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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 Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—3100
)	
JASON A. HENSLEE,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: (1) Defense counsel was not ineffective for failing to tender a jury instruction on self-defense; there was no prejudice as the instruction would have been denied where defendant denied that he had made intentional or knowing contact with the battery victim and thus denied the battery; (2) the trial court did not manifestly err in declining to appoint new counsel on defendant's *pro se* ineffectiveness claim, as the court's proper inquiry disclosed that the claim lacked merit; although defendant claimed that counsel should have introduced certain evidence, it was irrelevant to any claim of self-defense, which defendant could not raise, and it would not have impeached the victim's testimony; thus, defendant was not prejudiced by counsel's alleged error.

Following a jury trial, defendant, Jason A. Henslee, was convicted of aggravated battery (720 ILCS 5/12—4(b)(18) (West 2008)) and sentenced to three years' imprisonment. Defendant appeals,

arguing (1) that he received ineffective assistance of counsel when his trial counsel failed to request that the jury be given a self-defense instruction; and (2) that the trial court erred in failing to appoint new counsel to investigate his *pro se* posttrial motion alleging ineffective assistance of counsel. For the following reasons, we affirm.

I. BACKGROUND

Defendant was indicted on two counts of aggravated battery. Count I alleged that defendant knowingly caused bodily harm to a Du Page County sheriff's office deputy and count II alleged that defendant knowingly made contact of an insulting or provoking nature with that same deputy.

At trial, deputies Kevin M. Keenan and Jeffrey Shelton of the Du Page County sheriff's office testified as follows. On November 2, 2008, they were on duty at a housing unit in the Du Page County jail, where defendant was an inmate. At about 10:25 p.m., Keenan began lockdown, which is the process of securing the inmates in their cells for the evening, as Shelton remained in the housing control room located in the center of the housing unit. During lockdown, defendant asked Keenan a question from inside his locked cell. At Keenan's request, Shelton opened defendant's door using controls in the control room. Defendant exited his cell and asked Keenan why the inmates were being locked down early. Keenan explained why and asked defendant to return to his cell. Defendant refused. Keenan asked defendant three more times to return to his cell, and defendant responded with profanity and challenged Keenan to lock him down.

After defendant refused Keenan's repeated request to return to his cell, Keenan put his hand on defendant's back and gently escorted defendant to his cell. Although defendant initially walked along calmly with Keenan, as they got closer to the cell, defendant spun around, took an aggressive fighting stance, balled both of his hands into fists, and swung at Keenan with his left hand.

Defendant struck Keenan, with the impact occurring along a horizontal line across his face toward the area of his neck just under his right ear, knocking off Keenan's glasses. In response, Keenan grabbed defendant, spinning him to the right and into his cell. Defendant tripped over the foot of his bed and landed on his back in his cell. Defendant continued to fight and resist as Keenan attempted to handcuff him.

From his position in the housing control room, Shelton saw defendant's arms and hands come up towards Keenan's face, and he saw Keenan's glasses fly off. Shelton immediately exited the control room and rushed to Keenan's aid. By the time Shelton got to defendant's cell, Keenan had defendant on the ground to be handcuffed. Shelton did not see any injuries on defendant at that time. Defendant was later seen by jail medical staff because all inmates involved in the use of force are seen by jail medical staff as a matter of policy. Keenan did not see defendant again after he was handcuffed.

Defendant testified that according to the jail rules lockdown is supposed to occur at 10:30 p.m. but that, on the evening in question, Keenan began lockdown at 10:15 p.m. At that time, defendant was already in his cell, which is made of glass. When he saw Keenan walk by, defendant stood at his cell door with his jail rule book in his hand. Defendant put his finger up and told Keenan that he had a question. Keenan had defendant's door opened. When the door opened, it slid in front of the glass cell like a minivan door. Defendant exited his cell and asked Keenan why he was locking down at 10:15 p.m. when the rules state that lockdown is to occur at 10:30 p.m. Keenan answered defendant's question and told defendant to go in his cell for lockdown. When defendant again asked why Keenan was locking down early, Keenan grabbed him by his left arm and started to forcibly guide defendant to his cell. Keenan grabbed defendant's other arm, and defendant pulled

his arm away and told him to let go. Holding on to defendant's left arm with his left hand and the back of defendant's neck with his right hand and using a much firmer grip, Keenan continued to push defendant toward the door of his cell. Defendant spun around to his right to avoid being pushed face first into the door and hit his back and the back of his head on the door. Defendant tried to pull away from Keenan, but Keenan had a grip on defendant's left arm. Keenan punched defendant on the side of his head about two or three times. Defendant turned his head, and he fell to the ground. He looked up and saw Keenan coming down to punch him. He put his right hand up so that Keenan would not punch him in the face. Shelton came in and defendant was handcuffed. Keenan punched defendant a couple more times after he was handcuffed.

Defendant testified that he could not have struck Keenan with his left hand. He had an amputated pinky on his left hand, and, due to scar tissue remaining from a prior surgery on his left thumb, he is unable to ball his left hand into a fist. He stated that it would hurt him more than it would hurt Keenan if he hit Keenan with his left hand. He further testified that he did not hit Keenan with his right arm when he raised his arm to protect himself. Defendant was examined by a jail nurse after the incident. He had bumps all over his head and was bleeding from his left ear.

Keenan testified again, this time for defendant, that defendant struck him with his left hand. It was sort of an open-hand slap. Keenan agreed that he previously testified before the grand jury that defendant balled his fist and punched him in the head and neck. Keenan clarified that, when defendant swung at him, he started with a closed fist and ended with an open slap.

In closing, defense counsel argued that the case came down to the credibility of the witnesses. He argued that Keenan's testimony about defendant's swing starting with a closed fist and ending with an open slap was incredible. He argued that the State did not prove that defendant knowingly

struck Keenan. He stated that, while defendant may have accidentally scratched Keenan when defendant raised his arms to protect himself, he did not knowingly strike him.

During deliberations, the jury asked whether there were any medical records of defendant following the incident. With the agreement of the parties, the court instructed the jury that it had received all of the evidence and to continue deliberations. The jury found defendant guilty of aggravated battery (insulting or provoking) but not guilty of aggravated battery (bodily harm).

On April 9, 2009, defendant filed a motion for a new trial. At the hearing on the motion, defendant filed a *pro se* motion alleging that his trial counsel was ineffective for failing to “bring up several key elements of defense,” specifically defendant’s medical records and testimony from a jail nurse. Defendant argued to the trial court that his medical records “would have shown that [he] was put on medical watch, also a neurological watch for head injuries” and that “it would show that the officers maybe were untruthful in their testimony.” The trial court asked defense counsel for his “position” on the issue. Defense counsel explained: “I did not present any medical records. I didn’t seek them prior to trial because it was my belief that the injuries occurred after the altercation he was charged with and therefore were not relevant.” The trial court denied defendant’s *pro se* motion. After hearing argument on the motion for a new trial, the trial court denied that motion as well.

The trial court sentenced defendant to three years’ imprisonment. Defendant timely appealed.

II. ANALYSIS

A. Ineffective Assistance of Counsel for Failing to Request a Jury Instruction on Self-Defense

Defendant first contends that trial counsel was ineffective for failing to request that a self-defense instruction be given to the jury. A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney’s performance fell below an objective standard of

reasonableness and (2) there is a reasonable probability 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). We find that defendant has failed to establish a reasonable probability that, but for counsel’s alleged error, the result of the proceeding would have been different, as the giving of a self-defense instruction was not warranted by the evidence presented.

Self-defense is an affirmative defense. See 720 ILCS 5/7—1 (West 2008). “‘[T]he raising of such a defense necessarily constitutes an admission by the defendant that he committed the crime for which he is being prosecuted.’” *People v. Chatman*, 381 Ill. App. 3d 890, 897 (2008) quoting *People v. Raess*, 146 Ill. App. 3d 384, 391 (1986). To prove aggravated battery as charged here, the State had to show that defendant committed a battery, in that he intentionally or knowingly made physical contact of an insulting or provoking nature with an individual and knew that the individual was an officer or employee of the State of Illinois engaged in the performance of his authorized duties. See 720 ILCS 5/12—3, 12—4(b)(18) (West 2008). “A defendant, in order to raise a claim of self-defense, must present evidence supporting each of the following elements: (1) force was threatened against the defendant; (2) the defendant was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened was unlawful; (5) the defendant actually believed that a danger existed and that the kind and amount of force he used was actually necessary to avert the danger; and (6) defendant’s beliefs were reasonable.” *People v. Dunlap*, 315 Ill. App. 3d 1017, 1025 (2000). “[R]aising the issue of self-defense requires as its sine qua non that defendant had admitted [the battery] as the basis for a reasonable belief that the exertion of such force was necessary. [Citations.]” (Internal quotation marks omitted.) *Chatman*, 381 Ill. App. 3d at 897-98.

Defendant was not entitled to a self-defense instruction, because he denied that he intentionally or knowingly made the physical contact required for the charge of aggravated battery. He testified that he did not punch or slap Keenan with either his left or his right hand. In fact, he testified that he would not be able to strike Keenan with his left hand without incurring pain himself because of past injuries on his left hand. Although he claimed that he raised his right arm to defend himself from Keenan, he never stated that he intentionally or knowingly made contact with Keenan while doing so. Where a defendant denies the elements of the crime charged, the affirmative defense of self-defense is unavailable. See *id.* at 901. Thus, because a self-defense instruction was not supported by the evidence, defendant has failed to establish that the result probably would have been different if not for trial counsel's alleged error. Had trial counsel requested a self-defense instruction, it would have been properly denied.

II. Whether the Trial Court Erred in Declining to Appoint New Counsel on Defendant's Posttrial Claim of Ineffectiveness

Defendant's second contention is that the trial court erred in declining to appoint new counsel to investigate his posttrial claim of ineffectiveness based on counsel's failure to "bring up several key elements of defense," specifically defendant's medical records and testimony from a jail nurse. According to defendant, the court's preliminary inquiry disclosed possible neglect of the case. We disagree.

When a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court must examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003); *People v. Bolton*, 382 Ill. App. 3d 714, 718 (2008). If the allegation lacks merit or pertains only to matters of trial strategy, the trial court may deny the motion. *Moore*, 207 Ill. 2d at

78; *Bolton*, 382 Ill. App. 3d at 718. But, if the allegation suggests possible neglect, the trial court should appoint new counsel who would then represent the defendant at a hearing on the defendant's claim. *Moore*, 207 Ill. 2d at 78; *Bolton*, 382 Ill. App. 3d at 718. "The trial court's decision to decline to appoint new counsel for a defendant based on a judgment that the ineffective assistance claim is spurious shall not be overturned on appeal unless the decision is manifestly erroneous." *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008).

At the hearing on his *pro se* motion, the court engaged in a colloquy with defendant and his attorney in which defendant was able to explain his claim and the attorney provided his response. See *Moore*, 207 Ill. 2d at 78-79 (approving of such colloquy). Defendant stated that his medical records "would have shown that [he] was put on medical watch, also a neurological watch for head injuries" and that "it would show that the officers maybe were untruthful in their testimony." Defense counsel replied that he "didn't seek [the medical records] prior to trial because it was [his] belief that the injuries occurred after the altercation [defendant] was charged with and therefore were not relevant."

We find that, based on this preliminary investigation, the court could properly conclude that defendant's claim lacked merit. According to defendant, if his medical records and the nurse's testimony had corroborated his claim that he was injured and placed on neurological watch as a result of the incident, the jury may have believed that he was acting in self-defense. However, as noted above, defendant denied intentionally or knowingly making contact with Keenan; thus, defendant could not raise self-defense, and the medical records and nurse's testimony would have had no relevance on that issue. In any event, this evidence would not necessarily have impacted Keenan's credibility, because it would not have been inconsistent with Keenan's testimony. Keenan

testified that, after being struck by defendant, he spun defendant around and into the cell and that when he did so, defendant tripped over the foot of his bed and landed on his back. He stated that defendant continued to fight and resist being handcuffed. Although Keenan stated that he did not see any injuries on defendant, defendant's bumps on his head might not have been visible immediately, and Keenan also testified that he did not see defendant again after he handcuffed him. In sum, Keenan's testimony established that he used force against defendant and that defendant tripped and fell onto his back in the cell while resisting Keenan's attempts to handcuff him. This could have easily explained the reason for the "neurological watch" and claimed bumps. Thus, defendant suffered no prejudice by the absence of this claimed evidence.

Finally, in considering a *pro se* motion alleging ineffective assistance of counsel, the trial court may make use of its own "knowledge of defense counsel's performance at trial and the insufficiency of defendant's allegations on their face." *Id.* at 79. Here, the trial court had ample opportunity to observe and evaluate defense counsel's performance. Indeed, defendant himself stated: "I got great praise for [defense counsel]. He did an excellent job. I've told him that many times."

Accordingly, we hold that the trial court's decision to decline to appoint new counsel for defendant was not manifestly erroneous.

III. CONCLUSION

Based on the foregoing, we affirm the judgment of the circuit court of Du Page County.

Affirmed.