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2012 IL App (3d) 100950-U

Order filed May 15, 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 9th Judicial Circuit,
Plaintiff-Appellee,)	Knox County, Illinois,
)	
v.)	Appeal No. 3-10-0950
)	Circuit No. 09-CF-522
)	
GREG CHRISTOPHER,)	Honorable
)	James B. Stewart,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and Carter concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence did not warrant a self-defense instruction; (2) the State misstated the law in closing arguments, but this error was not plain error; (3) the trial court did not abuse its discretion in refusing to instruct the jury on the specific acts of resistance alleged in the charging instrument.

¶ 2 Defendant, Greg Christopher, an inmate at Hill Correctional Center, was charged with aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) and resisting a correctional institution employee (720 ILCS 5/31-1(a-7) (West 2008)). After a jury trial, defendant was convicted of

resisting a correctional institution employee. On appeal, defendant argues that: (1) the court abused its discretion in refusing to instruct the jury on self-defense principles; (2) plain error occurred when the State misstated the law in closing argument; and (3) the court abused its discretion in refusing to instruct the jury on the specific acts of resistance alleged in the charging instrument. We affirm.

¶ 3

FACTS

¶ 4 On August 16, 2010, defendant was charged by amended information with aggravated battery and resisting a correctional institution employee. The resisting charge alleged:

"that the said defendant knowingly resisted the performance of Correctional Officer Sgt. Harold Stark of an authorized act within his official capacity, being the handcuffing of said defendant, knowing Sgt. Stark to be a correctional officer engaged in the execution of his official duties, in that the defendant pulled away from Sgt. Stark, continuously struggled, swung and hit Sgt. Stark, said actions being the proximate cause of an injury to Sgt. Stark, in violation of 720 ILCS 5/31-1(a-7)."

¶ 5 On August 17, 2010, the case proceeded to a jury trial. At trial, Sergeant Harold Stark testified that he was a corrections officer at Hill Correctional Center on June 4, 2009. On that date, he observed defendant take a tray with two pieces of cake on it while he was in line at the cafeteria. Lieutenant James Reffett told defendant to throw away one piece of cake, but defendant ignored the instruction and sat down at a table. Stark, Reffett, and Lieutenant Roy Shaw approached defendant and instructed him to turn in his tray. Defendant got up, walked to the tray return window and purportedly started stuffing food into his mouth. Shaw directed defendant to turn around and "cuff up." Defendant threw his tray, knocked over a cup holder,

and backed into a fighting stance. Stark sprayed defendant with pepper spray, but he thought that most of it missed defendant. Stark believed that defendant was about to comply with the officers' orders and approached him. However, defendant punched Stark in the mouth and landed on top of Stark as the other corrections officers rushed in to restrain defendant. Stark suffered a bruised arm, abrasions on the top of his nose, and a laceration through his top lip. Reffett testified to a similar version of events. The State also introduced into evidence two videotapes of the incident.

¶ 6 Defendant testified that on June 4, 2009, he got his tray in the cafeteria line, without taking an extra piece of cake, and sat down at a table. As soon as he sat down, he was approached by Stark and Shaw, who instructed him to turn in his tray. At that time, defendant was unsure why the officers were ordering him to turn in his tray, but he got up anyway. While defendant was waiting for the inmate worker to take his tray, he ate a piece of cake, and the correctional officers rushed at him. Defendant alleged that he turned towards Reffett in response to his statement when Stark grabbed him. Defendant backed away and laid down his tray. Defendant thought that the corrections officers were trying to "rough [him] up," and his next memory was being sprayed with pepper spray and "slammed" to the ground. Defendant stated that he did not intentionally strike or try to strike any of the officers. Defendant alleged that he tried to avoid a confrontation.

¶ 7 During closing argument, the State argued that defendant knowingly performed a number of acts to resist the corrections officers. In particular,

"[h]e was given specific orders that he ignored. He was told to throw his cake away. He didn't. He was told to put his tray away. He threw it instead of putting it away. He ate the cake even though he wasn't supposed to. And then when he was going to be

handcuffed, he started backing away, and as he's backing away from Sergeant Stark and he's pursuing him, that's when the defendant then punched Sergeant Stark in the mouth."

¶ 8 The State contended that "[e]ach of these steps is resisting or obstructing" a correctional officer.

¶ 9 After closing argument, the court proceeded to jury instructions. The court instructed the jury that the definition of resisting a correctional institution employee, as defined under Illinois Pattern Jury Instructions, Criminal, No. 22.13 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 22.13) was:

"A person commits the offense of resisting or obstructing a correctional institution employee when he knowingly resists or obstructs the performance of any authorized act within the official capacity of one known to him to be a correctional institution employee."

¶ 10 The court further issued Illinois Pattern Jury Instructions, Criminal, No. 22.14 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 22.14), stating that:

"[t]o sustain the charge of resisting or obstructing a correctional institution employee, the State must prove *** that the defendant knowingly resisted or obstructed the performance by Harold Stark of an authorized act within his official capacity."

¶ 11 The jury found defendant guilty of resisting a correctional institution employee and not guilty of aggravated battery. The court sentenced defendant to three years in prison.

¶ 12 Defendant filed a motion for a new trial, arguing that the trial court erred when it failed to instruct the jury on self-defense. The court denied defendant's motion, and defendant appealed.

¶ 13

ANALYSIS

¶ 14

I. Self-Defense Instruction

¶ 15 Defendant argues that his conviction for resisting a correctional institution employee should be reversed and the cause remanded for a new trial because the court abused its discretion in refusing to instruct the jury on self-defense principles.

¶ 16 A defendant is entitled to instructions on his theory of the case when there is some foundation in evidence for the instruction. *People v. Jones*, 175 Ill. 2d 126 (1997). We review a trial court's decision to issue specific jury instructions under an abuse of discretion standard. *People v. Garcia*, 188 Ill. 2d 265 (1999).

¶ 17 Generally, an inmate may not use force to resist a department of corrections officer. 720 ILCS 5/31-1 (West 2008). An exception to this rule is made when the officer uses excessive force. See *People v. Wicks*, 355 Ill. App. 3d 760 (2005). However, there must be some evidence that defendant acted out of fear for his safety to justify a self-defense instruction. *Id.*

¶ 18 In the instant case, there was no evidence that the correctional officers used excessive force or that defendant feared for his safety. Although defendant alleged that he set his tray down and tried to avoid confrontation with the corrections officers, who were attempting to "rough [him] up[.]" this theory is unsupported by the officers' testimony and the videotaped evidence. Moreover, defendant's testimony was consistent with an innocence defense instead of a defense based on the justified use of force. We note that defendant testified that he never intentionally struck or intended to strike any of the corrections officers. We conclude that there was no evidence to support the inclusion of a self-defense instruction and such an instruction would have been inconsistent with defendant's theory of the case.

¶ 19

II. Closing Arguments

¶ 20 Defendant contends that he was denied a fair trial because of improper comments made by the State during closing arguments. Defendant acknowledges that he waived review of this issue, but asks that we review the issue for plain error.

¶ 21 The question of whether comments made by the prosecution in closing argument were so egregious as to warrant a new trial is a question of law that we review *de novo*. *People v. Wheeler*, 226 Ill. 2d 92 (2007).

¶ 22 We apply the plain error doctrine when: (1) error occurred and the evidence is so closely balanced that the error threatened to tip the scales of justice against defendant; or (2) error occurred and that error was so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551 (2007).

¶ 23 The first step in plain error analysis is determining whether error occurred. *People v. Thompson*, 238 Ill. 2d 598 (2010). A prosecutor is afforded wide latitude in closing arguments, and improper remarks will not merit reversal unless they result in substantial prejudice to defendant. *Wheeler*, 226 Ill. 2d 92.

¶ 24 Defendant argues that the State misstated the law during its closing argument by stating that each of defendant's acts of disobeying the correctional officers' instructions constituted resisting. We agree.

¶ 25 The offense of resisting a correctional institution employee requires more than verbal resistance or argument. *People v. McCoy*, 378 Ill. App. 3d 954 (2008). Rather, the statute prohibits a person from committing a physical act of resistance or obstruction that impedes, hinders, interrupts, prevents or delays the performance of the officer's duties. *Id.* Arguably, defendant's acts of disobeying the correctional officers' commands constituted resisting.

However, even if some of his conduct did not constitute resisting, the State's comments were not plain error. After reviewing the trial testimony and videotaped evidence, we conclude that the evidence was not closely balanced. We further conclude that any error did not result in substantial prejudice such that it eroded the integrity of the judicial process and undermined the fairness of defendant's trial. See *Thompson*, 238 Ill. 2d 598.

¶ 26

III. Jury Instructions

¶ 27 Finally, defendant contends that the court abused its discretion when it did not instruct the jury on the specific acts of resistance alleged in the charging instrument. Defendant acknowledges that he waived review of this issue and asks that we review the issue for plain error.

¶ 28 As noted in the previous issue, the first step of plain error review is determining whether the trial court erred. Here, we find that the trial court did not err. Illinois Supreme Court Rule 451(a) (eff. July 1, 2006) provides that:

"[w]henver Illinois Pattern Jury Instructions, Criminal (4th ed. 2000) (IPI Criminal 4th), contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal 4th instruction shall be used, unless the court determines that it does not accurately state the law."

¶ 29 Whether the court abused its discretion in giving a particular instruction depends on whether the instruction was an accurate, simple, brief, impartial, and nonargumentative statement of the applicable law. Ill. S. Ct. R. 451(a) (eff. July 1, 2006); *People v. Pollock*, 202 Ill. 2d 189 (2002).

¶ 30 In the present case, the court instructed the jury using IPI Criminal 4th No. 22.13, defining resisting or obstruction a correctional institution employee, and IPI Criminal 4th No. 22.14, defining issues in resisting or obstructing a correctional institution employee. These instructions sufficiently identified the acts that defendant had to commit in order to be found guilty. The standard instructions accurately stated the law, and we find no reason to deviate from them in this case.

¶ 31 **CONCLUSION**

¶ 32 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 33 Affirmed.