

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000287-001 DT

10/25/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

ANTHONY CHAFFEE (001)

JEFFREY J ROGERS

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number CR 2011-000329.

Defendant-Appellant Anthony Chaffee (Defendant) was convicted in Scottsdale Municipal Court of assault and disorderly conduct. Defendant contends the trial court erred (1) in denying his Motion for Judgment of Acquittal, which alleged the State did not prove beyond a reasonable doubt that Defendant did not act in self-defense, and (2) in limiting his cross-examination of the victim. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On January 3, 2011, Defendant was cited for assault, A.R.S. § 13-1203(A)(1), and disorderly conduct, A.R.S. § 13-2904(A)(1). Trial began October 26, 2011.

Danilo Moleri (the victim) testified he and his girlfriend, Nessa Nemir, went to the Revolver Bar in Scottsdale on January 3, 2011. (R.T. of Oct. 26, 2011, at 98-99.) Seated near them were two men, later identified as Defendant and Johnathan Gray. (*Id.* at 101-02.) While talking, one of the men bumped Mr. Moleri twice, so Mr. Moleri asked them if they would move away, which they did. (*Id.* at 103.) Defendant later came back and took a chair and pushed it into Mr. Moleri's chair. (*Id.* at 104-05.) Mr. Moleri stood up and asked, "What the fuck are you doing," whereupon Defendant grabbed a glass off the bar and hit Mr. Moleri in the face with it. (*Id.* at 105-06.) As a result, Mr. Moleri was knocked unconscious, and thus did not remember what else happened in the bar. (*Id.* at 106-07.)

During cross-examination, Defendant's attorney wanted to question Mr. Moleri about (1) his post-traumatic stress disorder and (2) the medications he was taking. (R.T. of Oct. 26, 2011, at 116, 133-36.) The trial court initially ruled Defendant's attorney could not go into those areas, but then reversed itself and allowed Defendant's attorney to question Mr. Moleri about these

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000287-001 DT

10/25/2012

areas. (*Id.* at 139.) Defendant's attorney then wanted to question Mr. Molieri about his probation status. (*Id.* at 139–40.) The trial court ruled Mr. Molieri's probation status was not relevant at that point, but said it might become relevant later:

[THE COURT]: So let's go—let's move forward. This gentleman's probationary status, at this juncture, is irrelevant. Maybe it will be at some other point in time. We'll cross that bridge when we get to it. But, this far, its irrelevant. Let's move on.

BY MR. SQUIRES [Defendant's attorney]: Very good. . . .

(*Id.* at 140–41.)

After Mr. Molieri finished testifying, the trial court took the noon recess. (R.T. of Oct. 26, 2011, at 160.) When the parties returned after lunch, the trial court revisited the areas where Defendant's attorney wanted to question Mr. Molieri. (*Id.* at 160–74.) The trial court then allowed Defendant's attorney to recall Mr. Molieri and question him about those areas. (*Id.* at 174–179.) Defendant's attorney questioned Mr. Molieri about his post-traumatic stress disorder and his tendency to over-react. (*Id.* at 181–91.) Defendant's attorney did not question Mr. Molieri about his probation status, nor did he make any offer of proof about that probation status. (*Id.* at 191.)

Prior to Mr. Molieri's testimony, Nessa Nemir testified and gave her version of the events that night. (R.T. of Oct. 26, 2011, at 57.) She and Mr. Molieri had gone to a movie on January 2, 2011, and after the movie finished, they went to the Revolver Bar. (*Id.* at 57–59.) They sat at the end of the bar, and there were two other men seated near them. (*Id.* at 59–60.) One of the men bumped Mr. Molieri on two occasions, so Mr. Molieri asked them to move, which they did. (*Id.* at 61–62.) One of the men later came back and pushed his chair into the chair where Mr. Molieri was sitting. (*Id.* at 64–65.) Mr. Molieri then said something to the man, and the man then picked up a glass from the bar and hit Mr. Molieri in the face with it. (*Id.* at 66.) The man then hit Mr. Molieri three to five more times. (*Id.* at 66–67.)

Anthony DeSantis testified he was at the Revolver Bar in the early morning of January 3, 2011. (R.T. of Oct. 26, 2011, at 18.) He and his girlfriend was seated at one end of the bar; there was another couple at the other end of the bar; and there were two men seated between them. (*Id.* at 19–22.) One of the men seated in the middle went to the man at the other end and spoke to him, and later went back and hit him. (*Id.* at 23–27.)

Matthew McCullough testified he was the bartender at the Revolver Bar. (R.T. of Oct. 26, 2011, at 33.) In the early morning hours of January 3, 2011, Anthony DeSantis was seated at the south end of the bar; there was a couple seated at the north end of the bar; and there were two men seated in the middle of the bar. (*Id.* at 34.) One of the men in the middle was gesturing with his hands while he was talking, and bumped the man at the north end of the bar. (*Id.* at 36.) Each time this happened, words were exchanged. (*Id.* at 36–37.) After the third time, one of the men from the middle of the bar hit the man at the north end of the bar with what Mr. McCullough described as the first punch. (*Id.* at 38–39.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000287-001 DT

10/25/2012

The police officers who investigated the incident that night also testified. (R.T. of Oct. 26, 2011, at 195, 207, 215, 224.) Because they were not at the bar when the fight took place, they testified about statements the witnesses had made to them. (*Id.* at 197–202; 207–09; 215–19; 224–26.)

After the State rested, Defendant’s attorney made a motion for judgment of acquittal, which the trial court denied. (R.T. of Oct. 26, 2011, at 236–38.) Johnathan Gray testified and said Mr. Molieri started the fight. (*Id.* at 251–52.) Defendant testified and also said Mr. Molieri started the fight. (*Id.* at 283.)

After hearing arguments from the attorneys, the trial court found Defendant guilty of both counts. (R.T. of Oct. 31, 2011, at 357.) The trial court later imposed sentence. (R.T. of Dec. 13, 2011, at 408–12.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. Did the State present sufficient evidence that Defendant did not act in self-defense.

Defendant contends the State did not present sufficient evidence that Defendant did not act in self-defense. In determining whether the state proved beyond a reasonable doubt a defendant did not act in self-defense, the court uses the same test as used to determine whether the state proved beyond a reasonable doubt the elements of the offense. *State v. Lopez*, 230 Ariz. 15, 279 P.3d 640, ¶¶ 4–7 (Ct. App. 2012). In addressing the issue of the sufficiency of the evidence for the elements of the offense, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining “whether substantial evidence supports the jury’s finding, viewing the facts in the light most favorable to sustaining the jury verdict.” Substantial evidence is proof that “reasonable persons could accept as adequate . . . to support a conclusion of defendant’s guilt beyond a reasonable doubt.” We resolve any conflicting evidence “in favor of sustaining the verdict.”

State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, a court does not consider whether it would reach the same conclusion as the trier-of-fact, but whether there is a complete absence of probative facts to support its conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). As outlined in the above recitation of the facts of this case, the State presented sufficient evidence for the trial court to conclude Defendant threw the first punch and thus did not act in self-defense. The evidence therefore supported the trial court’s finding that Defendant was guilty.

Defendant contends, however, that “the best that can be said of the State’s case is that it stood at equipoise with the defense case.” (Appellant’s Memorandum at 9.) Defendant is essentially asking this Court to re-weigh the evidence, which under *Bearup* and *Mauro*, this Court is not permitted to do.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000287-001 DT

10/25/2012

B. *Has Defendant waived this issue by not renewing his motion to question the victim and in not making an offer of proof.*

Defendant contends the trial court denied him the right to confront and cross-examine Mr. Moleri about his probation status. For two reasons, this Court concludes Defendant has waived this issue.

First, Defendant did not properly present this issue. When Defendant first asked to question Mr. Moleri about his probation status, the trial court ruled it was not relevant at that point, but it may become relevant later in the trial. (R.T. of Oct. 26, 2011, at 140–41.) At that point, Defendant had not presented his case and thus had not yet claimed self-defense, so there was nothing showing Mr. Moleri had a motive to lie. Once Defendant and Mr. Gray testified and claimed Mr. Moleri threw the first punch, Mr. Moleri's probation status and his motive to lie may have been relevant. Once Defendant made this claim of self-defense, he did not, however, ask the trial court then to allow him to question Mr. Moleri about his probation status. Because Defendant did not then ask the trial court to revisit its ruling and allow him to question Mr. Moleri about his probation status, Defendant has waived this issue.

Second, Defendant failed to make an offer of proof. At the time of the trial in this matter, the applicable rule of evidence provided as follows:

(a) **Effect of erroneous ruling.** Error may not be predicated upon a ruling which . . . excludes evidence unless a substantial right of the party is affected, and

. . . .

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Rule 103(a)(2), ARIZ. R. EVID. In the present case, Defendant made no offer of proof about Mr. Moleri's probation status, thus he has waived this issue. Moreover, to the extent the substance of the evidence was apparent from the context within which questions were asked, the trial court would have known Mr. Moleri was on probation, and thus the trial court would have considered that in assessing Mr. Moleri's credibility. Defendant has therefore failed to show the trial court abused its discretion.

III. CONCLUSION.

Based on the foregoing, this Court concludes the State presented sufficient evidence Defendant did not act in self-defense. Further, this Court concludes Defendant has waived any issue about Mr. Moleri's probation status.

. . . .

. . . .

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000287-001 DT

10/25/2012

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

102520120910