

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

DAVIE KUIHANA AHUNA, *Appellant*.

No. 1 CA-CR 22-0026
FILED 9-8-2022

Appeal from the Superior Court in Mohave County
No. S8015CR202100276
The Honorable Billy K. Sipe, Jr., Judge *Pro Tempore*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael O'Toole
Counsel for Appellee

Janelle A. McEachern Attorney at Law, Chandler
By Janelle A. McEachern
Counsel for Appellant

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MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the Court's decision, in which Presiding Judge Brian Y. Furuya and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Davie Kuihana Ahuna appeals from his convictions for aggravated assault on a peace officer causing injury and resisting arrest. He argues the superior court erred by failing to give a self-defense jury instruction. We find no reversible error and affirm.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 In March 2021, Mohave County law enforcement received a call for service in Dolan Springs. A sheriff's deputy in full uniform responded to the call. The uniform included several sleeve patches that identified the deputy as law enforcement and a vest that read "sheriff" across the front. The caller directed the deputy to Ahuna, who was in a fifth-wheel trailer in the backyard. The deputy knocked on the trailer door, announced that he was a law enforcement officer, and ordered Ahuna to step outside to talk.

¶3 Ahuna stepped out and spoke to the deputy for a few minutes before the deputy advised him that he was under arrest. Ahuna turned around and placed his hands behind his back. But when the deputy placed a handcuff on Ahuna's wrist, Ahuna threw his elbows out, pulled away, and turned on the deputy. The deputy believed Ahuna would strike him, so he took Ahuna to the ground. While they were both on the ground, Ahuna began striking the deputy with his fists and pushing him away with his feet, which dislodged the deputy's rifle magazine, flashlight, and radio. Ahuna then struck the deputy with a "solid object." A few moments later, Ahuna struck the deputy in the head with a "hard solid object" that the deputy believed was "a piece of wood, almost like an ax handle or some kind of tool." The deputy "immediately saw stars, [his] vision began to narrow, and [he] could feel blood running down [his] face." Fearing for his

¹ We view the facts in the light most favorable to sustaining the judgment. *State v. Mendoza*, 248 Ariz. 6, 11, ¶ 1, n.1 (App. 2019).

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life, the deputy drew his pistol and fired a single round into the side of Ahuna's neck.

¶4 With Ahuna down, the deputy distanced himself from Ahuna and called for backup and medical aid. As he waited for help to arrive, he held Ahuna at gunpoint and commanded him to remain on the ground and "cuff up." Ahuna refused to comply and told the deputy to leave, stating that he did not believe the deputy was law enforcement. Other deputies arrived in uniform and assured Ahuna that he would receive medical attention, but he remained noncompliant. The deputies began discussing using "less-than-lethal" methods to take Ahuna into custody.

¶5 Eventually, one deputy loaded his shotgun with nonlethal "beanbag rounds" and aimed it at Ahuna, who was down on one knee. The deputy ordered Ahuna to lay on the ground, but Ahuna cursed at the deputy and refused. The deputy fired a beanbag round into Ahuna's thigh, which knocked him back. The deputy again commanded Ahuna to lay with his stomach on the ground, but Ahuna still refused. The deputy fired a second beanbag round into Ahuna's lower back, but it had no effect. Another deputy used his taser on Ahuna, jolting him four or five times. This allowed the deputies to roll Ahuna onto his stomach, but he still refused to move his hands from underneath his body. As the deputies tried to pull Ahuna's hands out, he lifted two deputies off the ground. Fearing that Ahuna would get up and harm one of the deputies, a deputy began elbowing Ahuna in the face "[t]o try to knock him out." Although Ahuna remained conscious, "[h]e went somewhat limp," which allowed the deputies to control his hands and handcuff him.

¶6 The deputies searched Ahuna and found a methamphetamine pipe and a screwdriver. They took him to the front of the residence to receive medical attention and then to a hospital. The deputy who was struck on the head was also taken to the hospital, where he received a stitch in his forehead and eight staples on the top of his head.

¶7 The State charged Ahuna with aggravated assault with a deadly weapon or dangerous instrument, a Class 2 felony (Count 1); aggravated assault on a peace officer causing injury, a Class 4 felony (Count 2); and resisting arrest, a Class 6 felony (Count 3). And the State alleged that Ahuna was a repetitive offender under A.R.S. § 13-703 because he had two prior convictions for aggravated assault.

¶8 The case proceeded to trial. After the close of evidence, Ahuna requested a self-defense jury instruction. The superior court declined to

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give the instruction, finding no evidence supporting a self-defense claim. The jury found Ahuna not guilty on Count 1 but guilty on Counts 2 and 3. At sentencing, the trial court found that Ahuna was a category-two repetitive offender and sentenced him to six years' imprisonment on Count 2 and 2.75 years' imprisonment on Count 3, to run consecutively.

¶9 Ahuna appealed, and we have jurisdiction under Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.01(A)(1), 13-4031, and 13-4033(A).

DISCUSSION

¶10 Ahuna argues that the superior court erred by declining to give a self-defense jury instruction. We review the superior court's refusal to provide a self-defense jury instruction for an abuse of discretion and view the evidence in the light most favorable to the defendant. *State v. Carson*, 243 Ariz. 463, 467, ¶ 17 (2018). "A defendant is entitled to a self-defense instruction if the record contains the 'slightest evidence' that he acted in self defense." *State v. King*, 225 Ariz. 87, 90, ¶ 14 (2010) (quoting *State v. Lujan*, 136 Ariz. 102, 104 (1983)).

¶11 The "use of physical force against another is not justified . . . [t]o resist an arrest the person knows or should know is being made by a peace officer . . . unless the physical force used by the peace officer exceeds that allowed by law." A.R.S. § 13-404(B)(2). Ahuna argues that he did not believe the people arresting him were real police officers, even though "there was no doubt to anyone [else] that these were three uniformed . . . police officers trying to effectuate an arrest." He also argues that there was evidence "that he was defending himself against what he perceived as a disproportionate use of force by these officers."

¶12 But "[j]ustification defenses in Arizona 'use objective standards that depend on the beliefs of a "reasonable person" in the defendant's circumstances rather than the defendant's subjective beliefs.'" *State v. Richter*, 245 Ariz. 1, 7, ¶ 28 (2018) (quoting *Carson*, 243 Ariz. at 465, ¶ 9). Although there was some evidence that Ahuna subjectively did not believe that his arrestors were police officers, he failed to show the "slightest evidence" that a reasonable person in his circumstances would have thought the same. Likewise, even if Ahuna perceived the force as "disproportionate," he identifies no record evidence that the officers' force "exceed[ed] that allowed by law." See A.R.S. § 13-404(B)(2). There was, therefore, no evidence to support Ahuna's request for a self-defense jury instruction, and the superior court did not err.

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CONCLUSION

¶13 We affirm.



AMY M. WOOD • Clerk of the Court
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