

[Cite as *State v. Radecki*, 2010-Ohio-4108.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93260

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NICHOLAS RADECKI

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-514202

BEFORE: Sweeney, J., Kilbane, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 2, 2010
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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Nicholas Radecki (“defendant”), appeals his conviction for assault on a peace officer asserting it was against the manifest of evidence. For the reasons that follow, we affirm.

{¶ 2} Defendant was indicted with assault of a peace officer and possession of drugs. He pled guilty to the drug charge but elected to pursue a bench trial on the assault charge. The State presented the testimony of three police officers. The trial court denied defendant’s motion for acquittal, after which defendant testified. Defendant renewed his motion for acquittal, which was denied. The State presented rebuttal testimony from the corrections officer at the City Jail, who works in the booking area of the jail. The exhibits presented at trial include several photographs of defendant taken during his detainment in the City Jail, video of an altercation between defendant and a Cleveland police officer, and medical records.

{¶ 3} After several days of considering the testimony and evidence, the trial court found the defendant guilty of assault on a peace officer. The judge reasoned he had “looked at all of the evidence submitted and was especially concentrating on the video * * * went over the video with much time * * * Friday night and again [that] morning * * * the totality of the circumstances, the level of intoxication, and fragmented memory because of that, [he was] going to find the defendant guilty.” The trial court imposed sentence and defendant now appeals, asserting two assignments of error for our review, which will be addressed together.

{¶ 4} “I. The conviction of assault on a police officer in violation of R.C. §2903.13(A) is against the weight of the evidence.

{¶ 5} “II. The failure to specifically raise the affirmative defense of self-defense deprived the appellant his right to effective assistance of counsel.”

{¶ 6} Defendant asserts that his trial attorney did not assert the issue of self-defense, resulting in his receipt of ineffective assistance of counsel. This claim fails in two respects: (1) defendant’s attorney in his opening and closing statements and through examination (both cross and direct) raised this issue at trial¹ and (2) “in a bench trial it is presumed that the trial court considered the appropriate inferior and lesser-included offenses and defenses.” *State v. Perez*, Cuyahoga App. No. 91227, 2009-Ohio-959, ¶61. It is clear from the trial court’s comments that it did consider the issue of self-defense; specifically, the trial court had “especially concentrated on the video” and took into account “the totality of the circumstances.” Since there is no dispute that defendant inflicted wounds on the officer, the only thing the trial court could have possibly been contemplating before rendering the verdict was whether defendant had a defense to justify his conduct, i.e. whether he was acting in self-defense. The second assignment of error is not supported by the record and is therefore overruled.

¹In opening, defense counsel asserted that the altercation that occurred did not amount to assault of a police officer, invited the court to review the video of the event, and noted that the trial court would determine the “exact nature” of the altercation. Defense counsel effectively and thoroughly cross-examined the witnesses as to whether the officer threw the first punch and also elicited direct testimony from the defendant that he believed he was defending himself from an attack by the officer.

{¶ 7} To warrant reversal of a verdict under a manifest weight of the evidence claim, this Court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 8} Reversal of defendant's conviction for assaulting a peace officer is not warranted under this standard.

{¶ 9} Defendant was arrested outside a tavern in Cleveland on August 3, 2008. According to three police officers, defendant was combative, non-cooperative, and attempted to escape from the police car. For these reasons, the officers decided to arrest defendant instead of simply issuing him a citation for disorderly conduct as they had initially intended to do.

{¶ 10} Sergeant Medwid and Officer Rudin transported defendant to jail and began the booking process. Both Medwid and Rudin testified that defendant was yelling at them and other inmates. When a packet of suspected drugs fell out of defendant's pants, he became even more agitated. Defendant was waving his hands and Medwid believed defendant might hit him with his arm or elbow. Rudin noticed that defendant kept removing his hands from the counter. He was also concerned that defendant would hit Medwid. Rudin moved from behind the counter in an attempt to control defendant. At this point, an altercation ensued

between Rudin and defendant. The men fell to the ground and ultimately both sustained injuries.

{¶ 11} Sgt. Medwid witnessed the incident and testified that Rudin did not hit defendant until defendant was attacking him on the ground. Rudin also testified that he did not hit defendant until he felt pain in his neck. At that point, Rudin said he elbowed defendant about three to five times trying to free himself. Initially, Rudin believed he moved defendant to the ground believing defendant was about to hit him with a clenched fist. However, after reviewing video footage of the event, Rudin reported that they fell because defendant tripped over a shoe and Rudin's hands slipped off of defendant. Conversely, defendant believes Rudin hit him with a closed fist before they fell to the ground. Defendant thought this punch broke his nose, but he never sought any medical attention for his injuries. According to defendant, he was grabbing at Rudin trying to defend himself.

{¶ 12} Defendant admitted he was intoxicated and his testimony reflects his inability to recall many details about his arrest and booking. A portion of defendant's booking process was recorded on video and submitted into evidence as an exhibit. The entire length of the altercation lasts mere seconds. Prior to that, the video corroborates the officers' testimony concerning defendant's conduct during the booking process. As Rudin approaches defendant, defendant is moving his arms and saying something; however, the video contains no audio. Defendant's fists do appear to be clenched and his stance appears confrontational. Rudin grabs defendant by the shoulder and as the men fall to the

floor, several other officers become involved in the fray, obscuring the view. When the parties are separated, there is blood on defendant's face, scratches and strangulation marks on Rudin's face and neck, and blood on the floor. Both mens' injuries were documented by photos that are part of the record. Considering the record as a whole, we cannot say that the trial court clearly lost its way by finding defendant guilty of assault on a peace officer resulting in a miscarriage of justice. Accordingly, his conviction is not against the manifest weight of the evidence and the first assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR