

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 220040-U

NO. 4-22-0040

IN THE APPELLATE COURT

OF ILLINOIS

FILED

November 30, 2022
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
CARRIE L. JOHNSON,)	No. 20CF187
Defendant-Appellant.)	
)	Honorable
)	Charles M. Feeney III,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to show she was denied the effective assistance of counsel.

¶ 2 A jury found defendant, Carrie L. Johnson, guilty of aggravated battery of a peace officer, and the trial court sentenced her to 48 months' probation. Defendant appeals, arguing trial counsel provided ineffective assistance where counsel did not attempt to exclude propensity evidence or present evidence showing one of the State's witnesses had a motive to lie or was biased against her. We affirm.

¶ 3 **I. BACKGROUND**

¶ 4 **A. The Charges**

¶ 5 In December 2020, the State charged defendant with aggravated battery of a peace officer (720 ILCS 5/12-3(a)(2), 12-3.05(d)(4)(i) (West 2018)) and resisting a peace officer

(*id.* § 31-1(a-7)). The State alleged that on December 22, 2020, defendant “knowingly and without legal justification, made physical contact of an insulting or provoking nature with Officer Burgess *** in that [she] punched Officer Burgess with her fist.” The charge stemmed from a brief physical altercation between defendant and Officer Burgess that occurred when Officer Burgess, along with Woodford County Sheriff’s Deputy Dakota Park, responded to a report of a domestic dispute between defendant and her husband, which occurred at their residence.

¶ 6 B. The Motion to Suppress Evidence

¶ 7 On February 2, 2021, defendant filed a motion to suppress evidence. The substance of the motion is not relevant to the issue on appeal. However, some of the evidence presented at the hearing on the motion is relevant to defendant’s ineffective assistance claim, specifically that her counsel had knowledge of (1) certain propensity evidence and (2) an incident in 2019 that established Officer Burgess had a motive to lie at defendant’s trial or was biased against her. Thus, we discuss only the evidence presented at the hearing as it relates to defendant’s contentions on appeal.

¶ 8 1. *Propensity Evidence*

¶ 9 Andrew Burgess, a police officer with the Eureka Police Department, testified at the hearing on the motion to suppress he had been to defendant’s residence “many times” in response to “[d]omestic fights” between defendant and her husband. Officer Burgess further testified defendant had “been aggressive in the past” and that she was an “aggressive” person.

¶ 10 Defendant introduced a recording from Officer Burgess’s fixed squad car camera and mobile body microphone (Burgess recording)—because the camera was affixed to the squad car, and therefore did not capture video of the relevant altercation, the recording is essentially an

audio recording only. The Burgess recording includes statements made by Officer Burgess alluding to defendant's general aggressiveness and to previous "domestics" he had responded to at defendant's residence. For example, at one point in the recording, Officer Burgess is heard saying, "I've been here [(defendant's residence)] enough that I know there's been physical domestics." At another point, when defendant can be heard yelling and cursing, Officer Burgess remarks to Deputy Park, "This is normal for her, by the way."

¶ 11 *2. Evidence of the 2019 Incident*

¶ 12 Defendant testified at the hearing that around 3:00 a.m. on August 24, 2019, she was "awoke[n] by [Officer] Burgess standing in [her] laundry room which connects to [her] bedroom. And he had a flashlight on [defendant] and [her] husband screaming for [them] to get out of bed." Defendant testified the incident "scared the living hell out of [her family]." In response to the incident, defendant "made a verbal complaint" to the Eureka Police Department, but the police department "denied [her] a written complaint" so she "let it go."

¶ 13 *C. The Jury Trial*

¶ 14 Defendant's jury trial was conducted on May 21 and 24, 2021. The State called Deputy Dakota Park and Officer Andrew Burgess; the State also introduced the Burgess recording and published it to the jury. Defendant testified on her own behalf and presented the testimony of her children, M.J. and B.J., and her husband, Timothy Johnson. As defendant states in her appellant's brief, "[t]he central factual dispute at trial regarded the nature and timing of the pre-takedown physical contact between Officer Burgess and [herself]."

¶ 15 *1. The State's Evidence*

¶ 16 *a. Deputy Dakota Park*

¶ 17 Dakota Park, a patrol deputy with the Woodford County Sheriff's Office, testified that on the evening of December 22, 2020, dispatch indicated a 15-year-old male had reported a physical altercation between defendant and Timothy Johnson. Deputy Park responded to the call along with Officer Burgess. Deputy Park and Officer Burgess approached the residence from the rear. Officer Burgess opened a sliding glass door connected to the kitchen and announced, "Eureka Police Department." Defendant quickly walked into the kitchen and loudly demanded to know why they were at her house. Officer Burgess attempted to explain and "then he instructed [defendant] to turn around and place her hands behind her back." Officer Burgess "entered the threshold of the sliding glass door" in an effort to place defendant in handcuffs "and a brief struggle ensued from there." Deputy Park testified he could not clearly see the interaction between defendant and Officer Burgess because Officer Burgess was "standing directly in front of [him]." Deputy Park described the incident as follows:

"Q. What happened that you saw? From your perspective what did you see?

A. I saw Officer Burgess step into the residence after he had told [defendant] to place her hands behind her back, and they both *** kind of moved out of the door frame into more of the center of the kitchen area. Then they both ended up on the ground, and at that time I entered into the residence to assist in placing [defendant] into handcuffs."

Deputy Park further testified he did not see defendant "strike" Officer Burgess at any time.

¶ 18 b. Officer Andrew Burgess

¶ 19 Officer Andrew Burgess testified that when he opened the sliding door to the kitchen, he attempted to talk to defendant to find out what had taken place between her and her

husband. According to Officer Burgess, defendant was “very loud and aggressive,” so he entered the home and “told her to put her hands behind her back” and grabbed her hand. Officer Burgess continued, “And that’s—she—as I was trying to put her hands behind her back and turn her around[,] she struck me, she hit me.” When asked to describe how defendant struck him, Officer Burgess answered, “She took her fist and her arm, and she swung it around, and she hit me in *** my left shoulder.” Officer Burgess further testified:

“Q. Now, she also in that video, it sounds like, restated that you pushed her?

A. She—yes, she did.

Q. Did you push her?

A. No. I was trying to grab ahold of her.

Q. Did you—in trying to grab ahold of her did you push her to get her out of the way?

A. I don’t know. When I grabbed her entering the house I could have tried to push her a little bit forward because I am literally standing in the sliding area of the door, and I could have done that.

Q. When you say push, was it, like, a violent push, or—

A. No. It would just be to get her out of the way from the doorway so that I can enter.

Q. And that was after you had asked her to put her hands behind her back?

A. Yes.”

¶ 20 Officer Burgess testified he had responded to multiple “calls” to defendant’s house in the past. He further testified, without objection, as follows:

“Q. Did you—what was your intent at the door upon stepping into the threshold area?

A. To handcuff [defendant].

Q. Why?

A. Her aggression, the fact I’ve been at her house for domestics and she has been usually aggressive verbally and at times physically. I—there were—I have knowledge of the fact that she has got guns in the house because of a stolen gun report that I took for her. I just did not want to risk any—me or anybody else being injured.

* * *

Q. Why did you believe you could go into the residence at that moment in time?

A. ***. At the time I believed it was reasonable that there was a *** very serious potential that there could be somebody hurt in the house. She has weapons in the house. I don’t want her going and getting a weapon. She is, obviously, agitated, upset. This a common theme for domestics with her and Mr. Johnson. I did not want to risk my life or the deputy’s life or maybe even have her go in there and further injure somebody if somebody was hurt or injure us.”

¶ 21 The State also introduced the Burgess recording and published it to the jury. The Burgess recording includes the following relevant exchange between Officer Burgess and defendant:

“OFFICER BURGESS: Eureka Police Department.

DEFENDANT: You better not be in my f*** home.

OFFICER BURGESS: Eureka Police Department.

DEFENDANT: We can clearly hear you, are you opening my door again?

OFFICER BURGESS: You betcha I am, what's going on?

* * *

DEFENDANT: Why are you opening my f***—

OFFICER BURGESS: Because I have a—I'll tell you what, turn around,
put your hands behind your back.

DEFENDANT: Get your f*** hands off me.

* * *

OFFICER BURGESS: You have hit a police officer. You have hit a police
officer.

DEPUTY PARK: Alright, roll over, just roll over.”

In the recording, Officer Burgess states several times that defendant “hit” him. Defendant responds at one point, saying “you’re f*** right, he [(Officer Burgess)] f*** charged me and I f*** hit him back.” In another instance, after Officer Burgess states defendant hit him, defendant is heard saying, “Yes, I did.” Later, defendant states, “That’s fine if you want to take me to jail, but what you did was wrong too.” Finally, when Officer Burgess informs defendant she is being arrested for striking a police officer, defendant responds, “Well, why did you get hit? Because you f*** shoved me in my doorway, man.”

¶ 22 On cross-examination, defense counsel asked Officer Burgess about the 2019
incident as follows:

“Q. So you had been in [defendant’s] home before, hadn’t you?

A. I’ve been on many calls inside of her home, yes.

* * *

Q. All right. You were at their house in August of [2019]; is that right?

A. I believe so, yes, for a 911 call.

Q. You had a flashlight?

A. Yes, I did.

Q. And you woke them up

A. They had the door open to their house, and I shined the light in because we had a 911 call.

Q. Just answer my question. Did you wake them up?

A. Yes.

Q. So she knows that you've been there late at night with a flashlight before; would that be fair to say?

A. Yes.

MR. MINGER [(ASSISTANT STATE'S ATTORNEY)]: I'm going to object, Judge, to the relevance as to—

THE COURT: You've let it be asked and answered, Mr. Minger. It's a stale objection."

Defense counsel continued his cross-examination of Officer Burgess without further questioning about the 2019 incident.

¶ 23 c. The State's Oral Motion to Exclude Evidence

¶ 24 After the State rested, it made an oral motion to exclude further evidence related to the 2019 incident. The State argued that presenting further evidence of the incident would be an improper attempt to impeach or "to attack credibility or on an ancillary issue." Defense

counsel responded by arguing the evidence was “very important” because it “show[ed] the severe frustration [defendant] had when she saw Officer Burgess again entering her home.” The trial court granted the State’s motion but allowed defense counsel to make the following offer of proof relating to the excluded evidence:

“DEFENSE COUNSEL: That in August 2019, that Officer Burgess came to their house late at night under the pretext that there was some kind of a 911 call. And they would corroborate, the family, basically, that he came in the house. He even went so far as going into the bedroom of Tim and [defendant] with a flashlight awakening all of them. Again, under this pretext of a 911. And that—because of that alarming situation that explains why she was asking Officer Burgess why are you coming into my house again. And I think that would also show and help corroborate her frustration and her loud response and her yelling and her action knowing how that had upset them before.”

¶ 25

2. Defendant’s Evidence

¶ 26

a. M.J.

¶ 27

M.J., defendant’s son, who was 15 years old at the time of the charged incident, testified that he went to the kitchen with defendant and his sister when they heard Officer Burgess open the sliding door and announce himself. M.J. testified that Officer Burgess kept asking defendant where her husband was, “[a]nd at that point [defendant] shows where [her husband] is by pointing out to the driveway. And that’s whenever she gets taken down to the ground.” M.J. further testified he did not see defendant punch, hit, or resist Officer Burgess at any time.

¶ 28

b. B.J.

¶ 29 B.J., defendant's daughter, who was 13 years old at the time of trial, testified that she walked into the kitchen with defendant and M.J. when they heard Officer Burgess open the sliding door. B.J. testified Officer Burgess kept asking defendant where her husband was and defendant "pointed out the window to say that his car was gone, and then [Officer Burgess] pushed her over to the sink, and then she grabbed the sink to not fall over." According to B.J., Officer Burgess "shoved [defendant] again over to [the] dining table and *** stools, and two *** stools fell and then she fell, and he landed on top of her." B.J. testified she did not see defendant "strike" Officer Burgess, but she did see defendant move her hands "in surprise" after Officer Burgess shoved her and before they went to the ground.

¶ 30 c. Defendant

¶ 31 Defendant testified that when Officer Burgess asked her where her husband was, she "went to go point to [her] right. *** [T]o go show him that Tim's vehicle was gone from the home. And all of a sudden he abruptly came at [her], charged at [her], and threw [her] over towards [her] kitchen sink." Defendant further testified, "I put my hand up and ducked as to defend myself as I was terrified. And in that process I recall he said now you're under arrest for obstructing an officer." Defendant maintained that she did not hit or resist Officer Burgess at any point in time.

¶ 32 3. *Closing Arguments*

¶ 33 In closing argument, the State argued, in relevant part, Officer Burgess and Deputy Park should be believed because they had nothing "at stake" and were simply "responding to a call." And in its rebuttal argument, the State further argued, "[Officer] Burgess is credible. Defense wants you to believe that he is not credible. He is very credible."

¶ 34 4. *The Jury's Findings*

¶ 35 The jury found defendant guilty of aggravated battery of a peace officer and not guilty of resisting a peace officer.

¶ 36 D. Motion for a New Trial and Sentencing

¶ 37 On June 18, 2021, defendant filed a motion for a new trial, arguing, in part, the trial court erred in excluding evidence of the 2019 incident. Defendant maintained she “was unable to receive a fair and impartial trial due to the trial court’s ruling which prohibited any testimony explaining why [she] told Officer Burgess she did not want him in her home again which would have showed her emotional state and the anxiety she felt seeing this same officer improperly enter her home.” The trial court denied defendant’s motion following a hearing, reasoning that the evidence was irrelevant to the question of whether she knowingly made physical contact with Officer Burgess.

¶ 38 The trial court subsequently sentenced defendant to 48 months’ probation.

¶ 39 This appeal followed.

¶ 40 II. ANALYSIS

¶ 41 Defendant argues trial counsel provided ineffective assistance where he “neither sought to exclude evidence that [she] had a propensity for aggression and violence nor attempted to use evidence of the 2019 incident to show that Officer Burgess was biased against [her] or had a motive to testify falsely.” With respect to the alleged propensity evidence, defendant contends counsel performed deficiently in not attempting to exclude Officer Burgess’s testimony and the Burgess recording that defendant was an aggressive person and that Officer Burgess had responded to numerous “domestics” at her residence in the past. Concerning the 2019 incident, defendant asserts counsel was deficient in failing to offer evidence that she lodged a verbal complaint against Officer Burgess after the incident which would have established he was biased

against her or had a motive to testify falsely. According to defendant, the jury likely would have acquitted her if it had not heard the alleged propensity evidence and had known about Officer Burgess's alleged bias or motive to testify falsely. The State, on the other hand, argues defendant's claim "fails if only because there is not a reasonable probability the jury would have concluded [Officer Burgess] lied in the heat of the recorded altercation, in an effort to falsify evidence against defendant, and then, lied under oath."

¶ 42 To convict defendant of aggravated battery of a peace officer, the State had to prove the following elements beyond a reasonable doubt: (1) defendant knowingly made physical contact of an insulting or provoking nature with Officer Burgess; (2) defendant knew Officer Burgess was a peace officer; and (3) defendant knew Officer Burgess was engaged in the execution of his official duties as a peace officer. See 720 ILCS 5/12-3(a)(2), 12-3.05(d)(4)(i) (West 2018). Defendant contests only the first element. Specifically, defendant contends that, but for counsel's deficient performance, the State would have been unable to prove beyond a reasonable doubt that she knowingly made physical contact with Officer Burgess, as opposed to "unconscious or accidental" contact. Defendant asserts that the question of whether she knowingly made contact with Officer Burgess "was probably answered by resort to inadmissible propensity evidence and conflicting trial testimony whose credibility could not be well weighed without admissible but missing bias/motive evidence."

¶ 43 Criminal defendants have a constitutional right to the effective assistance of counsel under both the United States and Illinois Constitutions. U.S. Const., amend. VI, XIV; Ill. Const. 1970, art. I, § 8. A claim that counsel provided ineffective assistance is evaluated under the two-pronged standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). See, e.g., *People v.*

Johnson, 2021 IL 126291, ¶ 52. “To prevail on an ineffective-assistance-of-counsel claim, a defendant must demonstrate that counsel’s performance fell below an objective standard of reasonableness and that counsel’s deficient performance resulted in prejudice. [Citations.] To establish prejudice, a defendant must demonstrate that there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.* “Where, as here, a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent counsel’s errors, the factfinder would have had a reasonable doubt respecting guilt.” *Id.* ¶ 54. “If it is easier to dispose of an ineffective assistance claim on the ground that it lacks sufficient prejudice, then a court may proceed directly to the second prong and need not determine whether counsel’s performance was deficient.” *People v. Givens*, 237 Ill. 2d 311, 331 (2010). The ultimate question of whether a defendant was denied the effective assistance of counsel is reviewed *de novo*. See, e.g., *Johnson*, 2021 IL 126291, ¶ 52.

¶ 44 Here, even assuming, *arguendo*, defense counsel’s performance was deficient, we find defendant is unable to establish prejudice. As stated above, defendant argues that the question of whether she knowingly, as opposed to unconsciously or accidentally, made physical contact with Officer Burgess “was probably answered by resort to inadmissible propensity evidence and conflicting trial testimony whose credibility could not be well weighed.” Case law provides that “*Strickland* requires a defendant to ‘affirmatively prove’ that prejudice resulted from counsel’s errors.” *Johnson*, 2021 IL 126291, ¶ 55 (quoting *Strickland*, 466 U.S. at 693). “It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. [Citation.] Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply speculation that defendant may have been prejudiced.” (Internal

quotation marks omitted.) *Id.*; see also *People v. Palmer*, 162 Ill. 2d 465, 481 (1994) (stating proof of prejudice cannot be based on “mere conjecture or speculation”).

¶ 45 We reject defendant’s prejudice argument in light of the significant evidence presented at trial demonstrating her guilt—specifically, the numerous inculpatory statements defendant made in the Burgess recording, which strongly corroborate Officer Burgess’s trial testimony and contradict defendant’s version of events. Again, to establish prejudice, defendant must show “there is a reasonable probability that, absent counsel’s errors, the factfinder would have had a reasonable doubt respecting guilt.” *Johnson*, 2021 IL 126291, ¶ 54. As noted, defendant argues that absent counsel’s alleged errors, the jury would have reasonably concluded the physical contact she made with Officer Burgess was not knowing, but instead was “unconscious or accidental.”

¶ 46 The Burgess recording squarely refutes defendant’s contention. The Burgess recording contains several statements by defendant, made immediately after the physical altercation, in which she admits to knowingly hitting Officer Burgess. At one point in the recording, after Officer Burgess states defendant hit him, defendant responds, saying “You’re f*** right, he [(Officer Burgess)] f*** charged me and I f*** hit him back.” In another portion, after Officer Burgess again states defendant hit him, defendant is heard saying, “Yes, I did.” Later, defendant states, “That’s fine if you want to take me to jail, but what you did was wrong too.” Finally, when Officer Burgess informs defendant she is being arrested for striking a police officer, defendant responds, “Well, why did you get hit? Because you f*** shoved me in my doorway, man.” Nowhere in the recording does defendant indicate that her act of hitting Officer Burgess was “unconscious or accidental.” To the contrary, defendant stated unequivocally, and repeatedly, that she hit Officer Burgess because he had shoved her. Moreover, her statements in

the recording contradict her trial testimony that she merely raised her hands in defense and had inadvertently made contact with Officer Burgess. Given the considerable evidence of defendant's guilt, we cannot say the jury likely would have acquitted her absent counsel's alleged errors.

¶ 47 In short, we find that, even assuming *arguendo* defense counsel was ineffective, defendant has failed to establish a reasonable probability that the jury would have found her not guilty based on the numerous inculpatory statements she made in the Burgess recording which corroborated Officer Burgess's testimony. Accordingly, because defendant cannot show prejudice, we conclude she has failed to establish she was denied the effective assistance of counsel.

¶ 48 III. CONCLUSION

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

¶ 50 Affirmed.