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State v. Cornelsen Respondent's Brief Dckt. 40623

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO, Plaintiff-Respondent, vs. MICHAEL D. CORNELSEN, Defendant-Appellant.	)	No. 40623 Kootenai Co. Case No. CR-2010-14343

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE PENNY E. FRIEDLANDER, Magistrate Judge
HONORABLE JOHN R. STEGNER, District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Michael D. Cornelsen appeals from the district court's decision affirming his conviction for battery following a bench trial in magistrate court.

Statement Of The Facts And Course Of The Proceedings

Cornelsen was cited with battery under I.C. § 18-903 for kicking Ludwig Tomasini, a security officer at Kootenai Medical Center, against his will. (R., p.7.) After waiving a jury trial, Cornelsen was convicted of battery by the magistrate court. (R., pp.9-11, 17-27; Tr., pp.1-108.) The court sentenced Cornelsen to 180 days jail with 145 days suspended (30 days "unscheduled" and five actual days to serve), a $1000 fine (with $700 suspended), and placed him on supervised probation for two years. (R., pp.37-42.) Cornelsen appealed to the district court (R., pp.49-50), contending there was insufficient evidence presented at trial to sustain a conviction, and after briefing and argument by counsel,[1] the court affirmed the magistrate court's verdict (R., pp.71-98). Cornelsen appeals from the district court's intermediate appellate opinion. (R., pp.99-102.)

[1] Cornelsen's attorney was permitted to withdraw prior to briefing, and the district court appointed counsel to represent him on appeal to the district court. (R., pp.65-68.)

ISSUE

Cornelsen states the issue on appeal as follows:

1. Is there sufficient evidence to support the Magistrate's finding of guilt as to the charge of battery?

(Appellant's Brief, p.7.)

The state rephrases the issue as:

Has Cornelsen failed to show error in the district court's conclusion that there was sufficient evidence to sustain his battery conviction?

ARGUMENT

The District Court Correctly Concluded There Is Substantial Evidence In The Record To Support The Magistrate Judge's Verdict Finding Cornelsen Guilty Of Battery

A. Introduction

The district court, acting as an intermediate appellate court, determined that the evidence presented at trial was sufficient to convict Cornelsen of battery despite his claim of self-defense. (Appellate Tr., p.27, L.24 – p.28, L.17.) The district court concluded that, although the magistrate court did not discuss Cornelsen's claim of self-defense when it rendered its verdict, it "implicitly rejected [the] argument that Mr. Cornelsen was entitled to defend himself in the way that he did, and that he couldn't have found a battery otherwise." (Appellate Tr., p.28, Ls.1–17.)

Cornelsen argues on appeal that the magistrate judge's verdict finding him guilty of battery by kicking Tomasini was not supported by sufficient evidence.[2] (Appellant's Brief, pp.8-9.) Cornelsen specifically claims "there is no substantial evidence to indicate that the kick was not in self defense." (Appellant's Brief, p.8.) Cornelsen's argument fails because there was substantial evidence presented at trial showing he kicked Tomasini, and that the kick was not done in self-defense.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's

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[2] Apart from one passing reference to the district court, Cornelsen's Appellant's Brief does not discuss the district court's intermediate appellate decision. (See Appellant's Brief, p.9 ("The appellant's counsel would note that the Magistrate and the District Court seemed concerned with the status and immunity of Tomasini as a security guard.").)

decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2005)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); Hart, 112 Idaho at 761, 735 P.2d at 1072. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. Miller, 131 Idaho at 292, 955 P.2d at 607; Hart, 112 Idaho at 761, 735 P.2d at 1072.

C. The Evidence Supports Cornelsen's Conviction For Battery

Cornelsen has failed to meet his burden of demonstrating that the district court erred in finding the evidence presented at trial was insufficient to convict him of committing a battery upon Tomasini.[3] The trial testimony of Tomasini and a patient registrar, Kaylee Nowland, provided the magistrate judge with sufficient evidence upon which to conclude that Cornelsen kicked Tomasini while Tomasini was legally escorting him out of the hospital as a trespasser, and not in self-defense.[4]

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[3] Battery is defined by I.C. § 18-903 as any:

> (a) Willful and unlawful use of force or violence upon the person of another; or
> (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or
> (c) Unlawfully and intentionally causing bodily harm to an individual.

[4] Because Cornelsen's trail counsel argued at trial that Cornelsen did not recall kicking Tomasini, but if he did, it was in self-defense (Tr., p.100, L.25 – p.101, L.10), in order for Cornelsen to be found guilty of battery the state had to prove beyond a reasonable doubt that Cornelsen's actions were not in self-defense. Idaho Criminal Jury Instruction ("ICJI") 1517 states in relevant part:

> A battery is justifiable if the defendant was acting in self-defense.
>
> In order to find that the defendant acted in self-defense, all of the following conditions must be found to have been in existence at the time of the striking:
>
> 1. The defendant must have believed that the defendant was in imminent danger of bodily harm.
> 2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant from the danger presented.
> 3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant was in imminent danger of bodily injury and believed that the action taken was necessary.

Tomasini testified that, as a security officer for Kootenai Medical Center, his duties included responding to problems involving irritated or unhappy persons. (Tr., p.2, L.25 – p.3, L.23.) On July 9, 2010, while on duty, he walked through the emergency room area of the hospital and noticed Cornelsen was talking to a lady loudly and was swearing. (Tr., p.5, Ls.10-25.) About twenty minutes later, Tomasini walked by the admitting desks in the emergency room and heard Cornelsen "yelling that he wanted some f-ing medical attention right now." (Tr., p.6, L.15 – p.7, L.6.) Cornelsen was yelling, swearing, and demanding medical attention, saying, "I want some fuckin' medical attention right now, and just usin' the F-word quite a bit[,]" as he directed his comments to Nowland, who was sitting behind an admitting desk. (Tr., p.7, L.20 – p.8, L.3; p.28, Ls.8-10.) Tomasini feared Cornelsen might "pick up somethin' and start swingin' it at people[,]"[5] so he informed Cornelsen that he was a security officer and that "[Cornelsen] needed to get out of the hospital." (Tr., p.7, Ls.9-16.) Cornelsen responded to Tomasini's multiple orders to get out of the

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> 4. The defendant must have acted only in response to that danger and not for some other motivation.
> 5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.
>
> . . . .
>
> The burden is on the prosecution to prove beyond a reasonable doubt that the battery was not justifiable. If there is a reasonable doubt whether the battery was justifiable, you must find the defendant not guilty.

(Adapted to the crime of battery and self-defense (vis-à-vis defense of another).)

[5] According to Tomasini, there were other people waiting in the emergency room area during this time. (Tr., p.9, Ls.13-15.)

hospital with "pretty much a Fuck you. No." (Tr., p.8, Ls.19-20.) Tomasini intended to take Cornelsen out of the hospital because he did not know what he was going to do, and to "see exactly what the whole problem was and talk to him and . . . maybe help him resolve his problem." (Tr., p.9, Ls.3-9.)

Tomasini told Cornelsen that if he did not leave the hospital, he would be physically removed, to which Cornelsen again said, "Fuck you." (Tr., p.9, L.21 – p.10, L.1.) Tomasini testified:

> And uh, so I tried to uh, I don't know which one of my arms I used, but I – I'm – made sure that I wasn't going to touch his – his right arm that was possibly damaged or hurt. And so I tried to get him on the shoulder to like turn him around and gesture for him to let's start goin' outside, and he just took his arm and, you know, swang [sic] off – or basically hit my hand away. And so then I knew that it was gonna become physical, and uh, I waited till I could kinda maneuver off to his side a little bit so I could grab his left arm. And I grabbed his left arm, put it up behind his back and started takin' him outside.

(Tr., p.10, Ls.3-14.) Tomasini put Cornelsen's arm behind his back as a "control technique," and explained that it "doesn't like inflict any pain on 'em or anything, and I actually made sure that I grabbed his arm that was not in the sling." (Tr., p.25, Ls.3-8.)

As Tomasini directed Cornelsen through the first of two sets of double sliding glass doors, Cornelsen's mother approached Tomasini and told him to leave her son alone. (Tr., p.10, Ls.16-22.) Cornelsen then kicked Tomasini in the left leg, causing a long cut and bruise to Tomasini's leg. (Tr., p.10, L.23 – p.11, L.1; p.16, L.13 – p.17, L.9; Plaintiff's Ex. 1.) Tomasini was able get Cornelsen outside the emergency room doors, and was assisted by another security officer, Austin Penya, in handling Cornelsen. (Tr., p.11, Ls.9-19.) Tomasini tried to calm Cornelsen down, but

Cornelsen pulled his reportedly injured right arm out of his sling and threatened to hit Tomasini a couple of times. (Tr., p.12, Ls.2-14.) After about five minutes, Tomasini and Penya agreed to allow Cornelsen back into the hospital on the condition he calm down and not swear, but as they began escorting Cornelsen back into the emergency room Cornelsen again started swearing just as a woman and a young child were walking out. (Tr., p.12, L.18 – p.13, L.9.) Tomasini told Cornelsen, "That's it, you're out of here," and Cornelsen "just started fighting, so a fight ensued." (Tr., p.13, Ls.15-17.) After a third security officer arrived, they were able to regain control of Cornelsen, and hospital personnel took him by wheelchair into a "quiet room" in the emergency room, where he eventually calmed down, admitting he "delivers papers because uh, he didn't get along well with people, that he uses the F-word, uh, often . . . ." (Tr., p.14, L.14 – p.16, L.5.)

Nowland, who was working as a patient registrar in the hospital emergency room at the time of the incident, testified that when she checked Cornelsen into the emergency room, he was polite at first but became demanding and profane because, in his view, it was taking too long to be seen by medical staff. (Tr., p.29, L.5 – p.30, L.1.) Nowland testified that after a security officer asked Cornelsen to leave, he "was using the F-word." (Tr., p.32, Ls.2-6.) She heard the security officer ask Cornelsen to "step outside at least three times before telling him that if he didn't cooperate he'd have to take him out by force." (Tr., p.32, Ls.7-10.) Nowland watched as the security officer took Cornelsen out by the arm, and when they were in the middle of the two entrances to the emergency room, she saw Cornelsen kick

the officer, explaining, "I think it was a back kick, but I don't remember[,]" . . . "[b]ut I saw a kick." (Tr., p.32, L.11 – p.33, L.10.)

In determining if the evidence is substantial and competent, it will be considered in the light most favorable to the prosecution. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); Knutson, 121 Idaho at 104, 822 P.2d at 1001. Substantial evidence is present when a "reasonable mind" could conclude that guilt was proved beyond a reasonable doubt. State v. Hoyle, 140 Idaho 679, 683-684, 99 P.3d 1069, 1073-1074 (2004). The magistrate court's finding that Cornelsen was guilty of battery, and that his conduct was not justified by self-defense, is supported by Idaho's laws regarding trespass to property and self-defense.

Tomasini's conduct in leading Cornelsen by the arm out of the hospital was appropriate under Idaho's "trespass to property" laws. As a security officer employed by (i.e., an "agent" for) the hospital, Tomasini was entitled to evict Cornelsen from the hospital due to his profane and loud conduct. After Cornelsen indicated with certainty that he would not comply with Tomasini's repeated demands to leave the hospital premises, Tomasini was entitled to resort to a reasonable amount of physical force to remove him as a trespasser. In Tipsword v. Potter, 31 Idaho 509, 174 P. 133, 134 (1918), the Idaho Supreme Court explained:

> In order to justify the use of force in ejecting a trespasser from premises where he entered peaceably, it must be shown that he was first requested to depart, and either that he refused to or did not comply with the request after being allowed a reasonable time to do so.

> There is, however, evidence in the record sufficient to have warranted the jury in finding that respondent refused to leave at all. Appellant was therefore entitled to the instruction that, if respondent refused to leave upon demand, appellant had a right to eject him, using no more force than was reasonably necessary.

See Cornell v. Harris, 60 Idaho 87, 88 P.2d 498, 501 (1939) (citing Tipsword for "[t]he general rule . . . that the owner or one rightfully in possession of premises may, after requesting one who is illegally creating a disturbance therein to desist or leave, eject him resorting to force but using no more than is reasonably necessary.").

Because of Cornelsen's loud, profane, and disturbing behavior, Tomasini repeatedly ordered him to leave the hospital, but instead of complying with Tomasini's demands, Cornelsen swore at him. At that point, Tomasini was entitled to physically evict Cornelsen as a trespasser "using no more force than was reasonably necessary." Id. Tomasini testified that he attempted to escort Cornelsen out of the hospital by taking his uninjured arm and moving it behind Cornelsen as a "control technique," and Nowland testified that she watched as Tomasini took Cornelsen "by the arm." (Tr., p.25, Ls.3-8; p.32, Ls.11–14.) Any "reasonable mind" could conclude that Tomasini's actions fall squarely within the use of reasonable force to evict Cornelsen from the hospital, and do not even constitute a technical battery, much less suffice to show an "imminent danger of bodily harm," as would be required in order to establish a claim of self-defense. Hoyle, 140 Idaho at 683-684, 99 P.3d at 1073-1074; see ICJI 1517, n.4.

Under the elements of self-defense, there is nothing about the way Tomasini escorted Cornelsen by the arm out of the hospital that would have caused Cornelsen to believe he was in imminent danger of bodily harm or that kicking Tomasini was

necessary to avoid such harm – much less that a reasonable person would hold those beliefs. See ICJI 1517, n.4. To the contrary, the trial record shows that Cornelsen was exceptionally angry and profanely demanding medical attention, and when Tomasini tried to escort him out of the hospital, he reacted out of anger and retribution by kicking the security officer in the leg. Any reasonable mind could have reached the same conclusions in convicting Cornelsen of battery. Hoyle, 140 Idaho at 683-684, 99 P.3d at 1073-1074. The district court properly affirmed the magistrate court's verdict that Cornelsen was guilty of battery, and its implicit finding that Cornelsen's conduct was not justified by self-defense. (Appellate Tr., p.28, Ls.1-5.) See State v. Schevers, 132 Idaho 786, 790, 979 P.2d 659, 663 (Ct. App. 1999) ("There is evidentiary support for the district court's implied factual findings underlying its denial of Schevers'[s] motion to suppress the identification testimony"); State v. Whiteley, 124 Idaho 261, 268, 858 P.2d 800, 807 (Ct. App. 1993).

In sum, the district court correctly concluded that the magistrate judge's determination that Cornelsen's conduct constituted a battery despite his claim of self-defense is supported by substantial evidence.

CONCLUSION

The state requests this Court to affirm the district court's opinion affirming Cornelsen's conviction for battery.

DATED this 6th day of June, 2013.

JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of June, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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