

2013 IL App (1st) 111991-U

FIRST DIVISION
DATE: March 29, 2013

No. 1-11-1991

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 MC1 216036
)	
WILLIAM WILLIAMS,)	Honorable
)	Clarence Lewis Burch,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Judgment entered on defendant's battery conviction affirmed over contention that trial counsel was ineffective for failing to file a motion to sever defendant's trial from that of codefendant.

¶ 2 Following a joint bench trial with codefendant Don Tillman, defendant William Williams was found guilty of battery and sentenced to one year of probation. On appeal, defendant contends that his trial counsel was ineffective for failing to file a motion to sever his trial from that of his codefendant.

1-11-1991

¶ 3 The incident giving rise to the charges filed in this case occurred in the early morning hours of October 16, 2010, on the west side of Chicago. As a result, defendant was charged with battery in that he knowingly, intentionally, and without legal justification made physical contact with Chicago police officer Nick Cervantes by pushing him and forcing him into a squad car, and codefendant was charged with the aggravated assault of Officer Michael Tews. The accused were tried jointly, but represented by separate counsel.

¶ 4 At trial, Officer Cervantes testified that at 3 a.m. on October 16, 2010, he and his partner, Officer Tews, were in uniform and driving a marked squad car in the 1500 block of Leclaire Avenue. The officers observed a crowd fighting there; they stopped their vehicle to address the situation. Defendant approached their squad car and punched the mirror on the driver's side, prompting the officers to exit their vehicle and attempt to detain defendant. Defendant, however, pushed Officer Cervantes into the squad car, and Officer Tews tasered defendant, because of defendant's hostile demeanor. When defendant fell to the ground, Officer Cervantes handcuffed him.

¶ 5 Officer Cervantes further testified that he and Officer Tews were surrounded by a group of about 15 people during this incident, who began yelling and throwing beer bottles at them. One unidentified person threw a brick, striking Officer Tews' leg. Codefendant then stepped out of the crowd, took off his shirt, and slammed it to the ground. He assumed a fighting stance and said to Officer Tews: "[b]itch, you tased my uncle, now I am going to beat your ass." Officer Tews radioed for assistance, and when backup officers arrived, codefendant was detained.

¶ 6 Chicago police officer Michael Tews testified consistently with Officer Cervantes' account of the situation. He added that when defendant pushed his partner, he feared for his partner's safety, causing him to discharge his taser, hitting defendant in the back. He then radioed for assistance, because they were surrounded by a number of hostile people. When codefendant came out of the crowd and took a fighting stance, Officer Tews feared for his safety.

1-11-1991

¶ 7 Defendant testified that at 3 a.m. on October 16, 2010, he heard a lot of noise outside his home at 1509 North Leclair Avenue. He went outside to investigate and saw a number of his nephews and their friends; they were not fighting, but he told them to disperse. One of his nephews, however, continued to be loud, and defendant followed his nephew down the street. Defendant then returned to his house to tell the rest of the group to disperse. At that point, he saw police officers exit their car, and defendant was tasered by Officer Cervantes. Defendant denied making any contact with the police car or physical contact with either of the officers.

¶ 8 Codefendant testified that, at the time in question, he saw defendant, his uncle, chasing someone down the street. Codefendant and others ran after them; codefendant saw defendant lying in the street between some cars. Officer Tews drew his gun and told everyone not to "cross the line." Officer Tews then threw codefendant into a nearby truck and handcuffed him. Codefendant denied threatening Officer Tews.

¶ 9 During closing argument, defendant's counsel asserted that defendant credibly testified that he was acting as a peacemaker, that the incident was a "gross misunderstanding," and that the police testimony was inconsistent. Codefendant's counsel argued that Officer Tews "seemed to have no reluctance regarding [defendant] in tasering him when he felt in fear. And yet [codefendant] if he did in fact felt in fear [of], was not tasered." Codefendant's counsel further argued that codefendant testified honestly and credibly about the chaotic situation.

¶ 10 The court subsequently found codefendant not guilty of aggravated assault, but found defendant guilty of battery beyond a reasonable doubt. In this appeal from that judgment, defendant maintains that he received ineffective assistance of trial counsel based on counsel's failure to file a motion to sever his trial from that of his codefendant. He claims that codefendant's defense was "subtly" antagonistic to his defense throughout the entire trial, and became outwardly hostile during closing argument when his attorney premised codefendant's innocence on defendant's guilt.

¶ 11 Under the two-prong test for examining a claim of ineffective assistance of counsel, defendant must establish that his attorney's performance fell below an objective standard of reasonableness, and that but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984). The scrutiny of defense counsel's performance is highly deferential due to the inherent difficulties of making the evaluation, and the reviewing court must indulge in a strong presumption that counsel's conduct fell within the range of reasonable professional assistance. *People v. Robinson*, 299 Ill. App. 3d 426, 433 (1998). To prevail, defendant must satisfy both prongs of the *Strickland* test, and if this court concludes that defendant did not suffer prejudice, we need not decide whether counsel's performance was deficient. *People v. Harris*, 206 Ill. 2d 293, 304 (2002).

¶ 12 The Code of Criminal Procedure (Code) provides for the joinder of related prosecutions if the offenses and defendants could have been joined in a single charge (725 ILCS 5/114-7 (West 2010)), and for severance if it appears that a defendant or the State is prejudiced by such joinder (725 ILCS 5/114-8 (West 2010)). Here, the prosecution proceeded to a joint bench trial without objection, and defendant now claims that his counsel was ineffective for failing to file a motion to sever his trial from that of his codefendant.

¶ 13 Illinois courts have recognized two independent grounds for severance. *People v. James*, 348 Ill. App. 3d 498, 507 (2004). The first involves an interference with defendant's right of confrontation where codefendant has made out-of-court statements which implicate defendant, and the second involves a situation where the defenses are so antagonistic that one of the codefendants cannot receive a fair trial if they are tried jointly. *James*, 348 Ill. App. 3d at 507. Defendant bases his claim on the second ground which requires actual hostility between the two defenses. *People v. Gabriel*, 398 Ill. App. 3d 332, 347 (2010). This occurs where one defendant targets the other as the

1-11-1991

actual perpetrator of the offense or where each protests his innocence in condemning the other. *Gabriel*, 398 Ill. App. 3d at 347; *People v. Edward*, 128 Ill. App. 3d 993, 1000-01 (1984).

¶ 14 Defendant contends that codefendant's defense was "subtly" antagonistic throughout the trial and outwardly hostile during closing argument, which was based on the assumption of defendant's guilt. As evidence, defendant cites his testimony of being the peacemaker, but nevertheless being tasered by Officer Cervantes, and codefendant's argument that Officer Tews tasered defendant, but not him. This, defendant claims, suggested that Officer Tews was justified in tasering defendant, because he had reason to fear him, and correspondingly, the failure to taser codefendant meant that Officer Tews did not fear codefendant, leading to the conclusion that defendant was guilty and codefendant was innocent. Defendant also claims that this conclusion was reinforced by codefendant's counsel during closing argument. The record, however, does not support this contention.

¶ 15 Although there was conflicting testimony as to which officer tasered defendant, the record is clear that the officers were in a tense situation and that Officer Tews testified that he was afraid of both offenders. The record also shows that each defendant denied the assertions against him, but did not do so by suggesting or assigning blame to the other. *Gabriel*, 398 Ill. App. 3d at 347. There is also nothing in the record indicating that respective counsel attacked each other's client such that severance was required to ensure defendant received a fair trial. *Gabriel*, 398 Ill. App. 3d at 347. As a result, defendant fails to show that trial counsel erred by failing to file a motion for severance.

¶ 16 In reaching this conclusion, we find defendant's reliance on *People v. Bean*, 109 Ill. 2d 80, 95 (1985), is misplaced. In *Bean*, the defenses of the parties were openly and obviously antagonistic, whereas here, the defenses were, at most, merely inconsistent or contradictory (*People v. Rodriguez*, 289 Ill. App. 3d 223, 235 (1997)), circumstances which do not require severance (*People v. Rice*, 286 Ill. App. 3d 394, 403 (1996); *People v. Lekas*, 155 Ill. App. 3d 391, 408 (1987)).

1-11-1991

¶ 17 Defendant further maintains that the joinder was statutorily improper because the offenses he and codefendant were charged with were separate acts. In making this argument, defendant relies on section 111-4(b) of the Code (725 ILCS 5/111-4(b) (West 2010)), which provides, in pertinent part, that "two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or in the same comprehensive transaction out of which the *** offenses arose." 725 ILCS 5/111-4(b) (West 2010). The record shows that the charged offenses were committed within a short period of time, in the same location, and against the same two police officers, who were attempting to break up the fight. As such, it is clear that the offenses arose from the same comprehensive action (*People v. Quiroz*, 257 Ill. App. 3d 576, 586 (1993)), and that the joinder of these cases conformed with the statute.

¶ 18 Defendant finally contends, in essence, that the result would have been different had severance occurred. He specifically maintains that codefendant's counsel "skewed the playing field" by reinforcing the State's case against defendant, requiring him to defend against the theories of codefendant and the State.

¶ 19 In support of this argument, defendant cites *Rodriguez*, 289 Ill. App. 3d at 236, where the codefendant contended at trial that the occurrence witnesses' initial statements, implicating him in the shooting and not the defendant, were unreliable, and the defendant maintained that those statements were true. The reviewing court found that even though the codefendant did not take the stand and point at the defendant as the perpetrator, his counsel's examination of the witnesses, which reinforced the State's presentation of the evidence of the defendant's guilt, was antagonistic to the defendant. *Rodriguez*, 289 Ill. App. 3d at 236-37. Here, defendant and codefendant were charged with separate offenses arising from the same incident. There were no contradictory witness statements as to who was the perpetrator, the officers testified to separate acts committed by both

1-11-1991

offenders, and although both defendants maintained their innocence, one did not do so at the expense of the other. Accordingly, we find defendant's reliance on *Rodriguez* misplaced.

¶ 20 Moreover, the evidence against defendant was overwhelming (*Harris*, 206 Ill. 2d at 304); and, therefore, even if counsel had moved for, and was granted, a severance, the result of the trial would not have been different (*Everhart*, 405 Ill. App. 3d at 697). We therefore conclude that defendant's claim of ineffective assistance of trial counsel also fails for lack of prejudice. *Harris*, 206 Ill. 2d at 304.

¶ 21 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.