2013 IL App (4th) 120594-U

NO. 4-12-0594

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 26, 2013
Carla Bender
4th District Appellate
Court, IL

In re: KENICHI T., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JD25
KENICHI T.,	)	
Respondent-Appellant.	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) A reasonable trier of fact could have found respondent was not acting in self-defense when he punched his teacher.

(2) No *per se* conflict of interest existed because the record was devoid of evidence the assistant public defender was acting as both trial counsel and guardian *ad litem* for respondent.

¶ 2 In February 2012, Champaign County State's Attorney Julia Rietz filed a delinquency petition against respondent, Kenichi T. alleging aggravated battery (720 ILCS 5/12-3.05(d)(3) (West 2010)) and criminal damage to property (720 ILCS 5/21-1(a) (West 2010)). The petition stemmed from an altercation between respondent and his teacher during which respondent struck his teacher and broke his teacher's glasses. Following a bench trial in which respondent asserted self-defense, the trial court found him guilty of both counts beyond a reasonable doubt and adjudged him a delinquent minor.

¶ 3 In June 2012, respondent was sentenced to 24 months' probation, with 30 days of detention.

¶ 4 On appeal, respondent asserts (1) the State failed to prove beyond a reasonable doubt that he was not justified in hitting his teacher in self-defense; and (2) the trial court created a *per se* conflict of interest by appointing counsel to act as both his attorney and guardian *ad litem*.

¶ 5 We affirm.

¶ 6 I. BACKGROUND

¶ 7 In February 2012, Champaign County State's Attorney Julia Rietz filed a delinquency petition against respondent, Kenichi T., alleging aggravated battery (720 ILCS 5/12-3.05(d)(3) (West 2010)) and criminal damage to property (720 ILCS 5/21-1(a) (West 2010)). The petition stemmed from an altercation, on school grounds, between respondent and his teacher, Dean Dillon, during which respondent struck his teacher and broke his teacher's glasses. On February 16, 2012, respondent appeared in court on a separate issue, case No. 2011-JD-299, and was represented by assistant public defender Stephanie Corum. After proceedings on case No. 2011-JD-299 concluded, the trial court appointed the office of the public defender (which was already representing respondent in case No. 2011-JD-299) "to act as court appointed counsel and guardian ad litem" for respondent. The court continued, "Assistant Public Defender Stephanie Corum appears."

¶ 8 In April 2012, respondent's adjudicatory hearing began.

¶ 9 Dillon testified that in February 2012 he was a teacher at Pavilion School. On February 15, 2012, he was teaching social studies in a classroom where respondent and three

other students were present. Dillon was moving around the room as he lectured.

¶ 10 Dillon explained that when respondent came into the classroom, he took the teacher's aide's chair, which students are not supposed to sit in, pulled it over to an alcove and sat down, reclining with his feet on the wall blocking the hallway leading to the exit. Dillon asked respondent to get out of the chair and unblock the hallway, but respondent refused and cussed at him. In an effort to defuse the situation, Dillon continued to lecture; however, respondent then started talking with the other students, cussing, and threatening Dillon. Dillon was the only staff member in the room and felt he needed to get another staff person to assist him. Because no working telephone was in the room, he had to leave the room to get assistance, but respondent's feet were blocking the way. Dillon walked over to respondent, moved his feet off the wall and said, "excuse me, I need to get the [behavioral interventionist]."

¶ 11 Dillon explained once respondent's feet hit the floor, respondent jumped up out of the chair, pushed Dillon three times until he was up against a desk, and stated, "you better get your little whistle out, because I am going to kick your f-ing ass." Respondent knocked Dillon's glasses off his face so he could not see. Respondent then "cocked his hand back" and, in order to prevent being punched, Dillon grabbed respondent by wrapping his arms around him in a hug and tucking his face into the joint of his neck and shoulder. This was the first time Dillon had used this type of hold. After putting respondent in this hold, Dillon continued, "We're going—I've got ahold of him, and we're knocking desks down and chairs. And it created enough of a commotion, other staff came in. One or two staff grabbed him, one grabbed me, and when staff got in there, I let go. And when I did, he popped me on the—on the nose and cheekbone." Dillon described the contact as a punch. After Dillon was escorted to the hallway, he heard

respondent say, "I got that son of a bitch."

¶ 12 On cross-examination, Dillon stated he was trained in how to use restraints and the goal at Pavilion School was to talk the students down or ignore the behavior. Respondent did not calm down, but instead became more agitated, which led Dillon to determine he needed to get help.

¶ 13 Champaign police officer Jim Bednarz testified he was called to Pavilion School following the incident. He spoke to the principal of the school and then to Dillon. He tried to talk to respondent, but respondent was not cooperative. Officer Bednarz took photographs of Dillon's face to document the injury he sustained. On redirect examination, Officer Bednarz testified he saw Dillon's glasses and the right lens had popped out.

¶ 14 Champaign police officer Shane Standifer testified he was also called to Pavilion School following the incident. He transported respondent to the Champaign County juvenile detention center. Officer Standifer advised respondent of his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)) while in the squad car, and once they arrived at the detention center parking lot he questioned respondent about the incident. Officer Standifer testified as follows:

> "I asked him to tell me what had happened at the school between him and his teacher [, Dillon]. He told me that during the class he had sat down on the teacher's assistant's desk inside the classroom. The teacher came over to him, pushed him off the desk and yelled at him. He said that he then sat in the chair for the teacher's assistant's desk. The teacher came over to him again, yelled at him,

pulled him up out of the seat by his arm and his shirt, and placed him in a choke hold that he described as a [']full nelson[']. He said that he was able to break free of that hold, and punch the teacher in the face."

¶ 15 On April 12, 2012, respondent's bench trial continued and the State rested.

¶ 16 April Westerfield, the principal of Pavilion School, testified for the defense. She explained that she and all staff at the school had been trained in therapeutic crisis intervention (TCI), the main component of which is de-escalation, but also includes training on using proper restraints when calming techniques do not work. She became aware of the incident between Dillon and respondent because a "support code" was called, which is used when staff requires additional help. Westerfield then explained that TCI requires at least a two-person team to restrain a student when de-escalation techniques are inadequate. According to her, the only time a student should be restrained is when he is in imminent danger of hurting himself or others and that it takes at least two staff members to make a determination that a student is in imminent danger of hurting himself or another. Westerfield testified that under no circumstances would one staff member use the kind of hold utilized by Dillon. Westerfield further stated that two adults to every student are in a classroom at Pavilion School. Staff are provided with whistles to blow, phones in the room (although she admitted they get torn off the wall regularly), and the classrooms are close together so staff could yell for support if needed.

¶ 17 On cross-examination, Westerfield acknowledged she had not witnessed the incident between Dillon and respondent. She admitted Dillon was the only staff member in the room at the time of the incident and that the phone located in the classroom was not working.

¶ 18 Deonta Rozier was a student at Pavilion School and was in the classroom with Dillon and respondent during the incident. She stated respondent was sitting in a chair, which she and other students had also sat in, with his foot on the wall. Dillon stopped in the middle of class, walked up to respondent and "knocked" his foot off the wall. She continued, Dillon "didn't ask [respondent] get out of the chair or nothin'. He just walked up and pushed him and said [']would you get up out [of] the chair.['] By the time I seen [*sic*] that happen, I turned my head and turned back around and there was a whole bunch of teachers there. So I didn't really see what happened."

¶ 19 Respondent testified on his own behalf. He stated he was sitting in "the black chair" (the assistant's chair) on the date of the incident and had his feet up on the wall. He was talking to another student when Dillon walked over to him and, without saying anything, pushed his feet off the wall. Respondent just looked at Dillon and Dillon went back to lecturing. Respondent did not put his feet back up on the wall. Dillon then came back over to respondent and grabbed him. After being grabbed, respondent stood up, which, he explained, probably made Dillon think he was going to do something. When asked whether Dillon grabbed him from behind, respondent replied as follows:

> "Yes. I was turned in the chair. Like, it's a corner like this (indicating). This is the opposite corner from me. I had my feet on this one (indicating) and I was turned like this (indicating).
>
> When he pushed my feet, I rolled like this (indicating). It's one of these chairs. It has wheels on it. I was turned like this (indicating) and that's when he grabbed me like this (indicating). I

think it was the shirt or somethin' he picked me up by. That's when I tried to stand up with him so I can [*sic*] catch my breath."

¶ 20 The following colloquy ensued:

"Q. When you stood up, did you raise your fist at him?

A. No. I was trying to get his arm off my neck.

Q. And did you knock his glasses off his face?

A. No, ma'am. I probably have—I'm not gonna say I didn't when I hit him, but not for—that I know of.

Q. And when you stood up how did you get your arm—how did you get his arms off of you?

A. I had pushed his elbow up and he started pullin' my head up like this (indicating) and that's when the teachers intervened.

Q. Okay. After the teachers intervened, what happened?

A. After the teachers intervened—they didn't break us up 'cause we both still had each other. After he got—after I got out, that's when I threw the punch and the teacher grabbed me instantly.

Q. And did that teacher remove you from the classroom?

A. Yes, ma'am.

Q. Okay. And, Kenichi, you said that his arm was around you neck. Did that make you feel startled?

A. Yes, ma'am. Kind of scared me. Feel [*sic*] like I was

gonna go to sleep 'cause I have been before."

¶ 21 Respondent further explained that he had experienced problems with Dillon before. In January 2012, Dillon came up behind respondent to hang up the phone that a girl in class was using. Respondent stated, "[H]e was standin' by me and then he just reached around and put [his] privates into my back and hung up the phone. And when he got the phone hung up he just stood there for a second, so I shoved him off me. And I got to cussin' at him and I told him you do that again woo-woo." Respondent clarified that by "woo-woo" he meant he was going to fight Dillon.

¶ 22 Respondent did not cuss at Dillon or say anything to him prior to being removed from the classroom in the instant case. He swung at Dillon because Dillon choked him, not to knock his glasses off; respondent did not recall feeling Dillon's glasses, only skin. Respondent punched Dillon in the face after additional teachers came in the room and grabbed him, but he and Dillon had not yet been separated.

¶ 23 The State presented closing argument. Defense counsel chose not to present an oral closing argument. The trial court asked the parties to address the following in their written final arguments on the minor's self-defense claim: "I would like to know how, first of all, these restraint protocols figure into the self-defense and also will want to know where the testimony seems to be in agreement that other people had entered the room and both [respondent] and Mr. Dillon were restrained whether [respondent] still gets one last shot, as apparently he just testified he did."

¶ 24 In April 2012, defense counsel filed a motion in support of respondent's affirmative defense. Counsel noted, "the presence of additional staff does not negate the use of self-

defense. There was no testimony that the staff had successfully pulled Dean Dillon and [respondent] apart from each other when [respondent] hit Dean Dillon. The mere presence of an additional person does not change the subjective belief by [respondent] that a threat existed." The State replied that the danger of harm to [respondent] was not imminent, as the parties had been separated by multiple staff members prior to respondent punching Dillon.

¶ 25 In a May 2012 written order, the trial court found that Dillon had authority to remove respondent's feet from the wall so that he could go for assistance and was justified in placing respondent in a hold intended to restrain but not harm him because, when respondent drew his arm back, Dillon was in reasonable apprehension of receiving a battery. The court found respondent guilty of aggravated battery and criminal damage to property and adjudged him a delinquent minor.

¶ 26 In June 2012, respondent was sentenced to 24 months' probation, with 30 days of detention.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent asserts (1) the State failed to prove beyond a reasonable doubt that he was not justified in hitting Dillon in self-defense; and (2) the trial court created a *per se* conflict of interest by appointing counsel to act as both his attorney and guardian *ad litem*.

¶ 30 A. Self-Defense Claim

¶ 31 "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. [Citation.] The elements of self-defense are: (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.' " *In re T.W.*, 381 Ill. App. 3d 603, 612, 888 N.E.2d 148, 156-57 (2008) (quoting *People v. Lee*, 213 Ill. 2d 218, 224-25, 821 N.E.2d 307, 311 (2004).

Once the defense is raised, the State must disprove at least one of these elements beyond a reasonable doubt. *T.W.*, 381 Ill. App. at 612, 888 N.E.2d at 157.

¶ 32 The trier of fact determines the credibility of witnesses, draws reasonable inferences from the witnesses' testimony, and resolves conflicts in the evidence. *People v. Dillard*, 319 Ill. App. 3d 102, 106, 745 N.E.2d 185, 189 (2001). The trier of fact need not accept a claim of self-defense. *Id*. In reviewing the State's rebuttal of a self-defense claim, we determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that defendant was not acting in self-defense. *Dillard*, 319 Ill. App. 3d at 106-07, 745 N.E.2d at 188; *People v. White*, 293 Ill.

App. 3d 335, 338, 687 N.E.2d 1179, 1181 (1997).

¶ 33 Respondent contends that the State failed to disprove any of the elements of his self-defense claim. We disagree.

¶ 34 In this case, the evidence suggesting that defendant acted in self-defense was as follows. Defendant testified he was sitting in the teaching assistant's chair, which he did on numerous occasions, when Dillon walked up to him and pushed his feet off the wall. Respondent did not react and Dillon resumed teaching. A few minutes later, Dillon walked back over to respondent and grabbed him from behind. Respondent tried to stand up so he could catch his breath and tried to remove Dillon's arm from his neck. Dillon's arm around respondent's neck scared him and he felt like he "was gonna go to sleep." After additional teachers had intervened, but before they were able to break them apart, respondent got out of the hold and punched Dillon. Rozier testified Dillon stopped his lecture in the middle of class, walked up to respondent, and "knocked" his feet off the wall without asking him to remove them first. She then turned her head away and did not see anything else prior to them being separated by staff.

¶ 35 In contrast, Dillon testified he asked respondent to get out of the chair and unblock the hallway, but he refused and started cussing at Dillon. Dillon tried to defuse the situation by returning to his lecture but respondent started talking with other students, cussing again and threatening Dillon. Dillon determined he needed to get additional staff in the room, so he walked over to respondent and moved his feet from the wall, as he was blocking the exit. Respondent jumped up from the chair, pushed Dillon three times and backed him up against a desk, knocked his glasses from his face, and told him he was going to kick his "f-ing ass." After respondent "cocked his hand back" as if to throw a punch, Dillon physically restrained respon-

dent to avoid being punched. In explaining the restraint, Dillon testified he put both arms around respondent in a hug and tucked his head into him. Dillon was also a registered nurse and kept his arms away from respondent's neck because he knew of the damage that could cause. After other teachers intervened, Dillon let go of respondent, at which time respondent broke away from the staff that had him and punched Dillon.

¶ 36 Respondent first asserts that Dillon's physical restraint of him was unlawful because it violated school policy and resulted in the termination of his employment. We acknowledge that, based on Principal Westerfield's testimony, Dillon's physical restraint of respondent violated the school's policy. However, the mere fact that the school policy was violated does not make the restraint unlawful. In matters relating to the discipline of students, teachers stand in the relation of parents and guardians to the children. 105 ILCS 5/24-24 (West 2010). The trial court found Dillon had the authority to remove respondent's feet from the wall; thus, his actions were lawful. Further, Dillon's act of restraining respondent occurred after respondent pushed Dillon three times, backed him into a desk, and raised his arm as if to punch Dillon. See 720 ILCS 5/12-3(a) (West 2010) (defining battery as making physical contact of an insulting or provoking nature without legal justification). A reasonable trier of fact could have found that Dillon's act was a lawful exercise of his own right of self-defense where he was in imminent danger of great bodily harm.

¶ 37 Respondent also argues that his act of punching Dillon was a necessary response to the "choke hold," his final swing was a continuation of his response to the hold, and his belief that he needed to defend himself was not objectively unreasonable. Based on the evidence provided, a reasonable trier of fact could have found that (1) respondent was not placed in a

"choke hold" that affected his breathing; (2) respondent's belief he needed to defend himself was objectively unreasonable where he and Dillon were no longer physically engaged; and (3) respondent's act of punching Dillon was in retaliation (see *People v. Woods*, 81 Ill. 2d 537, 543, 410 N.E.2d 866, 869 (1980) ("The right of self-defense does not justify an act of retaliation or revenge.")).

¶ 38 Additionally, respondent contends that his initial disrespectful behavior did not rise to the level of physical threat such that he could be considered the initial aggressor and points out Dillon made the first physical contact. However, respondent's act of cussing and threatening Dillon following Dillon's nonphysical attempt to defuse the situation led Dillon to conclude he needed additional assistance, which required him to remove respondent's feet from the wall as they were blocking the exit.

¶ 39 Last, respondent states in his brief, "the [trial] court did not address how the testimony of Kenichi and Deonta supported the claim of self-defense and negated Dean Dillon's version of events." However, respondent points us to no authority to support a finding that the court was obliged to address this in its order. As mentioned *supra*, the trier of fact—in this case the judge—determines the credibility of witnesses and resolves conflicts in the evidence. *Dillard*, 310 Ill. App. 3d at 106, 745 N.E.2d at 189. Based on the court's order, it is apparent it found Dillon's testimony more credible.

¶ 40 Thus, viewing the evidence in the light most favorable to the prosecution, we hold that a reasonable trier of fact could have found beyond a reasonable doubt respondent was not acting in self-defense when he threw the punch.

¶ 41 B. *Per Se* Conflict of Interest

¶ 42 Next, respondent argues that the trial court created a *per se* conflict of interest when it appointed counsel to act as both the minor's attorney and guardian *ad litem*, requiring this cause to be remanded for a new trial.

¶ 43 Generally, claims of ineffective assistance of counsel are measured under the two-pronged deficient-performance-and-prejudice standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, when an attorney labors under a *per se* conflict of interest, the accused is not required to establish prejudice. See, *e.g.*, *People v. Daly*, 341 Ill. App. 3d 372, 376, 792 N.E.2d 446, 450 (2003). "The *per se* conflict rule is designed to avoid (1) unfairness to the defendant, who may not be able to determine whether his representation was affected by the conflict, and (2) putting the honest practitioner in a position where he may be required to choose between conflicting duties." *Id.* Whether an attorney has been appointed to act as both a defense attorney and a guardian *ad litem* (GAL), and whether that dual representation constitutes a *per se* conflict of interest, is a question of law which we review *de novo*. *People v. Austin M.*, 2012 IL 111194, ¶¶ 66, 87, 975 N.E.2d 22.

¶ 44 Respondent cites *Austin M.* for the proposition that an attorney who is appointed to fulfill both the roles of defense attorney and GAL labors under a *per se* conflict of interest given the "inherent conflict between the professional responsibilities of a defense attorney and a GAL." *Id.* ¶ 83, 975 N.E.2d 22. This is true because a defense attorney's loyalty rests solely with the client, whereas a GAL "owes a duty to the court and to society." *Id.* ¶ 85, 975 N.E.2d 22.

¶ 45 In this case, respondent argues the trial court's express appointment of trial counsel as both defense attorney and GAL gave rise to a *per se* conflict of interest under *Austin M.* We disagree.

¶ 46 The trial court in *Austin M.* did not specifically appoint the minor's attorney as the minor's GAL; however, the court described counsel's functions as those of a classic GAL and counsel never attempted to correct the court's description of his role. *Id.* ¶¶ 89, 90, 975 N.E.2d 22. Further, on multiple occasions throughout the proceedings, counsel made it known "that he shared with the court, the State, and the parents, the common goal of getting to 'the truth.' " *Id.* ¶ 98, 975 N.E.2d 22. "[Counsel] also suggested that he believed an adjudication and the attendant consequences would be in Austin's 'best interests' if, in fact, he committed the charged offenses." *Id.* The supreme court found the defense attorney was acting under a *per se* conflict of interest because he conducted himself as a GAL rather than a traditional defense attorney. *Id.* ¶ 101, 975 N.E.2d 22.

¶ 47 In this case the trial court orally pronounced it was appointing the office of the public defender to act as respondent's attorney and GAL. During a February 16, 2012, hearing, when counsel for the respondent was present with respondent on another matter, the court stated, "The court notes that the Respondent minor is already represented by the office of the Public Defender in regard to other pending matters before the court. That office will be appointed to act as court appointed counsel and guardian ad litem for the minor in regard to the petition for adjudication of delinquency and wardship on file in this cause." Thereafter, Corum appears as respondent's attorney throughout the case, but with the exception of the court's initial appointment of counsel, the record is devoid of any notation showing Corum's appearance as that of GAL. Also, pursuant to *Austin M*, the designation given to counsel by the court does not relieve us of our responsibility to examine how counsel functioned. *Id.* ¶ 66, 975 N.E.2d 22. There is no indication in the record before us that Corum functioned as a GAL. She did not mention

respondent's best interests during any proceeding but, instead, conducted herself as respondent's defense counsel. Corum pursued an affirmative defense, cross-examined the State's witnesses, and called witnesses on behalf of the respondent. Clearly, the State's case was subjected to meaningful adversarial testing.

¶ 48 Unfortunately, the wrong terminology was used in the appointment of counsel for the respondent. The trial court must be careful to accurately state the nature of any appointment. However, it is evident from the record Corum functioned solely as defense counsel, whose singular loyalty was to the defense of the respondent. We decline to find a *per se* conflict of interest when the record is devoid of evidence that appointed counsel was also acting as respondent's GAL.

¶ 49 Because we find no *per se* conflict of interest, we need not address respondent's argument that he did not waive his right to conflict-free representation.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm.

¶ 52 Affirmed.