

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA,

v.

L'DARIUS DEANDRE SMITH,

Defendant.

CASE NO.: 2020-00058-CFFA
JUDGE TERENCE R. PERKINS

MOTION FOR NEW TRIAL

COMES NOW the Defendant, L'darius Deandre Smith, by and through his undersigned Assistant Public Defender and moves this Honorable Court to grant a new trial because the verdict is contrary to law or the weigh or the evidence.

Facts

1. L'darius Smith was found guilty of battery, aggravated assault and improper exhibition on Wednesday, June 23, 2021.
2. L'darius Smith was taken into custody after the verdict
3. Anthony and Charles Ghirelli testified at trial.
4. Anthony testified in person.
5. Charles testified via Zoom video conferencing.
6. L'darius Smith also testified in his defense and raised the issue of self-defense.
7. Raven Navarro testified on behalf of the defense via Zoom video conferencing.
8. L'darius Smith went to the McDonalds with his girlfriend Raven Navarro to use the wif.
9. He entered the restaurant, went to the counter and was given two cups.
10. He went to the drink counter to get water.
11. Shortly, his girlfriend, Raven Navarro, entered the restaurant, called out to L'darius and threw him the keys to the vehicle.
12. Raven entered the restroom afterwards.
13. L'darius noticed Charles and Anthony looking at him.
14. Anthony pointed at him and said something unintelligible to L'darius.
15. L'darius did not understand what was said so he went over to both Anthony and Charles.
16. Anthony told him he liked his Batman jacket.
17. L'darius was explaining to them that pointing and looking at people where he is from is considered threatening.
18. Anthony once again compliment his jacket.
19. Charles told L'darius that he must be some kind of tough guy.
20. L'darius continued to explain to the men his assumptions and walked away.
21. Both Charles and Anthony were worried about their contact with L'darius.

22. They felt that he was irrational saying things like "trained killer" or "in the military" so kept a watch on him.
23. L'darius went to his car, cleaned it out, and received a call from a potential employer and noticed Anthony and Charles watching him.
24. L'darius Smith testified that Charles Ghirelli got up and pointed at him, from his perspective it looked like a gun gesture.
25. L'darius Smith testified that due to Charles and Anthony watching him while he was outside, he decided to take pictures of them.
26. Shortly thereafter, Anthony Ghirelli went outside to call the police and confront L'darius Smith about his truck.
27. In the trial, it was confirmed and not disputed that L'darius Smith was parked next to Anthony Ghirelli's black truck.
28. It is undisputed that L'darius Smith did not know nor was he aware that he was parked next to Anthony Ghirelli's truck.
29. It is undisputed that Anthony reasoned that L'darius Smith was trying to vandalize his truck.
30. It is undisputed that Anthony intended to call the police to report L'darius was doing something to his truck.
31. It is undisputed that L'darius Smith had no reason believe nor was he aware of the reasons for Anthony Ghirelli suspecting and calling the police on him regarding the truck.
32. It is undisputed that L'darius Smith was not vandalizing the vehicle and that he did not see Anthony Ghirelli come out until he heard a racial slur.
33. It is undisputed that L'darius Smith's girlfriend Raven Navarro was right in front of Anthony Ghirelli and Anthony Ghirelli was right behind Raven Navarro.
34. Raven Navarro testified that Anthony was right behind her, making racial slurs which got L'darius Smith's attention.
35. Raven Navarro testified that she thought Anthony Ghirelli was speaking to her at first.
36. It is undisputed that L'darius Smith grabbed a bat.
37. L'darius testified that shortly before Anthony came out the restaurant, Charles Ghirelli got up and pointed at him, the gesture looked like a gun and it was confirmed by the video
38. It is undisputed that L'darius Smith pretended to hit Anthony after Anthony pointed in is face.
39. Shortly afterwards, Charles came out because Anthony was outside by himself with L'darius.
40. L'darius pointed the bat at Charles, never swung it at him or toward him.
41. Afterwards, L'darius went back to his car, to back out to leave.
42. Anthony was behind L'darius' vehicle getting the tag while on the phone with dispatch.
43. As L'darius was backing out, Anthony walked towards L'darius truck, gave him the finger while on the phone with the dispatch.
44. L'darius rolled down the window, flipped a nickel at Anthony.
45. The nickel hit Anthony in the forehead.
46. At trial, the defense conceded the facts in regards to the nickel but disputed the accusation of aggravated assault.

Legal Basis

In ruling on the weight of the evidence, the trial court is not limited to merely determining the legal sufficiency of the evidence, as it is in a motion for judgment of acquittal. The trial just has the discretion to actually weight the evidence and determine the credibility of witnesses so as to act, in effect, as an additional juror. Tibbs v. State, 397 So. 2d 1120 (Fla. 1981).

Only the judge who presided over the trial can hear a motion for new trial based on the weight of the evidence and credibility of the witnesses. There is no newly discovered evidence. If the verdict is against the weight of the evidence, the defendant is entitled to a new trial, not discharge or reduction of the conviction to lesser included. State v. Harris, 660 So. 2d 285 (Fla. 5th DCA 1995).

Argument

The verdict is contrary to the weight of the evidence. Two videos were played for the jury but had no sound. So the jury had to rely solely on testimony from the witnesses.

It was evident from the video that L'darius was not the aggressor. Anthony came outside the restaurant to confront L'darius about his truck. L'darius did not know he was standing by Anthony's truck. Anthony was still upset over their previous contact, did not like L'darius' attitude towards them about the jacket. He did not like him and his brother's picture taken. Finally, unreasonably believed L'darius was vandalizing his truck. The video shows Anthony walking right behind Raven, following right behind her until L'darius came out with a bat.

L'darius used non-deadly force to deter Anthony from hurting him or his pregnant girlfriend. L'darius testified that he grabbed the bat once he heard the racial slurs. He confronted Anthony while the bat was in his hand. He did not swing the bat violently at him. He told Anthony he does not know what is going on, he has broken hand, his girlfriend is pregnant and he does not want trouble. L'darius had no idea why Anthony came outside.

With the combination of events (misunderstanding with total strangers, total strangers staring at him, total strangers pointing at him, racial slurs and surprised by Anthony's presence outside) coupled with L'darius's background; he felt threatened. Although, no verbal threats were made, the pointing and Anthony's presence outside after the pointing, are non-verbal threats.

L'darius reasonably believed Anthony was a threat to him and/or his pregnant girlfriend. He reasonably believed that Anthony was going to do something but did not know what. He was surprised to see him outside, so let his guard down somewhat but stood his ground to stop Anthony and Charles from coming at him.

As for credibility, both Anthony and Charles testified that L'darius was out of control, loud and claimed to be a trained killer. The video does not have audio. So, the jury has to rely

on the testimony of the witnesses to ascertain the truth. The video does not show L'darius being out of control. No one from McDonalds came up to him to calm down, asking him to leave or the like. The video does show L'darius walking over to them, walking back and forth. L'darius leaves the restaurant. Charles and Anthony wrote statements and never mentioned threats to kill or threats of being a trained killer.

Their testimony was intended to make L'darius seem irrational and dangerous. Thus, given Anthony the right to believe L'darius was a threat to them and justifies calling the police for a non-existent crime. Anthony says he went outside to call police because of poor reception. However, Anthony was walking out of the McDonald's toward L'darius to confront him. His hands down by his side. He did not walk outside, stop at the door to call the police. He called the police after L'darius confronted him with the bat. Anthony's reasons of walking out of the establishment were contradicted by his actions. Anthony was clearly going after L'darius under the mistakenly belief he was vandalizing the truck. Anthony was concerned about his truck more than his own safety and health.

In conclusion, the evidence is contrary to the weight because (1) Anthony and Charles made statements to paint L'darius as the aggressor which was contradicted by the video. Thus, their credibility is questioned. (2) L'darius reasonably believed Anthony was a threat to him and his girlfriend. Anthony came outside to confront L'darius after the finger pointing which looked like a gun gesture to L'darius. L'darius was in a place he had to right to be. He has no duty to retreat. (3) Anthony and Charles unreasonably thought L'darius was a threat to them and property. Thus, were the aggressors.

WHEREFORE, Defendant prays this Honorable Court grant this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: Flagler State Attorney Office, Assistant State Attorney, at eserviceflagler@sao7.org, and to the defendant, on July 6, 2021.

/s/ Regina Nunnally

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