

2012 IL App (1st) 110254-U

FIRST DIVISION
FILED: September 24, 2012

No. 1-11-0254

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 2072
)	
EUGENE WEBB,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where State's witnesses established that defendant struck police officer, lack of injury to defendant or blood on his clothing did not establish reasonable doubt of his guilt of aggravated battery, and denial of defendant's request for a continuance to retain new attorney during the presentation of the defense case did not constitute abuse of discretion; the judgment of the trial court was affirmed.

¶ 2 Following a bench trial, defendant Eugene Webb was convicted of aggravated battery and was sentenced to 18 months of probation. On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt. Defendant also asserts the trial judge's refusal to

allow him to change attorneys during his trial violated his right to be represented by his chosen counsel. We affirm.

¶ 3 Defendant was charged with two counts of aggravated battery for causing bodily harm to and making physical contact of an insulting or provoking nature to Chicago police officer Roberto Miranda. The evidence established that a team of police officers attempted to execute a search warrant for a second-floor apartment in a multi-unit building at 1336 South Millard Avenue in the early morning hours of December 31, 2009. The location was an apartment occupied only by its tenant, Reba Hayes, and defendant, her 51-year-old visiting fiancé, both of whom were in the bedroom. The police knocked, shouted "Chicago police" and "search warrant," and used a battering ram to force entry.

¶ 4 Officer Miranda, the first officer to enter the apartment, testified he was walking down a lit hallway with his weapon drawn when he encountered defendant, who struck him in the face with a closed fist using a downward motion. Miranda testified that defendant struck him "at full force," causing him to fall to his knees. Miranda was 5 feet 7 inches tall and weighed 185 pounds. Defendant later testified he was 6 feet 2 inches tall and weighed 300 pounds.

¶ 5 The parties stipulated that Miranda sustained a broken nose and deviated septum and required 11 stitches for his injuries. The State introduced into evidence photographs of Miranda's injuries and of the apartment. In the latter photographs, the officer identified the inner hallway of the apartment where he was struck.

¶ 6 On cross-examination, Miranda stated that he was standing one foot away from the apartment door when another officer used the battering ram. When asked why he did not fire his gun at defendant in response to being struck, Miranda replied, "It happened so quick that I didn't have [time] to shoot him."

¶ 7 Chicago police officer Caruso testified he was the second officer to enter the apartment and saw defendant strike Miranda with a downward punch directly above the nose with a "hammer fist" made of his two clenched and stacked fists. Miranda dropped to the ground and there "was a lot of blood right away." Caruso pointed his gun at defendant and ordered him to put his hands down. He and another officer handcuffed defendant, who wore only a white tank top. Caruso viewed several photographs of Miranda's injuries and said they were accurate depictions. Caruso said he could not recall if defendant had blood on his hands or shirt while being handcuffed.

¶ 8 Chicago police officer Richard Alvarez testified that he stepped aside to allow Miranda to enter, saw Miranda take one or two steps inside the apartment, and then saw defendant strike Miranda in the face with his right hand once using a "downward motion." Chicago police detective Gregory Jacobson testified that he interviewed defendant, who said he encountered Miranda at the front door of the apartment and attempted to push the officer back into the building's hallway, and that the officer hit his face on the door and fell to the ground.

¶ 9 After the State rested, Hayes testified she did not see Miranda's injury occur because she was in the bedroom. Hayes did not hear the police announce their presence before they entered the apartment. When Hayes saw defendant, he was handcuffed and wore a white shirt but had "no blood on him at all."

¶ 10 After Hayes testified, the case was continued for three weeks by agreement. When the trial resumed on October 7, 2010, defendant's attorney, Morton Cohon, told the trial judge that defendant was not satisfied with his representation and that defendant had retained a different attorney. The court asked defendant what he wanted Cohon to do that was not being done, and defendant replied he was "just not satisfied" and that Cohon had "problems with the evidence for my defense." Defendant indicated that a different attorney, Lewis Myers, would take over his

representation that day. After a short break, the assistant State's Attorney told the court he had contacted Myers' office and was told Myers had not been retained by defendant. The court again asked defendant if other defense witnesses could be called, and defendant acknowledged there were none other than himself and Hayes.

¶ 11 The court stated that defendant's criticisms of his counsel were "conclusory" and there was "nothing particular that he wants done that's not being done." The court also stated that, although defendant sought different legal representation, no new attorney was present or apparently had been retained. The court denied defendant's request for a continuance, stating that defendant was being "dilatory" and was being represented by his second attorney on the case. The court continued the case for approximately three weeks to allow defendant and Cohon to confer. On October 29, 2010, the case was continued because the court was involved in a different trial. On November 12, 2010, Cohon requested a continuance, which was granted, because he wanted to recall Hayes as a witness.

¶ 12 On November 19, 2010, the trial resumed with Hayes identifying photographs of the door to her apartment and a blood stain under the door knob. She said the lock on the door was broken and she identified blood stains from the door going into the apartment. When she returned from the police station at 5 a.m., she observed blood on the narrow portion of the door near the lock that was not documented in photographs of the scene. She had not seen anyone bleeding other than Miranda.

¶ 13 In his testimony, defendant denied striking Miranda. Defendant testified he was asleep when he "heard a big boom at the door" and "thought somebody was breaking in the house."

Defendant further stated as follows:

"I went to the door, I pushed the door. I didn't know, I couldn't see who was at the door. Once I did see the crack of the door, they did

say Chicago Police, I immediately got up off the door and I ran to the bedroom to put some pants on ***. Once the police came into the door, he stepped on my neck and he asked me to put my hands behind my back. I couldn't so he forcibly did it. And once he did that, he told me to get up. And they snatched me up.

Once they snatched me up, they brought me out back into the hallway and then I seen an officer that was bleeding on the ground. I stood there for the next 30 minutes with no underwear on and displaying myself to 12 different officers[.]"

¶ 14 On cross-examination, defendant said Hayes was watching TV but the volume was not loud. Defendant woke up when he heard one bang at the door. Defendant did not hear the police announce themselves before the door was opened.

¶ 15 Defendant was shown a photograph of Miranda sitting on the floor, bleeding and wearing clothing that stated "Chicago Police." Defendant stated that although some of the officers wore garments bearing that identification, the injured officer's clothing was not labeled as such. Defendant further stated the photograph of Miranda was not taken in Hayes' apartment.

¶ 16 In rebuttal, the State called several witnesses including an assistant State's Attorney who took a statement from Hayes in which Hayes said she heard the police announce themselves and she woke defendant by touching him on the leg after hearing two loud "booms" at the door. In closing arguments, defense counsel argued defendant had no blood on his hands or his white shirt at the time of his arrest, in contrast to the photos showing the bloody injuries to Miranda.

¶ 17 The trial court found defendant guilty of the two charged counts of aggravated battery as to Miranda, expressly finding the testimony of the police officers to be more credible. The court

rejected the theory that Miranda was injured when struck by the front door, and the court instead concluded that the officer's injury occurred inside the apartment.

¶ 18 On appeal, defendant first contends his aggravated battery convictions should be reversed because the State failed to prove his guilt beyond a reasonable doubt. Defendant argues it was not credible that he, without any clear motive, would strike an armed police officer with the force described, without getting any blood on his own clothing or sustaining injuries himself. He asserts the officers' version of events was "improbable and contrary to human experience."

¶ 19 A person commits battery if he intentionally or knowingly and without legal justification causes bodily harm or makes physical contact of an insulting or provoking nature knowingly. 720 ILCS 5/12-3 (West 2008). A person commits aggravated battery if he intentionally or knowingly causes great bodily harm or permanent disability or disfigurement to an employee of state or local government engaged in the performance of his official duties. 720 ILCS 5/12-4(a), (b)(18) (West 2008).

¶ 20 When weighing a challenge to the sufficiency of the evidence, the task of a reviewing court is to determine whether the evidence in the record could reasonably support a finding of guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318 (1979); *People v. Baskerville*, 2012 IL 111056, ¶ 31. It is the function of the trier of fact, which was the trial judge in this proceeding, to weigh and resolve conflicts in the evidence and draw reasonable inferences therefrom. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). Testimony may be found insufficient where the evidence in the record compels a conclusion that no reasonable person could accept the account beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004) (noting the decision of the fact finder to accept testimony, while entitled to great deference, does not bind the reviewing court). When applying this standard, all reasonable inferences from the evidence must be allowed in favor of the prosecution. *People v. Martin*, 2011 IL 109102, ¶ 15.

¶ 21 In this case, the trial court found the testimony of the police officers to be more credible than the account presented by the defense. Although, as defendant urges on appeal, the determination of the trier of fact is not conclusive, its findings as to witness credibility are entitled to great weight, and this court will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). Such a reversal is not warranted under the facts presented here, where it is undisputed that Miranda was injured and that two other officers observed defendant strike Miranda.

¶ 22 The testimony of a single credible witness with ample opportunity to observe an offense is sufficient to support a conviction, even if it is contradicted by the accused. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 45, citing *Smith*, 185 Ill. 2d at 541-42. Here, in addition to the testimony of Miranda, both Officers Caruso and Alvarez also testified that they saw defendant strike Miranda inside the apartment. Although defendant contends his account is supported by his lack of physical injuries and the absence of blood stains on his clothing, the trial court rejected these arguments. Defendant was seven inches taller than Miranda and therefore capable of striking a downward blow. Defendant also weighed 115 pounds more than Miranda and therefore was capable of remaining uninjured after striking the officer's nose. Although defendant correctly states this court is capable of rejecting an account that the finder of fact deemed to be credible (see *Cunningham*, 212 Ill. 2d at 279), the version of events presented by the State is not so unreasonable or improbable as to provide a reasonable doubt of his guilt.

¶ 23 Defendant compares the facts here to the testimony that was rejected as unbelievable in *People v. Coulson*, 13 Ill. 2d 290 (1958). In *Coulson*, the purported victim of an armed robbery testified that the two defendants forced him into a car at gunpoint and drove him to the victim's aunt's home to obtain money. *Id.* at 292-93. Police found no money or weapon after searching

the defendants and their vehicle, and the defendants testified the alleged victim had asked them for a ride home and told them to wait in the car while he went inside his aunt's house. *Id.* at 294-95. The supreme court reasoned that the purported victim's version of events would require the court to believe that the defendants drove him home and waited while he went inside, trusting he would not report them to the police; the court concluded that testimony "taxe[d] the gullibility of the credulous." *Id.* at 296.

¶ 24 We do not find the sole account of the alleged victim in *Coulson* that was deemed to be not credible to be comparable to the testimony of the State's witnesses in the case at bar. Here, three officers testified that defendant struck Miranda. The officer's wounds, which were memorialized in photographs entered into evidence, are consistent with a forceful downward motion. Defendant's testimony that he was able to view the officers when the front door was open by only a "crack" was contradicted by the officers' account of opening the door suddenly with a battering ram, causing a loud noise, to which the defense witnesses also attested. No officer testified that the door was opened a slight amount before they entered the apartment. In conclusion, the evidence presented at trial, viewed in the light most favorable to the State, sufficiently proved that defendant committed aggravated battery by hitting Miranda.

¶ 25 Defendant's remaining argument on appeal is that his conviction should be reversed and he should receive a new trial because he was denied the counsel of his choice. He argues the trial court abused its discretion when it denied his request for time to hire an attorney other than Cohon, and he contends the record does not demonstrate he was attempting to delay the proceedings.

¶ 26 A criminal defendant's right to counsel of choice is constitutionally protected. U.S. Const., amend. VI.; *Powell v. Alabama*, 287 U.S. 45, 53 (1932). Though that right is fundamental, it is not absolute in that a criminal defendant has no right to select an attorney he

cannot afford, who has a conflict of interest, or who declines to represent him. *People v. Baez*, 241 Ill. 2d 44, 104-05 (2011); *People v. Tucker*, 382 Ill. App. 3d 916, 920 (2008). A defendant who abuses the sixth amendment in an attempt to delay trial and thwart the effective administration of justice may forfeit his right to counsel of choice. *Id.*

¶ 27 When a trial court considers a motion to continue a case to retain private counsel, the court must balance the defendant's constitutional right against the interests in trying the case efficiently. *People v. Staple*, 402 Ill. App. 3d 1098, 1103 (2010). Whether the defendant's right to select his counsel unduly interferes with the orderly process of judicial administration turns on the particular facts of each case. *Tucker*, 382 Ill. App. 3d at 920. The trial court may consider several factors, including the defendant's reasons for seeking new counsel, whether the request is merely a guise to thwart effective prosecution, whether the defendant has cooperated with current counsel, and the length of time the defendant has been represented by current counsel. *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 41, citing *Tucker*, 382 Ill. App. 3d at 920.

¶ 28 Whether to grant a continuance for substitution of counsel is a matter left to the trial court's discretion, and the court's ruling will not be overturned absent an abuse of that discretion. *Brisco*, 2012 IL App (1st) 101612, ¶ 41, citing *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). A trial court abuses its discretion when its decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree" with the court's ruling. *Brisco*, 2012 IL App (1st) 101612, ¶ 41, citing *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

¶ 29 Defendant sought to retain a third attorney after the State had rested its case-in-chief, and after Hayes testified for the defense, leaving defendant as the only remaining defense witness. Defendant was first represented by an attorney in pretrial proceedings. Cohon, the second attorney, represented defendant from the commencement of trial. The record establishes that the trial court specifically asked defendant why he was not satisfied with Cohon's representation and

whether there were witnesses that should be called as part of the defense case. Defendant agreed there were no other witnesses who could testify for the defense regarding the events in Hayes' apartment. The court concluded defendant's reasons for seeking new counsel were "conclusory" and "dilatatory." The court noted that the lawyer whom defendant sought as his third attorney was neither present nor had been retained.

¶ 30 Defendant contends the five-week break in the trial would have given him time to retain Myers as his new attorney. Defendant's position is premised on hindsight, as it presumes the trial court would have known on October 7 that the case would be continued on October 29 (due to the court's trial calendar) and on November 12 (based on Cohon's request) and that defendant's trial therefore would not resume for approximately five weeks. Defendant further presumes a new attorney would have agreed to step in to represent him in the middle of the defense case. A trial court does not abuse its discretion in denying a defendant's request for new counsel if the request does not "contain a representation that substitute counsel had been secured, much less an averment that such substitute counsel was ready and willing to enter an appearance in the case." *Segoviano*, 189 Ill. 2d at 245; see also *Brisco*, 2012 IL App (1st) 101612, ¶ 41; *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992). According to defendant's comments to the court on October 7, defendant had not met with Myers to discuss representation, despite the fact that defendant was out on bond during the pendency of the trial and, thus, had ample time and freedom to retain a different attorney.

¶ 31 Furthermore, the substance of defendant's complaints did not present grounds for substitution of counsel. Defendant told the court he was not "satisfied" with his representation and that the evidence presented in his defense was "nothing" and that the defense witnesses were "weak," compared to the State's case. A defendant's dissatisfaction with his counsel or his disagreement with his attorney about trial strategy or tactics will not constitute good cause for

substitution of counsel. *People v. Wanke*, 303 Ill. App. 3d 772, 782 (1999). The trial court discussed the situation at length with defendant, reviewing his complaints and the performance of counsel, and the court did not abuse its discretion in denying defendant's request for a continuance to retain new counsel.

¶ 32 In summary, the evidence presented by the State was sufficient to establish defendant's guilt of the aggravated battery of Officer Miranda. Furthermore, the trial court fully inquired as to the merits of defendant's request for substitution of counsel and did not abuse its discretion in denying that request where no new counsel was ready to offer representation and where defendant's complaints about his present counsel were not grounds for substitution.

¶ 33 Accordingly, the judgment of the circuit court is affirmed.

¶ 34 Affirmed.