

No. 1-11-3062

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 MC3 6829
	)	
MARK REILEY,	)	Honorable
	)	Bridget Jane Hughes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GARCIA delivered the judgment of the court.  
Justices Lampkin and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for U UW affirmed where sufficient evidence supports the conviction and defense of self-defense not available as defendant was the initial aggressor; defendant's conviction for assault reversed because evidence was insufficient to prove beyond a reasonable doubt that victim had a reasonable apprehension of receiving a battery.

¶ 2 Following a bench trial, defendant Mark Reiley was convicted of assault and unlawful use of a weapon (U UW) and sentenced to two days in jail, time considered served. On appeal, defendant challenges the sufficiency of the evidence to prove him guilty of assault and U UW, and maintains that he acted in self-defense.

¶ 3 At trial, Joseph Michael Hapanionek testified that he is the security supervisor for St. Alexius Medical Center, and that his duties include dealing with psychologically disturbed patients, combative patients, video surveillance, and access control. When he is working he wears a uniform similar to law enforcement, including a star, except he does not carry a firearm. Hapanionek stated that at 6:20 p.m. on December 7, 2010, he received a "code strong," which is a call to security that their presence is needed because a patient is exhibiting dangerous behavior to themselves or others. Hapanionek responded to the call and a nurse pointed him in the direction of defendant, who was outside in the parking lot, and about 50 yards from the outpatient admissions entrance. The nurse informed Hapanionek that defendant could not leave yet. Hapanionek pursued defendant, caught up to him rather quickly, and told him to "hold on, just wait a minute, let's come back inside, let's see if we can get this figured out." Hapanionek stated that defendant was wearing socks that were from the hospital.

¶ 4 Hapanionek further testified that after he asked defendant to come back inside the hospital, defendant refused and continued to walk. Hapanionek told him to hold on, "just wait a minute," and "let's figure this out." Defendant turned around, untwisted the cap to his cane and unsheathed two inches of a metal object, which Hapanionek knew was a sword "from previous experience." At that time, a fellow security guard came to the scene, and Hapanionek told him to wait because defendant had a weapon. Hapanionek and the other security guard told defendant to put down his weapon, but defendant refused and asked if they were police. Hapanionek testified on direct examination that he said, "yes," and turned to let defendant see his hip to make him think he had a firearm. On cross-examination, however, Hapanionek denied telling defendant that he was a police officer.

¶ 5 Hapanionek further testified that defendant then said, not word-for-word but close to, "you're not the police, and if you come near me you're going to get hurt." Defendant "then

turned around and walked away." Hapanionek then positioned himself in front of defendant, pulled out his "O.C. foam," which is a more concentrated form of pepper spray, and warned defendant to drop his cane or he would be sprayed. At that time, the sword was slightly visible. Defendant continued to walk away, and another security guard, Hassan, started talking to defendant to distract him. Hapanionek then "ran at [defendant], grabbed the cane and lowered [his] shoulder at the same time kind of simultaneously grabbing the cane and making contact with [his] shoulder." Defendant fell over. Hassan, Hapanionek, and another individual detained defendant, who they then handcuffed, placed in a wheelchair, and brought back into the hospital to wait for police.

¶ 6 The State then presented defendant's cane and asked Hapanionek if he recognized it. Hapanionek indicated that he did. The court then allowed the State to untwist the head of the cane, and Hapanionek indicated that the blade the State pulled out was what he had observed on the day in question. Hapanionek also testified that during the encounter he called police, but had to hang up. He also testified that he made a report of the incident in which he noted that defendant told him to stay away from him, but did not note that defendant told him he was going to hurt him if he came near him.

¶ 7 Judelyn Aguto testified that she is a nurse at St. Alexius Medical Center, and that on the day in question defendant was admitted into the emergency room on a stretcher for "pneumonia, other mental status, and possible opiate overdose." When he was transferred out of the emergency room unit to her unit he was groggy but responsive. As the time went by, he became more alert. Defendant wanted to be discharged against medical advice, but the doctor put in an order at 4:45 p.m. for defendant to leave; defendant was discharged at 6 p.m. Aguto testified that she waited for the nursing supervisor to provide her with a cab voucher because defendant did not have a ride home. Aguto further testified that she ordered the "code strong"

because defendant left not properly dressed for outside in that he was wearing only socks, a sweat shirt, and pants in December.

¶ 8 Defendant testified that he had a history of strokes, which have left him needing to use a cane to walk. On December 7, 2010, he was admitted unconscious to the hospital via ambulance, and recalls slowly waking up and asking to be discharged. Defendant told the emergency room doctor that he wanted to leave, and the doctor determined that he was well enough to leave and signed the appropriate paperwork. Defendant explained that he left the hospital in socks because he arrived there without shoes.

¶ 9 Defendant further testified that when he saw the taxi pull up, he went outside, and started walking with his cane toward the taxi. As he was walking on the icy ground, four large men surrounded him, and screamed at him to get down on the ground. Defendant was frightened because he was unsure of what he was doing, did not know who these four men were, and was trying to get home to his dog. Defendant kept walking to get to the safety of the taxi because the ground was icy, but the men kept telling him to get down. He then turned around and asked who they were and if they were police. They indicated that they were police and ordered him to get down on the ground or they would "mace [him]." One of them eventually indicated that he worked at the hospital. Defendant testified that he told the man he was discharged, on his way home, had his taxi voucher, and was leaving. Defendant believed that he was in danger and as he kept walking and turned the corner, he saw a flashlight hit him, so he looked back, and then heard one of them say, "I'll take him down." He was then slammed to the curb and sustained a number of injuries.

¶ 10 Defendant further testified that the cane he used on the day in question contains a sword, but he does not use this cane often because its cap has a tendency to come loose. He stated that someone must have grabbed that cane when he was placed unconscious in the

ambulance, and that as he was walking with it, the cap came loose so he lifted it exposing the sword a "little bit," and then screwed it back in and continued walking. Defendant explained that he had to keep screwing the cane back in, was highly medicated, was moving slowly due to his condition, never unsheathed the sword from his cane, and was "just trying to get to safety in the taxi cab."

¶ 11 During closing arguments, defense counsel argued that defendant was discharged from the hospital and had every right to leave, and was falsely stopped without any justification and threatened. Counsel further argued that defendant did not swing the sword or take it out and threaten the security guard, and that even if defendant purposely unsheathed the sword, he was acting in self-defense. When defense counsel noted that there was no testimony to the contrary that defendant believed he was in actual danger of being hurt, the court interjected that it would disagree. Counsel then responded that the State's witnesses' testimony was not in conflict with defendant's genuine belief that he was in danger, to which the court replied, "[o]kay."

¶ 12 At the close of evidence, the court found defendant guilty of assault and unlawful use of a weapon. In doing so, the court stated that it found Hapanionek "very credible." The court found that it was not until defendant displayed a weapon that the security guard attempted to subdue him, and that the security guard's belief that when defendant pulled out the sword he could harm himself or another person was reasonable. The court stated that Hapanionek did not know what defendant's condition was but that he received a code that meant someone was trying to leave the hospital who was not properly released. Hapanionek's motivation was to stop this person from leaving and to help him if he was not physically able to leave. The court further stated that Hapanionek was correct to again attempt to stop defendant and get the weapon away considering it was December and defendant was in his socks outside, which raised a question as to his fitness. The court noted that defendant's explanation that the cane was loose and

unscrewed was self-serving and not credible. The court also found that as far as the nurse was concerned, defendant could not go until the paperwork was completed which included a voucher for the cab, and that it did not believe that a cab was waiting outside for defendant.

¶ 13 On appeal, defendant first contends that it is impossible for him to be guilty of assault where he was walking away and trying to avoid the security guard who pursued him for 50 yards. He further maintains that the security guard had no reasonable apprehension of receiving a battery, and that his actions were justified and thus with legal authority.

¶ 14 As an initial matter, defendant asserts that our standard of review is *de novo*. We disagree. Defendant is challenging the sufficiency of the evidence to prove an element of the offense (*People v. Pulley*, 345 Ill. App. 3d 916, 920 (2004)); and, in such a case, the standard of review is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (*People v. Williams*, 193 Ill. 2d 306, 338 (2000)). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). For the reasons that follow, we reverse defendant's conviction for assault.

¶ 15 Defendant commits assault where he, without lawful authority, engages in conduct which places another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1 (West 2010). Reasonable apprehension may be inferred from the evidence at trial, including the conduct of defendant and the victim. *In re Gino W.*, 354 Ill. App. 3d 775, 778 (2005). Although the emotional effect on the putative victim is examined, the response must be reasonable. *People v. Floyd*, 278 Ill. App. 3d 568, 570 (1996). It is not enough that the victim feels petrified that defendant was going to harm him; that feeling must have a measure of objective reasonableness. *Floyd*, 278 Ill. App. 3d at 570.

¶ 16 The record here shows that defendant, who had previously suffered from a stroke, and needed a cane to walk, had been admitted to the hospital unconscious. When he regained consciousness, he received a discharge order. Based on that order, he began to leave the hospital. As he was leaving, the security guard, Hapanionek, received a "code strong" regarding defendant, which he took to mean that defendant was not allowed to leave the hospital because he was either a danger to himself or others. When Hapanionek first saw defendant, he was 50 yards away walking in his socks with the use of a cane in the icy parking lot. Hapanionek pursued defendant, and when he caught up to him, he demanded defendant to stop. Defendant refused, and continued to walk away. Hapanionek repeated his request for defendant to stop, and defendant then turned around, lifted his cane exposing a little bit of the sword, and told Hapanionek that if he came near him he would hurt him; he then continued to walk away. At this time, another security guard and another man arrived. Defendant, however, did not approach them but kept walking away. When defendant asked if they were police, Hapanionek said they were, and defendant, correctly disbelieving them, kept walking away. Hapanionek then positioned himself in front of defendant, and told him that if he did not drop his cane, he would spray him with mace. Defendant, however, disregarded Hapanionek and to continued walking with his cane. At this time, Hapanionek "ran at" defendant, grabbed his cane and knocked him to the ground.

¶ 17 This evidence shows that it was objectively unreasonable that Hapanionek apprehended a battery from defendant where Hapanionek, not defendant, was in pursuit with defendant walking slowly away from Hapanionek with the use of a cane in an icy parking lot, and Hapanionek ultimately tackled defendant to the ground. Under these circumstances, Hapanionek's apprehension of harm from defendant was objectively unreasonable. *Floyd*, 278 Ill. App. 3d at 571. We are compelled to reverse defendant's conviction when the evidence that an assault was committed is so unreasonable and unsatisfactory that reasonable doubt remains.

¶ 18 Defendant next contends that the evidence was insufficient to prove him guilty of UUW beyond a reasonable doubt. He maintains that the State failed to prove his intent to use a weapon, and, in the alternative, that he acted in self-defense.

¶ 19 Under the facts of this case, to sustain a conviction for UUW, the State had to prove that defendant knowingly carried a "dangerous or deadly weapon" with the "intent to use the same unlawfully against another." 720 ILCS 5/24-1(2) (West 2010). The cane concealed a sword within. Hapanionek testified that defendant displayed two inches of the sword and said he would hurt Hapanionek if he came near him. *People v. Mussleman*, 69 Ill. App. 2d 454, 458 (1966). The evidence proved beyond a reasonable doubt that defendant possessed a dangerous weapon, namely, a sword, while expressing an intent to use it against Hapanionek. The evidence was sufficient to sustain defendant's conviction for UUW. Defendant maintains, however, that he lawfully displayed the sword in an act of self-defense.

¶ 20 Self-defense is an affirmative defense to UUW (*People v. Seiber*, 76 Ill. App. 3d 9, 13-14 (1979)), which defendant may properly assert when some evidence has been introduced at trial as to each of the elements of self-defense. *People v. Anderson*, 234 Ill. App. 3d 899, 906 (1992). Once a claim of self-defense has been raised by the evidence, the State bears the burden of proving beyond a reasonable doubt that defendant did not act in self-defense in committing UUW. *People v. Dillard*, 319 Ill. App. 3d 102, 106 (2001). There are five elements to a claim of self-defense: (1) unlawful force was threatened against defendant; (2) he believed the danger of harm was imminent; (3) he was not the aggressor; (4) the force used was necessary to avert the danger; and (5) his beliefs were reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). If the State negates any one of these elements, defendant's claim of self-defense fails. *Dillard*, 319 Ill. App. 3d at 106.

¶ 21 The record here shows that security guard, Hapanionek, responded to a "code strong" involving defendant, which meant that defendant was exhibiting a danger to himself or another. When Hapanionek encountered the defendant, he was walking outside in only a pair of socks. Hapanionek asked defendant to stop and return to the hospital given the cold on that December night, but defendant refused. To emphasize his refusal, defendant exposed the sword within the cane. At the very least, the display of the sword established defendant as the initial aggressor. Under these facts, the defense of self-defense was either unavailable to defendant or overcome beyond a reasonable doubt. *People v. De Oca*, 238 Ill. App. 3d 362, 368 (1992); *People v. Zolidis*, 115 Ill. App. 3d 669, 677 (1983).

¶ 22 We reverse defendant's conviction for assault, but affirm his conviction and sentence for UUW.

¶ 23 Affirmed in part; reversed in part.