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2017 IL App (3d) 150648-U

Order filed February 6, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0648
DIJON T. KELLEY,)	Circuit No. 13-CF-1422
Defendant-Appellant.)	Honorable Edward Burmila, Jr., Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying the defendant's motion to vacate guilty plea.

¶ 2 The defendant, Dijon T. Kelley, appeals the circuit court's denial of his motion to vacate guilty plea. Specifically, the defendant argues that certain statements made by the victim show that he has a defense worthy of consideration, there is doubt as to his guilt, and justice would be better served by conducting a trial.

FACTS

¶ 3

¶ 4 The defendant was charged by indictment with reckless conduct (720 ILCS 5/12-5(a)(2) (West 2012)). The indictment alleged that the “defendant caused great bodily harm to Lavale Kelley, in that defendant, while acting in a reckless manner, displayed a knife to Lavale Kelley, whose hand was cut when he tried to disarm the defendant.” The public defender’s office was appointed to represent the defendant.

¶ 5 The defendant pled guilty. As the factual basis for the plea, the prosecutor stated that defendant’s father, Lavale, told police officers that he got into an argument with the defendant. The defendant went into the garage, and Lavale went to check on him. When Lavale opened the garage door, “the defendant charged at him waving a knife.” Lavale grabbed the blade in an attempt to get the knife away from the defendant, causing a laceration to his hand. Both the defendant and Lavale went to the hospital to get stitches after the incident.

¶ 6 The circuit court asked the defendant if that was what occurred, and the defendant said yes. The circuit court sentenced the defendant to two years’ imprisonment.

¶ 7 The defendant filed a motion to vacate guilty plea and a motion to reconsider sentence.

¶ 8 The defendant retained a new attorney, and the public defender who had been representing the defendant withdrew as counsel. The defendant’s new counsel filed a second amended motion to vacate guilty plea (amended motion). The amended motion argued, *inter alia*, that new evidence had emerged that placed doubt on the defendant’s guilt and that the defendant would not have pled guilty if the evidence had been available at the time of his plea.

¶ 9 A hearing was held on the defendant’s amended motion. The defendant filed an affidavit executed by Lavale. In the affidavit, Lavale stated that he had spoken with the public defender’s office regarding the incident but the report generated by the public defender’s office was

incomplete and contained errors. The affidavit alleged that Lavale made statements that cast doubt on the defendant's guilt which were not contained in the "original reports" provided to the State or the defense.

¶ 10 Lavale also testified at the hearing. Lavale testified that he spoke with an investigator from the public defender's office regarding the case after the defendant pled guilty. Lavale told the investigator that he instigated an argument with the defendant. During the argument, Lavale "presented" a knife to the defendant while they were in the kitchen, but the defendant did not take the knife. Lavale then followed the defendant to the defendant's bedroom and continued arguing with him. The defendant did not have a knife at that time. The defendant went to the garage, and Lavale followed him. Lavale explained:

"Well, I came downstairs. I saw [the defendant] with the knife. And when I saw the knife, I grabbed the knife. It sliced my hand. And what I did is turned it towards [the defendant] to get him to drop the knife. After that, the incident was over. His mother pulled us apart, and we went to the hospital."

¶ 11 Lavale did not know where the defendant got the knife he was holding in the garage. Lavale stated that he was the aggressor and he believed the defendant was acting in self-defense.

¶ 12 On cross-examination, Lavale acknowledged that he told the police on the day of the incident that he and the defendant got into an argument, and the defendant told Lavale that "he had bodies to his name." Lavale stated that the defendant's statement "insinuate[d]" that the defendant had killed people. Lavale also told the police that he "presented" the defendant with a knife and told the defendant that if he was really a killer he should take the knife. The prosecutor asked Lavale if the foregoing statements that he had previously made to the police were "true and correct of what actually happened." Lavale replied, "Yes."

¶ 13

The prosecutor then questioned Lavale concerning the events in the garage:

“Q. And after a short time you were concerned about what your son was doing in the garage, so you went out there?”

A. I thought it was a short time, but thinking back it probably was a matter of seconds. I wanted to—you know, if somebody say something like that, you don’t know what their state of mind is. I went, I followed, I pursued him.

Q. You pursued your son into the garage. And at that point, is that when you observed your son with the knife?

A. I observed my son with the knife, yes.

Q. You indicated there was a struggle?

A. Yes. It was.

Q. Was the struggle for actual control of the knife?

A. For me it was, yes.

Q. Because you were afraid your son was going to stab you?

A. I was—I didn’t know what he was going to do with the knife.”

¶ 14

Lavale testified that he turned the knife to try to get the defendant to drop it, and the knife stabbed the defendant in the head.

¶ 15

Lavale identified People’s exhibit No. 1 as a statement he had written regarding the incident. Lavale stated that everything he had written in the statement was true and correct. The written statement sought to correct an investigation report prepared by an investigator at the public defender’s office. The statement asserted that Lavale and the defendant argued about registering for college. At one point, Lavale retrieved a knife from the kitchen and “presented” it to the defendant. Lavale told the defendant that if he was “the type of person he [said he was]

then prove it.” The defendant walked away and went to his room. Lavale followed him. Lavale became angry, yelled, and threw furniture around the room. The defendant then “retreated to the garage.” Lavale ran after the defendant. When Lavale opened the garage door, he saw the defendant holding a knife. The defendant told Lavale to stay back, but Lavale grabbed the knife, cutting his hand. Lavale then turned the knife toward the defendant’s head, stabbing the defendant in the head. The statement indicated that Lavale had exhibited “physical abusive behavior” toward the defendant in the past, and the defendant was afraid of Lavale. Lavale stated that he was the instigator of the incident.

¶ 16 The defendant testified that he did not know that Lavale had made “more statements” regarding the incident. The defendant’s former attorney did not present the defendant with any statement of Lavale prior to the defendant’s guilty plea. The defendant explained:

“[My former attorney] never told me about any statements. He never even asked me what happened. I never gave the statement to anybody. I still ain’t ever told anybody what happened that day. Because I wouldn’t have plead guilty because I know what happened in that house that day. ***

Only person I ever told it to was [my current attorney].”

¶ 17 The defendant testified that if he had known of the statement Lavale made in court earlier in the hearing, he would not have pled guilty.

¶ 18 The defense rested. The State moved for a directed finding. The circuit court granted the State’s motion and denied the defendant’s motion to vacate guilty plea. The circuit court reasoned:

“[T]he charge here that the defendant pled guilty to and he is asking to withdraw his guilty plea on was reckless conduct. *** [A] person is reckless when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow and such disregard constitutes a gross deviation from the standard of care which a responsible person would exercise in the situation.

I think that that’s exactly what [Lavale] testified to. I have to say that I believe the testimony of [Lavale] ***. *** And I understand exactly what [Lavale] is saying happened.

He was concerned about his son being in possession of a weapon, especially after he made the statement that [Lavale] interpreted to mean that his son had killed people on prior occasions. When he went in the garage, he saw his son recklessly possessing a knife after making that statement and he went to disarm him. The defendant resisted that. The dad was cut. I think that that exactly fits the description of reckless conduct.

I don’t think that [Lavale] was the aggressor. He was trying to protect his son. I understand that completely. But [the defendant] did not want his dad’s protection and resisted. So I think that the facts of this case are not changed at all my [Lavale’s] truthful testimony.”

¶ 19 The defendant filed a motion to reconsider, which was denied.

¶ 20 On appeal, we found that the record did not contain a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 3, 2013), and we remanded the matter for new postplea proceedings. *People v. Kelley*, No. 3-14-0879 (May 19, 2015) (summary order).

¶ 21 On remand, counsel filed a Rule 604(d) certificate. A hearing was held in which the parties filed a stipulation stating that if called to testify at a new hearing on the amended petition to vacate guilty plea, “the witness called by the Defendant in the hearing on his *** amended Motion to vacate guilty plea would testify to the same sum and substance as they testified in the original hearing in this cause.” The parties stipulated that the defense would rest after this testimony. The parties also stipulated that the State would enter People’s exhibit No. 1 into evidence and the State would then rest. The circuit court ordered that “the [defendant’s] motion to reconsider [be] denied.”

¶ 22 ANALYSIS

¶ 23 The defendant argues that the circuit court abused its discretion in denying his amended motion to vacate guilty plea. Specifically, the defendant contends that Lavale’s testimony and his unsworn statement introduced as People’s exhibit No. 1 show that the defendant was not reckless in possessing the knife or that the defendant possessed the knife in self-defense.

¶ 24 A defendant does not have an automatic right to withdraw a guilty plea but rather must show “a ‘manifest injustice’ under the facts involved.” *People v. Baez*, 241 Ill. 2d 44, 110 (2011) (quoting *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009)).

“Where it appears that the plea of guilty was entered on a misapprehension of the facts or of the law, or in consequence of misrepresentations by counsel or the State’s Attorney or someone else in authority, or the case is one where there is doubt of the guilt of the accused, or where the accused has a defense worthy of consideration by a jury, or where the ends of justice will be better served by submitting the case to a jury, the court should permit the withdrawal of the plea of

guilty and allow the accused to plead not guilty.” *People v. Morreale*, 412 Ill. 528, 531-32 (1952).

See also *Baez*, 241 Ill. 2d at 110; *People v. Mercado*, 356 Ill. App. 3d 487, 494 (2005).

¶ 25 “The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the circuit court and, as such, is reviewed for abuse of discretion.” *Baez*, 241 Ill. 2d at 109-10. “An abuse of discretion will be found only where the court’s ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court.” *Delvillar*, 235 Ill. 2d at 519.

¶ 26 Section 12-5(a)(2) of the Criminal Code of 2012 (Code) provides: “A person commits reckless conduct when he or she, by any means lawful or unlawful, recklessly performs an act or acts that *** cause great bodily harm *** to another person.” 720 ILCS 5/12-5(a)(2) (West 2012)). Section 4-6 of the Code defines recklessness as follows:

“A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2012).

¶ 27 We find that the circuit court did not abuse its discretion in denying the defendant’s motion to vacate guilty plea. The circuit court’s finding that Lavale’s description of the defendant’s actions “exactly fit[] the description of reckless conduct” was reasonable based on the evidence presented at the hearing on the motion to vacate guilty plea. Lavale testified that he had an argument with the defendant in which the defendant told Lavale that “he had bodies to his name.” Lavale then presented the defendant with a knife and told him that if he was really a

killer, he should use the knife. The defendant did not take the knife. Eventually, the defendant went to the garage, and Lavale followed him. Lavale explained: “[Y]ou know, if somebody say something like that, you don’t know what their state of mind is.” At that point, the defendant had a knife. Lavale did not know what the defendant would do with the knife. Lavale attempted to disarm the defendant and was cut with the knife. Lavale testified that it was a struggle to take the knife away from the defendant. Although Lavale testified that he instigated the incident, the circuit court found that Lavale was not the aggressor. We defer to the circuit court’s factual finding. *People v. Hill*, 272 Ill. App. 3d 597, 604 (1995) (“A reviewing court will give great deference to the trial court’s factual findings because the court stands in the best position to weigh the credibility of all the witnesses.”). Considering the totality of the circumstances, there is ample evidence in the record to support the circuit court’s determination that the defendant disregarded a substantial and unjustifiable risk that Lavale would be injured when he possessed the knife in the manner and context discussed above.

¶ 28 In reaching our holding, we acknowledge that Lavale made statements during his testimony and in his unsworn statement that he instigated the argument with the defendant, threw furniture around the defendant’s room, followed the defendant into the garage, and grabbed the knife from the defendant despite the defendant telling him to stay away. In his unsworn statement, Lavale also said that he was physically abusive toward the defendant in the past and that the defendant was afraid of Lavale. However, the circuit court was able to consider these facts and weigh them against Lavale’s testimony that Lavale did not know what the defendant would do with the knife after the defendant insinuated he had killed people. Despite Lavale’s testimony regarding his role in the argument, the circuit court concluded that the defendant acted recklessly under the circumstances in displaying a knife such that Lavale’s testimony did not

provide a basis for withdrawing the defendant's guilty plea. "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We cannot say that "no reasonable person would take the view adopted by the trial court." *Delvillar*, 235 Ill. 2d at 519.

¶ 29 We reject the defendant's contention that "he apparently did not know [Lavale's] testimony would corroborate his testimony" if the case went to trial at the time that he pled guilty. Specifically, the defendant argues:

"[Lavale] acknowledged having told the police on the day of the incident that he struggled for possession of the knife because he did not know what defendant was going to do with the knife, and that defendant made statements prior to that suggesting that he was a killer ***. Had the case proceeded to trial and had [Lavale] testified in that manner, this would have been a credibility case that could very well have resulted in [the defendant's] conviction.¹ But the reality now is very different in light of [Lavale's] post-plea statements."

However, Lavale did not claim during his testimony that the above statements he made to the police were inaccurate. In fact, Lavale expressly testified that his statement that the defendant said "he had bodies to his name" was true. Additionally, it is impossible to determine from this record whether Lavale's testimony would have corroborated the defendant's testimony because

¹ We note that the defendant's brief stated "this would have been a credibility case that could very well have resulted in Lavelle's conviction." However, based on the context of the sentence, we assume that the defendant meant to say that the case "could very well have resulted in [the defendant's] conviction."

the defendant never testified as to his version of the incident. In fact, the defendant testified that he had never told anyone but his second attorney what happened.

¶ 30

CONCLUSION

¶ 31

The judgment of the circuit court of Will County is affirmed.

¶ 32

Affirmed.