

FIFTH DIVISION
February 20, 2015

No. 1-13-0094

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 C4 40948
)	
PAWEL RZODKIEWICZ,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's aggravated battery conviction is affirmed. Defendant's claim that he received ineffective assistance of counsel lacks merit, as he cannot show he was prejudiced by counsel's allegedly deficient performance. In addition, the evidence was sufficient to sustain defendant's conviction.
- ¶ 2 Following a bench trial, defendant, Pawel Rzodkiewicz, was convicted of aggravated battery and sentenced to 30 months' probation. He appeals, asserting that he received ineffective assistance of trial counsel and the State failed to prove him guilty beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 Defendant and his wife, Karolina R zodkiewicz, and the victim in this case, Monika Will, went to an outdoor party at 10537 West Crown Road in Franklin Park at approximately 10 p.m. on July 31, 2010. At the party, Will met Malgorzata-Marta Merta and Merta's husband, Adam Mazur. Will testified that at around 4 a.m., she was sitting at a table with Merta, Karolina, and defendant when defendant started arguing with Merta and calling her names as Mazur slept in a chair. Will believed defendant was under the influence of alcohol. When Merta stopped talking to defendant, defendant "turned the table over" and jumped on Mazur. Defendant hit and beat Mazur then pushed him off the chair and started kicking him. He also hit Mazur's head against a metal shed. Merta started shouting for help, but everyone except Will had run away. Merta and Will attempted to separate Mazur and defendant. As Will tried to pull defendant off of Mazur by his pants, defendant turned toward her and kicked her in the left ankle with his shoe before pushing her away.

¶ 4 Will fell to the grass and felt "[i]ncredible pain." Karolina returned to the area and Will asked her to call 9-1-1, but Karolina refused. Eventually, Will called an ambulance and was transported to Gottlieb Hospital. She later underwent surgery on her left ankle and remained in the hospital for two days. The parties stipulated that Dr. Allen Brecher, who would be qualified as an expert in surgical medicine, would testify that he was Will's treating surgeon at Gottlieb Hospital. Brecher would testify that Will was admitted at around 5:18 a.m. and was treated for a displaced medial malleolus fracture, a posterior malleolus fracture, and a fibular fracture in the mid-shaft. Brecher surgically repaired Will's injuries with a 40 millimeter screw, and he would testify that People's exhibits Nos. 1 and 2 were post-operation X-rays of the victim's ankle and

leg showing the screw and fibular fracture. Will testified that she used crutches for six months while her ankle healed and attended physical therapy three times a week.

¶ 5 Will acknowledged that she had three beers at the party and may have had more, but said she was not "falling down drunk." The parties stipulated that when she was taken to the hospital, Will underwent blood testing, and pathology consultant Robert Shermer, III, would testify Will's blood alcohol content (BAC) was .141.

¶ 6 Malgorzata-Marta Merta testified that as she was sitting at a table with Will, defendant, and Mazur toward the end of the party, defendant started insulting her. When Merta stopped responding to defendant, he stood up, lifted the table, and turned it upside down. Defendant then hit Mazur in the chin, grabbed him, threw him to the ground, and started kicking him. Defendant also grabbed Mazur by the jacket and hit his head against a tool shed. Merta started shouting and called for Will to help her pull defendant away. As Will was pulling on defendant, defendant turned around with a "terrible look on his face," kicked Will in her leg, and pushed her. Will fell to the ground and "looked as if she was in great pain." Merta yelled at defendant, who ran away. The parties stipulated that Officer Ross of the Franklin Park police department would testify that he placed defendant under arrest at 10537 West Crown Road at around 4:36 a.m. on August 1, 2010.

¶ 7 Defense counsel presented three witnesses—Jakob Grodzicki, Karolina R zodkiewicz, and defendant.

¶ 8 Jakob Grodzicki, the host of the party, testified that he was sitting with others in a circle arguing about "who wears the pants in the house." At around 4.a.m., Mazur and defendant started arguing, and defendant became upset at something Mazur said and turned over the table. Mazur,

who was drunk, punched defendant in the face. The two men fell to the ground, and Will and Merta approached to try to separate them. Grodzicki saw Will on the ground but did not see how she fell, speculating that Will may have fallen when he was talking to his wife. He never saw defendant or anybody else hit Will. Grodzicki acknowledged that defendant was his friend and he did not know Will before the party. During the party, Grodzicki drank 10 alcoholic drinks, and he testified defendant was under the influence of alcohol. Will was consuming mixed vodka drinks.

¶ 9 Karolina Rzodkiewicz, defendant's wife, testified that defendant was under the influence of alcohol on the night of the party but she was not. As everybody was sitting and talking in a circle, defendant became upset and flipped over a table. Mazur then stood up and punched defendant in the face. The two men started to fight and fell on to the grass. Karolina denied that defendant punched or kicked Mazur. While defendant and Mazur were fighting, Merta was standing next to them, screaming for them to stop. When Will, who was Karolina's friend, tried to split up defendant and Mazur, she fell to the ground. Karolina denied ever seeing defendant kick or hit Will.

¶ 10 After Will fell, she called out to Karolina and told her she was hurt and needed her insurance card. Karolina denied that Will asked her to call an ambulance, explaining that Will had a phone in her hand and indicated she was going to call an ambulance herself. Karolina acknowledged she visited Will in the hospital twice after the incident, but she denied asking Will not to press charges. According to Karolina, she only asked Will why she was pressing charges and told her defendant had "trouble with deportation because of this case." Initially, Karolina admitted that she contacted Mazur and Merta after the party. She then denied contacting them,

saying that Merta called her and asked her for Will's phone number because they wanted to visit Will in the hospital. She denied telling Merta and Mazur that they would have deportation problems if they testified against defendant, stating she told them defendant was having deportation problems. She also denied going to Merta and Mazur's residence with defendant to discuss the matter with them.

¶ 11 Defendant testified that he drank "[a] lot" of whiskey and colas and was under the influence of alcohol during the party. At around 4 a.m., he became involved in an argument and turned over a table. He explained that he and Merta had a "sharp exchange of words" and he became angry when Merta said Karolina "wears the pants." After defendant flipped over the table, Mazur hit him, and he hit Mazur back. The two then engaged in "a wrestling match on the ground." Eventually, defendant felt someone "pulling on" him and realized it was Will. He did not remember how Will hit the ground because he was focused on his fight with Mazur. Defendant denied hitting or kicking Will. Mazur and defendant stopped fighting when Will shouted that her ankle hurt. She gave Karolina her house keys to retrieve her insurance card. After Karolina left, Will said defendant kicked her, which he denied. The police arrived and "everyone just took off."

¶ 12 Will and Merta each testified in rebuttal. Will said that when Karolina visited her the second time in the hospital, she threatened her with deportation, telling Will she was here illegally and she had no rights. Karolina also asked Will not to file any charges against defendant. When asked whether she requested that Karolina retrieve her insurance card, Will stated she did not have health insurance. Merta testified that Karolina and defendant called her home approximately four times after the incident, and defendant told her that she and Mazur

would be deported if they went to court. Karolina and defendant also visited Merta's home twice, and Karolina asked Merta not to testify because she and defendant had a small child.

¶ 13 The trial court found defendant guilty of aggravated battery, finding Will suffered great bodily harm and defendant's act was intentional. The court also stated it found the State's witnesses' testimony to be credible. At a later hearing, the court sentenced defendant to 30 months' probation. This appeal followed.

¶ 14 On appeal, defendant first asserts that he received ineffective assistance of trial counsel. He contends counsel failed to adequately cross-examine Will, failed to move for a directed finding, and failed to argue that the State did not prove each element of aggravated battery beyond a reasonable doubt. Defendant also contends that counsel entirely failed to subject the State's case to meaningful adversarial testing and, accordingly, we should presume prejudice pursuant to *Bell v. Cone*, 535 U.S. 685 (2002).

¶ 15 Claims of ineffective assistance of counsel are governed by the two-part test delineated in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Bew*, 228 Ill. 2d 122, 127 (2008). Under *Strickland*, a defendant must show both that counsel's performance was deficient and that he suffered prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687. However, a trial will be found presumptively unfair where " 'counsel entirely fails to subject the prosecution's case to meaningful adversarial testing.' " *Cone*, 535 U.S. at 696-97 (quoting *United States v. Cronin*, 466 U.S. 648, 659 (1984)). In such an instance, "there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." *Cronin*, 466 U.S. at 659.

¶ 16 We reject defendant's contention that we should presume prejudice because counsel failed to subject his case to the meaningful adversarial testing required by the Sixth Amendment. As the Supreme Court has explained, when it "spoke in *Cronic* of the possibility of presuming prejudice based on an attorney's failure to test the prosecutor's case," it "indicated that the attorney's failure must be complete." *Cone*, 535 U.S. at 697. Defendant has pointed to three alleged failures on counsel's part: the failure to adequately cross-examine Will, the failure to move for a directed finding, and the failure to argue that the State did not prove each element of aggravated battery. Defendant does not allege, nor can he show, that counsel failed to oppose the prosecution throughout the entire trial. Notably, counsel asserted in his opening statement and again at closing that defendant lacked the intent to kick or hurt Will. Counsel also challenged the State's witnesses' credibility in his closing. Further, counsel put on three witnesses, cross-examined both of the State's witnesses, and never conceded defendant's guilt. Based on the foregoing, defendant has failed to show his attorney failed entirely to conduct any meaningful adversarial testing. See *People v. Guest*, 166 Ill. 2d 381, 395-96 (1995) (counsel conducted meaningful adversarial testing where counsel pursued a theory throughout trial and during opening and closing arguments that the State failed to meet its burden of proof, cross-examined the State's witnesses in a manner consistent with the theory, challenged the State's failure to produce evidence, and never conceded the defendant's guilt). Accordingly, we review defendant's allegations of ineffective assistance pursuant to *Strickland*.

¶ 17 Under *Strickland*, a defendant must establish both that counsel's performance was deficient and that he suffered prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687. To satisfy the prejudice prong, a defendant "must show that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability that is sufficient to undermine confidence in the outcome." *Id.* If either prong of the *Strickland* test is not proven, defendant's ineffective-assistance claim fails. *People v. Perry*, 224 Ill. 2d 312, 342 (2007). Accordingly, we need not consider whether counsel's performance was deficient before deciding whether the alleged deficiency so prejudiced defendant that he is entitled to a new trial. *Id.*

¶ 18 Defendant has failed to show a reasonable probability exists that the outcome of his trial would have been different but for counsel's allegedly deficient performance. The evidence of defendant's guilt was overwhelming. It was undisputed at trial that defendant became angry during the party, flipped over a table, and started fighting with Mazur. Will and Merta, whom the trial court found credible, both testified that as Will tried to break up the fight between defendant and Mazur, defendant turned toward Will, kicked her in the leg, and pushed her away. Merta described defendant as having a "terrible look on his face" when he turned to Will. After defendant's kick, Will fell to the ground, felt "[i]ncredible pain," and later underwent surgery for a fractured ankle. The parties stipulated that Will was treated for a fractured ankle. Notably, Merta also testified that defendant ran away after kicking Will. In light of the strong evidence against him, defendant cannot establish the outcome of his trial would have been different even if counsel had conducted a lengthier cross-examination of Will, moved for a directed finding, or made arguments as to each element of aggravated battery.

¶ 19 Moreover, we reject defendant's claim that if Will were properly cross-examined, her testimony could have formed the basis for a claim of self-defense. Defendant fails to recognize

that self-defense is an affirmative defense, and raising such a defense "necessarily constitutes an admission by the defendant that he committed the crime for which he is being prosecuted."

People v. Chatman, 381 Ill. App. 3d 890, 897 (2008). At trial, defendant denied ever hitting or kicking Will. Thus, any cross-examination of Will about a potential self-defense claim could not have changed the outcome in this case.

¶ 20 In sum, defendant has failed to show a reasonable probability exists that but for counsel's alleged errors, the result of his trial would have been different. Defendant has therefore failed to establish he received ineffective assistance of counsel.

¶ 21 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt. He argues the State failed to show he intended to cause bodily harm to Will because none of the witnesses testified it was his kick that caused Will's ankle injury. Defendant also asserts the State failed to establish he acted without legal justification. He observes Will made initial contact with him when she intervened in his confrontation with Adam.

¶ 22 When a defendant challenges the sufficiency of the evidence, 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. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). It is the trial court's responsibility to resolve conflicts in the witnesses' testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Thus, we will not substitute our judgment for that of the trial court on issues involving the weight of the evidence or the credibility of witnesses. *Id.* 224-25. "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it

creates a reasonable doubt of defendant's guilt.' " *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 23 To prove defendant guilty of aggravated battery, the State was required to show that while committing a battery, he intentionally or knowingly caused great bodily harm. 720 ILCS 5/12-4(a) (West 2010). A defendant's intent to cause great bodily harm may be proved through circumstantial evidence. *People v. Steele*, 2014 IL App (1st) 121452, ¶ 23. Specifically, the defendant's "[i]ntent can be inferred from the surrounding circumstances, the defendant's words, the weapon used, and the force of the blow." *Id.*

¶ 24 The evidence was sufficient to sustain defendant's conviction. As previously detailed, it was undisputed at trial that defendant became angry, flipped over a table, and fought with Mazur. It was also undisputed that Will underwent surgery for a fractured ankle. Both Will and Merta testified that defendant kicked Will in the leg, and Merta described defendant as having a "terrible look on his face" when he turned toward Will. Based on the testimony of Merta and Will, whom the trial court explicitly found to be credible, the court could reasonably infer defendant caused Will's fractured ankle when he kicked her and that he intended to cause Will great bodily harm.

¶ 25 Nonetheless, defendant posits that he could have caused Will's ankle injury when he pushed her, and the act of pushing Will could not support an inference that he intended to harm her ankle. However, it was for the trial court to weigh the evidence and draw reasonable inferences therefrom. *Siguenza-Brito*, 235 Ill. 2d at 224. Defendant also claims, without citation to any supporting authority, that the State failed to prove he acted without legal justification. He posits that because Will made the initial contact with him, he would "be legally justified in

pushing her away in self defense." Like his related ineffective-assistance claim, defendant's contention fails because at trial, he denied hitting or kicking Will and said he did not know how she ended up on the ground. Yet, "[t]he defense of self-defense presupposes that the accused committed the act and invokes the defense as a justification." *People v. Hawkins*, 88 Ill. App. 3d 178, 182 (1980); see also *Chatman*, 381 Ill. App. 3d at 897 (making a self-defense claim "necessarily constitutes an admission by the defendant that he committed the crime."). Because defendant never admitted at trial that he caused great bodily harm to Will, it cannot follow that he did so in self defense. In sum, the evidence was sufficient to establish defendant committed aggravated battery.

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.