STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 20, 2012
v	No. 304855 Muskegon Circuit Court
ANTONIO ALEXANDER, JR., Defendant-Appellant.	LC No. 10-059905-FH

Before: M. J. KELLY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Defendant Antonio Alexander, Jr. appeals by right his bench conviction of assault of a prison employee. MCL 750.197c. Because we conclude that there were no errors warranting relief, we affirm.

Alexander was an inmate at the Muskegon Correctional Facility in July 2010. Alexander was running around a softball field with other prisoners when officers asked him for identification. The officers testified that Alexander did not provide his identification and swore at them. Officer Kevin Rubeck testified that he saw Alexander walking to get his shirt with three officers following him. Rubeck stepped in front of Alexander and ordered him to stop. He did not stop and walked directly into Rubeck; they had chest to chest contact. Alexander testified that he was walking toward a water fountain and did not notice Rubeck until he walked into him. Rubeck testified that Alexander had time to stop.

On the day of trial, Alexander requested a new lawyer because his lawyer had not provided him with the complaint or discovery. His lawyer gave him the documents at that time and the trial court allowed them to meet. Alexander stated that he wanted two other inmates to testify and writs were issued so the inmates could appear, but Alexander wanted an adjournment. The trial court took the request under advisement and later denied it. After the people rested, Alexander's lawyer stated that they no longer wanted to call the inmates. The trial court then found Alexander guilty as charged.

Alexander argues there was insufficient evidence to convict him of assaulting a prison employee because Rubeck testified that Alexander's actions did not put him in fear. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven

beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992). In order to convict Alexander of assaulting a prison employee, the prosecution had to show that Alexander was lawfully imprisoned, used violence, threats of violence, or a dangerous weapon to assault a prison employee, and knew that the victim was a prison employee. See MCL 750.197c.

A battery is a completed assault. *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996) (citations omitted). Thus, every battery necessarily includes an assault. *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011). Indeed, in *Terry*, this Court determined that spitting on an officer constituted an assault—even though the officer did not see the defendant spit on him—"[b]ecause spitting upon a person is a battery, which is a consummated assault . . . ." *Terry*, 217 Mich App at 663.

Here, Rubeck testified that he was not afraid during the assault, but fear itself is not an essential element of the offense. The evidence showed that Alexander made physical contact with Rubeck. There was testimony to support findings that Alexander heard Rubeck's order to stop, made eye contact with Rubeck, had an opportunity to avoid physical contact, and that Rubeck did not want to have contact. Therefore, there was evidence from which the finder of fact could conclude that Alexander committed a battery when he bumped into Rubeck, which necessarily included the assault element required under MCL 750.129c. See *id.* at 662-663 (stating that any wrongful application of physical force so as to harm or embarrass constitutes the use of violence and concluding that spitting on an officer to harm or embarrass the officer is a battery). Therefore, there was sufficient evidence to support Alexander's conviction.

Next, Alexander argues that he is entitled to a new trial because his trial lawyer provided ineffective assistance when he failed to provide him with discovery materials. In order to establish that he did not receive the effective assistance of counsel, Alexander must show that his trial lawyer's acts or omissions fell below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for those acts or omissions, the result of the proceeding would have been different. *People v Gioglio (On Remand)*, 296 Mich App 12, 22; 815 NW2d 589 (2012).

Here, even if we were to conclude that Alexander's lawyer's failure to provide Alexander with the requested discovery materials fell below an objective standard of reasonableness under prevailing professional norms, Alexander would not be entitled to any relief.[1] Alexander failed to assert—let alone identify—anything within the documents that his lawyer withheld from him that, had he had earlier knowledge, might have led him to present different evidence or otherwise pursue his defense in a way that might have led to a different result. As such, he has failed to establish the prejudice prong of his claim. *Id.* at 23 (noting that the defendant bears the burden

[1] We certainly understand Alexander's frustration with his lawyer. His lawyer admitted on the record that he had not provided his client with the requested discovery and then failed to provide him with the discovery even after telling the trial court that he would do so immediately. This was certainly unprofessional in the broadest sense, but we decline to determine whether it constitutes unprofessional conduct under the test for ineffective assistance of counsel because Alexander failed to establish the prejudice prong of his claim.

of proving that there is a reasonable probability that his trial lawyer's act or omission undermined confidence in the outcome when considering the totality of the evidence).

Alexander next claims that the trial court deprived him of a fair trial by refusing to adjourn the trial and precluding him from presenting a defense. "This Court reviews de novo whether defendant suffered a deprivation of his constitutional right to present a defense." *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009). At a minimum, "criminal defendants have the right to . . . put before a jury evidence that might influence the determination of guilt." *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006) (quotation marks and citation omitted). Alexander argues that he was denied the right to present a defense because he did not receive the complaint and other documents until the morning of trial. However, as with his ineffective assistance claim, he has not identified how his earlier access to these documents might have resulted in a more favorable result. Additionally, the trial court gave him the opportunity to meet with his lawyer before trial and examine the documents. As such, he has not established error warranting relief. *See People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Finally, Alexander argues that the trial court abused its discretion when it denied his request for an adjournment. This Court reviews the trial court's decision on a defendant's request for an adjournment for an abuse of discretion. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). A defendant must show good cause and due diligence to be granted an adjournment. *Id.* at 18-19. However, even if a defendant shows both good cause and due diligence, a denial of a request for an adjournment is grounds for a reversal only if the defendant demonstrates prejudice as a result of the denial. *Id.* In this case, Alexander has not demonstrated prejudice because he has not established how an adjournment would have changed or assisted his trial preparation.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens