2016 IL App (4th) 140510-U

NO. 4-14-0510

FILED
December 22, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MARTREAIL S. PATTON,	)	No. 13CF1821
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's counsel did not provide ineffective assistance by failing to request a self-defense jury instruction.

¶ 2 Following a jury trial, defendant, Martreail S. Patton, was convicted of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)) and sentenced to 15 years in prison. Defendant appeals, arguing his trial counsel was ineffective for failing to request a self-defense jury instruction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2013, the State charged defendant with two counts of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)), alleging he knowingly discharged a firearm and caused bodily harm to two individuals, Artez Winston (count I) and

Alandize Winston (count II). Ultimately, the trial court dismissed count II on the State's motion and proceeded on only count I. In April and May 2014, defendant's jury trial was conducted. The State presented evidence that on October 18, 2013, defendant and his cousin, Dontae Luster, encountered the Winstons at a motel in Rantoul, Illinois, and agreed to purchase cannabis from them. However, during the transaction, an argument broke out and both Winstons were shot.

¶ 5 In court, Artez identified defendant as the person who shot him. He acknowledged drinking alcohol at the motel on the day of the incident and testified he and Alandize argued with defendant and Luster outside of motel rooms 12 and 13 regarding the purchase price of the cannabis. Artez stated the motel's manager "came out" and told them they were being too loud. According to Artez, defendant and Luster then entered room 13. He testified he remained near the doorway of room 13 "inside the threshold" talking with Luster. Artez observed defendant going in to the bathroom and then coming out of the bathroom and walking toward the door. Artez stated defendant was "up close" to him and "came out [of] his shirt with something." The next thing he recalled was seeing "blood coming from [his] stomach." Evidence showed Artez was shot twice and had gunshot wounds to his chest and anterior right flank.

¶ 6 Defendant testified on his own behalf and asserted Luster was the one who shot both Winstons. Evidence showed defendant had gone to the motel on the day of the incident with his brother, Luster, and two other cousins, and the group rented rooms 12 and 13. At some point, defendant and Luster separated from the others and were at the motel by themselves. They encountered the Winstons and Luster agreed to purchase cannabis from them. According to defendant, Luster paid the Winstons, but they never produced any cannabis. Defendant stated he asked Artez "where the money or the weed" was, and Artez "started getting crazy." He testified

that Artez appeared to be under the influence of alcohol and described him as "going out of control" during their argument, "walking around" outside the motel and appearing agitated.

¶ 7 Defendant testified he and Luster had the key to room 12 but, during the argument with the Winstons, Luster told him to go to the manger to get the key for room 13, which was locked. Ultimately, they paid the manager $5 and he unlocked room 13. Defendant and Luster went inside and "slammed the door." While inside room 13, defendant heard "a lot [of] commotion." He testified the Winstons were beating on the door and yelling at them to open the door. Defendant suggested to Luster that they "whoop" the Winstons or "beat them up," but Luster "was getting agitated" and stated, "we fittin' to whack" them. Defendant testified he was scared and he and Luster telephoned defendant's brother and cousins and told them to hurry up and come back to the motel.

¶ 8 Defendant described what occurred next as follows:

> "So [Luster] was like skip it. Fuck it. We—he went to the bed and flipped over the mattress and grabbed two guns and then, at first, I was like, cuz, we don't have to do this, you know what I'm saying. They intoxicated. We can just, you know what I'm saying, beat 'em up, push 'em around or something. He's like no. Fuck this. I'm fittin' to whack 'em. So he grabbed a gun and he grabbed me a gun and we go open the door."

According to defendant, he and Luster both stuck their guns out of the door and pointed them at Artez and told him to leave or move. Artez responded, " [']I ain't scared of no gun, you're going to have to shoot me,['] " and then he "rushed" Luster, who "let one off," hitting Artez in the

stomach. Defendant testified Artez "ran out" and Luster followed him and "shot two more times," hitting both Winstons. Defendant asserted he fired a single shot at the ground. He and Luster then got in their vehicle and left the scene.

¶ 9 On cross-examination, defendant testified he did not know whether Artez had any weapons at the time he and Luster pointed their guns at him. He acknowledged that during his interview with the police, he stated he did not see any weapons, but Luster "said he seen something bulging out of the pants." Additionally, during defendant's redirect examination, the following colloquy occurred between defendant and his attorney:

> "Q. When [Luster] took the gun out, you had an idea that something bad was going to go down?
>
> A. Yes.
>
> Q. Did you say anything to [Luster]?
>
> A. At first I was like we don't have to do this, you know what I'm saying. We don't need these guns. But he said, no, skip that.
>
> Q. Okay. Was he getting pretty agitated at that point from what you could see and hear?
>
> A. Yes."

¶ 10 In its closing argument, the State asserted defendant was directly liable for shooting Artez but also maintained he could be found guilty based on an accountability theory. It submitted an accountability instruction, which was given to the jury. During his closing argument, defendant's attorney argued Luster alone was responsible for shooting Artez and asserted

defendant had argued against the shooting. Following deliberations, the jury found defendant guilty of aggravated battery with a firearm.

¶ 11 In June 2014, defendant filed a motion for acquittal or a new trial, arguing the evidence presented at his trial was insufficient to establish his guilt under either a direct or accountability theory of liability. The same month, the trial court denied defendant's posttrial motion and sentenced him to 15 years in prison.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues his trial counsel was ineffective for failing to submit a self-defense jury instruction. He contends evidence was presented at his trial to support an argument and finding that either he or Luster was acting in self-defense and, therefore, justified in shooting Artez.

¶ 15 An ineffective-assistance-of-counsel claim is reviewed under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Houston*, 229 Ill. 2d 1, 11, 890 N.E.2d 424, 430 (2008). That test requires that a defendant "show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced the defense in that, absent counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different." *Id.* To prevail on a claim of ineffective assistance, a defendant must satisfy both *Strickland* prongs. *Id.*

¶ 16 "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against

such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2012). "Self-defense is an affirmative defense, and once a defendant raises 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. Lee*, 213 Ill. 2d 218, 224, 821 N.E.2d 307, 311 (2004). To be entitled to a self-defense jury instruction, a defendant must present some evidence of each of the following:

> "(1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *Id*. at 225, 821 N.E.2d at 311.

"If the State negates any one of these elements, the defendant's claim of self-defense must fail." *Id*.

¶ 17 Additionally, "a defendant is entitled to instructions on those defenses which the evidence supports *** even in instances where the evidence is 'slight' [citations] or where it is inconsistent with defendant's own testimony [citations]." *People v. Everette*, 141 Ill. 2d 147, 156, 565 N.E.2d 1295, 1298 (1990). "Where self-defense is not supported by the evidence, an instruction thereon may properly be refused." *Id*. at 157, 565 N.E.2d at 1299.

¶ 18 Here, we find a self-defense jury instruction was not supported by the evidence presented and, therefore, was unwarranted. Evidence showed defendant and Luster got into a

disagreement with the Winstons over a drug transaction. Defendant testified Artez was intoxicated and described him as "out of control," walking around outside the motel and agitated. However, the evidence established that the interactions between defendant, Luster, and the Winstons were verbal. No evidence was presented of any physical contact or even of any verbal threat of unlawful force directed at Luster or defendant by the Winstons.

¶ 19 Additionally, assuming there was a threat of unlawful force, the evidence fails to support a finding that the threat was imminent. During the argument, defendant and Luster were able to get away from the Winstons by going inside room 13 and shutting the door. We note that, according to defendant's evidence, rather than leave the motel or enter the room to which they already had access, defendant and Luster took the time to gain access to a locked room by contacting the motel's manager. Further, although defendant described Artez as yelling and beating on the door to room 13, the record fails to reflect that he was trying to enter the room. Defendant and Luster could have remained inside the room. They also had cell phones at their disposal to call for help.

¶ 20 We find the record further reflects that defendant and Luster became the aggressors in the situation when, despite the lack of imminent harm, they escalated the situation by arming themselves with firearms and confronting the Winstons. See *People v. Nunn*, 184 Ill. App. 3d 253, 269, 541 N.E.2d 182, 193 (1989) (stating that "if one responds with such excessive force that one is no longer acting in self-defense but in retaliation, said excessive use of force renders one the protagonist; a non-aggressor has a duty not to become the aggressor"). Defendant's own testimony refutes that the use of a firearm to confront the Winstons was necessary under the circumstances and that Luster expressed the intent to "whack" the Winstons before open-

ing the motel room door. Further, although defendant's testimony and statement to police indicated that Luster stated he observed something under one of the Winstons' clothing, the evidence does not support a finding that either Winston brandished a weapon or threatened the use of one against defendant and Luster. Finally, accepting defendant's testimony as true, the evidence shows Luster continued to shoot as Artez was moving away from him, further indicating that the force applied was unnecessary and not in defense of his person.

¶ 21 We also note that the failure to request a self-defense instruction does not constitute ineffective assistance when such a failure is due to trial strategy. *People v. Gill*, 355 Ill. App. 3d 805, 811, 825 N.E.2d 339, 344 (2005). In this instance, defendant presented the defense that Luster alone was responsible for shooting Artez and that he had tried to talk Luster out of using a firearm. In particular, Defendant testified the Winstons were so intoxicated that it was unnecessary to use a firearm against them and that he and Luster could, instead, "beat 'em up, push 'em around or something." Thus, an instruction indicating it was necessary to shoot Artez for defendant and Luster to defend themselves would have been contrary to defendant's testimony and his counsel's strategy of defense.

¶ 22 Under the circumstances presented, defense counsel's failure to request a self-defense jury instruction did not render his performance deficient. Defendant did not receive ineffective assistance of counsel.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.