

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 22-00586

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESSIE ENGLIS, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (AXELLE LECOMTE MATHEWSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (MINDY F. VANLEUVAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Paul Wojtaszek, J.), rendered March 16, 2022. The judgment convicted defendant upon a nonjury verdict of assault on a peace officer and assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reversing that part convicting defendant of assault in the second degree and dismissing count 4 of the indictment, and as modified the judgment is affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a nonjury verdict of assault on a peace officer (Penal Law § 120.08; *see* CPL 2.10 [25]) and assault in the second degree (Penal Law § 120.05 [3]). The charges arose from an incident in which defendant, who was a hospitalized inmate, struck a correction officer in the head with a hospital monitor. The correction officer was then further injured when he and other correction officers tried to subdue defendant, who struggled to get free.

Viewing the evidence in light of the elements of the crimes in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention that the verdict is against the weight of the evidence with respect to the element of intent (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). Although there was evidence to support defendant's contention that he intended to commit suicide rather than to prevent the correction officers "from performing a lawful duty" (Penal Law § 120.08; *see* § 120.05 [3]), there was also evidence establishing that, just prior to the initial assault on the first correction officer, defendant made multiple statements threatening that correction officer and his family and, further, that defendant, who had broken free of his restraints, swung the monitor at the correction officer as he attempted to subdue the

out-of-control defendant. "In recognition of the inherent challenges to demonstrating an actor's mental state," courts have long "accepted that intent may be inferred from conduct as well as the surrounding circumstances" (*People v Rouse*, 34 NY3d 269, 274 [2019] [internal quotation marks omitted]). Moreover, a defendant is "presumed to intend the natural and probable consequences" of their actions (*People v Moreland*, 103 AD3d 1275, 1276 [4th Dept 2013], *lv denied* 21 NY3d 945 [2013] [internal quotation marks omitted]).

Furthermore, despite the fact that defendant may also have been under the influence of anesthesia, a determination whether intoxication is sufficient to negate intent is a question for the trier of fact to resolve in weighing the evidence (*see People v Reibel*, 181 AD3d 1268, 1270 [4th Dept 2020], *lv denied* 35 NY3d 1029 [2020], *reconsideration denied* 35 NY3d 1096 [2020]; *People v Fitzrandolph*, 162 AD3d 1537, 1537-1538 [4th Dept 2018], *lv denied* 32 NY3d 937 [2018], *reconsideration denied* 32 NY3d 1111 [2018]). The same is true with respect to an alleged mental health crisis at the time of the incident (*see People v Franco*, 225 AD3d 1284, 1284-1285 [4th Dept 2024], *lv denied* 41 NY3d 1002 [2024]). " 'Competing inferences to be drawn [regarding a defendant's intent], if not unreasonable, are within the exclusive domain of the finder[] of fact,' " and should not be disturbed by this Court (*People v Metales*, 171 AD3d 1562, 1563 [4th Dept 2019], *lv denied* 33 NY3d 1107 [2019], quoting *People v Barnes*, 50 NY2d 375, 381 [1980]). Here, we conclude that "it cannot be said that the [factfinder] failed to give the evidence the weight that it should be accorded" on the issue of defendant's intent (*People v Mike*, 283 AD2d 989, 989 [4th Dept 2001], *lv denied* 96 NY2d 904 [2001]).

We reject defendant's contention that the evidence is legally insufficient to establish that the first correction officer sustained a serious physical injury, as required for a conviction of assault on a peace officer. Assuming, arguendo, that the contention is preserved for our review (*see generally People v Gray*, 86 NY2d 10, 19 [1995]), we conclude, after viewing the evidence in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621 [1983]), that the evidence is legally sufficient to establish the requisite serious physical injury (*see People v Gonzalez*, 198 AD3d 543, 543 [1st Dept 2021], *lv denied* 37 NY3d 1146 [2021]; *People v Sponburgh*, 61 AD3d 1415, 1416 [4th Dept 2009], *lv denied* 12 NY3d 929 [2009]; *see generally Bleakley*, 69 NY2d at 495).

Defendant contends that Supreme Court erred in denying his request for a subpoena duces tecum to obtain hospital records that pertained to, inter alia, defendant's mental health. We conclude that defendant abandoned his request for those documents. The record does not establish that the court ruled on that specific subpoena, and thus "defendant abandoned [his request] by failing to seek a ruling" (*People v Reyes*, 144 AD3d 1683, 1686 [4th Dept 2016]; *see People v Mulligan*, 118 AD3d 1372, 1376 [4th Dept 2014], *lv denied* 25 NY3d 1075 [2015]; *see also People v Dove*, 176 AD2d 266, 267-268 [2d Dept 1991], *lv denied* 79 NY2d 946 [1992]). In any event, we conclude that any

error in refusing to issue the subpoena is harmless inasmuch as the evidence of defendant's guilt is overwhelming and there is no significant probability that he would have been acquitted had the court issued the subpoena (*cf. People v Wildrick*, 83 AD3d 1455, 1457 [4th Dept 2011], *lv denied* 17 NY3d 803 [2011]; *see generally People v Crimmins*, 36 NY2d 230, 241-242 [1975]).

Contrary to defendant's further contention, the court did not err in failing to conduct an inquiry when defendant sought substitution of his second assigned counsel. There was no "seemingly serious request" for substitution to warrant any court inquiry (*People v Sides*, 75 NY2d 822, 824 [1990]; *see People v Porto*, 16 NY3d 93, 99-100 [2010]). Moreover, to the extent that defendant's alleged complaints were not addressed when his first counsel was relieved of representation, they lacked factual support and merit (*see People v Tatum*, 204 AD3d 1400, 1401-1402 [4th Dept 2022], *lv denied* 38 NY3d 1074 [2022]).

Viewing the evidence, the law, and the circumstances of this case as a whole and as of the time of the representation, we conclude that defendant was afforded meaningful representation (*see generally People v Baldi*, 54 NY2d 137, 147 [1981]). We further reject defendant's contention that the court erred in refusing to entertain his pro se CPL 330.30 motion. "[T]he decision to entertain [pro se] motions [filed by a represented defendant] lies within the sound discretion of the trial court" (*People v Rodriguez*, 95 NY2d 497, 500 [2000]; *see People v Johnson*, 195 AD3d 1420, 1421 [4th Dept 2021], *lv denied* 37 NY3d 1146 [2021]).

We agree with defendant, however, that the conviction of assault in the second degree cannot stand. As the People correctly concede, this Court has previously determined that assault in the second degree "is an inclusory concurrent count of assault on a [peace] officer" (*People v Felong*, 192 AD3d 1664, 1666 [4th Dept 2021], *lv denied* 37 NY3d 955 [2021]). Moreover, as charged here, assault in the second degree "is a lesser included offense of assault on a [peace] officer" (*id.*; *see* CPL 1.20 [37]; *see generally People v Glover*, 57 NY2d 61, 63-64 [1982]). As a result, that part of the judgment convicting defendant of assault in the second degree must be reversed and count 4 of the indictment dismissed (*see Felong*, 192 AD3d at 1666).

Finally, we note that the uniform sentence and commitment sheet incorrectly states that defendant was convicted upon a plea of guilty, and thus it must be amended to reflect that the conviction was entered after a nonjury trial (*see People v McLamore*, 191 AD3d 1413, 1415 [4th Dept 2021], *lv denied* 37 NY3d 958 [2021]).