

**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).

2012 IL App (3d) 110418-U

Order filed November 16, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Tazewell County, Illinois,
	)	
v.	)	Appeal No. 3-11-0418
	)	Circuit No. 10-CF-496
	)	
MEISHA CLAYBORN,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* (1) The evidence was sufficient to convict defendant of resisting a peace officer causing injury and aggravated battery; and (2) trial counsel was not ineffective.
- ¶ 2 Following a jury trial, defendant, Meisha Clayborn, was convicted of resisting a peace officer causing injury (720 ILCS 5/31-1(a-7) (West 2010)) and two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)). Defendant appeals her convictions, arguing that: (1) the

State failed to prove the offenses beyond a reasonable doubt; and (2) trial counsel was ineffective. We affirm.

¶ 3

### FACTS

¶ 4 On September 10, 2010, the State filed an information charging defendant with resisting a peace officer causing injury (720 ILCS 5/31-1(a-7) (West 2010)) and two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)). The cause proceeded to a jury trial.

¶ 5 During opening statements, defense counsel commented that defendant was a "black lady." He then stated his concern that there was not a "black person" on the jury, and asked that the jury take into account how defendant must feel being judged by a jury that includes "none of the people of her race."

¶ 6 Officer Roger Wilsdorf testified that he initiated a traffic stop of a vehicle defendant was driving at 3:41 a.m. on August 21, 2010. At the time of the stop, Wilsdorf was wearing a police uniform and driving a police squad car. Defendant informed Wilsdorf that she did not have a driver's license or proof of insurance. Upon finding out that defendant's license was suspended, Wilsdorf asked defendant to exit the vehicle. Defendant did so reluctantly. Wilsdorf also asked defendant to spit out a cigarette that she had in her mouth; however, defendant refused to spit it out immediately. Because defendant was driving with a suspended license, Wilsdorf informed her that she was under arrest. Upon hearing this, defendant immediately turned around and attempted to get back into her vehicle.

¶ 7 Defendant was then handcuffed and asked to sit in the squad car. Defendant did not immediately comply, but she eventually sat down. Wilsdorf then asked defendant to place her feet inside the vehicle. After numerous requests, defendant did not comply. Wilsdorf and

Officer Steven Agee had to physically place defendant's feet into the squad car. While they were attempting to get her into the car, defendant resisted and kicked the officers with full force. One kick landed on Wilsdorf's right forearm and forced his arm outward, away from his body, resulting in a dislocation of his arm. While Wilsdorf struggled to deal with the injury, he witnessed Agee continue to struggle with defendant. Eventually, she was restrained.

¶ 8 After the incident, Wilsdorf saw a doctor for treatment of injuries he received when defendant kicked him. He stated that he suffered two torn tendons and had to have surgery to repair a labrum tendon tear.

¶ 9 Agee testified that he responded to the scene of the traffic stop after Wilsdorf had called for backup. He stated that he heard Wilsdorf ask defendant numerous times to sit before she finally complied. Defendant did not comply, however, when asked to put her feet inside the car. Thereafter, the officers each grabbed one of defendant's legs in an attempt to place them inside the vehicle. Defendant responded by kicking and flailing her feet. At one point Agee noticed that Wilsdorf had removed himself from the struggle. Defendant continued to kick Agee, and he applied a defensive technique which resulted in defendant being placed inside the car. After she was secure, Agee discovered that Wilsdorf had been injured.

¶ 10 Defendant testified that she was driving home from work when she noticed the squad car's lights behind her. She knew that her license was suspended based on previous speeding tickets; however, she was driving because she had to get to and from work. Defendant stated that she complied with the officer's request to exit her vehicle. Thereafter, she was led to the officer's squad car, where she realized that she had money in her car. She asked the officer if she could have her money, and Wilsdorf informed her that he would eventually give her the purse. The

conversation turned into a shouting match. When asked by defense counsel why she wanted her money, defendant stated that she had previously been arrested and had not received all of her money back upon release. During the exchange, Wilsdorf asked defendant multiple times to get into the squad car; however, she refused because she wanted her money. Eventually, defendant sat down but refused to put her legs in the car until she received her money. Thereafter, Agee punched and kicked her and then forced her into the vehicle. Defendant claimed that she did not assault the officers.

¶ 11 During closing arguments, defense counsel argued that while defendant may have been difficult, her behavior was influenced by her desire to retrieve her money. He then stated that the State did not prove her guilty of the charged offenses and that her behavior was not criminal but simply "contempt of cop[.]" He further asked the jury not to punish defendant because of her race or because she was an entertainer at a nightclub.

¶ 12 The jury ultimately found defendant guilty of the charged offenses, and she was sentenced to 90 days in jail. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 I. Reasonable Doubt

¶ 15 Defendant first argues that the State failed to prove her guilty beyond a reasonable doubt of resisting a peace officer causing injury and aggravated battery. When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry defendant; rather, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). A conviction will only be

overturned where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532 (1999).

¶ 16

#### A. Resisting a Peace Officer

¶ 17 A person commits the offense of resisting a peace officer when they knowingly resist or obstruct the performance by one known to the person to be a peace officer. 720 ILCS 5/31-1(a) (West 2010). A person convicted of resisting a peace officer whose violation was the proximate cause of an injury is guilty of a Class 4 felony. 720 ILCS 5/31-1(a-7) (West 2010). Here, it is clear that defendant knew that Wilsdorf was a police officer. During the course of the stop, defendant was reluctant to comply with the officers' request to exit her vehicle, sit in the squad car, and extinguish a cigarette. Testimony also established that defendant physically resisted being placed in the squad car and that she kicked the officers when they attempted to place her feet inside the vehicle. Defendant's kicks resulted in the dislocation of Wilsdorf's right arm. Based on this evidence, we conclude that a rational trier of fact could have found the essential elements of resisting a peace officer causing injury beyond a reasonable doubt.

¶ 18

#### B. Battery

¶ 19 A person commits battery when they knowingly and without legal justification cause bodily harm to an individual or make physical contact of an insulting or provoking nature with an individual by any means. 720 ILCS 5/12-3 (West 2010). Battery turns into aggravated battery when it is committed on an individual the defendant knows is an officer engaged in the performance of his or her authorized duties. 720 ILCS 5/12-4(b)(18) (West 2010). In this case, the evidence established that defendant resisted the police officers' attempts to place her in a squad car after she had been arrested. Her resistance included kicking the officers. Thus, the

evidence established that defendant knowingly made physical contact of an insulting or provoking nature with Wilsdorf and Agee. Evidence also established that defendant knew the individuals she kicked were police officers engaged in the performance of their authorized duties. Therefore, a rational trier of fact could conclude that defendant committed aggravated battery.

¶ 20

## II. Ineffective Assistance of Counsel

¶ 21 Defendant next argues that trial counsel was ineffective for failing to present a meaningful defense. To establish ineffective assistance of counsel a defendant must show that: (1) counsel's representation 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. *People v. Albanese*, 104 Ill. 2d 504 (1984). In order to establish the first prong, defendant must show that counsel's performance was so inadequate that counsel was not functioning as the counsel guaranteed by the sixth amendment. *People v. Manning*, 241 Ill. 2d 319 (2011). In doing so, defendant must overcome a strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *Id.* Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Id.*

¶ 22 In this case, defendant claims that counsel was ineffective for failing to present a meaningful defense by: (1) eliciting other-crimes evidence; (2) interjecting race and character evidence; and (3) failing to raise an affirmative defense. Our review of the record reveals that counsel was not ineffective and that the challenged actions or inactions were a product of trial strategy. First, counsel elicited other-crimes evidence for strategic reasons. The fact that defendant had been arrested previously explained why she was so adamant about getting her

money, and eliciting that her license was suspended because of speeding tickets assured the jury that it was not suspended for a more serious reason.

¶ 23 Second, counsel's mention of defendant's race and job as an entertainer at a nightclub was a strategic attempt to humanize his client. We note that even if the mention of race and character were inappropriate, they did not prejudice defendant's case in light of the strong evidence of guilt. Defendant also takes issue with counsel's admission that defendant was guilty of "contempt of cop." We find that this statement was a tactical attempt to cast doubt on the State's proof of the charged offenses.

¶ 24 Third, defendant claims counsel was ineffective for failing to raise the affirmative defense of self-defense. However, because defendant testified that she did not assault the officers, counsel's failure to raise self-defense was trial strategy and not error. Therefore, we conclude that counsel was not ineffective.

¶ 25

#### CONCLUSION

¶ 26 The judgment of the circuit court of Tazewell County is affirmed.

¶ 27 Affirmed.