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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—2865
)	
MICHAEL KOUMANDARAKIS,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: (1) Defendant's counsel was not ineffective for stipulating that the property damage that defendant allegedly caused met the \$300 threshold for a felony; without any evidence that the damage was actually under the threshold, defendant's claim of prejudice was merely speculative; (2) the State disproved beyond a reasonable doubt defendant's claim of self-defense; evidence showed that none of the victims had displayed a weapon or even made any movement suggesting that any of the victims was about to get out of their car; thus, the trial court was entitled to find, among other things, that defendant was not in any imminent danger.

After a bench trial, defendant, Michael Koumandarakis, was convicted of battery (720 ILCS 5/12—3(a) (West 2008)) and criminal damage to property in excess of \$300 (720 ILCS 5/21—1(1)(a) (West 2008)). The trial court denied defendant's posttrial motion and sentenced him

to 18 months' conditional discharge and the payment of \$1,000 restitution. Defendant appeals, arguing that (1) his trial attorney was ineffective for stipulating that the property damage exceeded \$300; and (2) he was not proved guilty beyond a reasonable doubt, because the State did not refute his claim of self-defense (see 720 ILCS 5/7—1(a) (West 2008)). We affirm.

Defendant was charged with aggravated battery based on the use of a deadly weapon (720 ILCS 5/12—4(b)(1) (West 2008)) and criminal damage to property in excess of \$300. We summarize the trial evidence.

For the State, Joshua McCoy testified as follows. On the evening of Saturday, June 7, 2008, he was at a party at Tim Cox's home in Cary. Also there were McCoy's friends Maxwell Timmins, Vincent Witten, Connor Keady, and Shawn Finnerty. At some point, Witten received a call on his cell phone from either Tim Koss or Patrick Shelton. McCoy then drove his four friends away in his 2000 Crown Victoria, a former police car. They first went to Koss's home, where Shelton showed them injuries to his head and said that he believed that Taso Koumandarakis, defendant's son, had attacked him. Before June 7, 2008, McCoy had never met Taso.

McCoy testified that, a short time later, the group drove to a location in Lake Barrington where Taso had told them to meet him. Taso had given Timmins the directions after Timmins had gotten his number from Koss or Shelton. The location was a dimly-lighted residential area at the intersection of Kelsey Road and White Pine Drive. When McCoy drove down White Pine Drive, he saw that it had a dead-end at a T-intersection with Chippewa Court. As McCoy slowed down, he saw Taso standing in the middle of the road. Upon stopping, McCoy saw that Taso had pulled a baseball bat out from behind his back. Taso yelled at the group to get out of the car and said that

he was going to kill them. Nobody exited the car or opened the doors; the driver's window was open, but all the other windows stayed closed. Nobody in the car had any weapons.

McCoy recounted that Timmins yelled, "Drop the bat," but Taso repeated, "Get out of the car." Out of the corner of his eye, McCoy saw defendant, carrying a cane, approach from the left rear. Defendant smashed the car's back window, then broke the driver's-side rear passenger window. Defendant then tried to smash the driver's-side window, but, because the window was already down, the cane broke on the door post. Part of the cane flew into the car and hit McCoy in the jaw, cutting him, and then landed by his feet. At trial, McCoy identified photographs, later admitted into evidence, showing his injuries, the damage to his car, and the part of the cane that had hit him.

McCoy testified that, after being hit, he drove forward to the dead end, turned right, realized that it was another dead end, then made a U-turn and drove out on White Pine, leaving the way that he had arrived. Defendant was in the road, and he swung a bat at the car, denting the hood. McCoy then drove away and stopped. He and his friends called the police. When an officer arrived, McCoy told her in part that he and his friends had driven to Lake Barrington "to have a confrontation."

The State next called Connor Keady, who had ridden in the front passenger seat of McCoy's car. Keady's account of the events leading up to the incident, and the encounter with Taso, was generally consistent with McCoy's. Keady related that, after Taso emerged in the middle of the road and McCoy's car had been stopped for a couple of seconds, defendant walked up from the rear of the car, on the left. Defendant smashed the rear window, then smashed the driver's-side rear passenger's window, then struck the driver's-side door frame. McCoy turned around and drove back the way that he came, and defendant struck the car on the hood.

Timmins next testified as follows. At Cox's party, he received a call, as a result of which he and five others drove off to meet with Koss and Shelton. After the meeting, they called the person whom Shelton had claimed had attacked him, and they eventually drove to where Shelton's assailant had said to meet him. Another group drove there in a Ford Explorer, but they were not there when McCoy's group arrived. Riding in the right backseat of McCoy's car, Timmins saw that, when the car stopped, Taso was standing in the road, holding a baseball bat. Timmins told him to drop the bat. Taso just mumbled. Defendant approached from the left and struck the car with a long wooden stick, shattering the back window. He then struck the rear driver's-side window, causing part of the stick to break off and hit McCoy in the face. As McCoy sped off, defendant struck the hood of the car.

Witten testified as follows. Nobody in McCoy's car had any weapons. Witten rode directly behind McCoy. After Taso appeared in the road and told the car's occupants to get out, defendant hit and shattered the car's rear window and then the window next to Witten. Defendant hit the car again, striking the driver's door panel, breaking the stick that he was using, and injuring McCoy. After McCoy turned around and started to drive away, defendant struck the hood of the car.

Lake County deputy sheriff Lakeisha Wilkerson testified that, early in the morning of June 8, 2008, she spoke to McCoy and his friends. A call came in on Timmins's phone. Wilkerson asked the caller, Taso, to meet her and give his side of the story, but he shouted obscenities and declined.

The parties stipulated "that the damage to the 2000 Ford vehicle was in excess of \$300." Defendant then presented his case.

Laura Koumandarakis, defendant's wife, testified as follows. On the evening of June 7, 2008, she was at home in her kitchen with her children, including Taso, who, along with his friends

Robert Cameron and Zack Serosky, had returned from a party. At about midnight, Cameron and Taso were talking on a cell phone, in raised voices. The person on the other end was also speaking loudly. The argument lasted about 15 minutes. At about 12:15 or 12:30 a.m., defendant returned from the restaurant that he owned. He demanded to know what the argument was about. He took the cell phone and tried to talk to the caller, but quickly put the phone down. At that point, a sport utility vehicle pulled up in front and shined its bright lights into the house for one or two minutes. Defendant took his walking stick and walked out the front door to see what was going on. Shortly afterward, Taso followed. Taso did not have a baseball bat with him. While defendant and Taso were outside, Laura heard people threaten to enter the house; they were yelling, “We are coming in to fuck you up.” The SUV sped away. A second vehicle came along. Defendant sent Taso back inside and approached the car. Laura never saw defendant swing his cane at the car or hit the car.

Defendant testified on direct examination as follows. On June 8, 2008, at about 12:20 a.m., he came home from work. Entering the kitchen, he noticed that Cameron and Serosky were screaming into a cell phone. Taso started screaming too. Defendant asked him what was happening. Taso said that people were coming from Cary “to beat us up.” Defendant took the phone and tried to speak to the caller, but the caller just kept screaming and threatening him. Next, a small SUV parked facing the house. The SUV’s bright lights came on. After a minute and a half, defendant stepped out to investigate, taking his walking stick with him. The SUV sped away, the occupants yelling, “We are going to fuckin’ kill you.”

Defendant testified that, seconds after the SUV left and he started walking away, a second car arrived. Defendant was about 50 feet away when he first saw it. Because it was a white four-door Ford Crown Victoria, he thought that the police had arrived. He told Taso, who was behind

him, to go inside. Defendant approached to about six or seven feet from the car. Seeing six young men inside, he realized that it was not a police car. The car had stopped, the driver's window was down, and the driver was swearing at defendant. Recognizing the driver's voice as that of the cell phone caller, defendant became "startled" and "scared out of [his] wits." He told the driver several times to leave. The driver did not respond, so defendant started to get closer to the car, "more toward the passenger side." The car's back door had been "cracked open."

Defendant testified that he raised his walking stick "to hit the trunk to maybe get this person's attention, to get him to stop swearing and threatening, and [defendant] went to hit the trunk and *** hit the back window." The glass broke. The driver was still screaming. Taso had come out onto the lawn. The car's back door started to open, but the dome light did not come on. Defendant took his cane and decided to hit the car. He hit the door with "a back hand." He wanted to warn the occupants that he had a cane and that, if they tried to carry out their threats, he might use it. The act was "a precaution" to stop the driver from exiting the car. However, defendant testified, "I hit the back door and I guess in my fear, I hit it too hard, and the stick broke the window of the rear door and [part of it] went into the car." The driver took off, and defendant did not strike the car again.

Defendant testified on cross-examination as follows. After listening to the caller on Taso's phone shout curses and threats, defendant hung up, but he did not call the police. When the SUV pulled up, defendant did not call the police but exited, saw the SUV drive off, and walked out further to make sure that the SUV was not going to return. When defendant realized that the Crown Victoria was not a police car, Taso was about 25 feet back, out of the road. Taso exchanged swear words with the driver and told him to leave, but he did not tell anyone to get out of the car.

Defendant recounted that he hit the car twice: the first time, he struck the rear window, and the second time he hit the rear driver's-side door as it was starting to open. The second time, the stick broke. Defendant denied having swung a third time. Shown a photograph of a dent to the frame of the driver's door, defendant testified that he did not "hit the door there," but then conceded that he might have. He never told Taso to call the police. After the car left, defendant thought of calling the police but did not. He explained that Taso could not identify anyone in either the SUV or the Crown Victoria, so that defendant would "sound kind of silly reporting that to a policeman."

The trial judge explained his decision as follows. After hearing Taso and Taso's two friends engage in "trash talk" with other teens, defendant saw the SUV pull up. He went outside, and the SUV left promptly. McCoy's car drove up, and Taso engaged in more "trash talk" with the occupants. Defendant decided to "act[] the teenager" and involve himself. The people in the car displayed no weapons, engaged in no aggression, and, other than engaging in verbal abuse, did nothing threatening. All of the windows except the driver's were closed, and everybody stayed inside the car. Although defendant testified that he saw a door crack open, the dome light did not go on, "nobody exited the car, nobody tried to exit the car, nobody started to exit the car." Yet defendant deliberately struck his cane against the car—whether twice or three times was not crucial—breaking two windows and injuring McCoy. The State had proved beyond a reasonable doubt that defendant had not acted in proper self-defense. However, the stick was not a deadly weapon, so he was guilty of only simple battery and criminal damage to property in excess of \$300.

Defendant retained new counsel and moved for a new trial, arguing that his trial counsel had been ineffective for stipulating, without defendant's consent, that defendant had caused more than \$300 damage to McCoy's car. Defendant's motion argued, without citing any evidence, that former

police cars are not sold in “the normal stream of commerce” but are instead “routinely auctioned off” for less than \$300 and that replacement parts for 2000 Crown Victorias are “extremely cheap.”

At a hearing on the motion, defendant’s new counsel told the court, “[W]e brought some estimates today from different glass shops,” and that this evidence would have raised “a general question of fact of whether the damage to the car was in excess of \$300.” The record does not contain the estimates or any other evidence in support of defendant’s valuation argument. In rejecting the ineffectiveness claim, the judge explained that, based on the pertinent photographs and the testimony about defendant’s actions, it appeared that the damage was “significantly more” than \$300. The cause immediately proceeded to sentencing, at which the State presented a three-page estimate (not in the record) concluding that it would cost approximately \$3,800 to repair the car. The judge suggested \$1,000 in restitution; the parties agreed. Defendant was sentenced as noted. He appealed.

On appeal, defendant argues first that his trial counsel was ineffective for stipulating that the damage that he caused to McCoy’s car exceeded \$300. Defendant notes that this stipulation ensured that, if found guilty of criminal damage to property, he would stand convicted of a Class 4 felony rather than a misdemeanor. See 720 ILCS 5/21—1(2) (West 2008). Defendant argues that there could have been no valid strategic reason to concede an element of the felony offense, without obtaining defendant’s consent, while obtaining nothing in return. He maintains that, given posttrial counsel’s representations that there was evidence that the amount of damage was less than \$300, defendant suffered prejudice from his trial counsel’s concession. We disagree.

To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel’s performance was objectively unreasonable; and (2) it is reasonably probable that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.

Strickland v. Washington, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). A defendant must meet both prongs of the *Strickland* test to prevail on an ineffective-assistance claim. *People v. Colon*, 225 Ill. 2d 125, 135 (2007). Here, we hold that defendant has failed to satisfy the prejudice prong.

Although defendant's posttrial counsel asserted that there were reasons to believe that the damage to the Crown Victoria did not exceed \$300, counsel never actually introduced any *evidence* to support that assertion. He made one reference to "estimates" that were never admitted into evidence or, as far as we can tell, even seen by the trial judge. Defendant does not explain what obligates a trial court, or this court, to credit unsworn assertions backed up by no evidence. Moreover, the prosecutor also stated that he had an estimate placing the damage at about \$3,800. Although the trial judge did not accept this figure, he did note that the photographic evidence from the trial depicted an obliterated rear window and dents to the driver's-side door frame, supporting an inference that the damage far exceeded \$300. Defendant's sheer speculation does not show that, without the stipulation, he would have been convicted only of a misdemeanor. Thus, we reject his ineffective-assistance claim.

Defendant contends second that he was not proved guilty beyond a reasonable doubt. His sole challenge to the sufficiency of the evidence is that the State did not disprove his claim of self-defense. Defendant asserts that his actions were justified by the need to prevent a dangerous assault by people who had driven to defendant's house in order to inflict violence as revenge for what had happened to a friend earlier. We disagree.

In considering a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d

272, 326 (1992); *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

Once a defendant raises the affirmative defense of self-defense, the State must disprove it beyond a reasonable doubt. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of force. 720 ILCS 5/7—1(a) (West 2008). The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person actually and subjectively believed a danger existed that required the use of the force applied; and (6) that his beliefs were objectively reasonable. *Lee*, 213 Ill. 2d at 225. If the State negates any of these elements, the self-defense claim must fail. *Id.* at 225.

Here, deferring to the trial court's role as fact finder, we hold that the State disproved defendant's self-defense claim beyond a reasonable doubt. We note that there were reasons to find defendant less than wholly credible. For example, he testified that, when he first struck the car, he intended only to hit the trunk; however, the photographic evidence shows that he took out almost the entire back window. Moreover, defendant initially denied having hit the driver's door frame, but then conceded that he might have. Finally, although defendant testified that the incident scared him, he admitted that he never called the police, even though he knew much about the car and the events preceding the confrontation (if not the actual names of the enemy).

There was ample evidence from which to conclude that the State had disproved both the first and third elements of self-defense. The trial judge concluded, based on the consistent testimony of

the State's occurrence witnesses, that, when defendant struck, nobody in the car had displayed a weapon, opened a window (other than the already-open driver's window), opened a door, or made any movement suggesting that he was going to get out of the car. Indeed, the State's evidence showed that it was Taso, wielding a baseball bat, who demanded that McCoy and his group get out of the car, giving them a strong motive to stay inside. Thus, the judge reasonably concluded that there was no threat of unlawful force, much less any imminent danger. The only evidence that defendant can point to, aside from the shouted threats from inside the car, is his own testimony that the back door had been "cracked open." However, several State witnesses testified that the doors all remained closed, and defendant did not testify that anyone was making an effort to exit the car (or to use any sort of weapon from inside the car).

We also note that the judge could have found that the State disproved the other elements of self-defense. If McCoy's group did not threaten force, then defendant—or Taso—could be seen as the aggressor, and the use of force was unnecessary. Finally, the judge could have concluded that defendant did not really believe that he was in imminent danger or that he needed to strike the car in order to protect himself or his family. Instead, the judge found that defendant just "act[ed] the teenager" and acted for reasons unrelated to self-defense.

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

Affirmed.