

NOTICE

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FILED

November 28, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 160529-U

NO. 4-16-0529

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RICKY A. ALEXANDER,)	No. 15CF1755
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding sufficient evidence was presented whereby a rational jury could determine defendant’s (1) voluntary intoxication was not so extreme as to suspend the power of reason and render him incapable of forming the specific intent to commit the offense of threatening a public official and (2) threats would place a reasonable officer in apprehension of future bodily harm.

¶ 2 Defendant, Ricky A. Alexander, appeals from his conviction and sentence for threatening a public official. On appeal, defendant argues this court should reverse his conviction because the State failed to prove his (1) voluntary intoxication was not so extreme as to suspend the power of reason and render him incapable of forming the specific intent to commit the offense and (2) statements would place a reasonable officer in apprehension of immediate or future bodily harm given the context in which they were made. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Information

¶ 5 In December 2015, the State charged defendant by information with threatening a public official (720 ILCS 5/12-9(a) (West 2014)). The State alleged on December 11, 2015, defendant “knowingly conveyed, directly or indirectly, to Cortez Gardner[,] a public official, a communication that contained a threat that placed Cortez Gardner, the public official, in reasonable apprehension of immediate or future bodily harm and the threat was conveyed because of Cortez Gardner’s performance of his public duty, in that [defendant] threatened to cut Cortez Gardner and/or shoot him with a pistol.”

¶ 6

B. Jury Trial

¶ 7 In a March 2016 jury trial, the State presented testimony from police officers Jared Hurley, Adam Marcotte, and Cortez Gardner, and an audio and video recording of defendant after he was arrested and placed in Officer Gardner’s patrol vehicle. Defendant testified on his own behalf. The following is gleaned from the testimony and the audio and video recording.

¶ 8

On December 11, 2015, a healthcare provider was speaking with Deborah Durkin by telephone and overheard an argument between Durkin and a male. The healthcare provider contacted the police, and officers were dispatched to Durkin’s apartment complex. The officers were provided with information indicating Durkin had an active no-contact order against defendant.

¶ 9

At approximately 11 a.m., officers arrived at Durkin’s apartment. The officers learned an argument occurred between Durkin and defendant concerning Durkin smoking a

cigarette while using compressed oxygen. Defendant told officers he was aware of the no-contact order but believed it did not prevent him from visiting with Durkin. Defendant was arrested for violating the no-contact order. The jury was informed the no-contact order was in fact no longer active at the time of defendant's arrest.

¶ 10 A search conducted incident to defendant's arrest revealed defendant did not have any weapons in his possession. After that search, defendant was handcuffed behind his back and placed in the backseat of Officer Gardner's patrol vehicle with a fastened seatbelt for transportation to the county jail.

¶ 11 Officer Gardner testified to defendant's statements and behavior while he was being transported to the county jail. He also testified to defendant's statements and behavior while he waited in a sally port at the county jail. Officer Gardner testified he exited his vehicle while inside the sally port to secure his weapon but then returned to the vehicle. Prior to exiting his vehicle, Officer Gardner opened the rear windows of the patrol vehicle.

¶ 12 Officer Gardner testified defendant made "several threatening statements, as far as, you know, getting a gun and shooting me, shooting my kids, finding out where I stay so he can come kill me, and several racial slurs." He testified defendant specifically threatened to get a pistol and shoot him. Officer Gardner testified defendant also threatened to cut him.

¶ 13 Officer Gardner testified his interaction with defendant caused Officer Gardner concern for his personal safety and he believed a possibility existed defendant could act on his threats. Officer Gardner specifically noted defendant's statements indicating he would act on his threats once he was released from the county jail. Officer Gardner indicated defendant did not appear to be acting rationally with him.

¶ 14 Officer Gardner testified it was not the first time he was threatened in his official capacity but he found this incident unique. He testified: “I’ve never had anyone take it to this level. I’ve been, of course, threatened before, but this was beyond anything I’ve ever experienced in four years of working as a police officer.”

¶ 15 On cross-examination, Officer Gardner was asked if he believed defendant was “under the influence of drugs or alcohol,” to which Officer Gardner responded, “I didn’t smell any alcoholic beverage on his breath, so it was irrational, but I was not sure if he was under the influence of anything.” Officer Gardner acknowledged he continued to work the remainder of his shift after this incident and did not request to be assigned to a different patrol area. Officer Gardner testified he did, however, speak with his supervisor about the incident. Officer Gardner also acknowledged he did not have any children.

¶ 16 The audio and video recording of defendant after he was arrested and placed in Officer Gardner’s patrol vehicle is approximately 30 minutes and includes the transport to the county jail and the period of time where Officer Gardner and defendant waited in the sally port. We have thoroughly reviewed the recording and will recite or summarize the statements defendant made during that recording. We note the recording is played through software that allows the operator to toggle between two different microphones or sync the microphones together. Toggling between the two microphones allows playback from each microphone individually to determine what each microphone was recording. The record does not indicate this feature was addressed before the trial court nor does it indicate where the two microphones were located. Defendant presumes one microphone was in the squad car and the other was attached to Officer Gardner’s uniform. Based on our review, we believe defendant’s presumption to be

correct.

¶ 17 After being placed in Officer Gardner's patrol vehicle, defendant inquired into the basis of his arrest. Officer Gardner explained the basis to defendant. Defendant also requested Officer Gardner obtain his medication from inside the apartment complex. While that request was being fulfilled by another officer, defendant complained it was taking too long and indicated he would arrest Officer Gardner and sue him if defendant had a stroke. At Officer Gardner's request, defendant provided his date of birth and his middle name. Officer Gardner eventually received defendant's medication.

¶ 18 Shortly after driving away from the apartment complex, defendant requested a drink, and then corrected his request to a pill. Officer Gardner explained only the nurse at the jail was allowed to give medication. Defendant again inquired into the basis for his arrest, which Officer Gardner explained to defendant. Defendant denied violating any order and then stated as follows:

“When I come back I'm going to put a fucking AK-47 and start shooting motherfuckers. Goddamn right I will. Everybody knows me around here man, I'm a nice guy.”

¶ 19 Moments later, defendant inquired if he had a bond. Officer Gardner explained defendant would have to speak with a judge about bond. In response, defendant stated as follows:

“There ain't no judge in this town. Get real. You know what I got for you. When my boys will see you when the ISIS comes over you got no judge either.”

¶ 20 Defendant later continued as follows:

“The police told me to come here and do this. Already know [inaudible]. If you want to file a report about something you have the people’s wishes, and I tried to do that. You know what, I wanna come back. You have children? You ain’t going to have them when I get done. You better put me dead, you better shoot me motherfucker, you better shoot me because I’ll cut you, I’ll cut you. Cut me! Motherfucker, take your pistol. You fucking took my girl away from me. I know I ain’t do nothing with her. I live next door too, and upstairs. *** No, this is it. You know what I’m gonna do. You better hope your children are safe. I’ll have my boys take care of you.”

¶ 21 After arriving at the county jail but before entering the sally port, Officer Gardner requested defendant’s address. Defendant provided his address. When driving into the sally port, defendant stated as follows:

“[Inaudible] I’ll make sure to come to court for you when your child has problems at school. I’ll show you what I can do. I’ll make sure you can’t even come down the street. I know all kinds of child molesters. God, I can’t believe you are doing this to me when I didn’t do shit to anybody. Nothing. Not a goddamn thing.”

¶ 22 Once parked inside the sally port, Officer Gardner opened the rear windows of the patrol vehicle and then exited the vehicle. Toggling between the audio on the recording makes

clear Officer Gardner remains within hearing distance of defendant.

¶ 23 Defendant again inquired into his basis for arrest, which Officer Gardner explained to defendant. Defendant asserted no basis existed for his arrest and indicated he would sue the involved officers and include them in his pending \$400,000 lawsuit. Moments later, defendant began the following tirade:

“If I see you on the street, motherfucker, I don’t give a fuck if you’re a cop or not, I’ll pull out a pistol and I’ll shoot you. You are a dumb motherfucker. Actually, I know [inaudible], I know what you do. You rack people for drugs and everything, you look like a fucking [inaudible], you know what they are getting ready to put a pistol in your head. I can tell you that right now. You like Special Forces, no you ain’t, you like special stupid and you still get high.

I can fix you up real big time, believe me.

I’m a nice guy and you put me like this. Wait until I see you on the street. I’m going to knock your fucking face off, motherfucker. Did you hear me. I will knock your fucking goddamn face off. I didn’t do nothing. I was only asking [inaudible] get a package of cigarettes. You’re the one that is going to pay, not me. You better watch your family, I’ll make sure they’re good.

Man!

Open the fucking door and tell them it’s Rick, they will let

us in. Man!

You got my medication? You're gonna need it cause I will fucking snap out.

Come on, man.

They gonna let us in, or what. Why don't you just cut the cord and let me get the fuck out of here because I didn't do nothing. I didn't do shit. I'm next door to the motherfucker I'm supposed to be not with. Hey, how can you say I can't be in the same apartment house as this bitch. There is 32 apartments in there. Guess what, who is going to jail, you. I'll make sure of that. I'll make sure [inaudible]. I guarantee about 50 people are gonna tell the same goddamn thing. You are going to jail too. And now, now that I know you, you are going to jail too. Everybody I see I'm gonna talk with you with. You are a narc. Everybody don't like you. Nobody cares about you. You think I'm joking. Try me. You think you are a happy little camper, you sell dope, everything. You still sell dope. I know. I know Smith. I know them all. A fucking cop, yeah right.

What the hell did I do wrong.

Wait until I catch you on the street, you. Guess what I'm going to do, cop or not. I won't do shit. I'll have my boys take care of you and your children. You shouldn't been a cop. You

should've been [inaudible]. I'm going to make sure you pay for this. *** I'm going to put your ass in a goddamned hell of a slammer. You don't know it my girl will too and so will about 25 of my friends. Guess what, you are going to jail. You know what, you know what! Because you are a child molester. We know that already. You fucking [inaudible]. You ain't do shit. You still fucking fuck children. Man, you know what, I wish I could meet you in a cell, a 5-by-12 cell, I would knock your fucking face off. I'm going to get you one way or another. I'm going to make a plan to do that. You recording all this I hope. You should because you are a wicked cop. You know I'm fucking suing Judge [inaudible]. You know I've got a fucking \$450,000 suit against him and all you cops, \$300,000. Who do you think is gonna win, me. Already got it. Just take me here, come on, man!

¶ 24 Moments later, defendant began another rant involving him referring to Officer Gardner by racial slurs, threatening to put Officer Gardner in jail, referring to Officer Gardner as a gangster, and stating Officer Gardner had felonies against him. Defendant's rant continued as follows:

“You fucking motherfucker, if I ever see you on the street at Christmas, I'm going to kick your ass. If I don't do it, my girl will do it or my friends will do it. You better watch what you're doing, Joe. You're going to get your ass whooped, bad.”

Defendant further denied committing any offense, and then followed up that denial with the following:

“I’m going to make sure I make a habit of kicking your ass you cock-sucking n*****. You hear me! I’m going to beat your ass boy! Your ass is going down, Joe. I’ll make sure of that. I’ll make damned good sure of that! You don’t have to look back at me, motherfucker. I don’t like your black eyes or your black [inaudible] because you don’t have to talk to me like that. Your asshole gonna get paid back. I know you’re recording everything. I’m just telling you like it is.”

Defendant continued by making statements indicating he was almost 70 years old, Officer Gardner sold drugs out of his patrol vehicle, and Officer Gardner was placing him in jail for something he did not do. Defendant followed up these statements with the following:

“Wait until I get out, motherfucker. You ain’t gonna see 70 years old.

Man, I’m gonna make it happen to you.”

Defendant made further statements referring to Officer Gardner with racial slurs and indicating everyone wanted to beat Officer Gardner. Defendant also again commented on the fact he was under arrest for something he did not do. Defendant followed these statements with the following:

“I’m going to make sure to get you motherfucker. You hear me! I’m going to beat your ass boy! Come on, you think I’m lying.

I'm going to beat the fucking hell out of you, you fucking n*****!
I didn't do shit to you. Nothing! I didn't do shit to nobody! Go
upstairs talk about [inaudible]. Hell no! I wasn't doing nothing.
Wow! Man, when I get out, I'm going to hunt you down if it is the
last thing I do. I'm going to beat your fucking ass n*****. You
hear me, I'm going to beat your ass n*****! Go ahead, beat me up.
I'll do something for you."

¶ 25 In his final tirade before being removed from Officer Gardner's patrol vehicle, defendant made statements indicating he needed his medication, Officer Gardner was not a police officer, and his "girl" told him Officer Gardner sold drugs. Defendant concluded as follows:

"When I get out, I'm going to hunt every day down for you to beat your fucking ass before Christmas. You know why I'm going to do that for, cause I'm going to make your children really feel bad because I'm going to beat the fuck out of you Joe, n*****! You hear me, n*****! I'm going to beat the fuck out of you. Watch me. And my girl and all my friends will do the same thing. We already know your name. You a fucking ex-druggie, yourself. Man, you are high right now. Jesus Christ! You are gonna pay for this one. I swear to god. You think your daddy's [inaudible]. I'm going to fuck you up n*****. You fucked with the wrong boy this time. I didn't do a god damn thing wrong. Trying

to protect [inaudible].

Open that god damn door and let me go in there.

Cock-sucker. I'm going to get you n*****. Watch me.”

¶ 26 Defendant testified he stayed up all night watching TV and “sipping vodka like a dumb fool” on December 10, 2015. Defendant indicated he had not slept for at least 24 hours and consistently drank vodka during that time. Defendant testified he drank “[a]t least a fifth and a half” and “was just blacked out on everything.” Defendant recalled having an argument with Durkin, being upset with Durkin for lighting a cigarette, being placed under arrest and handcuffed, and feeling “awful” because the officers were taking him to jail for something he did not do. Defendant testified he did not recall his statements or behavior from the audio and video recording. Defendant testified he also did not recall Officer Gardner’s appearance until the day of trial. Defendant indicated he did not know where Officer Gardner resided. When asked if he intended to carry out the threats he heard on the recording, defendant testified: “Not—no, not really. That would be kind of crazy.” Defendant testified he was “dumb drunk” and was “embarrassed” for his actions. Defendant testified he was 61 years old.

¶ 27 At the jury-instructions conference, the State requested the jury be instructed with Illinois Pattern Jury Instructions, Criminal, No. 24-25.02 (approved December 8, 2011) (hereinafter IPI Criminal No. 24-25.02) and Illinois Pattern Jury Instructions, Criminal, No. 24-25.02A (approved December 8, 2011) (hereinafter IPI Criminal No. 24-25.02A). After a discussion, the trial court agreed to instruct the jury with IPI Criminal No. 24-25.02, modified as follows:

“A voluntarily intoxicated person is criminally responsible

for his conduct unless his intoxication is so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of [t]hreatening [a] [p]ublic [o]fficial.”

The court also agreed to instruct the jury with IPI Criminal No. 24-25.02A and include the following language as a proposition the State was required to prove:

“That at the time of the offense, the defendant’s voluntarily intoxicated condition was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of [t]hreatening a [p]ublic [o]fficial.”

¶ 28 In closing arguments, the State argued defendant was angry and issued specific and unique threats against Officer Gardner in his official capacity, specifically threats indicating defendant would cut Officer Gardner and shoot him with a pistol. The State acknowledged defendant was secured in the backseat of the patrol vehicle but asserted his threats evidenced what he intended to do upon his release from incarceration. The State noted defendant spoke about seeing Officer Gardner on the streets and during an upcoming holiday. The State addressed defendant’s intoxication. It asserted the audio and video recording showed the absence of such intoxication. The State asserted defendant had a raspy voice but was not slurring his speech in the recording. The State asserted defendant was the only one who claimed he drank alcoholic beverages and the jury should give the appropriate weight to that testimony, which was self-serving and based on his selective memory. In any event, the State argued any intoxication was

not so extreme as to suspend defendant's power of reason and render him incapable of forming the necessary intent to commit the offense. The State also maintained Officer Gardner's absence of children did not make the threats less credible nor did the fact he continued about his business as a trained officer.

¶ 29 The defense argued defendant was mad because he was being arrested for a crime he did not commit. The defense argued Officer Gardner did not have a reasonable apprehension of harm as he had no children and defendant did not know where Officer Gardner lived or what he looked like. The defense also noted Officer Gardner continued to work the patrol area. The defense argued the threats were not specific as Officer Gardner did not have any children, defendant did not know where Officer Gardner lived, and no evidence showed defendant owned a gun or knife. The defense argued defendant did not have the necessary intent to commit the offense due to his extreme intoxication. In support, the defense highlighted defendant's testimony and directed the jury to consider what it heard and observed in the audio and video recording.

¶ 30 Following closing arguments, the trial court instructed the jury in accordance with the agreed instructions. The jury later returned a jury verdict finding defendant guilty.

¶ 31 C. Posttrial Motion

¶ 32 In April 2016, defendant filed a posttrial motion seeking an acquittal or, in the alternative, a new trial. In part, defendant argued the jury's verdict was against the manifest weight of the evidence and no rational jury could find the State had proven him guilty beyond a reasonable doubt.

¶ 33 D. June 2016 Hearing

¶ 34 At a June 2016 hearing, the trial court denied defendant’s posttrial motion and then proceeded to sentencing. The State requested a nine-year prison sentence, while defendant requested conditional discharge or, in the alternative, a two-year prison sentence. The court sentenced defendant to 30 months’ imprisonment.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant argues this court should reverse his conviction because the State failed to prove his (1) voluntary intoxication was not so extreme as to suspend the power of reason and render him incapable of forming the specific intent to commit the offense and (2) statements would place a reasonable officer in apprehension of immediate or future bodily harm given the context in which they were made.

¶ 38 As it pertains to this case, a person commits the offense of threatening a public official where that person knowingly delivers or conveys, directly or indirectly, to a public official by any means a communication containing a threat that would place the public official in reasonable apprehension of immediate or future bodily harm, and the threat was conveyed because of the performance of some public duty. 720 ILCS 5/12-9(a) (West 2014). Where a threat is made against a sworn law enforcement officer, “the threat must contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm.” 720 ILCS 5/12-9(a-5) (West 2014).

¶ 39 When considering a challenge to the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proved beyond a reasonable doubt. *People v.*

Ward, 154 Ill. 2d 272, 326, 609 N.E.2d 252, 275 (1992). The trier of fact is responsible for determining witnesses' credibility, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Jophlin*, 2018 IL App (4th) 150802, ¶ 38, 99 N.E.3d 597. It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089, 805 N.E.2d 271, 276 (2004). A conviction will be reversed on appeal "only where the evidence is so improbable and unsatisfactory it creates a reasonable doubt as to [the] defendant's guilt." *Jophlin*, 2018 IL App (4th) 150802, ¶ 38.

¶ 40 Defendant asserts the State failed to prove his voluntary intoxication was not so extreme as to suspend the power of reason and render him incapable of forming the specific intent to commit the offense. Defendant cites to his testimony indicating he drank a bottle and a half of vodka before the officers arrived and he was so intoxicated he could not recall the events in the audio and video recording or Officer Gardner's appearance. Defendant also cites to the audio and video recording, asserting it "speaks for itself" and shows "he is almost always slurring, swaying back and forth, and losing his train of thought in the middle of some illogical or incoherent threat."

¶ 41 In response, the State initially asserts "[v]oluntary intoxication is not a defense, and thus, [it] did not have to prove defendant was not so intoxicated as to preclude formation of the requisite intent." Alternatively, the State asserts it presented sufficient evidence to show defendant was not so intoxicated as to preclude formation of the requisite intent. Because the jury was instructed that the State was required to prove defendant's voluntary intoxication was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent to commit the offense, we will consider defendant's argument on the merits.

¶ 42 When asked if he believed defendant was “under the influence of drugs or alcohol,” Officer Gardner responded, “I didn’t smell any alcoholic beverage on his breath, so it was irrational, but I was not sure if he was under the influence of anything.” The audio and video recording showed defendant capable of (1) inquiring into the basis for his arrest, (2) denying any basis existed for his arrest, (3) requesting his prescribed medications, (4) providing his date of birth and his middle name, (5) inquiring if he had a bond, (6) providing his address, and (7) making multiple specific and unique threats against Officer Gardner. The jury was in a unique position whereby it was able to compare defendant’s statements and behavior while testifying with his statements and behavior from the audio and video recording. Viewing the evidence in the light most favorable to the State, we find a rational trier of fact could conclude beyond a reasonable doubt any voluntary intoxication by defendant was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent to commit the offense.

¶ 43 Defendant asserts the State failed to prove his statements would place a reasonable officer in apprehension of immediate or future bodily harm given the context in which they were made. Defendant cites to his testimony and the audio and video recording showing his state of intoxication, his secured placement in the back of the patrol vehicle, and the fact any threats were bookended by ridiculous, slurred statements.

¶ 44 In response, the State maintains it presented sufficient evidence to show defendant’s threats would place a reasonable officer in apprehension of immediate or future bodily harm. The State cites to Officer Gardner’s testimony indicating defendant’s threats caused him to personally fear for his own safety and the audio and video recording showing detailed and specific threats coupled with erratic behavior.

