2011 IL App. (3d) 100327-U

Order filed December 5, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	Appeal No. 3-10-0327
	)	Circuit No. 09-CF-318
ERIC J. STEVENS,	)	
	)	Honorable H. Chris Ryan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to convict defendant. Defendant fails to show that his trial counsel's representation was negatively impacted by the prior representation of two men charged with the same crime. The trial court is affirmed.

¶ 2 Defendant, Eric Stevens, appeals his conviction for threatening a public official. He

argues that the evidence was insufficient to support his conviction. He also argues that his trial counsel had an actual conflict of interest due to the joint representation of multiple defendants. The evidence supports defendant's conviction, and he was not denied the effective assistance of counsel. The trial court is affirmed.

¶ 3 FACTS

¶ 4 The State charged defendant, Jacob Stanford, Brian Burress, and Robert Heckman with threatening a public figure. The charges all came in response to a single encounter involving the four men and Officer Jeremiah Brown. Initially, private attorney Melvin Hoffman represented all four men. Two trials were scheduled, a bench trial for defendant and Heckman, and a jury trial for Stanford and Burress. At some point prior to either trial, the State raised the issue of whether Hoffman had a conflict in representing all four men. Hoffman informed the court he did not believe he could represent all four men. He withdrew from representing Stanford and Burress. The State tried defendant and Heckman prior to Burress and Stanford.

¶ 5 At defendant and Heckman's bench trial, Officer Brown testified to the following. On July 6, 2009, he was a part-time police officer in Earlville. Around 2 a.m., he responded to a complaint of disorderly conduct. While searching for the person described in the complaint, he came across defendant, who fit the description. Defendant was standing with three other men: Stanford, Burress, and Heckman. Officer Brown asked defendant to step away from the group and speak with him about the disorderly conduct complaint.

¶ 6 As requested, defendant approached Officer Brown, who asked defendant if he had

anything illegal in his possession. Defendant said he did not and invited Officer Brown to search him, which he did. Brown did not find anything illegal. Officer Brown then informed defendant that he had heard rumors defendant was using heroin. Defendant got upset, used vulgar language and offered to take a drug test. Defendant came within one foot of Officer Brown, clenched his fists and screamed that he did not use heroin. Defendant then returned toward the other men. Officer Brown walked to his car and started to get in when Burress ran up and asked Officer Brown to "run his name." Burress's fists were clenched and he seemed angry. Officer Brown thought Burress was going to hit him. Defendant and Stanford then came up behind Burress. Heckman stood behind the other three men. Officer Brown got in his car, and the four men yelled at him. Defendant said, "We're going to burn your fucking house down," and "You're family's dead." Burress called him "a fucking pussy" and said, "We're going to burn your fucking house down" and "You're family's dead." Stanford called him a "bitch ass cop" and said they knew where he lived, they would be waiting for him, threatened to burn his house down and said, "We stick together in Earlville." Officer Brown could not make out what Heckman was saying. Officer Brown testified that he was concerned for his and his family's safety. Officer Brown drove away while calling for assistance. Other officers arrived and arrested the four men.

¶ 7 Officer Brown admitted that in his police report and grand jury testimony he accused Stanford and Burress, but not defendant and Heckman of uttering threats. He also stated that none of the men touched him. Brown also admitted that he wanted to search defendant since he

had a tip that defendant possessed heroin. Brown denied that he charged defendant with this crime so he could get a search warrant for defendant's home.

¶ 8 At the conclusion of the State's case, both defendants moved for directed verdicts. The court granted the motion with respect to Heckman.

¶ 9 Heckman testified in defendant's defense. He said that he was present the night in question, that Brown asked defendant to speak with him and that Brown then searched defendant. Heckman did not hear any threats or loud voices. After a couple of minutes, defendant returned to the group of men. Brown started to get in his car when Burress approached Brown and asked him to check to see if he had any outstanding warrants. Burress did not raise his voice or make any threats. Brown refused the request and got in his car and left. Heckman stated that Stanford said something about "a big fish in a small pond" but nobody raised their voice, made any threatening gestures, or ran after Brown's car. Heckman testified that he did not hear any threats.

¶ 10 Defendant testified that he spoke with Brown and was searched by Brown. He stated that none of the men yelled at Brown, threatened Brown, or chased his car. Following defendant's testimony, the court admitted into evidence an audio CD of Brown's radio conversations with dispatch on the night of the incident. Defendant argued that Brown's conversations with dispatch showed that he was not in fear of harm.

¶ 11 The court found defendant guilty of threatening a public official.

¶ 12 Hoffman, defendant's trial counsel, filed a posttrial motion alleging, among other things,

that he had a conflict of interest due to his prior representation of Burress and Stanford in the same case. The motion stated that Burress and Stanford would have testified favorably for defendant. One of the reasons he failed to call them was his former representation of them in this case. Hoffman attached an affidavit stating that he never discussed the conflict with defendant. The court appointed the Public Defender to represent defendant.

¶ 13 At a hearing on the posttrial motion, Hoffman testified he was hired to represent all four men. He withdrew as counsel for Burress and Stanford, but they were present and available to testify at defendant's trial. Hoffman testified he had been told the prosecution was only proceeding against defendant and Heckman on an accountability theory. This statement is contradicted by the record which shows that in response to a request by Hoffman, the State filed a bill of particulars that detailed threats purportedly made by defendant against Officer Brown.

¶ 14 Hoffman was surprised by Brown's testimony at trial, but did not call Burress or Stanford for a number of reasons. First, he had formerly represented them in the case and had obtained confidential information from them. Second, he was unsure whether he could impeach them with statements they had made to him if their testimony differed from those statements. Third, they were not represented by counsel during defendant's trial, and Hoffman did not feel he could give them advice as to whether or not to testify. Finally, Hoffman testified that he did not think their testimony would be needed since Officer Brown did not attribute any statement to either defendant or Heckman in his police report or grand jury testimony.

¶ 15 Stanford testified that he was present at defendant's trial and willing to testify. He

testified that he did not hear defendant make any threats to Officer Brown. Burress was not available during the hearing on the posttrial motion and, therefore, did not testify.

¶ 16 Assistant State's Attorney Sticka testified that he was one of the prosecutors involved in defendant's trial. He denied telling Hoffman that the prosecution was limited to a theory of accountability. Sticka testified that he advised Hoffman that defendant had allegedly made specific threats and was to be tried as a principal and under a theory of accountability.

¶ 17 The trial court denied the posttrial motion and this appeal followed.

¶ 18 ANALYSIS

¶ 19 I. Sufficiency of the Evidence

¶ 20 The trial court found defendant guilty of threatening a public official. 720 ILCS 5/12-9(a)(1)(i) (West 2010). In order to obtain a conviction under section 12-9(a)(1)(ii) of the Code of Criminal Procedure of 1961 (the Code), the State was required to show that defendant: (1) knowingly and willfully communicated with a public official, (2) "a threat that would place the public official *** in reasonable apprehension of immediate or future bodily harm ***[,]" and (3) "the threat was conveyed because of the performance *** of some public duty[.]" 720 ILCS 5/12-9(a) (West 2010); *People v. Kirkpatrick*, 365 Ill. App. 3d 927, 930 (2006).

¶ 21 Defendant argues the State only failed to prove beyond a reasonable doubt that the threat made by defendant put Officer Brown in reasonable fear of harm. When entertaining a sufficiency of the evidence argument on appeal, a guilty verdict will only be overturned if, after viewing the evidence in the light most favorable to the State, we determine that no " 'rational

trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 22 Defendant's argument misses the mark. It is predominantly an argument that Officer Brown's discussions with dispatch show that he was not in fear of harm. The problem with that argument is that the statute does not require that the public official be put in actual fear of harm; it requires the State to prove that the comment "would place the public official *** in reasonable apprehension of immediate or future bodily harm." 720 ILCS 5/12-9(a)(1)(i) (West 2010). While courts have considered the public officials' testimony that the threats in question frightened them, they did so in determining whether the evidence showed the threat would cause a reasonable apprehension of future harm. *Kirkpatrick*, 365 Ill. App. 3d at 930. The question "is whether the expression, in context, 'has a *reasonable tendency* to create apprehension that its originator will act according *to its tenor*.' [Citation.]" (Emphasis in original.) *People v. Peterson*, 306 Ill. App. 3d 1091, 1100 (1999). Whether Officer Brown sounded scared, therefore, is not dispositive of whether defendant made threats that would cause a reasonable apprehension of future harm.

¶ 23 Even if the issue was whether Officer Brown was in fact scared, defendant's argument that Officer Brown's conversations with dispatch show that he was calm and not in fear of harm, still misses the mark. His argument assumes that no person put in apprehension of future harm could carry on a normal sounding conversation. We do not believe this is true, especially where the harm intended was to take place at a future time. After listening to the audio and considering

all the evidence in the light most beneficial to the State, we find that the State proved defendant guilty of threatening a public official beyond a reasonable doubt.

¶ 24 We also note that defendant argued that Officer Brown fabricated this charge to allow him to obtain a warrant to search defendant's home. Defendant never explains how charging him with threatening a public official would make it probable that a search of defendant's home would result in finding heroin or stolen property, which is generally what the State must show to obtain a search warrant. *People v. McCarty*, 223 Ill. 2d 109, 153 (2006).

¶ 25 Defendant has failed to establish that the State failed to prove him guilty beyond a reasonable doubt.

¶ 26 II. Actual Conflict of Interest

¶ 27 Defendant argues that his trial counsel had an actual conflict of interest due to his prior representation of Burress and Stanford. He asks this court to vacate his conviction and remand for a new trial. In order to show that his counsel suffered from an actual conflict of interest, defendant " 'must point to some specific defect in his counsel's strategy[,] tactics, or decision making attributable to the conflict.' " *People v. Taylor*, 237 Ill. 2d 356, 375-76 (2010) (citing *People v. Spreitzer*, 123 Ill. 2d 1, 18 (1988)).

¶ 28 We will not reverse the trial court's determination that Hoffman did not labor under an actual conflict of interest unless it is manifestly erroneous. *Taylor*, 237 Ill. 2d at 373. " 'Manifest error' is error which is clearly plain, evident, and indisputable." *Id.*

¶ 29 We will assume *arguendo*, as the parties have, that Hoffman did actively represent

conflicting interests and focus on whether his representation was negatively impacted. The trial court found that Hoffman's representation of defendant did not fall below an objectively reasonable standard as required by *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). The *Strickland* standard is not controlling here. *Taylor*, 237 Ill. 2d at 375–76. The proper standard is whether defendant has established that Hoffman's representation was adversely affected by a conflict of interest. *Id.* There is no material difference between these two standards. Representation that falls below an objectively reasonable standard and representation that suffers some specific defect are one in the same. So, although the trial court found Hoffman's representation of defendant did not fall below an objectively reasonable standard, that finding is sufficient to establish that the representation did not suffer some specific defect. Since the two standards are the same, we need not remand for the trial court to apply the proper standard of review.

¶ 30 Defendant argues that Hoffman stated he did not call Stanford and Burress in part, due to his prior representation. The State points out that Hoffman thought the issue was one of accountability, that he did not think the trial court would allow Officer Brown to change his testimony from what he put in the police report and concluded, "So I thought it would really not make any difference whether I called them or not." Hoffman's belief that he did not need to call Burress or Stanford to support defendant's case was reasonable. Defendant and Heckman had already testified that none of the men present made any threats against Officer Brown. Any testimony to that effect by Stanford and Burress would have merely been cumulative.

Hoffman's belief that the case hinged on whether the trial court would believe trial testimony from Officer Brown that differed from his police report and grand jury testimony was also reasonable and made the decision to not call Burress or Stanford a proper trial strategy.

¶ 31 The trial court's determination that Hoffman's representation of defendant did not violate the sixth amendment is not manifestly erroneous. Defendant cannot establish that the decision not to call Burress or Stanford negatively impacted his counsel's performance.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 34 Affirmed.