MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark K. Leeman
Leeman Law Office
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi Kathryn Stein
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Alicia Cruz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 22, 2021

Court of Appeals Case No. 21A-CR-1818

Appeal from the Cass Superior Court

The Honorable James K. Muehlhausen, Judge

Trial Court Cause No. 09D01-2006-F6-186

Brown, Judge.

[1] Alicia Cruz appeals her convictions for residential entry as a level 6 felony and battery as a class B misdemeanor. She claims the trial court improperly limited her defense counsel's closing argument. We affirm.

Facts and Procedural History

[2] On June 8, 2020, Cruz, together with her brothers Raniel and L.B. and two others, drove to a house in Logansport where Alejandra Valencia-Camacho and her fiancé Luis Fernando Saaverdra-Franco lived. According to Raniel, several days earlier, he had chased a man to that residence and watched him enter because the man had been looking into Cruz's window at night. Cruz exited the vehicle, and Saaverdra-Franco, who had been sitting on a front step, went inside the house, shut the door behind him, and called for Valencia-Camacho who was in the bathroom. Cruz opened the door using the doorknob and pushed the door open. Valencia-Camacho heard Saaverdra-Franco and exited the bathroom. Cruz was very upset, accused Saaverdra-Franco of looking through her window, screamed at Valencia-Camacho, and told Valencia-Camacho to fight her. Valencia-Camacho told Cruz "get out of my house." Transcript Volume II at 58. Cruz struck Valencia-Camacho in the face, knocking off her glasses. Valencia-Camacho called 911, Cruz returned to her vehicle, Valencia-Camacho and Saaverdra-Franco took photographs of the vehicle, and Cruz's vehicle drove away. Logansport Police Officer Samuel Fry responded to the scene and observed that Valencia-Camacho's cheek was slightly reddened and swollen and her glasses were slightly bent.

[3] On June 16, 2020, the State charged Cruz with: Count I, residential entry as a level 6 felony; and Count II, battery as a class B misdemeanor. Count I alleged that Cruz "did knowingly or intentionally break and enter the dwelling of [Valencia-Camacho], contrary to . . . I.C. 35-43-2-1.5," and Count II alleged that she "did knowingly or intentionally touch [Valencia-Camacho] in a rude, insolent, or angry manner, contrary to . . . I.C. 35-42-2-1(c)(1)."[1] Appellant's Appendix Volume II at 13.

[4] On May 18, 2021, the court held a jury trial. Valencia-Camacho testified that Saaverdra-Franco "screamed at [her] that there was someone at the door wanting to come in." Transcript Volume II at 56. She testified that she exited the bathroom and saw Cruz standing by the entrance of the door. When asked "[w]as she in your house," she replied "[s]he was not in the house at the moment. She did put a foot in when she hit me in the face." *Id*. She testified that Cruz was "very upset," screamed at her, "wouldn't even let [her] talk," and accused Saaverdra-Franco of looking through her window, and that she told Cruz "get out of my house." *Id*. at 58. Valencia-Camacho indicated that Cruz became more upset and hit her. When asked "[d]id she step inside the house to hit you," Valencia-Camacho replied "[y]es, she did because I did not come out [of] the house. She stepped inside the house and hit me." *Id*. at 59. She

[1] Ind. Code § 35-43-2-1.5 provides: "A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Level 6 felony." Ind. Code § 35-42-2-1(c) provides that "a person who knowingly or intentionally: (1) touches another person in a rude, insolent, or angry manner . . . commits battery, a Class B misdemeanor."

testified that Cruz hit her on the side of her face, her glasses were knocked off, and her glasses were bent.

[5] Saaverdra-Franco testified that, when he saw Cruz exit the vehicle, he went inside his house and shut the door behind him. When asked "[a]t some point, did the door become open," he answered "[y]es. She opened it." *Id*. at 94. When asked "[d]id she push the door open," he replied affirmatively. *Id*. When asked "[w]hen she opened the door, where was she standing," he replied "[s]he stepped inside, like, passing the metal at, at the door." *Id*. at 95. When asked "[s]he was standing on the rug," he answered "[y]es." *Id.* He testified that Cruz and Valencia-Camacho argued with each other, Cruz was yelling, and then Cruz hit Valencia-Camacho in the face. On cross-examination, Saaverdra-Franco indicated that, when he entered the house, he closed the door but did not lock it. When later asked how Cruz entered, he said "[s]he stepped onto the rug that was inside the house," and when asked "[a]nd was the door already open," he answered "[y]es. Because she opened it." *Id*. at 103. When asked "how did she open the door? With the doorknob," he answered "[y]es. She opened it and pushed it open." *Id*.

[6] Cruz called her brothers Raniel and L.B. and one of their friends, J.P., as defense witnesses. Raniel testified that he drove the vehicle to Valencia-Camacho and Saaverdra-Franco's house, the man in the yard said that he did not understand English and went inside, Valencia-Camacho exited the house, Cruz and Valencia-Camacho began to argue, and he and the others in the vehicle went to calm Cruz down and bring her back to the vehicle. He

indicated that he saw the entire altercation, Cruz never left his sight, she did not go to the door or step into the doorway, and she never touched Valencia-Camacho. He testified that he watched the whole incident and it consisted only of arguing and yelling. He indicated there was no pushing, shoving, or fighting. L.B. testified that he saw the entire incident and that Cruz never went into the house or attempted to hit Valencia-Camacho. J.P. testified that he was a friend of L.B., he saw Cruz and Valencia-Camacho yelling at each other, he did not see the entire incident, and he never saw Cruz enter the house or hit Valencia-Camacho.

[7] During closing argument, Cruz's counsel argued there was no breaking and entering. Defense counsel then stated "[n]ow, State can charge whatever they want to and like we said this morning, just because someone said something, it does not make it true. I'm going to read you a statute . . . ," at that time the court stated "[c]an I see the statute before you . . ." and "Counsel, want to come to the bench," and the trial transcript then states "(Bench Conference held off the Record at the Bench)." *Id*. at 156. Following the bench conference, Cruz's defense counsel argued "[t]here was no breaking here." *Id*. He argued: "Pretty clear my client went over there because she was mad and that is wrong, wrong. But don't make this what it's not. It was an argument. It was tumultuous conduct. But it was not residential entry. It was not breaking and entering. . . . Don't make this a residential entry and a battery." *Id*. at 157. He argued Valencia-Camacho did not have injuries consistent with being struck in the face while wearing glasses and there was no evidence of a battery. Cruz's

counsel argued: "You will be given a Jury Instruction that says, 'you should fit the evidence to the presumption that the Defendant is innocent if you can do so.' You can do so here. Whatever she's charged with or whatever she's not charged with, the facts here, the evidence here, does not fit residential entry and does not fit battery." *Id.* at 159-160.

[8] Following closing arguments and final instructions, and after the jury began its deliberations, the court stated that defense counsel had indicated that he wanted to read the statutes for trespass and disorderly conduct.[2] The court stated "the reason I didn't allow that was they were not charged," "[t]hey weren't included in the Instructions," "[i]n my mind it's irrelevant, the proceedings today, whether somebody committed disorderly conduct or criminal trespass," "the other thing that concerns me is . . . you start reading out of the statute, it's just going to confuse the jury," and "[t]hey're taking our Instructions back and it's going to make it even more difficult for them to understand the law of this case than it would otherwise be by throwing something in like that in final argument that is read from what purports to be the statute." *Id.* at 170. Defense counsel stated "I think that this case was much closer to disorderly conduct and that's what I wanted to have the opportunity to tell the jury" and "when they hear the statute that a person who engages in fighting or tumultuous conduct commits

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[2] Ind. Code § 35-43-2-2 provides in part "[a] person who . . . not having a contractual interest in the property, knowingly or intentionally enters the . . . dwelling of another person without the person's consent . . . commits criminal trespass, a Class A misdemeanor." Ind. Code § 35-45-1-3 provides "[a] person who recklessly, knowingly, or intentionally: (1) engages in fighting or in tumultuous conduct; (2) makes unreasonable noise and continues to do so after being asked to stop; or (3) disrupts a lawful assembly of persons; commits disorderly conduct, a Class B misdemeanor."

disorderly conduct a bell goes off and . . . they say, 'yes, that's what she's guilty of.' And my argument is, that's not what she's charged with. She's charged with battery." *Id*. at 171. The court replied: "you could've made all those arguments without pulling out statutes just that she's acting in, she was, she's making a lot of noise, she's carrying on, but is that criminal trespass, is that residential entry? No. You basically said that. You could've also said, you know, she was on her property, somebody's property she shouldn't have been, you know . . . ." *Id*. Defense counsel said "I think I may have misunderstood, Judge. I thought after approaching the bench that I was not to . . . ," and the court replied "I was just saying you don't read the statute" and "I wasn't saying you couldn't argue the facts." *Id*. Defense counsel later stated, "I understand your concern . . . , so I can still refer to another charge without reading the statute," and the court replied, "[w]ell, you, yeah, you can talk about all the facts that, you know, being the basis for the charge anytime in, in argument. Yeah. I just got a little bit concerned when you pulled out the statute knowing it wasn't an instruction." *Id*. at 173.

[9] The jury found Cruz guilty of residential entry and battery. The court ultimately sentenced Cruz to consecutive terms of 365 days suspended to probation for residential entry and 180 days with 170 days suspended to probation for battery and ordered that the sentences be served consecutively.

Discussion

[10] Cruz asserts that the trial court abused its discretion in limiting her closing argument. She argues that she was deprived of her ability to present the theory

of her defense, the issue of whether she entered the house was hotly contested, and she wanted to argue that there were other charges that more appropriately fit the crime. The State maintains that "[t]he trial court's ruling concerned only [Cruz's] ability to recite uncharged criminal statutes," that "the gist of [Cruz's] defense . . . was that she only entered the front yard, never entered the residence, and never struck [Valencia-]Camacho," and that "[s]he argued those points to the jury in closing argument, specifically that she never broke and entered the residence and did not strike [Valencia-]Camacho." Appellee's Brief at 10, 12.

[11] The opportunity to make a closing argument is a basic element of the criminal process. *Nickels v. State*, 81 N.E.3d 1092, 1094 (Ind. Ct. App. 2017). "Control of final argument is assigned to the discretion of the trial judge." *Rouster v. State*, 600 N.E.2d 1342, 1347 (Ind. 1992). "Unless there is an abuse of this discretion clearly prejudicial to the rights of the accused, the ruling of the trial court will not be disturbed." *Id.* We will not find an abuse of discretion unless the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Nelson v. State*, 792 N.E.2d 588, 591 (Ind. Ct. App. 2003), *trans. denied*. Among matters within a trial court's discretion is whether to allow defense counsel to read the law during closing argument. *See Schlabach v. State*, 459 N.E.2d 740, 742-743 (Ind. Ct. App. 1984) (finding the trial court did not abuse its discretion in disallowing defense counsel from reading case law regarding entrapment, the matter was best left to final instructions, and it would be easy to mislead a jury on the issue) (citing *Lax v. State*, 414 N.E.2d

555, 557 (Ind. 1981) (noting that, while a trial court may not unduly interfere with a defendant's presentation of legal argument, reading from cases and other legal authorities does not equate with arguing the law; while reading the law to a jury is permissible, a court need not allow it in all instances; and that it is a matter of sound discretion which will not be overturned absent manifest abuse)). In addition, "any abuse of discretion in restricting the scope of closing argument is subject to harmless error analysis." *Nelson v. State*, 792 N.E.2d 588, 592 (Ind. Ct. App. 2003), *trans. denied*.

[12] The record reveals the trial court did not allow defense counsel to read the statutes governing disorderly conduct and trespass during closing argument. The court indicated that it believed that reading the statutes would confuse the jury, and that defense counsel was not prohibited from arguing that the facts supported disorderly conduct and trespass rather the charged crimes. The court's decision was not clearly against the logic and effect of the facts and circumstances before it. Further, even if the court improperly limited defense counsel's closing argument, Cruz cannot establish that she was prejudiced or that any error was not harmless. The record reveals that Cruz was able to present the theory of her defense including that the evidence did not show that she entered Valencia-Camacho's house or struck her. Her counsel was able to, and did, thoroughly question each of the State's witnesses about the altercation and elicit testimony from defense witnesses which was favorable to her defense. The record further reveals that defense counsel's closing argument was not unduly restricted. The trial court did not prohibit defense counsel from arguing

that Cruz did not commit the charged offenses, and in fact defense counsel presented a thorough and careful argument that the evidence before the jury did not prove that Cruz committed residential entry or battery and that the State did not prove the elements of the offenses.[3]

[13] For the foregoing reasons, we affirm Cruz's convictions.

[14] Affirmed.

May, J., and Pyle, J., concur.

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[3] Cruz cites *Dixey v. State*, 956 N.E.2d 776 (Ind. Ct. App. 2011), *trans. denied*, and *Taylor v. State*, 457 N.E.2d 594 (Ind. Ct. App. 1983). In *Dixey*, the State charged Dixey with theft as a class D felony, and in closing argument defense counsel began discussing the uncharged offenses of criminal deception and utility fraud. 956 N.E.2d at 779-780. The trial court ordered defense counsel to not mention the offenses because it had rejected proposed jury instructions on them. *Id*. at 780. On appeal, this Court concluded the jury would have been aided by the explanation "that the legislature had enacted other offenses directly related to the use of utility bypass schemes or devices that do not require proof of the same requisite mens rea as theft" and Dixey was deprived of presenting the theory of his defense. *Id*. at 783. In *Taylor,* the trial court prohibited defense counsel from arguing the difference between negligence and recklessness where the defendant was charged with reckless driving. 457 N.E.2d at 599. This Court disagreed, concluding that understanding the distinction between negligence and recklessness would have aided the jury. *Id*. Here, the trial court only limited defense counsel from reading statutes governing crimes for which Cruz was not charged. *See* Transcript Volume II at 171 ("you could've made all those arguments without pulling out statutes"). Further, there is no indication the legislature enacted the trespass and disorderly conduct statutes to directly govern the altercation described by the testimony, the elements of the charged offenses were not so difficult to understand such that the jury would have been substantially aided by a discussion of other criminal statutes or other crimes, and defense counsel was able to and did argue to the jury that the State did not prove the charged crimes. Cruz was not deprived of her ability to present the theory of her defense, and as discussed above any error was harmless. We cannot say that *Dixey* or *Taylor* require reversal.