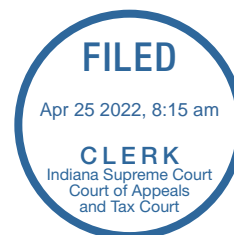


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Rafael Bautista Cruz,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 25, 2022

Court of Appeals Case No.  
21A-CR-1255

Appeal from the Clinton Superior  
Court

The Honorable Justin H. Hunter,  
Judge

Trial Court Cause No.  
12D01-1806-F5-885

**Tavitas, Judge.**

## Case Summary

- [1] Rafael Bautista Cruz appeals his conviction for battery resulting in bodily injury to a public safety official, a Level 5 felony. Cruz argues that the State failed to rebut his claim of self-defense. Concluding that the State presented sufficient evidence to rebut the self-defense claim, we affirm.

## Issue

- [2] Cruz raises one issue, which we restate as whether the State presented sufficient evidence to rebut Cruz's claim of self-defense.

## Facts

- [3] On the evening of June 23, 2018, Cruz attended a wedding and baby shower in Frankfort with his wife. Captain Cesar Munoz with the Frankfort Police Department was working off-duty security at the event and was wearing his police uniform at the time. Captain Munoz was watching the dancing when he heard a "loud commotion from the dance floor." Tr. Vol. I p. 134. He saw Cruz push another man and then saw Cruz push a woman, later identified as Cruz's wife. Captain Munoz approached Cruz and "told him that he needed to stop and he needed to come outside . . . ." *Id.* at 138. Cruz was intoxicated and was "getting loud and angry," and Captain Munoz tried to escort Cruz outside. *Id.* Cruz refused to go outside, pulled away from Captain Munoz, and struggled with Captain Munoz. Captain Munoz forced Cruz to the ground to handcuff him, and a group of people started hovering over Captain Munoz and

Cruz. Captain Munoz then radioed for assistance. Captain Munoz was able to get Cruz up and escort him outside.

[4] Several officers arrived at the scene, including Sergeant Joshua Ruben with the Frankfort Police Department and Deputy Joshua Blackwell with the Clinton County Sheriff's Department. The intoxicated Cruz was arguing with officers, and Captain Munoz went inside the building to talk to the people Cruz had pushed. Cruz then asked Sergeant Ruben if he could leave, and Sergeant Ruben told Cruz to wait. Another officer asked Cruz to "stop talking . . . for your own good." State's Ex. 1 at 3:47. Cruz then asked again if he could just go home, and Deputy Blackwell responded, "just wait." *Id.*

[5] Cruz turned to Deputy Blackwell, asked who he was, and then pushed Deputy Blackwell in his chest. Deputy Blackwell grabbed Cruz's wrist and told Cruz not to touch him. Deputy Blackwell attempted to use "an arm bar technique" to take Cruz to the ground. Tr. Vol. I p. 196. Deputy Blackwell slipped, and both men fell to the ground. Cruz landed face down, and Deputy Blackwell landed on his right side. Almost immediately, Deputy Blackwell yelled that Cruz was biting him. State's Ex. 1 at 4.10. Deputy Blackwell struck Cruz with his left arm, but Cruz would not release the bite. Sergeant Ruben struck Cruz on the upper back with his knee to get Cruz to release Deputy Blackwell's arm, but Sergeant Ruben's efforts were unsuccessful. Other officers joined in and eventually were able to restrain Cruz. The altercation lasted approximately thirty seconds and was recorded on the body cameras of multiple officers.

[6] Cruz later said, “I’m not going to let someone else touch me . . . . [H]e had no right to touch me. I wasn’t hurting him. I did bite him afterwards, but he touched me first.” State’s Ex. 4 at 30.57, 31.57. Cruz also said, “He touched me first and I had all the right to have [sic] bit him.” *Id.* at 45.59. Deputy Blackwell testified that the bite was very painful, he sought medical attention for the wound, and he continued to have pain and soreness for around two weeks.

[7] The State charged Cruz with battery resulting in bodily injury to a public safety officer, a Level 5 felony. A jury trial was held in April 2021. Cruz argued that he bit Deputy Blackwell in self-defense. Cruz testified that he pointed at Deputy Blackwell but did not push him. According to Cruz, when he and Deputy Blackwell fell, Deputy Blackwell’s arm was in Cruz’s mouth and covering his nose. Cruz testified that he could not breathe, and thus, he bit Deputy Blackwell. The jury found Cruz guilty of battery resulting in bodily injury to a public safety officer, a Level 5 felony, and the trial court sentenced Cruz to 400 days with 300 days suspended. Cruz now appeals.

## **Analysis**

[8] Cruz argues that the State failed to present evidence sufficient to rebut his claim of self-defense. The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any claim of sufficiency of the evidence. *Stewart v. State*, 167 N.E.3d 367, 376 (citing *Hughes v. State*, 153 N.E.3d 354, 361 (Ind. Ct. App. 2020), *trans. denied*),

*trans. denied.* When analyzing a claim of insufficient evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the jury’s verdict. *Id.* (citing *Sallee v. State*, 51 N.E.3d 130, 133 (Ind. 2016)). It is the jury’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether the evidence is sufficient to support a conviction. *Id.* If a defendant is convicted despite his claim of self-defense, an appellate court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Id.* (citing *Wilson v. State*, 770 N.E.2d 799, 800-01 (Ind. 2002)).

[9] “Self-defense is a legal justification for an otherwise criminal act.” *Id.* (citing *Gammons v. State*, 148 N.E.3d 301 (Ind. 2020)). Indiana Code Section 35-41-3-2 governs the defense of self-defense and provides in relevant part:

(i) A person is justified in using reasonable force against a public servant if the person reasonably believes the force is necessary to:

(1) protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force;

\* \* \* \* \*

(j) Notwithstanding subsection (i), a person is not justified in using force against a public servant if:

(1) the person is committing or is escaping after the commission of a crime;

(2) the person provokes action by the public servant with intent to cause bodily injury to the public servant;

(3) the person has entered into combat with the public servant or is the initial aggressor, unless the person withdraws from the encounter and communicates to the public servant the intent to do so and the public servant nevertheless continues or threatens to continue unlawful action; or

(4) the person reasonably believes the public servant is:

(A) acting lawfully; or

(B) engaged in the lawful execution of the public servant's official duties.

[10] If a defendant raises a self-defense claim that finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Stewart*, 167 N.E.3d at 376 (citing *Hughes*, 153 N.E.3d at 361). The State may meet this burden by rebutting the defense directly—by affirmatively showing the defendant did not act in self-defense—or by simply relying on the sufficiency of its evidence in its case-in-chief. *Id.* (citing *Miller v. State*, 720 N.E.2d 696 (Ind. 1999)).

[11] Cruz assumes “for the sake of argument” that he did “poke Deputy Blackwell in the chest.” Appellant’s Br. p. 13. Cruz contends that he bit Deputy Blackwell “in order to free his airway so he could breathe.” *Id.* at 14. Cruz

argues that Deputy Blackwell's obstruction of his airway was not lawful and, thus, Cruz "had the right to use reasonable force to protect himself." *Id.*

[12] Evidence was presented to the jury, however, that contradicted Cruz's claims. Almost immediately after Deputy Blackwell and Cruz fell, Deputy Blackwell began yelling that Cruz was biting him. Although officers were telling Cruz to stop biting and hitting Deputy Blackwell, Cruz continued biting the officer for several seconds. The entire altercation—from the fall to the other officers subduing Cruz—was less than thirty seconds. After the incident, Cruz said, "I'm not going to let someone else touch me . . . . [H]e had no right to touch me. I wasn't hurting him. I did bite him afterwards, but he touched me first." State's Ex. 4 at 30.57, 31.57. Cruz also said, "He touched me first and I had all the right to have [sic] bit him." *Id.* at 45.59.

[13] Given this evidence, the jury could have believed that Cruz was not acting to protect himself from what he reasonably believed to be the imminent use of unlawful force. Rather, the jury could have inferred that Cruz bit Deputy Blackwell because Cruz was angry at Deputy Blackwell for attempting to handcuff Cruz, not because Deputy Blackwell's arm was obstructing Cruz's airway. Cruz's argument is merely a request to reweigh the evidence, which we cannot do. We conclude that the State presented sufficient evidence to rebut Cruz's claim of self-defense.

## Conclusion

[14] The State presented evidence sufficient to rebut Cruz's claim of self-defense. Accordingly, we affirm Cruz's conviction for battery resulting in bodily injury to a public safety official, a Level 5 felony.

[15] Affirmed.

Bradford, C.J., and Crone, J., concur.