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2012 IL App (3d) 100939-U

Order filed September 4, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Whiteside County, Illinois,
)	
v.)	Appeal No. 3-10-0939
)	Circuit No. 10-CF-175
JASON J. UKENA,)	
)	Honorable
Defendant-Appellant.)	Stanley B. Steines,
)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt, and the trial court conducted an adequate inquiry into his posttrial claim of ineffective assistance of counsel.

¶ 2 Defendant, Jason J. Ukena, was convicted of two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)) and one count of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) West 2010)). On appeal, defendant argues that: (1) he was not proven guilty of aggravated battery beyond a reasonable doubt; and (2) the trial court failed to conduct an

adequate inquiry into his claims of ineffective assistance of counsel. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged with resisting or obstructing a peace officer, aggravated assault, and three counts of aggravated battery. At defendant's bench trial, Sergeant Timothy R. Fisher of the Rock Falls police department testified that on May 27, 2010, he was dispatched to a call of a man abusing his dog in the area of Twelfth Avenue and Sixth Street in Rock Falls. At the scene, Fisher saw defendant walking his dog, and he asked defendant if he would speak with him. Defendant did not stop walking and allegedly shouted obscenities at Fisher. As defendant walked by, Fisher noticed that defendant's elbow was bleeding and inquired if defendant was all right. Defendant responded that his injury was none of Fisher's business. Fisher returned to his car, and defendant continued walking.

¶ 5 As defendant reached Fifth Street, Fisher observed him shout at passing cars and make obscene gestures. Fisher approached defendant a second time, and defendant screamed that his rights were being violated. Fisher instructed defendant that he was not free to leave and that he was being cited for intoxicated pedestrian. Fisher returned to his police car to write defendant's citation. At that time, officer Jeremy Vondra arrived at the scene. Defendant continued to shout at Vondra while Fisher wrote defendant's ticket, and defendant produced a video camera from his backpack and began videotaping the encounter. Approximately 10 minutes later, Fisher exited his car, handed defendant his citation, and told him that he was free to leave.

¶ 6 After receiving his citation, defendant remained on the street corner and continued to yell obscenities. Fisher told defendant to calm down or he would be placed under arrest. Defendant did not comply, and Fisher announced that defendant was under arrest for disorderly conduct.

Fisher grabbed defendant's arm to place him into handcuffs. Defendant resisted, and Vondra instructed him to comply with Fisher's requests or he would be tased. Defendant replied "shoot me." Vondra warned defendant a few more times before shooting his taser at defendant.

Defendant fell to the ground, and Fisher attempted to pull his arms out from under his body to handcuff him. Defense counsel introduced the videorecording from Vondra's taser that showed defendant standing with his arms up and his video camera pointed at the officers. Vondra then fired his taser, and defendant fell to the ground.

¶ 7 After the initial tasing, defendant continued to resist arrest, and Vondra warned him again that he would be tased if he did not comply. Eventually, Vondra tased defendant a second time. Defendant then tried to stand up, and Vondra tased him a third time. Despite these tasings, defendant continued to wrestle with Fisher and Vondra while they attempted to restrain him. Vondra testified that he felt a sharp pain in his right wrist while trying to pull defendant's arms behind his back to place him in handcuffs.

¶ 8 After being handcuffed, defendant grabbed and twisted Fisher's wrists. Defendant also tried to stand up while Vondra was holding him down. In the struggle, defendant grabbed Vondra's right wrist and twisted it. Two additional police officers arrived at the scene to assist in restraining defendant, and he was carried to a nearby police car. Once in the car, defendant kicked his feet out so the car door could not be closed. Fisher dry stunned defendant, causing his knees to bend, and the other officers forced the door closed.

¶ 9 Physician's assistant, Joshua Wade, testified that he had treated Fisher and Vondra's injuries after the incident. He reported that Fisher suffered a nerve injury to his right elbow that required surgery. Vondra suffered a ligament tear in his right wrist that also required surgery.

¶ 10 Defendant testified that on the day of his arrest, he was walking from his friend's house and had waved at another friend as he drove by. Defendant denied making obscene gestures towards the traffic. Defendant stated that Fisher approached him and asked his name. Defendant asked why he was being stopped and told Fisher that he either needed to write a ticket, arrest him, or let him go.

¶ 11 Defendant got out his video camera to tape the interaction. Defendant told Vondra to tase him because he felt that Vondra had no legal justification for the action. Defendant alleged that he had not been told that he was under arrest or to place his hands behind his back, but Vondra tased him and he fell to the ground and dropped his video camera.

¶ 12 Defendant stated that he did not remember what happened after he was tased. He denied fighting with the officers after his third tasing, but he said that he tried to protect himself because the officers had smashed his head into the ground and forced their knee into his back. Defendant remembered being carried to the police car, and he maintained that he did not intentionally attempt to harm the officers.

¶ 13 The court found defendant guilty of two counts of aggravated battery and one count of resisting or obstructing a peace officer. Defense counsel filed a motion for a new trial. Before the motion was heard, defendant filed a motion for ineffective assistance of counsel. The motion alleged that defense counsel failed to resubpoena witnesses that were disclosed to the State and denied defendant the right to test the credibility of the testifying officers. The court conducted a hearing on defendant's motion. At the hearing, defense counsel argued that he had investigated the witnesses in question and had received letters from several of the witnesses; however, their testimony was not beneficial to defendant's case. Counsel further noted that defendant testified

about how the officers made up the story and he introduced Vondra's taser video to show that defendant was standing with one hand in the air and the other was pointing his video camera at the officers when he was tased.

¶ 14 The trial court found that defendant had not made a *bona fide* claim of ineffective assistance of counsel. The court reasoned that defense counsel's decision not to call certain witnesses was a matter of trial strategy. The court also found that: (1) defense counsel had not neglected defendant's case; (2) counsel had an opportunity to cross-examine the officers; and (3) counsel introduced the taser video to discredit the officers' testimonies. Defendant appealed.

¶ 15 ANALYSIS

¶ 16 I. Sufficiency of the Evidence

¶ 17 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he knowingly or intentionally caused bodily harm to Fisher or Vondra, without legal justification. Defendant contends that the State failed to establish beyond a reasonable doubt that his actions were not a justified response to the police officers' use of excessive force.

¶ 18 When reviewing the sufficiency of the evidence, the relevant question is whether " 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We will not substitute our judgment for the trial court's unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Sanders*, 168 Ill. App. 3d 295 (1988).

¶ 19 To convict a defendant of aggravated battery, the State must prove that a defendant, in

committing a battery, knows the individual harmed to be an officer of a unit of local government in the performance of his authorized duties. 720 ILCS 5/12-4(b)(18) (West 2010).

¶ 20 When a defendant raises the affirmative defense of self-defense, the State must also prove beyond a reasonable doubt that he did not act in self-defense. *People v. Hayes*, 2011 IL App (1st) 100127. Generally, a person may not use force to resist arrest by a police officer, even if the arrest is unlawful. 720 ILCS 5/7-7 (West 2010). An exception is made when the arresting officer uses excessive force. *People v. Wicks*, 355 Ill. App. 3d 760 (2005). However, an arresting officer may use any force reasonably necessary to effect an arrest and need not retreat in the face of resistance. 720 ILCS 5/7-5(a) (West 2010).

¶ 21 In the instant case, we find that the evidence was sufficient to convict defendant of aggravated battery. Fisher and Vondra testified that defendant resisted arrest and struggled with the officers after he was handcuffed. During defendant's resistance, both officers were injured. Although defendant denied that he fought with the officers, we find that there was sufficient evidence for the trier of fact to find defendant guilty of aggravated battery beyond a reasonable doubt.

¶ 22 Additionally, we find that the State proved that the officers' use of force in effectuating the arrest was not excessive and defendant's actions were not made in self-defense. Fisher and Vondra testified that they warned defendant several times to comply with their requests before he was tased. Despite the officers' requests, defendant continued to wrestle with the officers and tried to prevent them from transporting him to the police station. Our review of the video evidence tends to corroborate their testimony. Therefore, we conclude that the State met its burden of proof that defendant did not act in self-defense.

¶ 23

II. Ineffective Assistance of Counsel

¶ 24 Next, defendant argues that the cause should be remanded for further proceedings on his ineffective assistance of counsel claim because the trial court failed to conduct an adequate inquiry into his claims.

¶ 25 A court conducts an adequate inquiry into a defendant's ineffective assistance of counsel claim using one or more of the following methods: (1) questioning trial counsel; (2) questioning defendant; and (3) relying on its own knowledge of trial counsel's performance in the trial.

People v. Peacock, 359 Ill. App. 3d 326 (2005).

¶ 26 Appointment of counsel is not required every time a defendant's posttrial motion argues ineffective assistance of counsel. *People v. Woodson*, 220 Ill. App. 3d 865 (1991). Counsel need not be appointed where the trial court finds that a defendant's claim is spurious. *Id.* Such a finding will not be overturned on appeal unless it is manifestly erroneous. *People v. Brandon*, 157 Ill. App. 3d 835 (1987).

¶ 27 Here, the trial court conducted an adequate inquiry into defendant's ineffective assistance of counsel claim. The trial court began by asking defense counsel to respond to defendant's allegations of ineffective assistance. Trial counsel stated that he had contacted the witnesses that defendant had asked him to resubpoena, but their testimony was not beneficial to defendant's case. He also allowed defendant to present his version of events and introduced Vondra's taser video to discredit the officers' narrative.

¶ 28 In reaching its decision, the trial court considered defense counsel's statements and its own knowledge of defense counsel's handling of the case. In particular, the court noted that defense counsel had not neglected the case and defendant had not made a *bona fide* showing of

ineffective assistance of counsel. We see no reason to disturb these findings, and we conclude that the trial court's decision was not manifestly erroneous.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 31 Affirmed.