2017 IL App (1st) 150666-U

No. 1-15-0666

Order filed July 21, 2017

Fifth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 09315
	)	
JOSEPH TURI,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant swung golf club and 18-inch knife toward police officers, the State established that a reasonable person would have apprehended a battery based on those acts, and defendant's conviction for aggravated assault is affirmed.

¶ 2 Following a jury trial, defendant Joseph Turi was convicted of three counts of the aggravated assault of a peace officer engaged in the execution of official duties (720 ILCS 5/12-2(b)(4)(ii) (West 2014)). Defendant was sentenced to 33 months in prison for each conviction, with those sentences to be served concurrently. On appeal, defendant contends the State failed to

prove the elements of aggravated assault beyond a reasonable doubt as to each of the three police officers because two of the officers lacked a reasonable apprehension of an imminent battery and the third officer had no apprehension of a battery.

¶ 3 Defendant was charged with the aggravated assault of Chicago police officers Brian Gaffney and Milo Manojlovic for "wield[ing] a sword" at those officers and also with the aggravated assault for Chicago police sergeant Robert Goode for swinging a golf club at him. Defendant acted as his own attorney at trial.

¶ 4 At trial, Felix Outland testified that on April 30, 2014, he was the property manager for Dorland Property and performed services such as executing leases, rent collection, evictions and maintenance. That day, Outland arrived at a single-family residence at 1423 East 71st Place in Chicago to meet with a contractor. Outland noticed the window blinds had been raised and a security bar above a window had been removed. Outland approached the front door and noted the door had been forced open and was closed but not locked.

¶ 5 Outland rang the doorbell, and defendant answered. When Outland asked defendant what he was doing inside the residence, defendant replied that he was establishing residency and slammed the door. Outland informed defendant "through the door" that he was calling 911 because defendant lacked permission to be inside. Chicago police arrived at the scene, and Outland gave them permission to enter the residence. On cross-examination, Outland said he was last at the property two weeks before this incident.

¶ 6 Officer Gaffney testified that he, Officer Manojlovic and another officer responded to Outland's call and entered the residence after announcing "Chicago police" in a loud voice. All

three officers wore clothing that identified them as police officers. When the officers entered, defendant was standing at the top of a flight of stairs. Other officers had also entered.

¶ 7 Officer Gaffney testified that defendant stood at the top of the stairs, shouting, "Get out of the house." Defendant held a "small sword or knife" in his right hand and a golf club in his left hand. Officer Gaffney ordered defendant to drop the weapons and started to approach defendant. Officer Manojlovic was directly behind Officer Gaffney.

¶ 8 Officer Gaffney testified that defendant told the officers, "If you come up here, I'm gonna use this sword and put it through your chest." Defendant further stated, "I'm not afraid of dying and going to heaven." Officer Gaffney was between 5 and 10 feet away from defendant, and he "backed down and held my position" because he was afraid for his safety, as well as that of his partners and defendant. Defendant was "moving in all directions" wielding the knife or sword in a stabbing motion and he believed that if he had continued up the stairs, defendant "would have taken the sword and put it through my chest."

¶ 9 Officer Gaffney testified that Chicago Police Sergeant Robert Goode arrived at the scene with a Taser gun and "took the lead position on the stairs," approaching defendant. Defendant then "barricaded himself behind the wall of the second floor landing and swung the golf club" at Sergeant Goode as he approached. Officer Gaffney said that Sergeant Goode had to "duck his head" to avoid being struck by the golf club, which was "mere inches" away from striking him. The golf club hit the wall with a loud noise. Defendant moved away and barricaded himself behind a wall. Sergeant Goode told the officers that a tactical team would be called to extricate defendant.

¶ 10 The State entered into evidence photographs of the building's interior, the golf club and the sharp object held by defendant. Officer Gaffney described the latter item as a "small samurai sword or knife" with approximately an 18-inch blade. On cross-examination, Officer Gaffney stated that when he first observed defendant and saw him holding the sword and golf club, he drew his weapon. Although defendant never descended from the top of the stairs, defendant swung the sword "in all directions" while verbally threatening the officers.

¶ 11 Officer Manojlovic testified that after he and Officer Gaffney entered the residence, they both started up the stairs, and he was "shoulder-to-shoulder" with Officer Gaffney. Defendant was about 10 to 20 feet away from them and moved both of his arms in a circular motion while holding the sword and the golf club in each hand. Officer Manojlovic testified that he believed defendant would "possibly hurt somebody" or "cause great bodily harm."

¶ 12 Officer Manojlovic testified that Sergeant Goode was standing "a couple of stairs ahead of us" and was about five feet away from defendant. As Sergeant Goode moved closer to defendant, defendant swung the golf club, coming within six to eight inches of him. The golf club struck the wall above Sergeant Goode's head. The three officers secured the scene until the tactical team arrived and deployed pepper spray, and defendant was taken into custody.

¶ 13 Sergeant Goode testified that he entered the residence behind the other two officers but "took the lead" as he went up the stairs. When he was on the third step from the top of the stairs, defendant swung the golf club, and the club came "very close" to his head and would have hit him had he not ducked. Officer Manojlovic and Sergeant Goode also identified the photographs of the items held by defendant, as well as the wall where defendant hit it with the golf club.

¶ 14 Defendant recalled Officers Gaffney and Manojlovic and Sergeant Goode to testify in his defense. In response to one of defendant's questions, Sergeant Goode remarked that "it was not a threatening situation as long as you did not come down any further from the top of the stairs." The jury found defendant guilty of aggravated assault as to each officer.

¶ 15 On appeal, defendant contends that the State did not establish the elements of aggravated assault because the officers did not have a reasonable apprehension of an imminent battery. He argues that Officers Gaffney and Manojlovic did not have a reasonable apprehension of a battery because they were between 5 and 10 feet away from him and he did not move toward them as he stood at the top of the stairs and swung the sword and golf club. In addition, defendant contends Sergeant Goode's remark that "it was not a threatening situation" demonstrates that he lacked any apprehension of a battery.

¶ 16 When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the facts. *Id*. Thus, a reviewing court will not substitute its judgment for the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id*.

¶ 17 It is not the task of a reviewing court to retry the defendant when the sufficiency of the evidence is challenged. *People v. Lloyd*, 2013 IL 113510, ¶ 42. In an appeal from a criminal conviction, we will not reverse the judgment of the trial court unless the evidence is so

unreasonable, improbable or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Bradford*, 2016 IL 118674, ¶ 12.

¶ 18 To convict defendant of aggravated assault in this case, the State was required to prove that he knowingly and without authority engaged in conduct that placed the officers in reasonable apprehension of receiving a battery, knowing that they were peace officers. 720 ILCS 5/12(b)(4) (West 2014). Defendant does not dispute that he knew the three men were police officers. He contends, as set out above, that the officers did not reasonably apprehend a battery.

It was the task of the jury, as the trier of fact in this case, to determine whether defendant's acts placed each of the three officers in reasonable apprehension of receiving a battery. See *Bradford*, 2016 IL 118674, ¶ 12; see also *In re Justin F.*, 2016 IL App (1st) 153257, ¶ 17.

¶ 19 A reasonable apprehension on the part of a victim "may be inferred from the evidence presented at trial, including the conduct of both the victim and the respondent." *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005). Reasonable apprehension is judged on an objective standard, based on the apprehension that is "normally aroused in the mind of a reasonable person." *People v. Taylor*, 2015 IL App (1st) 131290, ¶ 14, citing *Gino W.*, 354 Ill. App. 3d at 778-79; see also *In Interest of C.L.*, 180 Ill. App. 3d 173, 178 (1989) (noting the use of an objective standard "bars consideration of the idiosyncratic characteristics of a particular victim such as extreme timidity or frightfulness.") Because an objective standard is used, it is not necessary for a victim to testify that he or she was in actual apprehension of receiving a battery. *Gino W.*, 354 Ill. App. 3d at 778.

¶ 20 As to Officers Gaffney and Manojlovic, defendant argues they could not have reasonably apprehended a battery because of their distance from him and because his threat to harm the

officers was “conditioned” on their continued movement up the stairs. Defendant points out that he held “short-range weapons” and did not approach the officers.

¶ 21 However, as set out above, the State did not have to establish that those officers were in actual apprehension of a battery; rather, the State was required to prove that a reasonable person would have apprehended a battery. See *Taylor*, 2015 IL App (1st) 131290, ¶ 14. Officer Gaffney testified that when he first saw defendant, defendant held a “small sword or knife” in one hand and a golf club in the other hand. He estimated that the sword or knife had an 18-inch blade, and photographs of both items were introduced into evidence. After the officer ordered defendant to drop the weapons, defendant said he would use the sword if the officers were to “come up here.” Defendant swung the golf club and moved the sword in a stabbing motion. Officers Gaffney and Manojlovic were between 5 and 10 feet away from defendant and then backed away from him. Based on that testimony, the jury could find that defendant placed Officers Gaffney and Manojlovic in reasonable apprehension of receiving a battery.

¶ 22 Defendant further contends Sergeant Goode was not in apprehension of a battery at all, pointing to the sergeant’s remark during the defense case that defendant did not pose a threat. However, it was not necessary for the State to show that Sergeant Goode himself actually apprehended a battery. See *Taylor*, 2015 IL App (1st) 131290, ¶ 14. The evidence presented at trial of a reasonable apprehension of a battery as to Sergeant Goode was as great or greater than that relating to the other two officers. According to the testimony of both Officer Gaffney and Sergeant Goode, defendant swung the golf club at Sergeant Goode, coming within “mere inches” of striking him and causing him to duck his head. Officer Gaffney testified the golf club hit the wall with a loud noise. The evidence was sufficient for the jury to infer, based on defendant’s act

of swinging the golf club, that a reasonable person would have apprehended a battery in the case of Sergeant Goode. The fact that Sergeant Goode ducked his head to avoid being hit by the golf club indicates a reasonable person would have anticipated a battery based on defendant's action. See, *e.g.*, *People v. Alexander*, 39 Ill. App. 3d 443, 447-48 (1976) (where defendant swung a tire iron in victim's direction causing him to duck, the trier of fact could infer that defendant's conduct placed victim in reasonable apprehension of a battery).

¶ 23 In conclusion, the evidence presented at trial, when viewed in the light most favorable to the prosecution, established that defendant's actions placed each of the three officers in this case in reasonable apprehension of a battery.

¶ 24 Accordingly, the judgment of the trial court is affirmed.

¶ 25 Affirmed.