

2020 IL App (1st) 171447-U
No. 1-17-1447
Order filed May 18, 2020

First Division

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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. 16 CR 18645
)	
LARRY NORWOOD,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Griffin and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated battery is affirmed where the trial court appropriately denied his *pro se* posttrial motion alleging ineffective assistance of counsel.

¶ 2 Larry Norwood was convicted of aggravated battery and sentenced to seven years' imprisonment. He appeals, arguing that the trial court erred by denying his *pro se* posttrial motion alleging ineffective assistance of counsel following a preliminary hearing under *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm. Norwood's claim of ineffective assistance of counsel

fails in light of (i) Norwood's counsel's representation that he informed Norwood of the State's intended use of the video; (ii) Norwood's refusal to agree to continuing the trial; (iii) the trial court's unequivocal finding that the video did not show what Norwood alleged at the hearing; and (iv) Norwood's counsel's actions falling within the realm of trial strategy.

¶ 3 Background

¶ 4 Norwood was charged by indictment with attempt murder (720 ILCS 5/8-4 (West 2016); 720 ILCS 5/9-1 (West 2016)) (count I) and five counts of aggravated battery (720 ILCS 5/12-3.05(a)(1), (c), (f)(1) (West 2016)) (counts II-VI) arising from an incident on September 23, 2016. The trial court appointed the public defender to represent Norwood.

¶ 5 At a hearing on February 1, 2017, defense counsel requested a continuance to review discovery. Norwood told the court that he did not understand why he could not demand trial. The court said the State had not yet tendered "a lot of discovery," and if Norwood wanted to demand trial, he would have to represent himself. Norwood declined. Defense counsel said he would "keep this case moving" and "as soon as we have all the discovery," including a video, he would review it with Norwood. Then Norwood demanded trial, and the court began to admonish him before he agreed to a continuance.

¶ 6 On March 22, 2017, Norwood again demanded trial, but counsel advised the court he was "in no position" to proceed. The trial court asked Norwood whether he had seen the discovery and would represent himself. Norwood refused and said he had not reviewed discovery. The court then passed the matter for counsel to consult with Norwood. Afterwards, counsel said he "explained the situation" and the procedure for proceeding *pro se*. In response, Norwood stated that he believed a "conflict of interest" existed because he wanted to proceed to trial. Defense counsel informed the court that he was seeking text message evidence that T-Mobile had not yet

supplied and that he had difficulty contacting Norwood's witnesses. The court continued the matter after Norwood again declined to represent himself.

¶ 7 At trial on April 21, 2017, Kasey Myles testified that Norwood lived in an apartment with his daughter; his girlfriend, Whitney Holcomb, and Whitney's son. Myles was at Norwood's apartment on September 23, 2016, but left with Whitney's sister, Caprice Holcomb, to go to her house. (Because Whitney Holcomb and Caprice Holcomb have the same last name, we refer to them by their first names.) There they met Myles's cousin Clearance Underwood. Whitney called Myles and said that Norwood was upset because he believed she and Myles were having an affair. Myles told Norwood over the phone that they should "address the situation like men."

¶ 8 Whitney came to Caprice's house and said Norwood had "tried to fight her." While there, Norwood texted Whitney about Myles. In response, Myles "sent [Norwood] a text and told him let's fight." Myles drank beer and then he and Underwood went to Norwood's building. Whitney and Caprice were also "in the vicinity." When Myles arrived, he carried a stick, but he put it down and "had a 30 second fight" with Norwood outside the building. The two "were just tussling" and did not throw punches. Myles was on top of Norwood at the end. Afterwards, Norwood entered the building with Whitney and Caprice.

¶ 9 Myles spoke with some of Norwood's family members who wanted to "confront" Norwood, so they walked towards the building. Before Myles could enter, Norwood attacked him with a knife at the door. Norwood stabbed Myles's eyeball, back, neck, and the back of Myles's head, then ran away. Underwood drove Myles to the hospital, where he underwent surgery. He did not have a weapon during the incident.

¶ 10 The State entered a stipulation that a surveillance video, "accurately depicts" the events outside the apartment building. The State published the video. Myles identified himself and

Norwood in the video. It showed Norwood “stabbing me as soon as I walk through the door.” The trial court asked the prosecutor to play the video again “at regular speed,” but the prosecutor explained that it was filmed “in fragments.”

¶ 11 The video is included in the record on appeal. The quality is grainy and appears to play at a low frame rate, but the events can be clearly discerned. It depicts a vestibule area with a door leading into a building on the left and another door leading to the outside on the right. Both doors are open. At the 6:37:08 p.m. timestamp, a man wearing a hat, whom Myles identified as himself, stands outside the building near the door on the right. Seconds later, another man, whom Myles identified as Norwood, enters the vestibule from the door on the left and attacks Myles with what appears to be a sharp object.

¶ 12 On cross-examination, Myles agreed that before the fight he was upset with Norwood “about this issue over the women.” He sometimes lived at Norwood’s apartment and denied that Norwood ordered him to move out for taking money. The first encounter outside the building was a “mutual fight,” and Myles agreed he was the “aggressor.” Myles denied being the aggressor during the second encounter, when Norwood “charged and stabbed” him by the door.

¶ 13 The court advised Norwood of his right to testify, and he declined. The defense then rested. Following arguments, the court announced its findings, noting that Norwood “could have stayed upstairs” after the first fight but instead returned with a knife and “was not *** justified to use deadly force” against Myles. Norwood interjected that counsel told him he did not have to testify because the court would acquit him, but because it now seemed “like it’s going the wrong way,” he wanted to call a witness and also testify himself. The court acceded to Norwood’s request “in the interest of justice.”

¶ 14 Zachary Windbush testified that he knows both Norwood and Myles. As he and Norwood left the apartment building Myles arrived. Myles “appeared staggering” and “drunk.” He had a stick in his hand and told Windbush he would use it to beat Norwood. On cross-examination, Windbush said Myles was unable to walk straight, but was not “falling down drunk.” Norwood had not been drinking while Windbush was with him.

¶ 15 Norwood testified that on September 23, he, Whitney, Myles, Caprice, and Underwood were in Norwood’s apartment before Myles, Caprice, and Underwood left. Myles then sent Norwood about 40 “threatening” text messages in which Myles was “talking crazy.” Myles returned to the building and Norwood met him outside. Other people were present, but they were not members of Norwood’s family. Myles hit Norwood with a stick and the two went to the ground, with Myles on top of Norwood.

¶ 16 Norwood went upstairs to gather his belongings and move out because he believed Whitney “was with [Myles].” Whitney and Caprice followed him. Caprice swung a knife in Norwood’s face and told him that Underwood and Myles would “jump” on him and “record it” for “social media.” Norwood decided to go to Windbush’s house, and brought a knife with him because Caprice had one and had said Underwood and Myles would attack him. He believed Underwood and Myles were armed.

¶ 17 Norwood walked downstairs. As he opened the door to leave, Myles, who had his back to the door, turned around and hit him. Norwood also noticed Underwood running towards him. Fearing for his life, Norwood stabbed Myles and then left the area. He may also have stabbed Underwood during the incident.

¶ 18 On cross-examination, Norwood could not say whether Myles was drunk during the initial fight. Myles hit Norwood with the stick “[m]aybe twice.” The fight started because Myles

was texting Norwood, but Norwood did not text Myles or want to fight him. Norwood went upstairs believing the incident was over. When Norwood came back downstairs, Myles hit Norwood with his fist, and Norwood then drew his knife “because Underwood was running towards [Norwood] at the same time.”

¶ 19 On redirect, Norwood said he was upset after the first fight because Myles wanted to fight without “merit.” Police officers contacted Norwood several days after the incident. He told them what happened, and they did not ask him to come to the station.

¶ 20 The court viewed the video again before providing its findings. According to the court, Myles and Norwood had a fistfight, after which Norwood retrieved a knife from the apartment and returned to stab Myles. The video refuted Norwood’s account that Myles was “standing *** with his back to the door and then attack[ed] the [d]efendant when he opened the door.” Instead, the video showed Myles “not really doing anything” before the attack. The trial court acquitted Norwood of attempt murder but found him guilty of each aggravated battery count.

¶ 21 Norwood asked the court if he could “contest the video” because it looked like “still pictures” and did not depict the events in real time. According to Norwood, counsel initially told him there was “nothing” on the video, but before trial said the State “found something on there.” Defense counsel replied that he told Norwood before trial there was “something” on the video and that they could request a continuance, but Norwood “wanted to go today.” The court continued the matter for a presentence investigation.

¶ 22 On May 19, 2017, the court held a hearing on Norwood’s motion for a new trial. Before arguments, Norwood complained that the surveillance video had been “edited” and that Myles only appeared to be inside the building due to a “reflection off the glass.” Norwood argued the video corroborated his testimony that Myles attacked him outside the building. Norwood further

claimed that he asked to view the video before trial, and counsel told him and his mother there was “nothing” on it. Then, on the day of trial, counsel said there was “something” on the video. Norwood argued that he was unable to prepare a defense because he and counsel viewed the video for the first time at trial and counsel never objected to the video.

¶ 23 Defense counsel responded that Norwood wanted to “demand trial from day one.” He told Norwood on the day of trial that the State would publish the video, and though counsel believed it was “inconclusive,” he “could ask for a date for [Norwood] to review the video.” Norwood said he “wanted to proceed.”

¶ 24 Norwood replied that he demanded trial before seeing the video because counsel showed him a still frame, claimed the video only “showed a bunch of people walking in and out,” and did not ask if Norwood wanted a continuance to view the footage. The court asked Norwood what he would have done differently “[h]aving seen the video.” Norwood responded that he would have instructed counsel to argue the video showed Myles attacking Norwood after Norwood left the building and did not show Myles “walking in the building and getting attacked by me.” Defense counsel replied that he “cannot state emphatically enough” that he asked Norwood whether he wanted a continuance based on the still frames and video, and Norwood insisted on proceeding to trial as he had at “every other court date.”

¶ 25 The court found that counsel was “not ineffective,” as Norwood demanded trial “before [he] ever *** wanted” to view the video and the record supported counsel’s assertion that he asked Norwood whether he wanted a continuance, but he again “push[ed] for the trial.” And Norwood was not “prejudice[d]” because the court viewed the video “numerous times” and concluded it did not depict a reflection. While the video was not “free flowing,” the court found “no evidence that it was edited or tampered.” Further, “[e]ven taking into consideration if

[Norwood was] being attacked by two individuals,” he was not “justified in stabbing [Myles] in the eye with a knife.” The court stated that it considered Norwood’s explanation of the video and “rejected it.” The court denied Norwood’s motion for a new trial.

¶ 26 Following a sentencing hearing, the court merged counts III through VI into count II for aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2016)), sentenced Norwood to seven years’ imprisonment, and denied his motion to reconsider sentence.

¶ 27 Analysis

¶ 28 On appeal, Norwood argues that the trial court erred by not appointing him new counsel because his posttrial allegation of ineffective assistance established possible neglect where trial counsel did not review the video with him before trial. Defendant’s initial brief on appeal also alleged the trial court erred by “ruling on the merits” of his ineffective assistance claim, but his reply brief, citing *People v. Roddis*, 2020 IL 124352, only argues that he “demonstrated that trial counsel possibly neglected his case.”

¶ 29 A defendant’s *pro se* posttrial allegation of ineffective assistance of counsel is evaluated under the framework developed through *Krankel* and its progeny. *People v. Roddis*, 2020 IL 124352, ¶ 34. “[T]he purpose of the preliminary *Krankel* hearing is to determine, in a neutral and nonadversarial proceeding, the factual basis for defendant’s *pro se* claims of ineffective assistance and, if possible neglect by trial counsel has been demonstrated, to appoint new counsel for defendant to fully present the *** claim to the trial court in an adversarial proceeding.” *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 77. While the defendant need not file a written motion (*Roddis*, 2020 IL 124352, ¶ 35), new counsel should be appointed only where the allegations show possible neglect (*People v. Moore*, 207 Ill. 2d 68, 77-78 (2003)).

¶ 30 In making this determination, the trial court must consider the factual basis of the defendant's claim and may deny the claim if it lacks merit or only pertains to trial strategy. *Id.* at 78. The court may inquire into allegations counsel was ineffective by (i) questioning defense counsel, (ii) questioning the defendant, and (iii) relying on its own knowledge of defense counsel's performance "and the insufficiency of [the] defendant's allegations on their face." *Id.* at 78-79. As recently explained in *Roddis*, 2020 IL 124352, our supreme court "never distinguished between factual and legal merits when discussing whether a claim of ineffective assistance 'lacks merit.'" *Roddis*, 2020 IL 124352, ¶ 55. Instead, "even in preliminary *Krankel* inquiries, a trial court must be able to consider the merits *in their entirety* when determining whether to appoint new counsel on a *pro se* posttrial claim of ineffective assistance of counsel." (Emphasis in original). *Id.* ¶ 61.

¶ 31 If the trial court rules on the merits of the defendant's ineffective assistance claim, that determination will not be overturned on appeal unless found manifestly erroneous. *People v. Cook*, 2018 IL App (1st) 142134, ¶ 106. "A ruling is manifestly erroneous only if it contains error that is clearly evident, plain, and indisputable." (Internal quotation marks omitted.) *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 40.

¶ 32 At the preliminary *Krankel* hearing, Norwood argued that trial counsel did not review the surveillance video with him or offer to continue the matter so Norwood could view the video. Norwood stated that given the chance to review the video before trial, he would have instructed counsel to argue that it was tampered with and actually corroborated Norwood's testimony. Defense counsel, however, said that he believed the video was inconclusive. He informed Norwood of this before trial began and presented the option of a continuance, but Norwood insisted on proceeding to trial. The trial court found, in relevant part, that counsel was not

ineffective because the record supported counsel's account that he offered to seek a continuance but Norwood "push[ed] for the trial."

¶ 33 This ruling was not manifestly erroneous. At the preliminary *Krankel* hearing, the court heard from both Norwood and defense counsel, and determined Norwood's factual basis for claiming ineffective assistance had no merit in light of counsel's representation that he informed Norwood the State intended to use the video and Norwood decision to refuse a continuance of the trial. In so finding, the court appropriately relied on its knowledge of counsel's representation throughout the course of the litigation, noting that Norwood consistently demanded trial and resisted continuances at earlier court dates. See *Moore*, 207 Ill. 2d at 78-79.

¶ 34 Norwood's allegations also fail because the court viewed the video at trial and found unequivocally that it doesn't show what Norwood alleged at the hearing. This renders Norwood's motion unwarranted. See *Roddis*, 2020 IL 124352, ¶¶ 61, 68 ("Through our scrutiny of the record, we find that Norwood received effective assistance of counsel and was not prejudiced by his attorneys' performance."). And, Norwood's claim implicates trial strategy. Defense counsel reviewed the video, decided it was inconclusive, and shaped the trial strategy accordingly. A challenge to counsel's trial strategy is not cognizable at a preliminary *Krankel* hearing. *Moore*, 207 Ill. 2d. at 78; see also *People v. Porter*, 2014 IL App (1st) 123396, ¶ 15 (finding counsel's decision not to use video evidence a matter of trial strategy where defendant "disagreed with counsel" about what video showed).

¶ 35 Affirmed.