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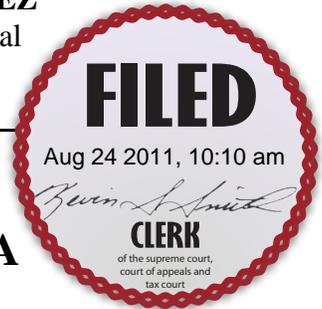
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**IN THE
COURT OF APPEALS OF INDIANA**

SANCHEZ M. ELLIS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A03-1012-CR-673

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-1004-FC-81

August 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Sanchez M. Ellis (“Ellis”) appeals from his convictions after a jury trial of one count of battery¹ as a Class C felony, one count of battery² as a Class D felony, and one count of resisting law enforcement³ as a Class D felony. Ellis raises the following restated issues for our review:

- I. Whether the trial court erred by admitting a warrant for Ellis’ arrest into evidence; and
- II. Whether the trial court abused its discretion by refusing to give Ellis’ tendered instruction on the right to resist excessive force in the course of an arrest.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 5, 2010, Holly Knight (“Knight”) called the Fort Wayne Police Department for assistance in removing an unruly guest, who had threatened Knight, from her apartment. When Officers Darrell Caudill and Heather Hoffman arrived, Knight asked them to remove all of her houseguests. The officers entered Knight’s apartment and observed Ellis exiting quickly and avoiding eye contact with the officers as he passed by them. The rest of the guests left shortly thereafter.

Officer Caudill went outside to find the woman who had threatened Knight. The woman had exited the apartment with the other houseguests. Officer Caudill placed the

¹ See Ind. Code § 35-42-2-1.

² See Ind. Code § 35-42-2-1(a)(2).

³ See Ind. Code § 35-44-3-3(b).

woman in the back of his patrol car when he found her. He then attempted to disperse the remaining houseguests who remained outside Knight's apartment.

Ellis walked back toward Knight's apartment. As Ellis approached, Officer Caudill was telling the other houseguests that they needed to disperse quickly if they had been drinking. Ellis told Officer Caudill that he could do as he pleased since he had not been drinking. Officer Caudill informed Ellis that he could not return to Knight's apartment, but Ellis proceeded in that direction anyway.

When Ellis refused to stop as directed, Officer Caudill asked him for identification. Ellis responded by stating "why in the hell you need my ID?" *Tr.* at 162-63. Officer Caudill asked Ellis why he was returning to Knight's apartment, but Ellis continued walking toward the apartment without responding. The officer then stepped in front of Ellis' path and instructed Ellis to show him his identification. Ellis stopped and turned his back to the officer, making the men in proximity to each other. When Officer Caudill saw Ellis flex his shoulders, raise his shoulders up, and ball up his fist, the officer slid his arm around Ellis' chest and placed his hand on Ellis' right arm in an attempt to restrict Ellis' movement, calm him down, and talk to him.

Once Officer Caudill touched Ellis, the situation quickly escalated. Ellis violently pulled away and tried to spin toward the officer. Officer Caudill tightened his grip and ordered Ellis to the ground. Ellis managed to slip away so that Officer Caudill only had a grip on Ellis' shirt, which ripped at the neck as Ellis pulled away. Ellis spun back and came toward Officer Caudill. When Ellis came toward Officer Caudill, the officer attempted to

punch Ellis on the side of the head and neck, but punched him in the nose instead. A struggle ensued between the two.

Officer Hoffman ran to the scene of the scuffle and tried to separate Ellis from Officer Caudill. Ellis spun around with Officer Caudill, slammed him to the ground, and landed on top of him. Officer Caudill, who appeared to be unconscious, was lying motionless and unresponsive. Ellis pressed his forearm against the officer's throat. Ellis yelled, "take that mother fucker[.] I'm from Detroit[.] I'm not going down." *Tr.* at 136. Officer Hoffman grabbed Ellis' arm and dragged him from Officer Caudill. By this time, another officer and a civilian came to render aid in placing Ellis in the patrol car and assisting Officer Caudill.

Officer Caudill regained consciousness while on the ground as Officer Hoffman handcuffed Ellis. The officer sustained a bruised rib on the right side of his back near the spine, a partial tear in his left shoulder, and suffered extreme pain.

The State charged Ellis with two counts of battery, one count of strangulation, and one count of resisting law enforcement. At the conclusion the jury trial, Ellis was found guilty of both counts of battery and one count of resisting law enforcement, but the jury could not reach a verdict on the count alleging strangulation. Ellis now appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

The trial court has broad discretion in ruling on the admissibility of evidence. *Edwards v. State*, 930 N.E.2d 48, 50 (Ind. Ct. App. 2010), *trans. denied*. We will reverse such a ruling only when the trial court abuses its discretion. *Id.* An abuse of discretion

occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Boggs v. State*, 928 N.E.2d 855, 862 (Ind. Ct. App. 2010), *trans. denied*.

Ellis challenges the trial court's decision to admit and publish a copy of his arrest warrant from Michigan. At trial, Ellis claimed that he had no reason to avoid contact with police and refuse to provide identification. In response to that argument, the State introduced into evidence the out-of-state arrest warrant. This evidence was offered to rebut Ellis' argument that he had no reason to avoid contact with police and to refuse to provide identification. In *Guajardo v. State*, 496 N.E.2d 1300, 1303 (Ind. 1986), our Supreme Court held that the admission in evidence of a search warrant and the probable cause affidavit supporting such search warrant did not amount to reversible error absent a showing of prejudice. Here, the arrest warrant did not contain any evidence that was not already introduced by other means. Ellis had testified on cross-examination that he had previous convictions for fraud and forgery, that he was on parole in Indiana and that his parole here caused his probation in Michigan to be "dropped." *Tr.* at 238. The admission of evidence that is merely cumulative of other properly admitted evidence is harmless and does not constitute reversible error. *Martin v. State*, 736 N.E.2d 1213, 1219 (Ind. 2000). Ellis has shown no prejudice from the admission of this evidence, and we find no reversible error. The trial court did not abuse its discretion.

II. Tendered Jury Instruction

Ellis argues that the trial court abused its discretion by failing to give his tendered instruction addressing the right to resist excessive force in the course of an arrest. “Jury instructions are solely within the discretion of the trial court; we will reverse only if the court abuses that discretion.” *Young v. State*, 696 N.E.2d 386, 389 (Ind. 1998). An abuse of discretion occurs if the instructions, considered as a whole and in reference to each other, mislead the jury as to the applicable law. *Id.* at 389-90. In reviewing a trial court’s decision to give or refuse tendered jury instructions, we consider: “(1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions that are given.” *Chambers v. State*, 734 N.E.2d 578, 580 (Ind. 2000).

Here, the evidence shows that the trial court agreed to give Ellis’ tendered instruction on self-defense. However, the trial court found that the evidence did not support the giving of the instruction related to the amount of force that can be used to resist excessive force in the course of an arrest. Ellis’ defense theory was that he had been attacked by Officer Caudill and that any injury to the officer was merely an accident or an incidental byproduct of Officer Caudill’s action. The trial court did not abuse its discretion by failing to give the proffered instruction.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.