

People v. Beachem

Appellate Court of Illinois, Fifth District

July 11, 2024, Decision Filed

NO. 5-21-0344

Reporter

2024 IL App (5th) 210344-U *; 2024 Ill. App. Unpub. LEXIS 1438 **

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALONTE BEACHEM, Defendant-Appellant.

Notice: THIS ORDER WAS FILED UNDER SUPREME COURT RULE 23 AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER RULE 23(e)(1).

Prior History: **[**1]** Appeal from the Circuit Court of Jefferson County. No. 20-CF-48. Honorable Jerry E. Crisel, Judge, presiding.

Disposition: Reversed; caused remanded for a new trial.

Core Terms

video, firearm, weapon, truck, gun, trial court, new trial, driving, cell phone, laser, sight, admit, self-defense, instruction of a jury, first degree murder, aggravated battery, burden of proof, convictions, sentence, pistol, seat, beyond a reasonable doubt, post trial motion, motion in limine, trial counsel, discharged, depicted, shooting, slowed, shot

Judges: JUSTICE BARBERIS delivered the judgment of the court. Presiding Justice Vaughan and Justice Boie concurred in the judgment.

Opinion by: BARBERIS

Opinion

ORDER

Held: Reversible error occurred by the trial court's failure to give a pattern jury instruction requiring the State to prove, beyond a reasonable doubt, that defendant was not justified in using the force used.

[*P2] Following a jury trial in the circuit court of Jefferson County, defendant, Alonte Beachem, was convicted and sentenced to 50 years in prison for attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2020)) and aggravated battery with a firearm (*id.* § 12-3.05(e)(1)). Defendant appeals, arguing that the court (1) committed plain error by publishing a defective jury instruction, (2) erred by permitting "bad acts" evidence by granting the State's motion to admit video evidence, (3) committed plain error by seating an alternate juror following the dismissal of a juror, and (4) imposed an excessive sentence. Defendant also argues that he received ineffective assistance of counsel when trial counsel failed to (1) submit a proper **[**2]** jury instruction for self-defense, (2) object to the court's publication of a defective jury instruction for self-defense, (3) object to the State's repetitive questioning of defendant on cross-examination, and (4) contemporaneously object to the court's juror substitution. For the following reasons, we reverse and remand for a new trial.

[*P3] I. Background

[*P4] We limit our recitation to those facts relevant to our disposition of this appeal. We will recite additional facts in the analysis section as needed to address defendant's specific arguments.

[*P5] On February 10, 2020, the State charged defendant by information with two counts of aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), Class X felonies, alleging that defendant, on or about February 7, 2020, knowingly discharged a firearm and thereby caused injury to Randy Mewes (count I) and Matthew Verkey (count II).

[*P6] On February 20, 2020, the State charged defendant by indictment with attempted first degree murder (count I) (*id.* §§ 8-4(a), 9-1(a)(1)), a Class X felony, in that defendant, with the intent to commit first degree murder, performed a substantial step toward the commission of that offense, in that he, without lawful justification and with the intent to kill Mewes, **[**3]** shot a firearm at Mewes two times, striking him once. The State also charged defendant with two counts of aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), alleging that defendant, on or about February 7, 2020, knowingly discharged a firearm and thereby caused injury to Mewes (count II) and Verkey (count III).

[*P7] On June 8, 2021, the trial court held a pretrial conference. Specific to this appeal, the State sought to introduce other-crimes evidence or bad acts, and the court addressed video footage that the State obtained from defendant's cell phone. The following colloquy took place:

"THE COURT: *** Will the State seek to admit any evidence of other similar crimes or other crimes for any purpose, motive, intent or *modus operandi*?

MR. FEATHERSTUN [(STATE'S ATTORNEY)]: I don't believe that there are—well, so there are photographs of [defendant] possessing firearms, specifically a handgun with a laser sight on it. I could see an argument made that those photographs might be evidence of other crimes as we're sitting here talking about it, but those photographs have been disclosed. There's a video from [defendant's] cell phone basically of him handling a handgun that has a laser sight on it. Those **[**4]** are—that is evidence that we intend to present as it relates to his access to a firearm near the time of this offense.

THE COURT: Okay. And if there is an affirmative defense of self-defense, that may take care of itself.

MR. FEATHERSTUN: I understand that may play into this.

THE COURT: So, Ms. Whitley [(trial counsel)], do you want to add anything?

M[S]. WHITLEY: Yes. I plan to file a motion *in limine* as it relates to those, the videos from the cell phone."

[*P8] On June 10, 2021, the State filed a motion *in limine* to admit prior conduct requesting that the trial court allow the State to introduce and admit into evidence three videos, pursuant to Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011), that police discovered on defendant's cell phone following a search warrant

subsequent to defendant's arrest. Specifically, the State sought to admit a video, dated February 4, 2020, depicting defendant handling a black semi-automatic firearm equipped with a green laser sight affixed to the bottom of the firearm. Next, the State sought to admit two videos, dated January 25, 2020, depicting defendant handling an assault-style weapon. The State argued that all three videos obtained from defendant's cell phone were relevant and otherwise **[**5]** admissible to show opportunity, intent, preparation, plan, knowledge, and absence of mistake or accident in the present proceeding. The State further argued that the videos were relevant and otherwise admissible given that the videos demonstrated "[d]efendant's recent in time possession of firearms specifically modified for improved accuracy."

[*P9] That same day, defendant filed a motion *in limine* requesting that the trial court exclude all evidence relating to the videos obtained from his cell phone. Defendant admitted that the videos depicted him holding guns. As such, defendant argued that the videos depicted him in a negative light. Defendant argued that the videos had no probative value and that any probative value would be substantially outweighed by the danger of unfair prejudice. Defendant asserted that "the evidence once presented will prove that [he] was the actual victim in this case."

[*P10] Also on June 10, 2021, the trial court held a hearing on the State's and defendant's motions *in limine*. The court heard the following arguments by the parties. Trial counsel requested that the court deny the State's motion *in limine* and exclude the videos obtained from defendant's cell phone, arguing **[**6]** the videos were prejudicial and that defendant, not Mewes and Verkey, was the real victim in this case.

[*P11] In response, the State argued that it planned to present evidence of three videos, all under 10 seconds in length, obtained after a lawful search of defendant's cell phone. The State sought to admit a February 4, 2020, video, which depicted defendant handling a black semi-automatic firearm equipped with a green laser sight affixed to the bottom of the firearm. According to the State, the short video showed defendant holding a gun and engaging the green sight. The State argued that it expected the evidence to show that defendant "likely fired these projectiles from his firearm while he was simultaneously driving his vehicle." The State proceeded to state:

"Simply put, it's a difficult shot, your Honor, and this video—the first video, which the State references, displays that [defendant] had access and opportunity to access a weapon which was modified for an increased degree of accuracy. Simply put, the fact that [defendant] has access to a weapon three days prior to the alleged shooting which has been modified for improved accuracy is relevant evidence, in that it tends to make it **[**7]** more likely that [defendant] discharged the firearm."

The State asserted that the video was not more prejudicial than probative, where the State did not expect to present the video to show defendant "was committing an illegal act in this video."

[*P12] Next, the State asserted that two additional videos obtained from defendant's cell phone showed defendant possessing assault-style weapons in January 2020. Again, the State argued that "there's no prejudice from [these] video[s]" because "[t]here's no illegal activity being displayed." The trial court asked the State the following:

"THE COURT: Do you—is it your contention that that laser pistol, laser sighted pistol in the first video is the firearm used in the offense?

MR. JENNINGS [(ASSISTANT STATE'S ATTORNEY)]: Your honor, I hesitate to make that conclusion. The weapon from this shooting offense was not recovered. As such, I cannot state to any degree of certainty that it was the weapon used. I can also not preclude it from saying it was not the weapon used.

THE COURT: Okay. Go ahead.

MR. JENNINGS: But, your Honor, I do believe that these videos go directly towards the reasons layed *[sic]* out in 404(b) that evidence can be admitted of other prior conduct. **[**8]** It does go towards absence of mistake, knowledge, plan and opportunity especially. *** And that [the videos] are probative, that they do have any tendency to make an issue in dispute more likely than not and there's no good reason to keep them out, your Honor.

THE COURT: Okay. Ms. Whitley?

MS. WHITLEY: I would stand on my motion.

THE COURT: All right. The Court is aware that Rule 404(b) does allow other behavior, bad acts or whatever you want to call it to be introduced as to evidence. And the Court—and the standard is quite

correctly, as Ms. Whitley has stated, whether it's more probative than prejudicial or vice versa. So, um, I think that as to the laser sighted pistol, the video which was taken shortly before, a few days before the alleged event, um, as to showing opportunity, preparation and ability, the Court will allow that video as to the laser sighted pistol. However, the two videos with the AK-47, it seems to me that that might be a little more prejudicial than probative. This did not involve an assault weapon to my knowledge, and, um, how can I put this, the AK-47 has become the pariah of weapons in our national conscious. And so, um, unless there's some other direct relationship, I am **[**9]** going to keep out the AK-47 videos."

The court determined the February 4, 2020, video of defendant brandishing a firearm admissible to show opportunity, preparation, and ability.

[*P13] On June 15, 2021, the trial court held the first day of defendant's four-day jury trial. The State's evidence revealed that on the morning of February 7, 2020, defendant fired a gun from his vehicle two times in the direction of Mewes and Verkey. At the time of the shooting, Mewes, Verkey, and defendant worked at Continental Tire in Mt. Vernon, Illinois. On February 6, 2020, Mewes and Verkey carpooled together to work the overnight shift from 11 p.m. to 7 a.m. Defendant also worked the overnight shift on February 6, 2020. Following work on the morning of February 7, 2020, Mewes and Verkey walked to Mewes's pickup truck. The men sat in Mewes's truck in the parking lot to allow the truck to warm up. Mewes sat in the driver's seat, while Verkey sat in the passenger seat. Video evidence revealed that defendant also ended his shift at 7 a.m. Defendant then pulled out of the parking lot, turning right onto Highway 142. Video evidence then demonstrated that Mewes pulled out of the parking lot and turned right onto **[**10]** Highway 142. Several miles later, Mewes turned southbound on Log Cabin Lane. While driving down Log Cabin Lane, Mewes and Verkey noticed a black Kia Forte waiting at the bottom of the hill. When Mewes's truck passed the Kia Forte, the driver, identified as defendant, started to follow Mewes, honking his horn and tailgating. Mewes testified that defendant "would get next to us and get in front of us and slow way down, and when we wouldn't pass him, he would get over back in the left lane and let us go by, and then he would continue doing that." Shortly thereafter, Mewes stopped at the intersection of Log Cabin Lane and Ina Road. After Mewes stopped, he started to drive through the intersection when defendant "pulled up next to us and fired two shots," shattering Mewes's driver side window. Mewes slowed down and drove his truck into a private driveway while

defendant sped away. Once Mewes pulled over, Verkey called 9-1-1 to report the incident, at which time he realized that a bullet had struck Mewes. Mewes testified that the bullet hit him in his left shoulder, traveled straight across his body and against his ribs. Mewes testified that the bullet remained in his body between his liver **[**11]** and lungs and continued to cause him pain. Defendant also shot Verkey in the left arm, causing abrasions on Verkey's left forearm.

[*P14] Prior to February 7, 2020, Mewes and Verkey noticed the same black Kia Forte drive aggressively and at high rates of speed on multiple occasions, prompting Mewes to take a picture of the license plate. Specifically, Mewes testified that he drove in the middle of the road on February 4, 2020, to prevent defendant from passing several cars on a two-lane highway.¹ On February 5 and 6, 2020, Mewes testified that defendant followed his truck closely, honking his horn, flashing his lights, and driving next to Mewes's vehicle. Mewes testified that he had an unloaded gun with him in his vehicle on February 7, 2020. Mewes stored his gun in a case, behind the driver's side seat. Verkey also had a gun with him that day but stored his gun in a case behind his seat.

[*P15] Following the incident, defendant sped away and law enforcement pursued defendant in his vehicle. The police pursuit ended once defendant crashed his vehicle in Harrisburg, Illinois, causing significant damage to the front end of his vehicle. Defendant then fled from his vehicle by foot and police pursued **[**12]** defendant before arresting him and taking him into custody. After police arrested defendant, crime scene investigators analyzed both Mewes's truck and defendant's car. Investigators discovered two 9-millimeter brass shell casings in defendant's car, as well as two bullet holes in Mewes's truck, corroborating Mewes's and Verkey's testimonies. Additionally, the testimony of Shan Mei Jones, a forensic scientist, demonstrated that defendant's hands and car (ceiling and front passenger seat) tested positive for gunshot residue, which allowed Jones to conclude that defendant discharged a firearm, defendant's hands and car contacted an item that had gunshot residue on it, or defendant's hands and car were in the environment of a discharged firearm. Moreover, police obtained a search warrant of defendant's cell phone, which revealed a video from February 4, 2020, of defendant displaying a black pistol with a laser sight and flashlight attachments.

¹ Verkey testified that neither Mewes nor Verkey drove in middle of the road to prevent defendant from passing in his vehicle.

[*P16] Contrary to the State's evidence and witness testimony, defendant, who worked for Unified Staffing at Continental Tire, testified that he encountered Mewes and Verkey on Highway 142 on February 6, 2020. While driving home from work, defendant encountered **[**13]** Mewes driving "just slow," so defendant attempted to pass Mewes's vehicle. As defendant attempted to pass Mewes, Mewes "whipped his car over at me *** and threw me off the side in the ditch." Once defendant exited the ditch, he once again drove behind Mewes's truck. Defendant honked at Mewes, prompting Mewes to look in his rearview mirror. As defendant tried to pass Mewes's vehicle, Mewes swerved towards defendant's car and flipped off defendant. Defendant laid on his horn again. Mewes then "threw a black pistol *** in the air." Defendant slowed down for a few miles before he "blew around" Mewes's truck. Defendant testified that he first encountered Mewes's truck on February 6, 2020.

[*P17] The next day, on February 7, 2020, defendant drove down Log Cabin Lane when he saw Mewes's truck in his rearview mirror speeding towards his car. As Mewes passed next to defendant's car, defendant saw Mewes and Verkey "waving ***, and laughing and giggling, and rocking back and forth." According to defendant, Mewes, who was now driving in front of defendant, slowed down, prompting defendant to drive around Mewes's truck. Mewes then swerved in defendant's direction and "waved the gun around," preventing **[**14]** defendant from passing Mewes's truck. Shortly thereafter, defendant attempted to pass Mewes again, at which time Mewes pointed a gun at defendant. Specifically, defendant stated that Mewes held "the same gun in his right hand over his left arm" while driving. Defendant, "scared for his life," fired his gun two times at Mewes. Defendant admitted that no one shot at him. While driving home, police stopped defendant's car and arrested him. Defendant testified that he did not know Mewes or Verkey, and he was unaware that both men worked at Continental Tire.

[*P18] Specific to the video demonstrating defendant holding a firearm, defendant testified that he did not use that specific firearm to shoot Mewes and Verkey. According to defendant, he filmed the video on February 4, 2020, in a bathroom at a gas station near Continental Tire while on his lunch break. When the State asked defendant to explain "the purpose of filming the video in the bathroom," defendant responded that he "was supposed to star in a music video. The weapon was a prop weapon." According to defendant, the weapon was fake, although he admitted that a "[f]lashlight, laser sight" was affixed to the bottom of the

weapon. Specific **[**15]** to the video, the State asked defendant about noise that appeared to come from an intercom system, suggesting that defendant, who wore soundproof ear plugs in the video, filmed the video at the Continental Tire factory where he worked. Defendant denied the State's suggestion, stating, again, that he filmed the video in a bathroom at a gas station near the factory. Defendant admitted that he did not possess a firearm owner's identification card, thus, he was unauthorized to possess a gun. Defendant also testified that he obtained the gun used to shoot Mewes and Verkey on February 6, 2020, from a "miscellaneous guy," who looked like a "junkie." Defendant testified that he did not know the man who sold him the weapon.

[*P19] Relevant to this appeal, the jury received a series of instructions submitted by the State without objection by trial counsel, including: (1) Illinois Pattern Jury Instructions, Criminal, No. 2.03 (hereinafter IPI Criminal), burden of proof instruction, which states that the burden is on the State throughout the case to prove the guilt of the defendant, beyond a reasonable doubt; and (2) IPI Criminal No. 24-25.06, the instruction defining the general definition of self-defense and providing the jury as to when the use of force is justified in defense **[**16]** of a person. Additionally, the State provided a list of definitional instructions, including IPI Criminal No. 6.05X (attempted first degree murder) and IPI Criminal No. 11.115 (aggravated battery with a firearm). The trial court did not provide the jury with IPI Criminal No. 24-25.06A, informing the jury that the State had the burden to prove, beyond a reasonable doubt, that defendant was not justified in using the force which he used. Following deliberations, the jury found defendant guilty of attempted first degree murder of Mewes (count I) and aggravated battery with a firearm of Mewes (count II).²

[*P20] On July 16, 2021, defendant filed a posttrial motion for a new trial, arguing, *inter alia*, that the State produced insufficient evidence to prove defendant guilty beyond a reasonable doubt. On September 27, 2021, the State filed a response to defendant's posttrial motion for a new trial.

[*P21] On October 4, 2021, the trial court held defendant's sentencing hearing and heard argument on defendant's posttrial motion for a new trial, which the court denied. The court, merging counts I and II, then sentenced defendant to 50 years in prison followed by 3 years of mandatory supervised release. Defendant

² The jury returned a not guilty verdict on count III against defendant.

also filed a *pro se* motion titled, "Overturning of Jury's Guilty **[**17]** Verdict," which the trial court struck without objection. Defendant filed a timely notice of appeal.

[*P22] II. Analysis

[*P23] Defendant first argues that he received ineffective assistance of counsel when trial counsel failed to submit a proper jury instruction or object to the trial court's defective self-defense instruction, which lacked information regarding the State's burden of proving, beyond a reasonable doubt, that the use of deadly force was not justified. Alternatively, defendant asserts that the trial court committed plain error by failing to explain to the jury the State's burden of proof concerning defendant's affirmative defense of self-defense. As a result, defendant requests this court reverse his convictions and remand the case for a new trial.

[*P24] In response, the State concedes that, although defendant raised this issue for the first time on appeal, waiver and forfeiture are inapplicable under Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013) ("substantial defects" in criminal jury instructions "are not waived by failure to make timely objections thereto if the interests of justice require"). Additionally, the State concedes that the trial court committed grave error by omitting the self-defense issues instruction, **[**18]** IPI Criminal No. 24-25.06A, by failing to apprise the jury that the State had the burden of proving, beyond a reasonable doubt, that defendant was not justified in the force he used against the victim. The State acquiesces in defendant's request to have his convictions reversed and cause remanded for a new trial. We accept the State's concession and agree that the jury instruction the jury received was defective. Additionally, a review of the closing arguments in the case reveals that neither party emphasized to the jury that the State had the burden of proving defendant was not justified in the force he used. We therefore reverse defendant's convictions and sentence and remand the case for a new trial. Moreover, because defendant does not contest the sufficiency of the evidence adduced at trial, double jeopardy does not bar his retrial for those offenses. See *People v. Olivera*, 164 Ill. 2d 382, 393, 647 N.E.2d 926, 207 Ill. Dec. 433 (1995) ("Although the double jeopardy clause precludes the State from retrying a defendant after a reviewing court has determined that the evidence introduced at trial was legally insufficient

to convict, the double jeopardy clause does not preclude retrial of a defendant whose conviction has been set aside because of an error in the proceedings leading to the conviction.").

[*P25] Next, defendant argues that **[**19]** the trial court erred by granting the State's motion *in limine* to introduce and admit into evidence a video of defendant brandishing a gun. Specifically, defendant argues that such evidence amounted to impermissible propensity evidence. Although the State concedes that a new trial is warranted, the State, arguing the court did not err in granting the State's motion *in limine* regarding such evidence, requests this court address defendant's argument because the issue is likely to recur on remand. We decline to do so.

[*P26] Although neither party raises the issue of forfeiture, our supreme court has indicated that we may consider the issue *sua sponte*. *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 319 Ill. Dec. 373 (2008) ("[T]he ascertainment of its own jurisdiction is one of the two most important tasks of an appellate court panel when beginning the review of a case. The other is to determine which issue or issues, if any, have been forfeited. By giving careful attention to each of these tasks, a court can avoid the possibly unnecessary expenditure of judicial resources."). Generally, an issue not objected to during the trial and raised in a posttrial motion is forfeited on appeal. *People v. Enoch*, 122 Ill. 2d 176, 190, 522 N.E.2d 1124, 119 Ill. Dec. 265 (1988). Defendant filed a posttrial motion for a new trial; however, contrary to defendant's **[**20]** argument in his opening brief, he failed to raise this specific issue before the trial court. Additionally, defendant has not argued plain error concerning this particular issue on appeal. As a result, this issue on appeal is forfeited, and we decline to address this issue. In light of this disposition, it is unnecessary to reach defendant's other issues on appeal.

[*P27] III. Conclusion

[*P28] For the reasons stated, we reverse defendant's Jefferson County convictions and sentence for attempted first degree murder and aggravated battery with a firearm and remand the case for a new trial.

[*P29] Reversed; caused remanded for a new trial.

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