MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Dorian R. Stroud,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 30, 2021

Court of Appeals Case No. 21A-CR-1070

Appeal from the Wayne Superior Court

The Honorable Darrin M. Dolehanty, Judge

Trial Court Cause No. 89D03-2008-F6-506

Baker, Senior Judge.

Statement of the Case

[1] Dorian Stroud was involved in a skirmish with police officers when they attempted to serve a warrant. Based upon this incident, he was convicted of

battery against a public safety official. He appeals, contending there is insufficient evidence to sustain his conviction, the trial court committed reversible error when it refused his tendered jury instruction, and his sentence is inappropriate. Finding sufficient evidence, no instructional error, and no need for sentence revision, we affirm.

Issues

[2] Stroud presents three issues for our review, which we restate as:

I. Whether the evidence is sufficient to rebut Stroud's claim of self-defense;

II. Whether the trial court erred in instructing the jury; and

III. Whether Stroud's sentence is inappropriate.

Facts and Procedural History

[3] In August 2020, several officers of the Richmond Police Department were dispatched to Stroud's residence to serve him with a warrant. Officer Ben Turner saw Stroud on the back porch and told him "to hold up," but Stroud went back inside his residence. Tr. Vol. II, p. 153. The officers knocked at the back door and announced themselves but received no response. Officer Turner then called and requested that his supervisor, Sergeant Zach Taylor, come to the scene. Sergeant Taylor arrived and called Stroud. As Sergeant Taylor was talking on the phone with Stroud, Stroud's girlfriend arrived at the residence and let the officers in.

[4] The officers found Stroud sitting on the couch with a large knife on his lap. The officers ordered Stroud to put his hands up, but he would not comply. Officer Turner retrieved the knife and tossed it to the other side of the room. Stroud was told to stand up, but he refused to comply with the officers' commands. Twice Officer Turner grabbed Stroud's wrist to get him to stand up, but Stroud pulled away both times and began kicking at the officers. Officer Turner was kicked by Stroud at least two times. After being kicked, Officer Turner punched Stroud in the left cheek and eye area two times to get him to comply, but it was not effective. Officer Reggie Miller then used a taser with no cartridge to provide a shock without the prongs—referred to as a "drive stun"—but that, too, was ineffective. *Id.* at 141. Finally, Officer Turner applied a unilateral vascular neck restraint on Stroud, briefly rendering him unconscious so that the officers could secure him in handcuffs.

[5] Stroud was charged with battery against a public safety official, a Level 6 felony,[1] and resisting law enforcement, a Class A misdemeanor.[2] A jury found him guilty of both counts. Due to double jeopardy concerns, the trial court vacated the conviction for resisting and sentenced Stroud to 730 days for battery. He now appeals.

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[1] Ind. Code § 35-42-2-1 (2020).

[2] Ind. Code § 35-44.1-3-1 (2020).

Discussion and Decision

I. Sufficiency of the Evidence

[6] Stroud contends the State failed 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 sufficiency claim. *Cole v. State*, 28 N.E.3d 1126, 1136-37 (Ind. Ct. App. 2015). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* at 1137. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, the verdict will not be disturbed. *Id.*

[7] Self-defense is a legal justification for an otherwise criminal act. *Burnside v. State*, 858 N.E.2d 232, 239 (Ind. Ct. App. 2006). Indiana Code section 35-41-3-2(c) (2019) provides that a person may use reasonable force against another to protect himself from what he reasonably believes to be the imminent use of unlawful force. However, the person is not justified in using force if the person is the initial aggressor. *See* Ind. Code § 35-41-3-2(g)(3).

[8] To prevail on a claim of self-defense, Stroud had to show: (1) he was in a place where he had a right to be; (2) he did not provoke, instigate, or participate willingly in the violence; and (3) he had a reasonable fear of death or great bodily harm. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). Once self-defense has been raised, the State must negate at least one of the necessary elements. *Cole*, 28 N.E.3d at 1137. A conviction in spite of a claim of self-

defense will be reversed only if no reasonable person could say that self-defense was negated beyond a reasonable doubt. *Wilson*, 770 N.E.2d at 800-01.

[9] Here, the State presented the testimony of Officers Christie, Miller, and Turner. They testified that they entered Stroud's house, informed him he was under arrest, and requested that he stand up. Stroud refused to comply with their requests, so they attempted to assist him in standing up, but he pulled away and became combative, throwing his arms around and kicking at them. In response to the question of what led to the officers' use of force, Officer Christie testified it was Stroud "being physically combative." Tr. Vol. II, p. 126. Once Stroud began kicking the officers, they were forced to use different tactics to subdue and handcuff him. The sum of Stroud's testimony in this regard is that he was flailing his legs "to evoke [his] rights to be made aware of why [he] was being arrested," *id.* at 178, and that he put his hands up when he was told to do so. He testified that, while his hands were up, he was tased and punched. Stroud also testified that he did not kick the officers. He further testified that "when the officer entered the room, [he] had the fear of being killed" because the officer had a firearm. *Id.*

[10] There is ample evidence to establish that Stroud was the initial aggressor in the physical encounter with the officers and that he did not have a reasonable fear of great bodily harm. It was within the province of the jury to weigh Stroud's credibility and disbelieve his self-serving testimony. *See McCullough v. State*, 985 N.E.2d 1135, 1139 (Ind. Ct. App. 2013) (stating jury is under no obligation to credit defendant's evidence), *trans. denied*. Moreover, Stroud's testimony as to

his claim of self-defense was inconsistent. Self-defense is a legal justification for an otherwise criminal act—meaning the defendant admits the crime occurred but maintains his actions were justified—but Stroud testified that he did not kick the officers. Whether a defendant acted in self-defense is generally a question of fact, and on appellate review the factfinder's conclusion is entitled to considerable deference. *Hall v. State*, 166 N.E.3d 406, 413 (Ind. Ct. App. 2021). The State presented probative evidence from which the jury reasonably determined that Stroud did not act in self-defense. We therefore conclude the State presented sufficient evidence to prove that Stroud committed battery against a public safety official.

II. Jury Instruction

[11] Stroud next claims the trial court erred by refusing to give his tendered instruction. The purpose of an instruction is to inform the jury of the law applicable to the facts without misleading it and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict. *Wilson v. State*, 842 N.E.2d 443, 445 (Ind. Ct. App. 2006), *trans. denied*. When determining whether a trial court erroneously gave or refused to give a tendered instruction, we consider the following: (1) whether the tendered instruction correctly states the law; (2) whether there was evidence presented at trial to support the giving of the instruction; and (3) whether the substance of the tendered instruction was covered by other instructions that were given. *Mayes v. State*, 744 N.E.2d 390, 394 (Ind. 2001). We review the trial court's decisions on instruction of the jury for an abuse of discretion. *Hayden v. State*, 19 N.E.3d 831, 838 (Ind. Ct. App.

2014), *trans. denied* (2015). Error in the refusing of an instruction is harmless where a conviction is clearly sustained by the evidence, and the instruction would not likely have impacted the jury's verdict. *Randolph v. State*, 802 N.E.2d 1008, 1013 (Ind. Ct. App. 2004), *trans. denied*.

[12] Stroud tendered Defendant's Proposed Final Jury Instruction #1, which stated:

> The law does not allow a peace officer to use more force than necessary to effect an arrest and if he does use such unnecessary force, he thereby becomes a trespasser, and an arrestee therefore may resist the arrester's use of excessive force by the use of reasonable force to protect himself against great bodily harm or death. If you find Officer Christie and/or Officer Turner used more force than necessary to effectuate the arrest, then the Defendant was permitted to resist the arrest to such an extent as necessary to protect himself from great bodily harm or death, and you much [sic] find him not guilty of resisting law enforcement.
>
> Force is used when an individual directs strength, power, or violence towards police officers, or when he makes a threatening gesture or movement in their direction.

Appellant's App. Vol. III, p. 21. The trial court refused the instruction, ruling that the substance of the tendered instruction was covered by other instructions; the tendered instruction contained terms that had not been used during the presentation of the evidence, argument, or opening statements; addition of these terms at this point in the trial would cause undue confusion for the jury; and the tendered instruction overemphasized the amount of force necessary. *See* Tr. Vol. II, pp. 189-90 ("It starts out talking about more force than

necessary, changes it to unnecessary force, and then describes it as excessive force").

[13] Although the State concedes that Stroud's proposed instruction was modeled after instructions approved in *Burton v. State*, 978 N.E.2d 520 (Ind. Ct. App. 2012) and *Wilson*, 842 N.E.2d 443, our analysis does not end there. The evidence here demonstrates that the officers knocked on Stroud's door and announced their presence, but he refused to answer. Once they were given access, they told Stroud to stand up, but he refused to comply with their directives. Officer Turner twice attempted to hold Stroud's wrist or arm to stand him up, and twice Stroud pulled away. Stroud then started flailing his arms and kicking at the officers, striking Officer Turner twice. In response, Officer Turner punched Stroud to subdue him and gain his compliance, but the approach was ineffective. Stroud continued to be combative and non-compliant, so Officer Miller applied the drive stun. This tactic, too, was ineffective. Officer Turner then applied the unilateral vascular neck restraint to Stroud which allowed the officers to put him in handcuffs and end the incident.

[14] In light of this overwhelming evidence establishing Stroud's guilt of the offense of battery on a public safety official, it seems unlikely that the jury would have acquitted Stroud if only it had been given the tendered instruction. Moreover, Stroud's counsel explained to the trial court that she tendered the instruction to specifically address the charge of resisting. *See* Tr. Vol. II, p. 189. Although Stroud was found guilty of resisting, the conviction was vacated by the trial court due to double jeopardy concerns. Thus, we deem error, if any, harmless

in these circumstances and conclude that Stroud's conviction of battery on a public safety official may stand.

III. Inappropriate Sentence

[15] Finally, Stroud claims his sentence is inappropriate given the nature of his offense and his character. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The principal role of appellate review under Rule 7(B) is to attempt to leaven the outliers, not to achieve a perceived "correct" result in each case. *Garner v. State*, 7 N.E.3d 1012, 1015 (Ind. Ct. App. 2014). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[16] To assess whether the sentence is inappropriate, we look first to the statutory range established for the offense. The advisory sentence for a Level 6 felony is one year, with a minimum of six months and a maximum of two and one-half

years. Ind. Code § 35-50-2-7(b) (2019). The court sentenced Stroud to 730 days—essentially two years.

[17] As for the nature of the offense, when officers attempted to peaceably serve a warrant, Stroud became combative and kicked at least one officer no less than two times.

[18] As to the character of the offender, Stroud's criminal history consists of four misdemeanor convictions, one of which was a felony battery that was entered as a misdemeanor. He has also accumulated five felony convictions, including convictions of battery with bodily injury on a public service officer and resisting law enforcement, as were involved here. Additionally, his record contains two failures to appear, one of which occurred in this case, and a probation violation. Stroud committed this offense while he was on pretrial release in other cases, and, at the time of sentencing in this case, he had pending four different cases comprised of twelve charges.

[19] In sentencing Stroud, the court concluded that his sentence "should meaningfully exceed" the advisory sentence of one year based on his significant and related criminal history and his commission of this offense while on pretrial release. Appellant's App. Vol. IV, p. 21. The deference shown to a trial court's sentencing should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial

virtuous traits or persistent examples of good character). *Stephenson v. State*, 29 N.E.3d 111 (Ind. 2015). Stroud has not met this burden.

Conclusion

[20] Based on the foregoing, we conclude the evidence was sufficient to rebut Stroud's claim of self-defense, the trial court acted within its discretion when it refused his tendered jury instruction, and his sentence is not inappropriate.

[21] Affirmed.

Riley, J., and Crone, J., concur.