

No. 1-11-0588

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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. 08 CR 12209
	)	
ANDRE BULLOCKS,	)	Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Connors and Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant was not entitled to Rule 401(a) admonitions prior to *Krankel* hearing, and after his trial and sentencing hearing were completed, defendant's waiver of counsel was not invalid, and evidence was sufficient to support trier of fact's rejection of self-defense theory; defendant's convictions and sentences were affirmed.

¶ 2 Following a bench trial, defendant Andre Bullocks was convicted of second degree murder and two counts of aggravated battery with a firearm and was sentenced to a total of 24 years in prison. On appeal, defendant contends he was inadequately admonished regarding his waiver of counsel prior to a hearing on his *pro se* post-trial motion alleging the ineffectiveness of

his trial attorney. Defendant also argues that the State failed to prove that he lacked an unreasonable belief in the need for self-defense when he shot three men who were trying to rob him. We affirm.

¶ 3 Defendant was charged with the first degree murder of Wesley Bonds and the attempted murder of Bryant Brown and Johnny Smith. The evidence at trial established that at about 7:30 p.m. on April 21, 2008, defendant shot those three men inside a van parked at a McDonald's restaurant at 76th Street and Vincennes in Chicago. The defense contended those shots were fired in self-defense because the van's occupants were trying to rob defendant of the money he brought to purchase drugs.

¶ 4 Willie Hutchinson testified that Smith drove Hutchinson's van to the parking lot with Bonds and Brown also inside. Defendant had called Brown and asked to buy marijuana from him and purchased marijuana from Brown before. The van's other occupants did not know defendant.

¶ 5 Inside the van, Brown was seated behind Smith in a middle row of seats, and Bonds and Hutchinson sat behind them on the rear bench seat. Defendant arrived and parked his SUV next to the van and confirmed that Bonds was inside. Two other men, Michael Wilburn and Torontae Agee, were in defendant's vehicle. Defendant got into the van and sat in the other middle seat next to Brown.

¶ 6 Hutchinson testified that defendant and Brown started arguing, and Bonds stood up between them, putting his arms in the air and telling defendant there wasn't "any need for this." Hutchinson said about 12 shots were fired from the area where defendant was sitting but did not see who fired them.

¶ 7 Hutchinson heard a "click" indicating the weapon had been emptied. Defendant exited the van through a window, and Hutchinson saw him holding a gun that made a clicking noise. Everyone in the van other than Hutchinson had been shot, and he testified none of them had

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weapons. He identified defendant in a police photo array and a lineup. On cross-examination, Hutchinson said he did not know what defendant and Brown discussed but heard them speaking in loud voices. Hutchinson said immediately after the shooting, he drove to a car wash, where the inside of the van was cleaned.

¶ 8 Smith testified Brown received a phone call and directed him to drive the van to the McDonald's. After defendant entered the van, Smith turned around to see defendant and Brown arguing "face-to-face." Smith said defendant and Brown "were all in each other's face" and defendant was holding onto Brown's shirt. When Bonds tried to stop the fight, shots were fired but Smith could not see who fired the shots. Bonds was fatally wounded in the chest. Brown was shot in the head and has a brain injury, and Smith was shot in the back.

¶ 9 Kenneth King testified he was sitting in a tow truck in the parking lot when the shooting occurred and that he knew Hutchinson. King heard shots being fired and saw Hutchinson get out of the van and shout at him for help. King testified defendant returned to his own vehicle and tried to drive away, at which point King rammed defendant's SUV with his tow truck to stop him from leaving the parking lot.

¶ 10 King further testified that Defendant drove out of the parking lot. King had difficulty starting the tow truck after he rammed it into defendant's vehicle, and King told the driver of a nearby Lexus, who he recognized, to help him pursue defendant. The tow truck and the Lexus followed defendant's SUV. After King forced defendant's SUV into a light pole, defendant and Agee got out and ran into the basement of a nearby building. A police officer found defendant in that building, bleeding from a gunshot wound to the leg. A nurse who treated defendant testified that the wound punctured his femoral artery, causing substantial bleeding.

¶ 11 For the defense, Wilburn testified he and Agee remained in defendant's vehicle while defendant left and got into the van. Defendant testified he was employed as a maintenance

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worker for an apartment complex and owned a gun that he kept under the seat of his car "for protection" and that defendant carried during the events in question.

¶ 12 Defendant testified that after he and Brown arranged the drug purchase, Brown instructed him via phone to get into the van. Defendant testified that situation worried him "because [Brown] usually gets out." Defendant said he was concerned about the other people present in the van because he did not know them. He greeted Smith and began talking to Brown. Defendant said he was "smacked in the head with a gun," and the men seated behind defendant told him to hand over his money.

¶ 13 Defendant testified "[t]hey were all grabbing and roughing me up, snatching my jewelry and stuff like that." He said the van's occupants were going through his pockets and were shouting, "Give up the money." One of defendant's assailants shouted, "Shoot him," and defendant felt a pain in his leg.

¶ 14 Defendant took his weapon out and began shooting. Defendant said he "just kept shooting" because he was "afraid" and thought he was going to die and that he fired without aiming at anyone or anything in particular. When the gun was emptied, defendant got out of the van through a window that had been shot out. When he returned to his own vehicle, Agee was there but Wilburn had disappeared.

¶ 15 Once defendant had driven away and the vehicle had crashed, defendant ran into the building to avoid the men who were chasing him from the tow truck. Defendant hid behind a table in the basement, where he removed his black jeans and work boots to assess the extent of his injury. When police entered the building, defendant called out for help.

¶ 16 On cross-examination, defendant said he had between \$300 and \$400 in his pocket, and when he got into the van, he wore a jacket over his jeans, with his gun in his pants pocket. He was not sure if Brown struck him, but Bonds and Hutchinson, who were seated behind him in the van, struck him in the head multiple times and they, along with Brown, took the money from his

pocket. Defendant said that when he got into the building after being shot, he was "bleeding out." Photographs of the basement depict blood on the floor. Defendant's jacket and pants were among the exhibits entered into evidence. The court also viewed footage from security cameras that showed defendant before he entered the building.

¶ 17 After closing argument, the trial court found defendant guilty of the second degree murder of Bonds and guilty of aggravated battery of a firearm as to Brown and Smith. The court stated that it was "just not humanly possible" for defendant to have carried his gun in his pants pocket as he had testified; however, the gun could have been secreted in defendant's long jacket, as the State had asserted. The court stated "[s]omething happened inside the van" after defendant entered to buy drugs, and Bonds stepped in front of defendant as he argued with Brown, at which point defendant fired his weapon in the van. The court opined that defendant was shot in the leg while outside of the van, possibly by someone in the Lexus.

¶ 18 The court further stated that defendant's claim that he acted in self-defense was not believable and that defendant was the only person armed during the events at issue. The court reasoned that if defendant had been shot inside the van as he claimed, both the van and defendant's vehicle would have substantial blood staining. The court concluded that defendant acted with an unreasonable belief that his actions were justified. On June 4, 2010, defendant was sentenced to 10 years on the second degree murder conviction and a consecutive term of 14 years for the aggravated battery with a firearm as to Brown, with a concurrent 8-year term for aggravated battery with a firearm as to Smith, for a total sentence of 24 years in prison. In response to the court's question, defendant's counsel, Michael Clancy, stated he planned to file a motion to reconsider the sentence.

¶ 19 On June 10, 2010, defendant filed a *pro se* motion for a new trial asserting that his counsel was ineffective. On June 21, 2010, Clancy appeared and asked to withdraw from representing defendant. When the court asked defendant if he was going to retain a new lawyer,

defendant said he thought Clancy would still file the motion to reconsider his sentence. The court explained to defendant that he could retain new counsel or a public defender could be appointed to represent him. The court allowed Clancy to withdraw. The court then noted that a portion of the sentence imposed against defendant was incorrect, though the length of defendant's sentence would not be affected. Defendant said he would hire a new lawyer, and the matter was continued to allow defendant time to do so.

¶ 20 On July 12, 2010, defendant appeared *pro se* and told the court he was in the process of obtaining counsel. On August 31, 2010, defendant filed an amended *pro se* motion for retrial "due to ineffective assistance of counsel." In September 2010, the court appointed the public defender to represent defendant on the issue of sentencing. On October 19, 2010, assistant public defender Timothy O'Hara noted to the court that he had been appointed for purposes of the motion to reconsider sentence. On December 7, 2010, on the State's motion, defendant's sentences were vacated and defendant was resentenced to consecutive 8-year and 6-year terms on the aggravated battery convictions, to be served consecutive to his 10-year murder sentence. On January 4, 2011, O'Hara filed a motion to reconsider that sentence, which the court denied.

¶ 21 On January 10, 2011, defendant was represented by O'Hara. The court asked defendant if he had made a *pro se* request for a new trial based on the ineffectiveness of counsel. Defendant responded yes, and the court stated it was in possession of an amended motion of defendant. The court continued the case to review the motion.

¶ 22 On January 27, 2011, the court stated on the record each of the nine points in defendant's August 2010 motion. The court stated it would allow an evidentiary hearing on two of those points, namely that Clancy failed to thoroughly investigate the surveillance tapes from the area in which the events took place and failed to allow defendant to view those tapes prior to trial. The public defender conferred with defendant, and the following colloquy occurred:

"MR. O'HARA [assistant public defender]: Judge, I think I would ask that the court question Mr. Bullocks about whether or not he wants to represent himself for purposes of this motion, or whether or not he wants an attorney to represent him for purposes of this motion.

THE COURT: Do you want to represent yourselves [*sic*]?

DEFENDANT: Yes.

THE COURT: Okay. Then that's what I've ruled. You can have an evidentiary ruling on [the above-described points in defendant's *pro se* motion].

The other conclusory type of allegations are dead."

¶ 23 On February 10, 2011, the court held a hearing on defendant's motion for a new trial based on the ineffectiveness of Clancy as his trial counsel. The court stated on the record the claims to be addressed and asked defendant if he wanted to call witnesses or present any arguments. Defendant replied no.

¶ 24 The State called Clancy as a witness and questioned him about his decisions regarding the surveillance video, which Clancy explained were tactical considerations. The court also questioned Clancy. Defendant conversed with the court but stated that he had no questions for Clancy. After hearing that evidence, the court denied defendant's motion.

¶ 25 On appeal, defendant first contends that his waiver of counsel prior to the February 2011 hearing on his claims of ineffectiveness of his trial attorney was invalid. He argues the court needed to admonish him as to his right to counsel and explain the difficulties of self-representation pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), and he contends this case should be remanded for an evidentiary hearing on his claims after he has been properly admonished about his right to counsel at such a proceeding.

¶ 26 When a defendant presents a *pro se* post-trial claim of the ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *People v.*

*Moore*, 207 Ill. 2d 68, 77 (2003); *People v. Krankel*, 102 Ill. 2d 181, 189 (1984) (counsel other than the defendant's trial counsel must be appointed for a hearing on the defendant's motion alleging trial counsel's ineffectiveness for refusing to investigate or present an alibi defense). Newly appointed counsel for defendant is not automatically required; the trial court must first examine the factual basis of the claim. *Moore*, 207 Ill. 2d at 77-78. "If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.*

¶ 27 In the instant case, the court reached the latter stage described above, *i.e.*, the court examined the factual basis of defendant's *pro se* claims on January 27, 2011, and determined it would hold an evidentiary hearing on two claims, also known as a *Krankel* hearing. At that point, defendant was represented by a public defender, and not by attorney Clancy who acted as trial counsel.

¶ 28 *Moore* holds that counsel should be appointed for defendant if the allegations show possible neglect of the case. The record reflects that the court asked defendant if he wanted to represent himself, and defendant responded in the affirmative. Defendant contends that, at that point in the proceedings, the court was required to provide Rule 401(a) admonishments to him and that his waiver of counsel was invalid absent those admonitions; he argues he is entitled to a new *Krankel* hearing after receiving the appropriate admonishments.

¶ 29 Therefore, at issue is whether a defendant is entitled to admonitions under Rule 401(a) when he asks to proceed *pro se* in a *Krankel* hearing. Rule 401(a) provides that when a defendant wishes to waive his right to counsel, the trial court shall permit the defendant to do so only after first admonishing him and determining his understanding of the nature of the charge, as well as the minimum and maximum sentences prescribed by law. Ill. S.Ct. R. 401(a). The

court also must inform the defendant that he has a right to counsel, including court-appointed counsel if necessary. *Id.*

¶ 30 In contending the admonitions were required, defendant relies on *People v. Cleveland*, 393 Ill. App. 3d 700 (2009), and *People v. Campbell*, 224 Ill. 2d 80 (2006), both of which are factually distinguishable from the instant case. In *Campbell*, the defendant was not admonished in accordance with Rule 401(a) prior to his bench trial, and the supreme court held the trial judge's failure to comply with the rule rendered the defendant's waiver of counsel ineffective and, because the defendant had already completed his sentence and would not have been served by a remand for a new trial, the appropriate remedy was to vacate the defendant's misdemeanor conviction for driving with a suspended license. *Campbell*, 224 Ill. 2d at 84-88.

¶ 31 *Cleveland* involved a defendant who represented himself at sentencing after waiving counsel for a second time during the proceedings. *Cleveland*, 393 Ill. App. 3d at 702-03. Although the court admonished the defendant pursuant to Rule 401(a) prior to trial when he stated his desire to act *pro se*, the court did not admonish the defendant at the sentencing stage after counsel had been requested and appointed and the defendant again waived counsel's assistance. *Id.* Here, in contrast to *Cleveland* and *Campbell*, defendant was beyond the trial and sentencing stages.

¶ 32 As the State points out on appeal, this court has held in *People v. Young*, 341 Ill. App. 3d 379, 386-87 (2003), the admonitions set out in Rule 401(a) are not required where a defendant had already been convicted and sentenced. The *Young* court noted that at a post-trial and post-sentencing stage, the defendant "already knew everything a Rule 401(a) admonishment would have told him." *Id.* at 387. The court observed that the rule's language "manifests only the intent to deal with defendants who are considering a waiver of counsel at the initial-appointment stage of the proceedings." *Id.*

¶ 33 Defendant acknowledges that his waiver occurred "post-sentencing" but maintains that the admonitions were required prior to the *Krankel* hearing. Defendant offers no legal authority requiring the admonitions to be given in that context. Instead, defendant cites *People v. Baker*, 94 Ill. 2d 129 (1983), which is factually distinguishable, as it involved the waiver of counsel at a probation revocation proceeding, which is akin to a trial and can result in the imposition of a sentence. Defendant's argument on this point is unpersuasive.

¶ 34 Defendant's remaining contention on appeal is that the State failed to prove he had a belief of the need to act in self-defense when he shot the victims and that his belief was unreasonable. He argues that circumstantial evidence supported the theory that he was shot in the leg after the men inside the van tried to rob him and that Hutchinson removed a weapon and a shell casing from inside the van. In contending that the State failed to prove that his belief in the need to act in self-defense was unreasonable, defendant therefore challenges the sufficiency of the evidence to sustain this element required to convict him.

¶ 35 Self-defense is an affirmative defense, and once a defendant raises it and provides some evidence of it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense. *People v. Lewis*, 2012 IL App (1st) 102089, ¶ 17. The determination of whether a defendant is guilty of second degree murder or was justified because he was acting in self-defense is a question for the finder of fact. *People v. Simon*, 2011 IL App (1st) 091197, ¶ 52. Thus, we determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found that defendant in this case did not act in self-defense and was therefore not legally justified in his actions. *Id.* at ¶ 16; see also *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995).

¶ 36 Defendant argues it is "completely consistent" with the circumstantial evidence in this case that he was shot while inside the van. He asks this court to reweigh the events surrounding

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his leg wound, including the lack of blood in his own vehicle, asserting that his jeans stanching the bleeding until he removed them in the basement of the building where he was found.

¶ 37 Contrary to defendant's position, it is not the task of this court "to search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt." *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). Rather, it is the role of the fact finder, which was the trial judge in this bench trial, to resolve conflicting inferences. *People v. Major*, 244 Ill. App. 3d 1013, 1019 (1993). The testimony of Hutchinson and Smith supported the State's theory that defendant and Brown began arguing while in the van. No testimony was offered that someone other than defendant had a weapon. The court was free to weigh that testimony against defendant's account that the van's occupants attempted to rob him.

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

¶ 39 Affirmed.