Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-794
Lower Tribunal No. 18-21220

Jeffrey Tillman,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Marisa Tinkler Mendez, Judge.

Carlos J. Martinez, Public Defender, and Shannon Hemmendinger, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Asad Ali, Assistant Attorney General, for appellee.

Before FERNANDEZ, SCALES, and HENDON, JJ.

HENDON, J.

Jeffrey Tillman ("the Defendant") appeals from his conviction and sentence for misdemeanor battery as a lesser-included offense of aggravated battery (Count I). We affirm.

The Defendant was charged with the aggravated battery of John Davis (Count I), burglary with an assault or battery of John Davis (Count II), resisting an officer without violence (Count III), and misdemeanor battery of Donald Sweney (Count IV). At trial, as to Count I, the State's position was that the Defendant, not Mr. Davis, was the initial aggressor, and therefore, the Defendant was not acting in self-defense when he forced himself into Mr. Davis' room at a boarding house and aggressively rushed and grabbed Mr. Davis. In support of its position, the State called as witnesses Mr. Davis (the victim) and other residents of the boarding house. Their testimony showed that Mr. Davis and another resident of the boarding house, David Ward, were on the back porch of the boarding house when the Defendant, who previously resided at the boarding house, approached and asked for a beer. Mr. Davis told the Defendant to leave because he no longer resided at the boarding house. When the Defendant did not leave, Mr. Davis went into his room and closed the door. The Defendant then banged on Mr. Davis' door, entered the room without permission, and aggressively rushed and grabbed Mr. Davis. The victim hit the Defendant with a flashlight. The two continued to struggle for a few minutes, during which time the Defendant takes the flashlight and strikes the victim, causing the

victim's head to bleed. The altercation continues and the residents called the police. The Defendant then left the premises.

The defense did not call any witnesses. During their closing argument, counsel for the Defendant argued that their client was acting in self-defense.

The trial court ruled there was sufficient evidence for the jury to receive an instruction on the justifiable use of non-deadly force as to the charge of aggravated battery of Mr. Davis (Count I). During closing arguments, the following arguments and objections were made:

> THE STATE: Now, in just a few moments, the Defense is going to get up here and make an argument to you and they're going to argue that Mr. Tillman is not guilty of these charges, because he acted in self-defense.
>
> Now, in order to believe that Mr. Tillman acted in self-defense, there needs to be some evidence that came out during this trial to support that.
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> DEFENSE COUNSEL: Objection. Burden shifting, Your Honor.
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> THE COURT: Overruled.
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> DEFENSE COUNSEL: Misstatement of the law.
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> THE COURT: Overruled. Go ahead.
>
> THE STATE: There needs to be something in the evidence to support that Mr. Tillman acted in self-defense, and there isn't. In fact, all of the evidence shows that this crime occurred in John Davis's home, and that Mr. Tillman was the initial aggressor.

Shortly after making these arguments, the State informed the jury that it had the

burden of proving the charged offenses beyond a reasonable doubt.

In closing argument, defense counsel argued that any force used by the Defendant was in response to being beat up by Mr. Davis and to being hit with a golf club and pepper sprayed by other residents. Defense counsel then argued:

> The State has not come close to proving beyond and to the exclusion of every reasonable doubt that Mr. Tillman started this fight. And, secondly, no, the State has not come close to proving or disproving the fact that when Mr. Tillman took the Maglite, took John Davis's Maglite out of John Davis's hand and hit John Davis back, they had not come close to disproving that that action was in self-defense.

During rebuttal, the State informed the jury that the State has the burden to prove the charges beyond and to the exclusion of all reasonable doubt.

The jury found the Defendant guilty of misdemeanor battery as a lesser-included offense of aggravated battery (Count I), battery and trespass as a lesser-included offense of burglary with an assault or battery (Count II), and not guilty of resisting an officer (Count III) and misdemeanor battery (Count IV). Thereafter, the trial court dismissed the jury's finding of guilt as to Count II, and the Defendant was sentenced for the misdemeanor battery of Mr. Davis (Count I). While this appeal was pending, the Defendant filed a motion to correct illegal sentence. The Defendant was ultimately sentenced to 270 days in jail.

The Defendant argues that reversal is warranted because, over objection, the trial court allowed the prosecution to comment on the Defendant's self-defense arguments. We disagree.

This Court reviews a trial court's ruling regarding the propriety of comments made during closing argument for an abuse of discretion. See Sweeting v. State, 260 So. 3d 520, 524 (Fla. 3d DCA 2018). Although a prosecutor is given wide latitude during closing argument, "it is 'reversible error for a prosecutor to make arguments that shift the burden of proof in a case' during closing argument." Id. at 524-25 (quoting Mitchell v. State, 118 So. 3d 295, 296 (Fla. 3d DCA 2013)).

"If a defendant establishes a prima facie case of self-defense, the State must overcome the defense by rebuttal, or by inference in its case-in-chief." Johnson v. State, 45 Fla. L. Weekly D573, *6 (Fla. 1st DCA Mar. 12, 2020) (quoting Andrews v. State, 577 So. 2d 650, 652 (Fla. 1st DCA 1991)). Here, the comments made by the State do not misstate the law or shift the burden of proof. The comments merely reflect the State's belief that it overcame its burden of proof based on the testimony it presented or by inference in its case-in-chief. The State's evidence showed that the Defendant forced himself into Mr. Davis' room and was the initial aggressor. Therefore, the trial court did not abuse its discretion by overruling the defense's objection to the complained-of comments made by the State during closing argument. Accordingly, we affirm the Defendant's conviction and sentence for misdemeanor battery as a lesser-included offense of aggravated battery (Count I).

Affirmed.