Vol. 2 at 20). Stutz responded, "[t]hat's fine. Then I'll represent myself." (Tr. Vol. 2 at 20). The trial court further explained that Stutz had the right to represent himself, that he also had the right to appointed counsel, and that the trial court had appointed him counsel. Stutz responded that Attorney Jones "was failing to do his job." (Tr. Vol. 2 at 20). Stutz further told the trial court that he was "going to write to the . . . Supreme Court on you again, just to let them know you're failing to do your job and give me counsel, you're failing to accept motions." (Tr. Vol. 2 at 22).

[10] As the trial court and the parties discussed the progress of the case, Stutz told the trial court that he did not "want to hear [its] fucking lies anymore." (Tr. Vol. 2 at 23). Stutz further told the trial court, "I have nothing else to fucking say. I don't want to hear this bullshit. This is a fucking quacked Court, fucking retards." (Tr. Vol. 2 at 23). The trial court told Stutz that he was "not exhibiting the appropriate decorum[,]" and Stutz responded, "[t]hen have the trial without me. I'll come back on appeal." (Tr. Vol. 2 at 24). When Stutz refused to apologize to the trial court for his behavior, the trial court held him in contempt and sentenced him to ninety days for "insulting the Court, for

disrupting the Court, for getting up and trying to leave and I had to get the jailer to bring you back and sit you down." (Tr. Vol. 2 at 24). Stutz accused the trial court of "lying on [the] record[] and gave "fingers" to the trial court." (Tr. Vol. 2 at 24, 25). Stutz further told the trial court, "we'll get the Supreme Court involved and the feds involved because you don't even know how to do your job. You need the Strickland test, too." (Tr. Vol. 2 at 25). When the trial court told Stutz to "have a seat[,]" Stutz responded that he was "tired of hearing [the trial court's] fucking nonsense." (Tr. Vol. 2 at 25). When Attorney Jones told Stutz to "sit down, shut up[,]" Stutz responded, "[y]ou shut up. I want to represent myself. Take this retard off my case, all of them." (Tr. Vol. 2 at 25). At the end of the hearing, the trial court told Stutz that despite his actions that day, the trial court would be fair to him at trial. Stutz responded, "I believe you're a liar and you're already being looked into by the feds . . . and you're going to be losing your job soon, too." (Tr. Vol. 2 at 27).

[11] At Stutz's two-day trial in September 2021, Stutz did not ask to represent himself. At the trial, the jury heard the facts as set forth above regarding the July 2021 incident in the holding cell. Further, Deputy Ford testified that when Stutz had bitten his arm, the bite had hurt and it had caused pain. In addition, Deputy Hartman testified that the day after the incident with Stutz, Deputy Hartman had woken up with a "deep bruising pain" in his left shoulder. (Tr. Vol. 3 at 123). The pain reminded him of having been punched really hard in his shoulder. Deputy Hartman's shoulder "hurt like that for two days." (Tr. Vol. 3 at 123). After the pain had subsided, Deputy Hartman still felt "a weird

tingle" in his shoulder" and "something did not feel right." (Tr. Vol. 3 at 123-24). Ten days later, when Deputy Hartman was lifting his son into his car seat, Deputy Hartman's shoulder "popped and it shot searing pain down [his] left arm[.]" (Tr. Vol. 3 at 124). According to Deputy Hartman, he had not had any shoulder pain before the incident with Stutz, and he had done nothing after the incident with Stutz that would have potentially caused that pain.

[12] The jury convicted Stutz of Level 6 felony resisting law enforcement and Level 6 felony intimidation. Stutz now appeals.

Decision

[13] Stutz argues that the trial court violated his constitutional right to self-representation and that there is insufficient evidence to support his conviction for Level 6 felony resisting law enforcement. We address each of his contentions in turn.

1. Constitutional Right to Self-Representation

[14] Stutz first argues that the trial court violated his constitutional right to self-representation. The right to self-representation is implicit in the Sixth Amendment to the United States Constitution, and Article 1, Section 13 of the Indiana Constitution also guarantees this right.[4] *Stroud v. State*, 809 N.E.2d 274,

[4] Although Stutz argues that the Indiana Constitution provides broader self-representation rights, our Indiana Supreme Court has held that Article 1, Section 13 of the Indiana Constitution "track[s] federal standards" and "gives no broader rights than the Sixth Amendment" with respect to claims of self-representation. *Edwards v. State*, 902 N.E.2d 821, 828, 29 (Ind. 2009).

279 (Ind. 2004). However, a defendant's request to proceed pro se must be clear and unequivocal and must be made within a reasonable time before the first day of trial. *Id*.

[15] Our Indiana Supreme Court has explained that:

> An unequivocal assertion is one that's sufficiently clear in that, when granted, the defendant should not be able to turn about and urge that he was improperly denied counsel. Half-hearted expressions of dissatisfaction with counsel and general references by the defendant to self-representation ultimately fail to meet this requisite. Absent this condition, trial courts subject themselves to potential manipulation by defendants clever enough to record an equivocal request to proceed without counsel in the expectation of a guaranteed error.

Wright v. State, 168 N.E.3d 244, 259 (Ind. 2021) (internal citations and quotation marks omitted), *cert. denied*. In addition, a defendant's request is not clear and unequivocal where, in making the request, he "vacillate[s] between representing himself and being represented by counsel." *Stroud*, 809 N.E.2d at 280.

[16] Here, Stutz argues that he clearly and unequivocally asserted his right to self-representation. The State responds that "[b]ecause Stutz made emotional responses and threats to receive new counsel and vacillated about self-representation, his requests were unclear and equivocal[.]" (State's Br. 12). We agree with the State.

[17] Specifically, our review of the record reveals that during an August 2021 hearing, Stutz told the trial court that he would like for Attorney Jones, who was representing him in two pending cases, to represent him in this case. The following month, Stutz tendered to the trial court a handwritten pro se motion asking for new counsel. He did not ask to represent himself. One month later, Stutz wrote another motion asking the trial court to appoint him a new counsel. Again, he did not ask to represent himself.

[18] When the trial court mentioned at a September 2021 hearing that Attorney Jones was the one to speak and file motions on Stutz's behalf, Stutz stated that he wanted to represent himself. However, Stutz demonstrated his vacillation on self-representation when he further stated that the trial court had given other people other attorneys. After the trial court had told Stutz that he did not get to pick and choose which appointed counsel represented him, Stutz responded that he would represent himself. However, Stutz again demonstrated his vacillation on self-representation when he further stated that he was going to tell the Supreme Court that the trial court was failing to give him counsel. Later in the hearing, after Stutz had cursed at and argued with the trial court, and Attorney Jones had told Stutz to sit down and to shut up, Stutz stated that he wanted to represent himself. We agree with the State that Stutz's statement was "an emotional request expressing his dissatisfaction with [Attorney] Jones[,]" (State's Br. 12), which fails to meet the requisite clear and unequivocal assertion of the right to self-representation. *See Wright*, 168 N.E.3d at 259.

[19] Under these circumstances, where Stutz vacillated between representing himself, being represented by counsel, and simply expressed his dissatisfaction with Attorney Jones, we conclude that none of Stutz's statements represented a clear and unequivocal assertion of his right to self-representation. Accordingly, the trial court did not violate Stutz's constitutional right to self-representation.

2. Sufficiency of the Evidence

[20] Stutz further argues that there is insufficient evidence to support his conviction for Level 6 felony resisting law enforcement. At the outset, we note that Stutz has waived appellate review of this argument because he has failed to support it with citation to authority. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (explaining that a party generally waives an issue raised on appeal where the party fails to provide adequate citation to authority), *trans. denied*.

[21] Waiver notwithstanding, our standard of review for sufficiency of the evidence claims is well-settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[22] INDIANA CODE § 35-44.1-3-1(a)(1) provides that a person who knowingly or intentionally "forcibly resists, obstructs, or interferes with a law enforcement

officer . . . while the officer is lawfully engaged in the execution of the officer's duties . . . commits resisting law enforcement, a Class A misdemeanor." However, the offense is a Level 6 felony if "while committing the offense, the person . . . inflicts bodily injury on or otherwise causes bodily injury to another person[.]" I.C. § 35-44.1-3-1(c)(1)(B)(ii).

[23] Bodily injury means any impairment of physical condition, including physical pain. I.C. § 35-31.5-2-29. There is "no requirement that the pain be of any particular severity, nor does [the statute] require that the pain endure for any particular length of time." *Toney v. State*, 961 N.E.2d 57, 59 (Ind. Ct. App. 2021). "It must simply be *physical* pain." *Id*. (emphasis in original).

[24] Here, the charging information alleged that Stutz had knowingly or intentionally forcibly resisted, obstructed, or interfered with Deputy Ford and/or Deputy Hartman, both law enforcement officers who were lawfully engaged in the execution of their duties, and had caused bodily injury to Deputy Ford and/or Deputy Hartman. Because the charging information was written in the disjunctive and the jury's verdict form did not identify which deputy the jury found Stutz guilty of resisting, we will address Stutz's sufficiency arguments regarding both deputies.

[25] Stutz first argues that there is insufficient evidence that Deputy Ford sustained bodily injury. However, our review of the evidence reveals that Deputy Ford testified that Stutz bit him when he was trying to pull Stutz's arm out from under Stutz. Deputy Ford further testified that the bite had hurt and had

caused pain. This evidence is sufficient to establish that Deputy Ford sustained bodily injury and to support Stutz's Level 6 felony resisting law enforcement conviction as to Deputy Ford.

[26] Stutz next argues that there is insufficient evidence that Deputy Hartman sustained bodily injury. However, Deputy Hartman testified that the day after the incident with Stutz, Deputy Hartman had woken up with a pain in his shoulder that had lasted for two days. We further note that Deputy Hartman testified that he had not had any shoulder pain before the incident with Stutz, and he had done nothing after the incident with Stutz that would have potentially caused that pain. This evidence is sufficient to establish that Deputy Hartman sustained bodily injury.

[27] Stutz also argues that even if Deputy Hartman sustained bodily injury, there was insufficient evidence that Stutz caused the bodily injury. "For a defendant to be convicted of the causing-injury enhancement, the State must prove that the defendant's conduct was a proximate cause of the injury, i.e., that the injury was a foreseeable result of the defendant's conduct." *Hopson v. State*, 95 N.E.3d 531, 533 (Ind. Ct. App. 2018). Here, Deputy Hartman's shoulder injury was a foreseeable result of Stutz's resistance, which included Stutz "going dead weight" and thrashing about on the floor and in the restraint chair. *See id.* (explaining that when an officer is placed in the position of having to chase a fleeing suspect, it is generally foreseeable that the officer will suffer an injury in the heat of the pursuit). This evidence is sufficient to support Stutz's Level 6 felony resisting law enforcement conviction as to Deputy Ford.

[28] Concluding that the trial court did not violate Stutz's constitutional right to self-representation and that there is sufficient evidence to support his Level 6 felony resisting law enforcement conviction, we affirm the trial court's judgment.

[29] Affirmed.

Robb, J., and Weissmann, J., concur.