SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1430
KA 16-00439
PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V   MEMORANDUM AND ORDER

JAMES B. METALES, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered July 22, 2015. The judgment convicted defendant, upon a jury verdict, of assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of assault in the second degree (Penal Law § 120.05 [3]). The charge arose from allegations that he caused physical injury to a police officer with the intent of preventing the officer from performing a lawful duty.

At trial, the officer testified that he was investigating a report of shots fired in the City of Rochester when he encountered defendant, who was walking near a bank where the officer was attempting to secure surveillance video. The officer testified that, for no apparent reason, defendant repeatedly called him a "bitch" and told him to get out of the neighborhood. Displaying his badge and gun, the officer explained that he was conducting an investigation and asked defendant to leave the area. According to the officer, defendant continued his verbal tirade against him, saying, "Bitch, I don't care if you are the police . . . You need to get the f . . . out of my hood."

When the officer shined a flashlight on defendant to see if he was armed, defendant, with a clenched fist, approached the officer, who turned to walk away. Defendant nevertheless followed the officer closely and allegedly said, "Bitch, I'll kill you." The officer testified that he then turned and punched defendant as a preemptive defensive maneuver. A fight ensued, with defendant and the officer exchanging blows and wrestling for position. The officer eventually

subdued defendant and pinned him to the ground. According to the
officer, defendant repeatedly reached for the officer's holstered gun
during the struggle, as if defendant intended to use it against him.
Other officers soon arrived and placed defendant in handcuffs. The
officer testified that he sustained various injuries during the fight,
including an aggravation of a preexisting left wrist injury, which
continued to cause him pain at the time of trial. The entire
encounter was captured on a surveillance video and played at trial for
the jury.

     Defendant contends that the evidence is legally insufficient to
establish that the officer was performing a lawful duty when the
officer "instigated" the physical confrontation. That contention is
not preserved for our review (*see People v Townsley*, 50 AD3d 1610,
1611 [4th Dept 2008], *lv denied* 11 NY3d 742 [2008]; *see generally* CPL
470.05 [2]). In any event, the trial testimony and surveillance video
establish that it was defendant, not the officer, who initiated the
confrontation, and we conclude that there is legally sufficient
evidence to demonstrate that the officer was performing a lawful duty
at the time, i.e., he was investigating a report of shots fired (*see
generally People v Bleakley*, 69 NY2d 490, 495 [1987]).

     Contrary to defendant's further contention, the evidence is
legally sufficient to establish that defendant *intended* to prevent the
officer from performing a lawful duty. The evidence establishes that,
after being informed by the officer that he was conducting an
investigation, defendant continued to swear at the officer and told
him to leave the neighborhood. While the officer was walking away,
defendant approached him from behind and threatened to kill him. A
defendant's intent "may be inferred from [his] conduct as well as the
surrounding circumstances" (*People v Steinberg*, 79 NY2d 673, 682
[1992]), and "[a] jury is entitled to infer that a defendant intended
the natural and probable consequences of his acts" (*People v Bueno*, 18
NY3d 160, 169 [2011]). "Competing inferences to be drawn [regarding a
defendant's intent], if not unreasonable, are within the exclusive
domain of the finders of fact, not to be disturbed" by us (*People v
Barnes*, 50 NY2d 375, 381 [1980]). Here, we conclude that it may
reasonably be inferred from defendant's obstreperous conduct that he
intended to prevent the officer from conducting his investigation (*see
People v Torres*, 130 AD3d 1082, 1085 [2d Dept 2015], *lv denied* 26 NY3d
1093 [2015]; *People v Rayford*, 16 AD3d 1102, 1102 [4th Dept 2005], *lv
denied* 5 NY3d 768 [2005]).

     We similarly reject defendant's contention that the evidence is
legally insufficient to establish that the officer sustained a
physical injury within the meaning of Penal Law § 10.00 (9). Viewing
the evidence in the light most favorable to the People, as we must
(*see People v Contes*, 60 NY2d 620, 621 [1983]), we conclude that there
is a valid line of reasoning and permissible inferences to support the
jury's finding that the officer sustained a physical injury (*see
People v Chiddick*, 8 NY3d 445, 447 [2007]; *People v West*, 129 AD3d
1629, 1631 [4th Dept 2015], *lv denied* 26 NY3d 972 [2015]; *see
generally Bleakley*, 69 NY2d at 495).

Viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we further conclude that the verdict is not against the weight of the evidence (*see generally Bleakley*, 69 NY2d at 495). Although a different verdict would not have been unreasonable, it cannot be said that the jury failed to give the evidence the weight it should be accorded (*see People v Kalinowski*, 118 AD3d 1434, 1436 [4th Dept 2014], *lv denied* 23 NY3d 1064 [2014]).

We have reviewed defendant's remaining contentions and conclude that none requires reversal or modification of the judgment.

Entered: April 26, 2019   Mark W. Bennett
                                                  Clerk of the Court