

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Kevin Penelton,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 28, 2024

Court of Appeals Case No.
23A-CR-2015

Appeal from the Marion Superior Court
The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No.
49D30-2102-MR-3839

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Kevin Penelton appeals his convictions, following a jury trial, for murder and level 4 felony unlawful possession of a firearm by a serious violent felon. He contends that the trial court abused its discretion in instructing the jury. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] On December 18, 2020, Penelton met his twenty-eight-year-old son, D'Andre, at an apartment complex in Marion County. Penelton and his son backed their cars into parking spots near where Kenneth Batts was already parked. Penelton got out of his vehicle with a long-barreled handgun and approached Batts's vehicle. With D'Andre standing behind him, Penelton opened the driver's door of Batts's vehicle and shot Batts. Penelton and D'Andre fled the scene in their separate vehicles. Penelton dismantled and disposed of the handgun.
- [3] Police officers were dispatched to the scene after receiving a report that a person had been shot. When they arrived, they discovered that Batts was deceased after suffering a "close range" gunshot wound to "the face." Tr. Vol. 2 at 200. Batts had a handgun tucked beneath his thigh. A second gun was found in Batts's right jacket pocket. Officers reviewed security camera footage that showed the two vehicles, one registered to D'Andre, and the other registered to Penelton's wife, Kelly Bond, that were involved in the shooting.

[4] Officers obtained and executed a search warrant for Bond's residence. Bond and Penelton were transported to the police station for questioning. Penelton admitted to being present at the scene, blamed his son for the murder, and told officers that he did not have a gun, insisting, "I ain't pulled no f**king trigger, man." State's Ex. Vol. 1 at 113. Penelton later called officers and asked to speak with them again. This time he told officers that there was another individual with Batts when the shooting occurred, but he continued to blame D'Andre for the murder.

[5] The State subsequently charged Penelton with murder and level 4 felony unlawful possession of a firearm by a serious violent felon. A bifurcated jury trial was held in July 2023. Penelton testified and admitted to shooting Batts, but he claimed self-defense. At the conclusion of the first phase of trial, the jury found Penelton guilty of murder and possession of a firearm. Penelton then admitted to being a serious violent felon. A sentencing hearing was held on August 4, 2023. The trial court sentenced Penelton to an aggregate term of sixty-three years. This appeal ensued.

Discussion and Decision

[6] Penelton asserts that the trial court abused its discretion in refusing his proposed jury instruction, which stated, "[C]arrying a handgun without a license or the unlawful possession of a handgun does not deprive a citizen of his right to self-defense and/or the defense of others." Appellant's App. Vol. 3 at 32. The State objected to the instruction, asserting that it was not "necessary" and that "the concept" was covered by other instructions. Tr. Vol. 3 at 54. Penelton

responded that he believed that the instruction would be “helpful and informative for jurors” because, without such instruction, the jurors could be misled into thinking that they had to find him “guilty of all charges” rather than being informed that they could pick “one or the other.” *Id.* at 55. In refusing the instruction, the trial court agreed with the State and further noted that the instruction was not a pattern jury instruction. The trial court explained to Penelton that he could use closing argument to make his point to the jury “very clearly just like you did to me.” *Id.*

[7] We typically review the trial court’s manner of instructing the jury for an abuse of discretion. *Ramirez v. State*, 174 N.E.3d 181, 195 (Ind. 2021). The purpose of an 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.” *Overstreet v. State*, 783 N.E.2d 1140, 1163 (Ind. 2003), *cert. denied* (2004). A trial court erroneously refuses to give a tendered instruction if: “(1) the instruction correctly sets out the law; (2) evidence supports the giving of the instruction; and (3) the substance of the tendered instruction is not covered by the other instructions given.” *Id.* at 1164. We consider the instructions as a whole and in reference to each other and do not reverse the trial court for an abuse of discretion unless the instructions as a whole mislead the jury as to the law in the case. *Paul v. State*, 189 N.E.3d 1146, 1151 (Ind. Ct. App. 2022), *trans. denied*.

[8] First, we agree with the State that the trial court properly rejected Penelton’s proposed instruction because it does not correctly set out the law. “As a general

matter, a defendant can raise self-defense as a justification for an otherwise criminal act. When self-defense is asserted, the defendant must prove he was in a place where he had a right to be, ‘acted without fault,’ and reasonably feared or apprehended death or great bodily harm.” *Larkin v. State*, 173 N.E.3d 662, 670 (Ind. 2021) (citations omitted). However, there are certain circumstances that, if proven by the State beyond a reasonable doubt, negate a finding of self-defense. Penelton argues that his proposed instruction would have informed the jury of one of those circumstances. Specifically, he argues that his proposed instruction was necessary to inform the jury that it could still find that he acted in self-defense “even if he should not have been in possession of a firearm” at the time of the shooting. Appellant’s Br. at 13. However, his proposed instruction did not go far enough. As our supreme court held in *Mayes v. State*, 744 N.E.2d 390, 394 (Ind. 2001), the defendant’s contemporaneous commitment of a criminal act will negate a self-defense claim only if there is “an immediate causal connection” between the crime and the confrontation. In other words, “the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.” *Id.*

[9] Thus, when we look at the jury instructions as a whole, the substance and purpose of Penelton’s proposed instruction were more precisely and adequately covered by final instruction 19, which explained self-defense in full. That instruction provided in relevant part that a “person may use reasonable force against another person to protect himself or someone else from what he

reasonably believes to be the imminent use of unlawful force.... However, a person may not use force if: ... He is committing a crime that is directly and immediately connected to the confrontation[.]” Appellant’s App. Vol. 3 at 40. Unlike Penelton’s proposed instruction, instruction 19 more fully explained to the jury the necessary causal connection between the crime and the confrontation before a self-defense claim could be rejected on that basis. Under the circumstances, we cannot say that the trial court abused its discretion in rejecting Penelton’s proposed jury instruction. We affirm his convictions.

[10] Affirmed.

Bailey, J., and Pyle, J., concur.

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