

No. 1-13-0078

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 6991
	)	
EDWARD HOWARD, JR.,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE COBBS delivered the judgment of the court.  
Justices Howse and Ellis concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence was sufficient to convict defendant of official misconduct. Counsel was not ineffective for eliciting reference to defendant's employment disciplinary record.

¶ 2 Following a bench trial, defendant Edward Howard, Jr., was convicted of official misconduct and sentenced to 18 months' probation with fines and fees. On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt. He also contends that trial counsel was ineffective for eliciting from defendant a reference to his

employment disciplinary record as it opened the door for the State to introduce impeaching portions of that record.

¶ 3 Defendant was charged with two counts of aggravated battery and official misconduct for, on or about October 11, 2010, striking Gregory Jeffries in the face with his hand while on a public way – a parking lot open to the public – while defendant was a police sergeant. The alleged official misconduct was defendant's battery of Jeffries.

¶ 4 At trial, the parties stipulated to the foundation for the security video of the parking lot.

¶ 5 Gregory Jeffries testified that, as of October 2010, he was a 19-year-old college student, was about 5'9" tall, and weighed about 145 pounds. At about 10 p.m. on October 11, he was in a restaurant with two friends when he had an argument with the restaurant employees. He had just left the restaurant when he saw a police car in front of the restaurant door. A police officer told him to put his hands on the police car, and he did so. The officer searched or frisked Jeffries, who was then handcuffed with his hands behind his back. There were several plain-clothed officers present. When Jeffries asked why he was arrested, a male officer "hit me in the chest and he kept pressure there," asking Jeffries if he had any more questions. Another officer asked him where he lives, and when he responded "on the east side" she insulted him and slapped his hat off his head. Defendant, dressed in a sergeant's uniform, came up to Jeffries and slapped his face four times without saying anything. Jeffries denied making a movement towards defendant or trying to spit on him. From the slaps, his lips were cut and his nose and the area around his eyes were swollen. Although Jeffries said nothing during the slapping, afterwards he asked defendant why he had slapped him, but defendant did not reply. Jeffries spat blood, but onto the ground

after defendant finished slapping him. Jeffries was arrested and taken to the police station, where he was charged with trespass to land.

¶ 6 Jeffries was released at about 1:30 a.m. on the morning of October 12th. Upon his release, Jeffries' mother, Nicole Jones, came to the police station, and they filed a complaint about the incident. They then went to the restaurant parking lot where Ms. Jones photographed the blood on the ground. Once at home, Jones took photographs of Jeffries' injuries. Ms. Jones' photographs were entered into evidence. On that same day, Jeffries went to the Independent Police Review Authority (IPRA) where he gave a recorded sworn statement.

¶ 7 Jeffries and the court were shown the security video, and Jeffries stated that it accurately depicted the events at issue. This court has also reviewed the video, which is silent and extremely grainy. It depicts Jeffries putting his hands on the police car and being frisked, leaning against the car with his arms behind him the remainder of the time. Defendant is standing a few feet away from Jeffries when he walks up to him and slaps him with his right hand. Defendant then remains directly in front of Jeffries – with his arms waving and head bobbing as if he is addressing Jeffries – while he slaps Jeffries two more times with his right hand. Defendant reared his arm back for the first and third slaps.

¶ 8 On cross-examination, Jeffries testified that the restaurant in question is in a predominantly black neighborhood but its employees on the night in question were not black. When he went into the restaurant, employees insulted him with racial slurs, and one of the employees came out into the customer area and kicked Jeffries, before the employees "threw [him] out of the restaurant." The responding officers did not use racial slurs. Jeffries admitted that the video did not depict the male officer hitting him in the chest nor the female officer

slapping his hat off his head. He also admitted that there was no blood on his lips or clothes, nor any cuts or swelling of his face, in his police booking photographs. Although he told the female officer that he lived on the east side, he did not give his name, full address, or any other identifying information. He denied that defendant told him to calm down before slapping him and denied coughing up phlegm that night. The police did not take him for medical treatment, nor did he seek treatment after being released. Jeffries sued the city regarding this incident.

¶ 9 Ms. Jones testified that Jeffries phoned her at about 1:15 a.m. on the night in question and told her that he was at the police station. When Jones saw him there, his face and lips were swollen and his lips were cut. Jones and Jeffries made a complaint, went to the restaurant parking lot to photograph the blood there, then went home where she photographed his injuries. Although they did not seek medical treatment, Jones suggested that Jeffries put ice on his lips and he did so. Later that day, Jeffries went to IPRA. On cross-examination, Jones admitted there was no blood on Jeffries' face, lips, or clothing, but maintained that there was swelling when she first saw him. There was blood on his lips in the photographs she took later at home. Although Jones had her camera with her at the police station, she did not photograph Jeffries there.

¶ 10 Police officer Jennifer Harris testified that, on the night in question, she and her partner responded to the restaurant on a report of a man with a gun. They frisked and then released two people. Other officers detained two men including Jeffries. She did not see whether Jeffries was handcuffed because he was leaning against a police car, but she never saw his hands in front of him that night. Jeffries was not spitting or otherwise physically aggressive. Officer Harris approached Jeffries to search his hat. She removed it (but did not slap it off his head), briefly dropped it to the ground, and then placed it back on his head. Although Jeffries did not respond

to her questions about his name and identification, he was not physically aggressive and did not try to kick or spit on her. Officer Harris was standing several feet away when defendant approached Jeffries. She heard "a pop, like a hand on a car" and saw defendant swinging his hand in front of him where Jeffries was standing. She did not see Jeffries spitting, attempting to spit, kicking, or striking during defendant's hand-swinging. Later, defendant told her that "you can't let people talk to you or treat you that way." No gun was found at the scene. Officer Harris explained that there are certain reports an officer must file if he or she has been assaulted or battered. She also explained that officers are instructed that they can ask a temporarily-detained person for information but the person is not obligated to answer and a failure to answer is not a basis for arrest.

¶ 11 The parties stipulated to the effect that a police radio message was sent at 10:03 p.m. in which defendant is heard to say, "Can I get a wagon over here? These guys do not understand not to fool with the police." The parties additionally stipulated that defendant did not file any report regarding the force used against Jeffries on the night in question.

¶ 12 The court denied defendant's motion for a directed finding after argument by the parties.

¶ 13 Defendant testified that he went to the restaurant on the night in question in response to a report of a man with a gun. When he arrived, he saw two young men by a police car surrounded by four officers. Jeffries was one of the men, and he was "yelling and screaming and cursing." When defendant asked Jeffries why he was acting "so out of the way," Jeffries replied with a curse. Defendant told Jeffries to "stop acting the fool, you know, show some class, show some respect, you know, just relax a little bit, let's just see what's going on." Jeffries responded with another obscenity and "coughed up phlegm from his throat." Defendant therefore "used my open

hand to redirect his face from the direction of my face." When defendant continued to reassure Jeffries that he would "find out what's going on," Jeffries responded with another curse and demanded that his handcuffs be removed before again insulting defendant and "call[ing] up more phlegm from his throat." Defendant again "used an open hand to redirect his face from my face." As defendant continued attempts to speak to Jeffries, he again prepared to spit and defendant again redirected his face. Defendant then called for a wagon, which he felt he needed because a police car does not protect an officer from being spat upon by an arrestee seated in the back seat. However, an officer reported to defendant that Jeffries had calmed down and the officer offered to transport Jeffries to the police station. When defendant expressed concern that Jeffries would spit on the officer, the officer replied "we can handle it." Thus, defendant agreed to have the officer transport Jeffries. Defendant denied that there was blood coming from Jeffries' mouth, and he maintained that he slapped Jeffries in self-defense to avoid being spat upon. When asked if he had a police disciplinary record, defendant answered "[n]ot to my knowledge."

¶ 14 On cross-examination, when questioned about his disciplinary history, defendant responded that he had no disciplinary history; "within the last 5, 10 years I have none that I remember" and "the guideline for \*\*\* our contract states that any discipline that's over 10 years old should not be in our record." He had been disciplined by the police department, in that he was previously suspended for 20 days for falsifying time slips. When asked if he had 72 disciplinary complaints against him in his 26 years of police service, defendant responded, "I don't know a number."

Defendant admitted that when he struck Jeffries, Jeffries' hands were cuffed behind his back. Defendant did not move backwards or turn around to avoid Jeffries' spit, though he could

have, nor did he turn Jeffries around. Though defendant considered the threat of spitting to be assault, Jeffries was not charged with an assault, nor did defendant file the requisite police reports for an assault. He admitted that failing to file one of the forms was a mistake and was uncertain whether he had to file the other form. Defendant did not file the case report on Jeffries but reviewed and approved the report by the arresting officers; the report did not mention Jeffries attempting to spit or defendant using force.

¶ 15 On redirect examination, defendant testified that he continued interacting with Jeffries because there was an ongoing investigation of a reported gun. Although officers searched the scene for a gun, none was found.

¶ 16 On this evidence, following argument by the parties, the court found defendant guilty of all counts. The court observed that it had to balance the testimony in a "very difficult case" and that "like most cases in front of me, every witness that testifies in a case has some issue that they are attempting to present to the court to enhance their particular position." Regarding Jeffries, the court noted that "how many of us have had to have the police called because we got in an argument in a restaurant." Regarding Jones, the court opined that "we all want to believe our kids and believe that they do the right thing." The court found that the photographs of Jeffries from his booking were inconsistent with those taken by Jones. With respect to Officer Harris, the court commented that she "found herself in a bad spot in this case." The court found that defendant "attempt[ed] to answer some questions [but] not answer other questions" and "tried to use the rule that disciplinary matters are wiped off the books after 10 years." With respect to the video, the court found "no, explanation, other explanation in this video" but to convict defendant, observing on the first blow that defendant "is at least an arm's length or more away, he steps into

it, he's raising his hand and he steps into it and strikes" Jeffries, while on the third "he strikes him so hard that he has to shuffle his feet to maintain his balance."

¶ 17 After trial, the court vacated the aggravated battery counts as redundant of the official misconduct count. In his unsuccessful post-trial motion, defendant argued that he acted in self-defense and alternatively asked the court to find him guilty of the lesser-included offense of battery. Following evidence and argument in aggravation and mitigation, the court sentenced defendant to 18 months' probation and assessed fines and fees. This appeal timely followed.

¶ 18 On appeal, defendant first contends that the evidence was insufficient to convict him beyond a reasonable doubt of official misconduct based upon battery.

¶ 19 On a claim of insufficiency of the evidence, this court must determine whether, after taking the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence. *Id.* The weight of the evidence and credibility of witnesses are matters for the trier of fact, who may accept or reject as much or little of a witness' testimony as it chooses. *People v. Rouse*, 2014 IL App (1st) 121462, ¶¶ 43, 46. This court does not retry the defendant – that is, we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Brown*, 2013 IL 114196, ¶ 48. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 20 On this record, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no reasonable finder of fact would convict defendant of official misconduct based on battery. We agree with the trial court that the video is decisive over the conflicting testimony. Although the video belies Jeffries' testimony that defendant said nothing to him throughout the slapping – defendant's arm and head movements during the slapping are wholly consistent with him addressing Jeffries – it also firmly belies defendant's testimony that he merely "used an open hand to redirect his face from my face" against an anticipated spitting. Defendant walked up to Jeffries from a few feet away and immediately administered the first and seemingly hardest of the slaps; remained directly in front of Jeffries for the second and third slap, while apparently addressing him. Although the silence and graininess of the video precludes it from directly resolving the spitting issue, what is clear is that defendant's approach for the first slap and remaining in front of Jeffries for the second and third slaps are inconsistent with his account that Jeffries tried to spit on him and that he acted merely in self-defense.

¶ 21 Defendant also contends that trial counsel was ineffective for eliciting a reference to his employment disciplinary record, as it opened the door for the State to introduce impeaching portions of his disciplinary record.

¶ 22 To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate both that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that the result of the proceeding would have been different absent counsel's error. *People v. Simpson*, 2015 IL 116512, ¶ 35. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *Id.* Counsel cannot be found ineffective where a defendant fails to satisfy either prong of this test. *Id.*

¶ 23 Defendant has failed to satisfy the second prong of the test. In finding defendant guilty, the court noted that every witness has issues with their testimony and then recounted those issues for each of the witnesses in this case. In so doing, the court commented on defendant's testimony concerning his disciplinary record but also pointed to issues with the State's witnesses. The court concluded that the testimony "took some balancing to try and arrive at a decision." After recounting the testimony the court commented that "[a]ll that having been said, I have a video and there is no, explanation, other explanation in this video." Clear from the whole of the court's comments is that it found the video decisive. We see no reasonable probability that the result of trial would have been different even absent evidence of defendant's disciplinary record.

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

¶ 25 Affirmed.