2016 IL App (1st) 142020-U

SECOND DIVISION
August 9, 2016

No. 1-14-2020

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 12768
	)	
JULIUS TUCKER,	)	Honorable
	)	Erica Reddick,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for armed robbery while personally discharging a firearm affirmed where the evidence sufficiently established defendant discharged firearm during the offense, and defendant's *pro se* notice of appeal did not trigger a *Krankel* inquiry.

¶ 2 Following a bench trial, defendant Julius Tucker was convicted of committing armed robbery while personally discharging a firearm, and sentenced to 26 years' imprisonment. On appeal, Tucker concedes that he was proven guilty of armed robbery while armed with a firearm, and that he discharged that firearm. He contends, however, that the State failed to prove him

guilty beyond a reasonable doubt of committing armed robbery while personally discharging a firearm because the evidence showed that he fired his weapon after the robbery was complete. Tucker also contends that the trial court erred when it failed to conduct a preliminary inquiry into his *pro se* posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm. The evidence sufficiently proved Tucker guilty beyond a reasonable doubt of committing the armed robbery while personally discharging the firearm. In addition, the content and substance of Tucker's *pro se* document indicates that he intended it to be his notice of appeal and so did his counsel, when she moved in this court to amend Tucker's notice of appeal.

¶ 3 Background

¶ 4 Tucker was tried on one count each of (i) committing armed robbery while personally discharging a firearm, (ii) armed robbery while armed with a firearm, and (iii) aggravated discharge of a firearm. In light of Tucker's acknowledgement that he was proven guilty of armed robbery while armed with a firearm, and that he discharged that firearm, we need not engage in a detailed discussion of all of the evidence at trial.

¶ 5 The evidence established that about 5:10 a.m. on June 29, 2012, Cortez Baskin left a friend's house on 102nd Place and walked toward his SUV, which was parked at the curb in front of the house. Baskin testified that he is a male, but was dressed "in drag" as a woman, wearing a dress and carrying a purse. When Baskin reached the sidewalk in front of the house, Tucker was walking past and began talking to Baskin. Tucker flirted with Baskin and asked him if he wanted to buy some marijuana. Baskin declined. Baskin unlocked the doors of his SUV with his remote, and, as he entered the driver's seat, Tucker opened the passenger's door next to

the curb and sat halfway down in the seat. Baskin had not invited Tucker into SUV and told Tucker he was a transsexual. Tucker then asked Baskin if he had any money, and Baskin told Tucker to get out.

¶ 6 As Tucker did so, he pulled a gun from his pants pocket. Tucker then reached back inside the SUV through the open door, pointed the gun at Baskin, and grabbed for Baskin's purse, which was on the passenger's seat. Baskin also grabbed for his purse, and as they struggled over it, the purse fell onto its side inside the SUV, and Baskin's money and other items from the purse spilled onto the ground outside. Tucker then pointed the gun at Baskin, and Baskin began pulling away from the curb with his passenger's door still open. Baskin reached across and pulled the door closed, then began driving away. Baskin looked back and saw Tucker picking up the money and other items that fell out. Tucker stood in the middle of the street, pointed the gun towards the SUV, and fired three or four gunshots.

¶ 7 Baskin testified that the street came to a dead-end, and he turned to his left and drove through a vacant lot at 103rd Street and Normal Avenue, where he called police. Baskin waited for the police, but when they did not arrive, he drove out of the lot to search for an officer. About three blocks from the lot, Baskin saw Tucker standing in the doorway of a Citgo gas station on the corner of 103rd Street and Wentworth Avenue. As Baskin drove back down 103rd Street, he flagged down an officer, gave him a description of Tucker, and told the officer that Tucker was at the gas station. The first officer then left Baskin and two other officers arrived. Shortly thereafter, the officers brought Baskin to a laundromat across the street from the gas station where Baskin identified Tucker as the man who robbed him and fired gunshots at him. A short

time later, Baskin went to the police station and identified a gun as the same gun Tucker used to rob him and shoot at him.

¶ 8 The trial court found Baskin's testimony credible and corroborated by the recovered gun and shell casings, and therefore, found that the State proved Tucker guilty beyond a reasonable doubt of armed robbery while personally discharging a firearm, armed robbery while armed with a firearm, and aggravated discharge of a firearm. At sentencing, the trial court merged all of the convictions into the offense of armed robbery while personally discharging a firearm and sentenced Tucker to the minimum term of 26 years' imprisonment.

¶ 9 Analysis

¶ 10 Use of Force

¶ 11 Tucker concedes that he was proven guilty of armed robbery while armed with a firearm, and that he discharged that firearm, but contends that the State failed to prove him guilty beyond a reasonable doubt of committing armed robbery while personally discharging a firearm because the evidence showed that he fired his weapon after the robbery was complete. Tucker argues that the elements of the offense—taking Baskin's property by use of force—were complete before he discharged the gun, that his discharge of the gun was not a continuation of the offense, and that his act of firing the gun had no connection to the taking of the property. Tucker asserts that this court should reverse his conviction, reinstate his conviction for the lesser included offense of armed robbery while armed with a firearm, and remand his case for resentencing on that offense.

¶ 12 The State responds that the armed robbery was not complete when Tucker fired at Baskin, and therefore, Tucker committed armed robbery while personally discharging the firearm. The State argues that by shooting at Baskin, Tucker continued to use force against him,

which continued his commission of the armed robbery, and that force did not cease until Baskin reached the vacant lot.

¶ 13 Initially, Tucker asserts that this court should consider his issue under a *de novo* standard of review rather than the reasonable doubt standard because it does not require a credibility assessment and the facts are not in dispute. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where facts undisputed, defendant's guilt is question of law that is reviewed *de novo*). But, there is a dispute as to whether the armed robbery was complete at the time defendant discharged the firearm. This presents a mixed question of law and fact, and thus, *de novo* review is not appropriate. See *People v. Salinas*, 347 Ill. App. 3d 867, 879-80 (2004) (in all criminal cases, reasonable doubt standard should be applied in reviewing sufficiency of evidence).

¶ 14 When a defendant claims that the evidence is insufficient to sustain his or her conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Also, "all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 15 In a bench trial, the trial court is responsible for determining witness credibility, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from them. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction

based on insufficient evidence unless the evidence is so improbable or unsatisfactory that reasonable doubt exists as to guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 16 To prove Tucker guilty, the State must show that he took property from Baskin by the use of force or by threatening the imminent use of force, and that he personally discharged a firearm "during the commission of the offense." 720 ILCS 5/18-2 (a)(3) (West 2012). "Although the required force or threat of force must either precede or be contemporaneous with the taking of the victim's property ***, use of a dangerous weapon at any point in a robbery will constitute armed robbery as long as it reasonably can be said to be a part of a single occurrence." (Internal citations omitted.) *People v. Dennis*, 181 Ill. 2d 87, 101-02 (1998). An armed robbery is complete when force or threat of force causes the victim to part with custody or possession of the property against his or her will. *Id*. at 102. But, where defendant's flight or escape is effectuated by use of force, the accompanying force continues defendant's commission of the armed robbery. *Id*. at 103. Thus, the commission of an armed robbery ends when both force and taking, the two elements that constitute the offense, cease. *Id*.

¶ 17 Viewed in the light most favorable to the State, we find that the evidence was sufficient to allow the trial court to find Tucker guilty of committing armed robbery while personally discharging a firearm. It is undisputed that Tucker reached inside the open passenger's door of Baskin's SUV, pointed a gun at Baskin, and grabbed for Baskin's purse, which was sitting on the passenger's seat. Baskin testified that as they struggled over the purse, the contents spilled onto the ground, and Tucker again pointed the gun at Baskin as he began pulling away from the curb. While driving away, Baskin saw Tucker picking up the money and other items that fell out of his

purse, and Tucker then stood in the middle of the street and fired three or four gunshots at Baskin as he drove away.

¶ 18 We find that the evidence shows Tucker exerted force against Baskin to take Baskin's property, and continued exerting force by firing gunshots at Baskin as Baskin fled. Tucker's use of the gun, including firing the gunshots, was all part of one single occurrence. Tucker's use of force, an element of the offense, did not cease until Baskin turned into the vacant lot. We therefore find Tucker's continued use of force continued his commission of the armed robbery, and that the force did not cease until he stopped firing the gunshots, which is when his commission of the armed robbery ended. Accordingly, the evidence proved Tucker guilty beyond a reasonable doubt of committing the armed robbery while personally discharging the firearm.

¶ 19 Claims of Ineffective Assistance of Counsel

¶ 20 Tucker next contends that the trial court erred when it failed to conduct a preliminary inquiry into his *pro se* posttrial claims of ineffective assistance of counsel under *People v. Krankel*, 102 Ill. 2d 181 (1984). Tucker points out that in his *pro se* document entitled "notice of appeal," filed six days after he was sentenced, he raised three claims that his trial counsel rendered ineffective assistance. Tucker asserts that, despite the title, this document was not his notice of appeal, but instead, was a *pro se* motion raising claims that his trial counsel rendered ineffective assistance. Tucker argues that the trial court erred when it treated this filing as his notice of appeal, and instead, should have made an inquiry into his claims against counsel, and that his case should be remanded for a preliminary *Krankel* inquiry.

¶ 21 The State responds that the substance and content of the document, which states that Tucker is challenging the verdict and sentence, and states his claims against counsel, demonstrate Tucker's intent to file a notice of appeal only. The State argues that the court properly treated this document as a notice of appeal, and a *Krankel* inquiry was not required.

¶ 22 Generally, where defendant raises a *pro se* posttrial claim that trial counsel rendered ineffective assistance, the trial court should conduct an inquiry to examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Although the pleading requirements for raising *pro se* claims are relaxed, defendant must still meet the minimum requirements necessary to trigger a preliminary inquiry by the trial court. *People v. Porter*, 2014 IL App (1st) 123396, ¶ 12. Where, as here, no inquiry was made into defendant's alleged ineffective assistance claim, our review is *de novo*. *Id*. at ¶ 11.

¶ 23 To invoke the jurisdiction of the appellate court, an appellant must file a timely notice of appeal, and if the notice of appeal is not properly filed, the reviewing court lacks jurisdiction and the appeal must be dismissed. *People v. Patrick*, 2011 IL 111666, ¶ 20. The purpose of a notice of appeal is to notify the prevailing party that the appellant is seeking review of the trial court's judgment. *Id*. at ¶ 21. "A notice of appeal 'should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " (Internal quotation marks omitted.) *Id*., quoting *People v. Smith*, 228 Ill. 2d 95, 105 (2008). "[F]ailure to comply strictly with the form of notice is not fatal if the deficiency is one of form rather than substance and the appellee is not prejudiced." *Id.* at ¶ 27.

¶ 24 To determine the character of a motion, we look at its content, substance, and the relief sought, not merely the title placed on it by the movant. *Id*. at ¶ 34. "[O]nce a notice of appeal has been filed, the trial court loses jurisdiction of the case and may not entertain a *Krankel* motion raising a *pro se* claim of ineffective assistance of counsel." *Id*. at ¶ 39.

¶ 25 Our examination of the record reveals that the *pro se* document filed by Tucker on June 12, 2014, was his notice of appeal, and not a *pro se* motion for a new trial based on claims of ineffective assistance of counsel. On June 6, the trial court sentenced Tucker to 26 years' imprisonment, and immediately thereafter, admonished him that to appeal, he must file a written notice of appeal within 30 days. Tucker subsequently submitted his handwritten *pro se* document entitled "NOTICE OF APPEAL," which he dated June 8, 2014, two days after he was sentenced and admonished, and he indicated the case name and circuit court case number.

¶ 26 The first sentence of Tucker's document reads: "I am respectfully noticing the Court of Appeals of the verdict render [*sic*] not limited to an unfair trial, and the invalid and/or unfair sentence." Tucker then states: "[t]here are errors in front of the court and the Public Defender was ineffective and fail[ed] to object, be in my defense and raise the unconstitutional issues surrounding the illegal seizure and search without a warrant." Tucker further asserts that the outcome of the trial would have been different had counsel been effective. He then lists allegations specifying how counsel was ineffective, including that she failed to file a motion to quash arrest and suppress evidence, failed to object to the State boosting the victim's credibility, and failed to impeach the victim's testimony.

¶ 27 Tucker's document was filed with the clerk of the circuit court on June 12, 2014. The presiding judge of the criminal division of the circuit court entered an order on June 20, 2014,

noting that Tucker had filed a notice of appeal and appointing the Office of the State Appellate Defender to represent Tucker. That same day, the clerk of the circuit court served the "Notice of Notice of Appeal" with copies of Tucker's notice of appeal on the Illinois Attorney General, the State's Attorney, and the clerk of this court. Nothing in the record indicates the trial judge ever saw or reviewed Tucker's document.

¶ 28 We find that the content and substance of Tucker's *pro se* document indicates that he intended it to be his notice of appeal. Tucker explicitly stated he was "noticing the Court of Appeals of the verdict," and challenging both the trial and his sentence. We also find his claims regarding his counsel were issues he intended to present on appeal, and not allegations he expected the trial court to review. Once Tucker filed his notice, the trial court lost jurisdiction and was precluded from considering a *Krankel* motion. *Patrick,* 2011 IL 111666, ¶ 39.

¶ 29 In addition, on January 5, 2015, the State Appellate Defender filed a motion with this court to amend Tucker's notice of appeal. The motion indicated that Tucker had filed his notice of appeal on June 12, 2014. Counsel stated that the notice should be amended to reflect the offense, sentence, and judgment date, and that "[a]ll other information contained in the notice of appeal appears to be correct (see attached notice of appeal)." Attached to counsel's motion is a copy of Tucker's *pro se* document which counsel now argues is not a notice of appeal. But counsel cannot proceed in one manner and assert that Tucker's *pro se* document is his notice of appeal, and later contend that the document is not a notice of appeal. To allow counsel to now object to the very document that counsel previously represented to this court as Tucker's notice of appeal undermines consistency and fairness. See *People v. Parker*, 223 Ill. 2d 494, 508 (2006).

¶ 30 Affirmed.