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IN THE
COURT OF APPEALS OF INDIANA

Robert Lawson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 7, 2022

Court of Appeals Case No.
22A-CR-448

Appeal from the Marion Superior Court

The Honorable Charnette D. Garner, Judge

Trial Court Cause No.
49D35-1909-F6-36344

Robb, Judge.

Case Summary and Issues

[1] The State charged Officer Robert Lawson with obstruction of justice, a Level 6 felony; perjury, a Level 6 felony; battery, a Class A misdemeanor; false informing, a Class B misdemeanor; and official misconduct, a Level 6 felony. During the jury trial, Officer Lawson made two Trial Rule 50 motions for judgment on the evidence both of which were denied. At the conclusion of the parties' cases in chief, Officer Lawson proposed several jury instructions that were rejected by the trial court. The jury found Officer Lawson guilty of perjury, false informing, and official misconduct. The trial court entered convictions on all three counts, but at Officer Lawson's request later vacated the perjury and false informing convictions. Officer Lawson was then sentenced to 365 days with 363 days suspended to probation.

[2] Officer Lawson now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court abused its discretion by denying Officer Lawson's motions for judgment on the evidence; (2) whether there was sufficient evidence to sustain Officer Lawson's convictions; and (3) whether the trial court abused its discretion by refusing to give Officer Lawson's proposed jury instructions. Concluding the trial court did not abuse its discretion by denying Officer Lawson's motions for judgment on the evidence, the State presented sufficient evidence to sustain his convictions, and the trial court did not abuse its discretion by refusing to give his proposed jury instructions, we affirm.

Facts and Procedural History[1]

[3] On August 29, 2019, Officer Lawson of the Indianapolis Metropolitan Police Department was dispatched to Shortridge High School at the request of Indianapolis Public Schools ("IPS") following a large fight that broke out in the school. Upon Officer Lawson's arrival, A.W. was handcuffed and in the custody of IPS officers. A.W.'s aunt, Danielle Porter, came to the school so that A.W. could be released into her custody.

[4] When Officers unhandcuffed A.W. and took him outside to meet Porter, she began to shout and berate the officers. A.W. walked toward Officer Lawson, pulled his pants up, and appeared to get into a fighting stance. Officer Lawson then hit A.W. in the face. Officers put handcuffs back on A.W. and arrested him.[2]

[5] After the encounter, Officer Lawson spoke to Officer Marzetta Jenkins. In the probable cause affidavit he prepared, Officer Lawson reported that Officer Jenkins "stated she observed [A.W.] swing his fist at Officer Lawson a split second before Officer Lawson threw the palm strike, however [A.W.] did not

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[1] We held a traveling oral argument in this case on October 27, 2022, at South Ripley High School in Versailles, Indiana. We commend counsel for the quality of their oral and written advocacy, and we thank South Ripley for hosting the event, as well as the attendees for their insightful questions posed to the panel and counsel after the argument.

[2] A.W. was charged with disorderly conduct and resisting law enforcement.

make contact."[3] Amended Exhibits, Volume I at 8. Officer Jenkins testified at trial that she told Officer Lawson that it looked "as if [A.W.] was *about* to swing" but that she did not tell Officer Lawson she saw A.W. throw a punch. Transcript of Evidence, Volume III at 25 (emphasis added). Because Officer Lawson used force during the incident, a use of force report was completed. Detective John Howard from the Special Investigations Unit was assigned to investigate Officer Lawson's use of force. As part of the investigation, Detective Howard reviewed the video of Officer Lawson's use of force and testified that he did not see A.W. throw a punch.

[6] On September 16, 2019, the State charged Officer Lawson with obstruction of justice, perjury, battery, false informing, and official misconduct. During the trial, Officer Lawson made a Trial Rule 50 motion for judgment on the evidence twice, once at the close of the State's evidence and again at the close of his own evidence. Both motions were denied.

[7] Subsequently, Officer Lawson proposed the following jury instructions:

> DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1
>
> In this case the Defendant is a police officer. All parties are equal before the law. Police officers are entitled to the same fair consideration that you would give any other individual person. A

[3] Officer Lawson reported the use of force as a palm strike; however, in video of the incident he appears to hit A.W. with a closed fist. *See* Am. Ex., Vol. I at 4-7.

police officer is not held to any higher or lower standard of conduct than any other person.

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [10]

Perjury requires willful intent to provide false testimony rather than as a result of faulty memory, confusion, or mistake.

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [12]

The alleged statement must be a statement of fact- and not a conclusion, opinion, or deduction from given facts. Confused or mistaken testimony is not perjury.

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [13]

Evidence sufficient to sustain a conviction for perjury must exclude every reasonable hypothesis except that of the guilt of the accused.

Appendix of Appellant, Volume II at 135; App. of Appellant, Vol. III at 60, 62-63 (citations omitted).

[8] The jury found Officer Lawson guilty of perjury, false informing, and official misconduct. The trial court entered a judgment of conviction on all three counts. At Officer Lawson's request, the trial court then vacated the perjury and false informing convictions due to double jeopardy concerns. The trial court

sentenced Officer Lawson to 365 days with 363 days suspended to probation. Officer Lawson now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Motion for Judgment on the Evidence

A. Standard of Review

[9] Indiana Trial Rule 50(A) provides:

> Where all or some of the issues in a case tried before a jury or an advisory jury are not supported by sufficient evidence or a verdict thereon is clearly erroneous as contrary to the evidence because the evidence is insufficient to support it, the court shall withdraw such issues from the jury and enter judgment thereon or shall enter judgment thereon notwithstanding a verdict.

[10] The purpose of a motion for judgment on the evidence is to test the sufficiency of the evidence presented by the nonmovant. *Overshiner v. Hendricks Reg'l Health*, 119 N.E.3d 1124, 1131 (Ind. Ct. App. 2019), *trans. denied*. A motion for judgment on the evidence should be granted "only when there is a complete failure of proof because there is no substantial evidence or reasonable inference supporting an essential element of the claim." *Stewart v. Alunday*, 53 N.E.3d 562, 568 (Ind. Ct. App. 2016) (quoting *Raess v. Doescher*, 883 N.E.2d 790, 793 (Ind. 2008)). Judgment on the evidence is proper if there is a total absence of evidence in favor of the plaintiff or if the inference intended to be proven by the evidence cannot logically be drawn from the evidence without undue speculation. *Hill v. Rhinehart*, 45 N.E.3d 427, 435 (Ind. Ct. App. 2015), *trans.*

denied. But if there is evidence that would allow reasonable people to differ as to the result, then judgment on the evidence is improper. *Stewart*, 53 N.E.3d at 568.

[11] Our supreme court has noted that a judgment on the evidence "does not alter the critical, invaluable, and constitutionally protected role of the jury in Indiana's system of jurisprudence." *Purcell v. Old Nat'l Bank*, 972 N.E.2d 835, 842 (Ind. 2012). A trial court is not free to engage in weighing evidence or judging the credibility of witnesses to grant judgment on the evidence in a case where reasonable people may come to competing conclusions, as weighing evidence and judging witness credibility has always been within the purview of the jury. *Id*. "That said, it is equally true that judges, at times, may play a role in the ultimate determination of cases . . . to ensure the proper administration of our laws[.] Where . . . the plaintiff fails to present sufficient, probative evidence as to a necessary element of a claim, the trial judge is within his or her discretion to issue judgment on the evidence pursuant to Rule 50(A)." *Id*.

[12] Thus, the grant or denial of a Trial Rule 50 motion is within the broad discretion of the trial court and will be reversed only for an abuse of discretion. *Hill*, 45 N.E.3d at 435. When we review a trial court's ruling on such a motion, we use the same standard as the trial court: we must consider only the evidence and reasonable inferences most favorable to the nonmoving party. *Stewart*, 53 N.E.3d at 568. When, as in this case, the trial court denies the motion and declines to intervene, "it is not the province of this Court to do so unless the verdict is wholly unwarranted under the law and the evidence." *Ohio*

Farmers Ins. Co. v. Ind. Drywall & Acoustics, Inc., 970 N.E.2d 674, 685 (Ind. Ct. App. 2012), *trans. denied*.

B. Trial Rule 50 Motion[4]

1. Perjury

[13] Officer Lawson argues the trial court erred by denying his motion for judgment on the evidence as to his perjury charge. A person commits the crime of perjury when he "makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true[.]" Ind. Code § 35-44.1-2-1(a)(1). To support a conviction for perjury, the State must present sufficient evidence to show that the defendant: (1) made a false statement under oath; and (2) said statement was material to a point in the case. *Daniels v. State*, 658 N.E.2d 121, 123 (Ind. Ct. App. 1995). It is well-settled that confusion or inconsistency alone is not enough to prove perjury. *Id.*

[14] Officer Lawson contends that his inclusion of Officer Jenkins' statement in the probable cause affidavit was not material and therefore does not constitute perjury.[5] *See White v. State*, 25 N.E.3d 107, 122 (Ind. Ct. App. 2014) (stating that

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[4] Pursuant to the special verdict forms completed by the jury, Officer Lawson's conviction of official misconduct is based on his convictions of perjury and false informing. *See* App. of Appellant, Vol. III at 71-72. He does not have an independent basis to challenge the official misconduct conviction. However, reversal and dismissal of his perjury and false informing convictions would be a reversal of the factual ground upon which the jury found him guilty of official misconduct. Accordingly, we address only his perjury and false informing convictions.

[5] Officer Lawson briefly states that he potentially misremembered the information in the perjury section of his brief but for the most part saves his argument that he did not *knowingly* make a false statement for the

"if testimony alleged to be false is of no importance and immaterial it cannot be made the basis for a charge of perjury"), *trans. denied*, *cert. denied.* 577 U.S. 1035 (2015). Materiality has been defined as that which is reasonably calculated to mislead an investigation.[6] *Wilke v. State*, 496 N.E.2d 616, 618 (Ind. Ct. App. 1986). The State is not required to prove actual impairment of the investigation, "[m]ere potential influence . . . is sufficient[.]" *Id.* The issue of materiality is an issue for the court to decide as a matter of law. *Id.*

[15] Officer Lawson argues that because he never sought to charge A.W. with "any kind of alleged battery on an officer charge[,]" the inclusion of Officer Jenkins' statement was not material. Amended Brief of Appellant at 14. Instead, A.W. was charged with, in part, disorderly conduct. Pursuant to Indiana Code section 35-45-1-3(A)(1), a person who recklessly, knowingly, or intentionally "engages in fighting or in tumultuous conduct" commits disorderly conduct. As stated in the probable cause affidavit, "[A.W.] was then arrested for disorderly conduct

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section of his brief challenging his false informing conviction. Therefore, for purposes of his Trial Rule 50 claims we address whether the false statement was included knowingly in the false informing subsection; however, our conclusion applies to his perjury charge as well.

[6] There are seemingly two investigations that could have been misled by Officer Lawson's inclusion of Officer Jenkins' statement in the probable cause affidavit. The investigation into A.W.'s conduct, which we address in the body of the opinion, *see infra* at ¶¶ 15-16, and the investigation into Officer Lawson's use of force against A.W. Because we conclude that the statement was reasonably calculated to mislead the investigation into A.W., we need not determine whether it was also reasonably calculated to mislead Detective Howard's investigation into Officer Lawson's use of force.

for knowingly and intentionally attempting to fight with Officer Lawson."[7] Am. Ex., Vol. I at 8.

[16] Officer Lawson contends the inclusion of Officer Jenkins' statement that A.W. swung on Officer Lawson was "surplusage at best" because of A.W.'s other conduct. Am. Br. of Appellant at 14. We disagree. Although the probable cause affidavit does include statements that "both [of A.W.'s] hands were balled into fist[s]" and that he "moved his right shoulder back and bladed his body . . . taking a fighting stance[,]" Am. Ex., Vol. I at 8, the inclusion of Officer Jenkins' statement that A.W. threw a punch would have constituted a clear indication that A.W. "engaged in fighting or in tumultuous conduct" to satisfy Indiana Code section 35-45-1-3(A)(1), whereas the remainder of A.W.'s behavior as detailed in the probable cause affidavit does not necessarily satisfy the statute. Therefore, Officer Lawson's inclusion of a statement indicating that A.W. attempted to strike him would be material to A.W.'s disorderly conduct charge.

[17] We conclude the trial court did not abuse its discretion by denying Officer Lawson's motion for judgment on the evidence as to his perjury charge.

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[7] We interpret the probable cause affidavit to mean A.W. was arrested for his conduct outside of the school when the altercation with Officer Lawson occurred and not for any prior conduct. A.W. was also charged with resisting law enforcement. *See* Ind. Code § 35-44.1-3-1(A)(1) (stating 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 his duties commits resisting law enforcement). The probable cause affidavit states that A.W. was "resisting and interfering with law enforcement"; however, it does not explicitly state that this charge was based on an attempt to fight Officer Lawson, so we limit our discussion in this section to A.W.'s disorderly conduct charge. Am. Ex., Vol. I at 8.

2. False Informing

[18] Officer Lawson also argues the State did not produce enough evidence to establish elements of false informing sufficient to stave off his Trial Rule 50 motion for judgment on the evidence. A person is guilty of false informing if he or she gives false information in the official investigation of the commission of a crime, knowing the information to be false. Ind. Code § 35-44.1-2-3(d). Officer Lawson contends there was no evidence that Officer Lawson *knew* the statement from Officer Jenkins that he included in his probable cause affidavit was false. Officer Lawson claims the State did not submit any evidence indicating that he lied in his probable cause affidavit "because no such evidence existed." Am. Br. of Appellant at 17. However, knowledge is a mental state of the actor; thus, the trier of fact must infer its existence. *Jernigan v. State*, 612 N.E.2d 609, 613 (Ind. Ct. App. 1993), *trans. denied.* In determining whether a defendant knowingly made false statements, the trier of fact must rely on reasonable inferences based on the surrounding circumstances. *See id*.

[19] Here, Officer Lawson testified that he did not see A.W. swing at him. He further claims that when Officer Jenkins told him that A.W. did, he responded, "[R]eally? [Be]cause I didn't see that." Tr., Vol. III at 231. Officer Lawson testified that he included the statement from Sergeant Jenkins in his probable cause affidavit simply to "show what [Sergeant Jenkins] said"; however, there seems to be no indication in the probable cause affidavit that Officer Lawson did not believe Officer Jenkins' statement to be true, other than Officer Lawson's testimony that he "skipped several lines" when including Officer

Jenkins' testimony seemingly as some way to distinguish it from the remainder of his affidavit. *Id.* at 232.

[20] Officer Lawson also testified that it is possible that he misheard Officer Jenkins. However, this would simply make Officer Jenkins' statement incompatible with the event Officer Lawson had just witnessed firsthand. Not only did Officer Lawson witness the event firsthand, but he was also standing face to face a few feet away from A.W. seconds prior to striking him. If A.W. had thrown a punch, it seems unlikely that Officer Lawson would not have seen it or that A.W. would not have made any contact with Officer Lawson.

[21] Accordingly, there was sufficient evidence that Officer Lawson knew the purported statement by Officer Jenkins he included in the probable cause affidavit was a falsehood so as to survive his motion for judgment on the evidence.

II. Sufficiency of the Evidence

[22] Officer Lawson also argues that insufficient evidence was presented to sustain his convictions. When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the evidence supporting the judgment and reasonable inferences that can be drawn therefrom. *Id.* Where there is conflicting evidence, we must consider the evidence in the light most favorable to the conviction. *Id.* We will affirm if there is substantial evidence of probative value from which the trier of

fact could find guilt beyond a reasonable doubt. *Trotter v. State*, 838 N.E.2d 553, 557 (Ind. Ct. App. 2005). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may be reasonably drawn from it to support the verdict. *Drane*, 867 N.E.2d at 147.

[23] Officer Lawson incorporates his arguments from his Trial Rule 50 challenge and contends that "[r]egarding the mens rea elements of the convicted crimes, the entire trial record does not contain sufficient evidence that [he] knowingly lied by including [Officer] Jenkins['] [s]tatement in his reports." Am. Br. of Appellant at 20. However, as stated above, knowledge is a mental state of the actor; thus, the trier of fact must infer its existence from the surrounding circumstances. *Jernigan*, 612 N.E.2d at 613.

[24] Here, Officer Lawson experienced the event firsthand and was feet away from A.W. but claims Officer Jenkins stated she saw A.W. throw a punch. A reasonable juror could determine that Officer Lawson knew that a punch was not thrown and "knowingly" included a false statement in his probable cause affidavit. Further, Officer Lawson's argument that he did not include a false statement "knowingly" is essentially a request for this court to reweigh the evidence and judge his credibility, neither of which we may do in conducting our review. *Smith v. State,* 660 N.E.2d 357, 358 (Ind. Ct. App. 1996).

[25] Accordingly, we conclude that the State presented sufficient evidence to support Officer Lawson's convictions.

III. Jury Instructions

A. Standard of Review

[26] "The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict." *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001) (internal quotation omitted). We review a trial court's jury instructions for an abuse of discretion. *Isom v. State*, 31 N.E.3d 469, 484 (Ind. 2015), *cert. denied*, 577 U.S. 1137 (2016). On appeal, we review whether a tendered instruction correctly states the law, whether there is evidence in the record to support giving the instruction, and whether the substance of the instruction is covered by other instructions. *Id*. at 485.

[27] Further, any error in instructing the jury is subject to a harmless error analysis. *Dixson v. State*, 22 N.E.3d 836, 840 (Ind. Ct. App. 2014), *trans. denied.* An error is to be disregarded as harmless unless it affects the substantial rights of a party. *Oatts v. State*, 899 N.E.2d 714, 727 (Ind. Ct. App. 2009); Ind. Trial Rule 61. And "[e]rrors in the giving or refusing of instructions are harmless where a conviction is clearly sustained by the evidence and the jury could not properly have found otherwise." *Dill*, 741 N.E.2d at 1233.

B. Proposed Jury Instructions

[28] Officer Lawson argues the trial court erred by refusing to give four of his proposed jury instructions. The State concedes that all of Officer Lawson's proposed jury instructions are correct statements of law. Further, we conclude

that evidence in the record supports the instructions. The only issue before us is whether Officer Lawson's proposed instructions were sufficiently covered by other instructions. The first proposed jury instruction that Officer Lawson offered reads as follows:

> DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1
>
> In this case the Defendant is a police officer. All parties are equal before the law. Police officers are entitled to the same fair consideration that you would give any other individual person. A police officer is not held to any higher or lower standard of conduct than any other person.

Appellant's App., Vol. II at 135. However, the trial court gave the following instructions that direct the jury to treat Officer Lawson like any other witness:

> FINAL INSTRUCTION NO. 18
>
> Your verdicts should be based on the law and the facts as you find them. It should not be based on sympathy or bias.
>
> FINAL INSTRUCTION NO. 19
>
> You should judge the testimony of the Defendant as you would the testimony of any other witness.

Appellant's App., Vol. III at 48-49.

[29] Next, Officer Lawson challenges the denial of three proposed instructions regarding the requirements to sustain a perjury conviction. The proposed instructions are as follows:

> DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [10]
>
> Perjury requires willful intent to provide false testimony rather than as a result of faulty memory, confusion, or mistake.
>
> * * *
>
> DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [12]
>
> The alleged statement must be a statement of fact- and not a conclusion, opinion, or deduction from given facts. Confused or mistaken testimony is not perjury.
>
> DEFENDANT'S PROPOSED JURY INSTRUCTION NO. [13]
>
> Evidence sufficient to sustain a conviction for perjury must exclude every reasonable hypothesis except that of the guilt of the accused.

Id. at 60, 62-63. Officer Lawson argues that without these instructions the jury was "not instructed on the further nuances of perjury and what is or is not a statement of fact." Am. Br. of Appellant at 25. However, the trial court gave the following final instructions regarding Officer Lawson's perjury charge:

FINAL INSTRUCTION NO. 5

The crime of Perjury Charged in Count II is defined by law as follows:

> A person who makes a false, material statement under oath or affirmation knowing the statement to be false or not believing it to be true commits Perjury, a Level 6 Felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant, Robert Lawson

2. made a false, material statement

3. under oath or affirmation

4. when the Defendant knew the statement was false or did not believe the statement was true.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Perjury, a Level 6 Felony, charged in Count II.

* * *

FINAL INSTRUCTION NO. 12

The defense of mistake of fact is defined as follows:

> It is a defense that the Defendant was reasonably mistaken about a matter of fact if the mistake prevented the Defendant from knowingly committing the acts charged.
>
> The state has the burden of disproving this defense beyond a reasonable doubt.

Id. at 35, 42.

[30] We conclude that Officer Lawson's proposed jury instructions were sufficiently covered by other instructions. Therefore, the trial court did not err by denying Officer Lawson's proposed instructions.

Conclusion

[31] We conclude the trial court did not abuse its discretion by denying Officer Lawson's motions for judgment on the evidence, the State presented sufficient evidence to sustain his convictions, and the trial court did not abuse its discretion by refusing to give his proposed jury instructions. Accordingly, we affirm.

[32] Affirmed.

Weissmann, J., and Foley, J., concur.