2017 IL App (1st) 151761-U

No. 1-15-1761

Order filed December 12, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 11708
	)	
EDDIE GRIFFIN,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Conviction affirmed where the trial court properly admonished defendant before allowing him to proceed *pro se* and the evidence did not warrant a self-defense or justifiable use of force instruction.

¶ 2 Following a jury trial, defendant Eddie Griffin was convicted of aggravated battery of a transit passenger and battery. The trial court merged the battery count into the aggravated battery count and sentenced Griffin to five years in prison. On appeal, Griffin contends that the trial

court erred in failing to properly admonish him before allowing him to proceed *pro se* and refusing a self-defense jury instruction. We affirm.

¶ 3 Griffin was charged with four counts of aggravated battery for causing: (i) great bodily harm; (ii) permanent disfigurement; (iii) bodily harm to a transit passenger; and (iv) bodily harm with the use of a deadly weapon, all arising out of an altercation with the victim, Anthony Walker. He was arraigned and assigned a public defender. On October 15, 2014, Griffin asked to represent himself. The public defender informed the court that she had explained to Griffin the charges on a prior visit with him. The court ordered a behavioral clinic examination for Griffin and continued the case until November 24, 2014.

¶ 4 On November 24, the trial court acknowledged its receipt of a report from Forensic Clinical Services concluding that Griffin was fit to stand trial and to represent himself. The trial court then explained to Griffin that he was charged with four counts of aggravated battery, all charged as Class 3 felonies, and explained the potential sentencing if found guilty. Griffin stated that he understood the penalties but not the charges, asking "how I get four counts on one person?" The court explained again that Griffin was charged with four counts, and told Griffin he would receive a copy of the counts from the State. Griffin stated he understood the penalties and what the court meant by aggravated, but "d[idn't] understand the charges until [he] read them," or why he had four counts. The court advised Griffin of his right to an attorney, which Griffin acknowledged he understood. The court then found that the Griffin made a voluntary, knowing, and intelligent waiver of his right to counsel and allowed him proceed *pro se*.

¶ 5 On December 11, 2014, the State provided Griffin with multiple pieces of discovery, as well as a copy of the charges. At a January 5, 2015 pre-trial conference, the court informed

Griffin of the possible sentences, which he stated he understood. On March 9, 2015, the State informed the court it was proceeding on only the counts charging aggravated battery causing permanent disfigurement and aggravated battery to a transit passenger. The court told Griffin he was going to trial on two counts of aggravated battery and again explained the possible sentences. The trial judge asked Griffin whether he still wanted to represent himself or wanted a public defender. Griffin acknowledged that he had copies of the charges and understood them and reaffirmed that he wanted to proceed *pro se*. Throughout the pretrial proceedings, Griffin asserted the affirmative defense of self-defense and requested a jury instruction to that effect. The court informed him that the instruction would be given if evidence of self-defense was established at trial. At a final pre-trial conference, the court granted Griffin's request that the lesser included offense of simple battery be included in the jury instructions. The case proceeded to a jury trial with Griffin representing himself *pro se*.

¶ 6 Walker was riding the CTA bus on Roosevelt Road on June 22, 2014, shortly before 11:00 a.m., with Renee Crawford, an acquaintance he met at the bus stop. Walker, a diabetic who had lost a leg and part of his other foot, boarded the bus first and proceeded to the back of the bus. Crawford, who had been injured in a bus accident and had badly disfigured legs and difficulty walking, sat in front of Walker with her legs stretched out in the aisle. Griffin boarded the bus a short time later and walked towards the back where Walker and Crawford were sitting. Griffin and Crawford got into an argument because Crawford was too slow getting into her seat. Crawford claimed Griffin kicked her leg as he walked by. As Griffin continued to the back of the bus, Crawford asked him why he would do that. Griffin turned around from the back of the bus

and returned to where Walker and Crawford were sitting. He threatened Crawford saying "B***, I cut your face up" and "I kick your ass, I cut you."

¶ 7 Walker stood up and tried to deescalate the situation, but when Griffin's threats to Crawford continued, Walker told him, "You got to go through me first." Griffin then pushed Walker from the back and he fell into a seat. Walker got up, lunged at Griffin and grabbed his throat. Griffin took a box cutter from his pocket with his right hand and started "slicing" Walker. As Griffin was attacking him, Walker was hitting Griffin in the face. Griffin then pulled the emergency lever on the bus and exited the back door at Kedzie Avenue.

¶ 8 Video footage from the bus (without audio) was introduced and corroborated the foregoing narrative. Both Walker and Crawford narrated what was happening on the video as it was shown. Portions of the altercation shown on the video were obscured by other passengers on the bus. During his cross-examination of both Walker and Crawford, Griffin asked them no questions about whether Walker "strangled" Griffin during the altercation.

¶ 9 When the bus stopped at Kedzie, the driver flagged down a police squad car. Crawford saw Griffin walk by the bus, and she pointed him out to the officers. The officers detained Griffin and Crawford identified him as the person who had attacked Walker. Walker was bleeding, so Crawford held tissues and paper towels on Walker's wounds until paramedics arrived. Walker was brought to Mount Sinai Hospital and received 54 stitches to three cuts on his arm and one on his abdomen.

¶ 10 At the close of the State's case, the court found no evidence that would support a self-defense instruction, finding that the witnesses' testimony and the accompanying security videos

contradicted Griffin's theory. The court explained to Griffin that he would need to present evidence of self-defense during his case in order to receive a self-defense instruction.

¶ 11 Griffin, *pro se*, called and examined Walker, Officer Antonio Valenzuela, and Detective Michael Rooks. Walker reiterated that Griffin cut him with a black box cutter. Valenzuela, one of the officers who arrived at the scene, testified that he thought Walker's injuries were minor. Rooks testified that he took notes from the victim and two witnesses to craft his report. He wrote down that the victim was injured by an unknown cutting instrument that could not have been a piece of glass. He wrote down the threats that were made by Griffin as told to him by Crawford and Walker. Rooks testified that Walker received three cuts to his arm, one under his arm, and a laceration to his abdomen, one of which was a major cut which required 39 stitches. Rooks saw no blood on Griffin's clothing at the police station.

¶ 12 After Griffin rested, the court found that he did not introduce any evidence that would warrant a self-defense jury instruction. Griffin argued he had feared for his life, but the court stated there was no evidence of this and asked Griffin if he wanted to testify. He declined.

¶ 13 The jury found Griffin guilty of aggravated battery to a transit passenger (720 ILCS 5/12-3.05(d)(7) (West 2014)) and battery (720 ILCS 5/12-3 (West 2012)). The court merged the battery conviction into the aggravated battery conviction, and sentenced Griffin to 5 years' imprisonment with 299 days credit for time served. Griffin timely appealed.

¶ 14 Griffin contends that the trial court committed reversible error when it granted him leave to proceed *pro* se without first informing him of the nature of the charges as required by Illinois Supreme Court Rule 401(a)(1) and providing him a copy of the information setting forth the charges. The State contends Griffin has forfeited this issue for review by failing to raise it in the

trial court and, in the alternative, that the court properly admonished Griffin and no error occurred. Griffin concedes that he did not object or raise this issue in his post-trial motion, but argues it should still be reviewed under the second prong of the plain error rule.

¶ 15 To preserve an alleged error for appeal, a defendant must both object at trial and include the error in a written posttrial motion. *People v. Colyar*, 2013 IL 111835, ¶ 27. Griffin failed to do either. Therefore, the issue is forfeited and only may be considered if it amounts to plain error. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Rippatoe*, 408 Ill. App. 3d 1061, 1066 (2011).

¶ 16 The plain error doctrine bypasses forfeiture principles and allows a reviewing court to consider an unpreserved error when: (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The trial court's failure to comply with Rule 401(a) denies a defendant his fundamental right to be represented by counsel and, for that reason, is reviewable as plain error under the second prong of the doctrine. *People v. Herndon*, 2015 IL App (1st) 123375, ¶ 23. But where there is no error, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). So we must first determine whether any error occurred in the trial court's Rule 401(a) admonishments.

¶ 17 Before a trial court accepts a defendant's request to waive his right to counsel and represent himself, the trial court must ascertain that the waiver is knowing, intelligent and voluntary. *People v. Baez*, 241 Ill. 2d 44, 116 (2011). To ensure a valid waiver, Rule 401(a) requires the trial court before accepting a defendant's waiver of counsel, to admonish the defendant regarding (1) the nature of the charge; (2) the minimum and maximum sentence

prescribed by law, including any additional penalty due to the defendant's prior convictions or consecutive sentences; and (3) the defendant's right to counsel and if indigent, to have counsel appointed. Ill. S. Ct. R. 401(a).

¶ 18 Trial courts need only substantially comply with this rule. *People v. Haynes*, 174 Ill. 2d 204, 234 (1996). Strict technical compliance is not necessary as long as the admonishments given still fulfill the fundamental purpose of the rule and do not prejudice the defendant's rights. *People v. Langley*, 226 Ill. App. 3d 742, 749 (1992). There is "substantial compliance" with Rule 401(a) when the failure to fully admonish does not prejudice a defendant because either (1) the absence of a detail from the admonishments did not prevent the defendant from making a knowing and intelligent waiver, or (2) the defendant possessed a degree of knowledge or sophistication that excused the lack of admonishment. *People v. Pike*, 2016 IL App (1st) 122626, ¶ 112. While we review a finding that a defendant's waiver was knowing and voluntary under the abuse of discretion standard, we review the legal issue of whether the trial court failed to substantially comply with Rule 401(a) admonishments *de novo*. *Id.* ¶ 114.

¶ 19 Griffin does not argue that the trial court failed to admonish him regarding the possible sentences he could receive, and his right to have counsel appointed. Instead, he argues that the circuit court failed to properly admonish him regarding the nature of the charges before allowing him to proceed *pro se*. In admonishing Griffin prior to accepting his waiver of counsel, the court informed him that he was charged with four Class 3 felony counts of aggravated battery and explained the potential sentences, but did not specifically recite the charges. Griffin argues that because he was not given a copy of the information and the court did not explain why he faced

four counts of aggravated battery "on one person," the Rule 401(a) admonishments were did not sufficiently explain the nature of his charges.

¶ 20 Rule 401(a) does not require the trial court to recite all pending counts against a defendant to substantially comply with the requirement that a defendant be advised of the nature of the charge. *Pike*, 2016 IL App (1st) 122626, ¶¶ 117, 121. As used in Rule 401(a), the "nature" of the charges "connotes and is synonymous with the words essence, general character, kind or sort." *People v. Harden*, 78 Ill. App. 2d 431, 444 (1966). Where the "nature" of the crime is factually simple and there is no indication in the record that defendant failed to understand the nature of the offense, simply telling defendant the name of the charge may be sufficient. See *People v. Phillips*, 392 Ill. App. 3d 243, 263 (2009). The trial court need not tell the defendant all the facts that do or might constitute the offense. *Pike*, 2016 IL App (1st) 122626, ¶ 117. Here, the nature of the charges was factually simple—they were all aggravated battery—and self-evident in the name of the offense. The fact that the court did not explain each aggravating factor does not render the admonishments insufficient.

¶ 21 Further, the record shows that when the court allowed Griffin leave to proceed *pro* se on November 24, 2014, Griffin was already aware of the content of the four charges. During the October 2015 pretrial hearing at which Griffin first asked to represent himself, his court-appointed public defender informed the court she had explained the charges to Griffin. *People v. Herndon*, 2015 IL App (1st) 123375, ¶¶ 27, 30 (finding the fact that a defendant was informed of charges at arraignment relevant in determining that he was aware of the nature of the charges). Then, during the November 2014 hearing itself, Griffin acknowledged that he understood what the court meant by aggravated, and was unclear only as to why there were four counts involving

one victim. Since Griffin was aware of the nature of the charge he faced—aggravated battery—the court's admonishments were sufficient.

¶ 22 Finally, shortly before trial, on March 9, 2015, when the State *nolle prossed* two of the charges, the court readmonished Griffin regarding the two remaining charges and the possible sentences and asked him whether he still wanted to proceed *pro se*. Griffin acknowledged that he had received copies of the charges, understood the charges and possible penalties, and did want to continue *pro se*. By this point, Griffin had been in possession of his own copies of the charges since December 2014 and had told the court several times in earlier proceedings that he understood the possible sentences. He had (i) filed and argued a motion seeking substitution of judge, (ii) requested and been granted a jury instruction regarding the lesser included offense of simple battery for all counts, and (iii) requested and argued a self-defense instruction. The record therefore rebuts Griffin's contention that he was inexperienced and confused about the charges, as he demonstrated his familiarity with the charges and judicial process throughout the proceedings. See *People v. Washington*, 2016 IL App (1st) 131198, ¶ 56 (finding defendant's waiver was knowing and intelligent in part to his familiarity with the judicial process). We find the trial court properly admonished Griffin of the nature of the charges against him. There was no error in the court's admonishments and so we need not consider Griffin's plain error argument further.

¶ 23 Griffin also contends that the trial court erred when it did not instruct the jury on his affirmative defense of self-defense or, in the alternative, on self-defense and the justifiable use of force by initial aggressors. Griffin did not raise the justifiable use of force by an initial aggressor theory in the trial court. It is therefore forfeited and cannot be asserted on appeal. *People v.*

Cherry, 2016 IL 118728, ¶ 30. Nevertheless, we will consider it, as it is not so different from the self-defense argument Griffin raised at trial that the court did not have an opportunity to review the same essential claim raised here: that even if Griffin was the aggressor, he was warranted in his use of force against Walker. See *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009) ("An issue raised by a litigant on appeal does not have to be identical to the objection raised at trial, and we will not find that a claim has been forfeited when it is clear that the trial court had the opportunity to review the same essential claim.")

¶ 24 When the trial court finds there is insufficient evidence to justify giving an instruction, reviewing courts review the trial court's decision for an abuse of discretion. *People v. McDonald*, 2016 IL 118882, ¶ 42. Generally, a defendant is entitled to have a jury instructed on defenses that are supported by the evidence, even where the evidence is slight or inconsistent with the defendant's testimony. *People v. Everette*, 141 Ill. 2d 147, 156 (1990). The trial court must determine whether the record contains evidence of defendant's subjective belief in the need to use force in self-defense. *People v. Washington*, 2012 IL 110283, ¶ 36.

¶ 25 To establish a claim of self-defense (720 ILCS 5/7-1 (West 2012)), the defendant must present some evidence that: (1) unlawful force was threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) he actually and subjectively believed a danger existed that required the use of the amount of force applied; and (6) his beliefs in that regard were objectively reasonable. *People v. Holman*, 2014 IL App (3d) 120905, ¶ 57. When a defendant is the initial aggressor, he can claim self-defense if the force used against him "is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such

danger other than the use of force which is likely to cause death or great bodily harm to the assailant." 720 ILCS 5/7-4(c)(1) (West 2012).

¶ 26 The evidence establishes that Griffin was the initial aggressor. Both Walker and Crawford testified that Griffin entered the bus, exchanged a few words over the location of Crawford's feet, and proceeded to the back of the bus. He then returned to where Crawford and Walker were sitting and started threatening and shouting expletives at Crawford, threatening to "cut" her. Walker got between Griffin and Crawford to deescalate the situation, but Griffin pushed him. The push resulted in a scuffle between Walker and Griffin, which was partially caught on tape. Walker testified that the men started to "tussle" after he was pushed and then Griffin pulled his "blade" and started "slicing" him. The video footage corroborates Crawford and Walker's testimony that Griffin walked past them, turned around, returned to their seats, pushed Walker, and then a fight ensued. Accordingly the evidence shows that Griffin was the initial aggressor in the altercation, and a self-defense instruction was not warranted.

¶ 27 Griffin claims that the videos showed Walker was strangling him and they demonstrate his actual and reasonable belief in the need to defend himself. However, our review of the videos does not substantiate this claim. The video shows Walker lunged at Griffin and placed his hand on Griffin's throat after Griffin pushed him, but what happened next between the two men cannot be seen, as the other passengers on the bus stood up and blocked a clear view of the fight. The only thing that can be seen on the video is Griffin wildly swinging at Walker, followed by Griffin pulling the emergency lever and exiting the bus. There is likewise no evidence that Walker was "strangling" Griffin, that Griffin feared for his life, and that he acted in accordance with that fear. Nothing in the record supports Griffin's claim on appeal that Walker placed

Griffin in imminent danger of death or great bodily harm or that Griffin's use of a box cutter to attack Walker was his only means of escape. Therefore, the only evidence in the record is Crawford and Walker's testimony that Griffin attacked first with no mention that Walker strangled Griffin, and security camera footage that corroborates this version of events. Accordingly, there was no slight evidence that warranted an instruction on either self-defense or justifiable use of force by an initial aggressor and the trial court properly refused to give those instructions.

¶ 28 The judgment of the circuit court is affirmed.

¶ 29 Affirmed.