ILLINOIS OFFICIAL REPORTS

Appellate Court

***People v. Jasoni*, 2012 IL App (2d) 110217**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARK A. JASONI, Defendant-Appellant.
District & No.	Second District Docket No. 2-11-0217
Filed	August 8, 2012
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Defendant's conviction for aggravated battery of a victim who was 60 years of age or older was upheld where the evidence satisfied the requirement that defendant knew the victim was 60 years of age or older at the time of the offense, especially when he had known her for 20 years, had been married to her daughter, paid her rent, lived with her son, and interacted with her regularly.
Decision Under Review	Appeal from the Circuit Court of Winnebago County, No. 10-CF-989; the Hon. Gary V. Pumilia, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal	Thomas A. Lilien and Steven E. Wiltgen, both of State Appellate Defender's Office, of Elgin, for appellant. Joseph P. Bruscato, State's Attorney, of Rockford (Lawrence M. Bauer and Kathryn E. Kohls, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE HUDSON delivered the judgment of the court, with opinion. Justices Zenoff and Burke concurred in the judgment and opinion.

OPINION

¶ 1 I. INTRODUCTION

¶ 2 Following a jury trial in the circuit court of Winnebago County, defendant, Mark A. Jasoni, was convicted of one count of aggravated battery pursuant to section 12-4(b)(10) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-4(b)(10) (West 2008) (now 720 ILCS 5/12-3.05 (West 2010))) and one count of domestic battery under section 12-3.2 of the Code (720 ILCS 5/12-3.2 (West 2008)). The court did not enter judgment on the domestic battery charge. Defendant now appeals, arguing that his conviction of aggravated battery should be reversed and, in its place, defendant asks that we enter judgment on the domestic battery count. For the reasons that follow, we affirm.

¶ 3 II. BACKGROUND

¶ 4 On August 29, 2009, defendant was charged with one count of aggravated battery (victim 60 years of age or older) and one count of domestic battery to Edna Briggs-Gunther. He was tried before a jury in Winnebago County on January 19, 2011. Briggs-Gunther testified first for the prosecution regarding an altercation that took place on August 28, 2009, the day before defendant's arrest. On that day, Briggs-Gunther was 68 years old. She had known defendant for 20 years. Defendant had been married to Briggs-Gunther's daughter, but she had died in 2005. They had a son together, who was seven years of age on the day of the battery. The battery took place at defendant's home in Loves Park, where defendant lived with his son and Harold Briggs, who is Briggs-Gunther's son. Briggs-Gunther would often come to the apartment to visit her grandson, and she testified that she was concerned about her grandson living with defendant because she thought defendant had a drinking problem.

¶ 5 Briggs-Gunther explained that on August 28, 2009, she received a call from Briggs asking her to come to his and defendant's home immediately. Upon arrival, she noticed that defendant was extremely drunk and agitated. When defendant saw Briggs-Gunther, he rushed

up to her, screamed in her face, and put his hands on her shoulders. Briggs-Gunther slapped defendant and called for Briggs, who then pushed defendant onto a couch. She saw her grandson curled up in a ball with a blanket over his head. She grabbed her grandson and exited the home, walking toward her car. As she exited, defendant tipped the dining room table over, with many of the items on it smashing on the floor. Defendant followed her to her car and shoved her against it. As a result, Briggs-Gunther sustained bruises on her arm and thigh, and she reaggravated a torn meniscus in her right knee.

¶ 6 Officer Michael McCamond testified next for the prosecution. McCamond stated that on August 29, 2009, he was working as a police officer for the Loves Park police department. Briggs-Gunther entered the police station and filed a report. When McCamond interviewed her, he noticed bruises on her right thigh and right hand, which he photographed. She asserted that the bruises were a result of being pushed into her car by defendant.

¶ 7 The prosecution then called Briggs to testify. He stated that on August 28, 2009, he called Briggs-Gunther because he was concerned for the well-being of defendant's son. He saw that defendant was drunk and agitated, and he did not think defendant should be around his son in such a condition. Briggs-Gunther arrived at the home shortly thereafter. When defendant saw her, he began shouting in her face and became physically aggressive toward her. Briggs pushed defendant away from Briggs-Gunther. Defendant then flipped the dining room table over in the direction of Briggs-Gunther, breaking many of the items on it. Defendant and Briggs-Gunther continued to argue outside. Briggs was inside the home during this argument, but he heard Briggs-Gunther scream. When he went outside, he saw that his mother was limping.

¶ 8 The State rested, and defendant then testified on his own behalf. He related that on August 28, 2009, at around 8 p.m., he was at his home when Briggs-Gunther arrived. He claimed that he had "one, maybe two beers" that afternoon around 4 p.m., but by 8 p.m. he did not feel drunk. He started arguing with Briggs-Gunther over the amount of rent he was paying her. (Briggs-Gunther leased the apartment in which defendant lived.) He then asked her to leave, but she refused to do so, instead sitting at the dining room table. Briggs then tackled him onto the couch, and defendant hit his head on a table. He tried to pull the dining room table toward himself, and it accidentally tipped over. Briggs then grabbed him and threw him into a wall. Defendant's stepdaughter intervened to separate the men. Defendant decided to leave the home, and he saw his son in the back of Briggs-Gunther's car. When he told his son to exit the car, Briggs-Gunther ran out of the home and slapped him in the face. She then tried to open the car door, but slipped and fell on her backside. Defendant testified, "It serves her right, you know, running out, and–like that to fall down." He claimed that he never touched Briggs-Gunther.

¶ 9 The prosecution recalled Briggs-Gunther in rebuttal, and she testified that she slapped defendant not because he told his son to exit her car; rather, she slapped defendant in self-defense, inside the home, because he was attacking her. She also claimed that she did not slip outside; rather, she fell because defendant pushed her.

¶ 10 The jury found defendant guilty of domestic battery and aggravated battery. The court did not enter judgment on the domestic battery charge, because it was based on the same act as

the aggravated battery count. Defendant and defense counsel filed motions for a new trial, but the court denied both motions. Defendant was sentenced to 2 years' probation, subject to 90 days in the county jail, with credit for 1 day already served. Defendant filed a notice of appeal on March 2, 2011.

¶ 11 III. ANALYSIS

¶ 12 On appeal, defendant concedes that he committed a battery; however, he contests his conviction of aggravated battery. He argues that there was insufficient evidence to prove beyond a reasonable doubt that he knew that Briggs-Gunther was 60 years of age or older. The prosecution contends that under section 12-4(b)(10) of the Code, when a defendant commits a battery, it automatically becomes aggravated battery if the victim is 60 years of age or older. The prosecution argues that it is irrelevant whether the defendant knew that the person he battered was 60 years of age or older. Because the resolution of this issue requires the interpretation of a statute, our review is *de novo*. *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). Under the *de novo* standard of review, we owe no deference to the trial court. *Newsome v. Illinois Prison Review Board*, 333 Ill. App. 3d 917, 924 (2002).

¶ 13 The primary objective of a court in construing a statute is to ascertain and give effect to the intent of the legislature. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). All other rules of statutory construction are subordinate to this cardinal principle. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001); *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 387 (1998). We determine legislative intent by examining the language of the statute, which is "the most reliable indicator of the legislature's objectives in enacting a particular law." *Michigan Avenue National Bank*, 191 Ill. 2d at 504; see also *In re D.L.*, 191 Ill. 2d 1, 9 (2000); *Nottage v. Jeka*, 172 Ill. 2d 386, 392 (1996). The language of a statute is to be given its plain, ordinary, and popularly understood meaning. *Union Electric Co. v. Department of Revenue*, 136 Ill. 2d 385, 397 (1990). Where a statute is clear and unambiguous, a court will not resort to other aids of statutory construction. *Solon v. Midwest Medical Records Ass'n*, 236 Ill. 2d 433, 440 (2010).

¶ 14 The subsection of the aggravated battery statute at issue here specifies that a person commits aggravated battery when, in committing a battery, the person "[k]nows the individual harmed to be an individual of 60 years of age or older." 720 ILCS 5/12-4(b)(10) (West 2008). The wording of this statute differs from an earlier version. Before 2006, a person committed aggravated battery if he "[k]nowingly and without legal justification and by any means cause[d] bodily harm to an individual of 60 years of age or older." 720 ILCS 5/12-4(b)(10) (West 2004). This earlier version of the statute was interpreted to mean that, as long as the victim was 60 years of age or older and the defendant committed a battery, the defendant was guilty of aggravated battery. See *People v. Jordan*, 102 Ill. App. 3d 1136, 1139 (1982) (noting that the legislature had specifically rejected an amendment requiring knowledge of the victim's age because *scienter* would be too difficult to prove). Hence, the defendant's knowledge of the victim's age was irrelevant in determining whether he or she committed aggravated battery. *People v. White*, 241 Ill. App. 3d 291, 302 (1993). However, the General Assembly amended the aggravated battery statute to its present form in Public

Act 94-327 (Pub. Act 94-327, § 5 (eff. Jan. 1, 2006)).

¶ 15 In this case, the State argues that the aggravated battery statute does not require a defendant to know that the victim is 60 years of age or older. The State, relying on *White* and *Jordan*, correctly points out that these cases held that it was not necessary to show that a defendant knew he or she was committing battery on someone 60 years of age or older to be convicted of aggravated battery. See *White*, 241 Ill. App. 3d at 302 (holding that, in reference to the aggravated battery statute, "the knowledge element refers to the *mens rea* of the offense and does not mean that the defendant had to have prior knowledge of the victim's age"); *Jordan*, 102 Ill. App. 3d at 1139 (holding that there was no requirement that a defendant have knowledge of the victim's age). The State asserts that the interpretations set forth in *White* and *Jordan* should control here.

¶ 16 In light of the amendment contained in Public Act 94-327, we cannot agree with the State's position. We must first look to the plain language of the current version of the aggravated battery statute. *Union Electric Co.*, 136 Ill. 2d at 397. The plain language of section 12-4(b)(10) makes clear that the General Assembly intended a defendant to know that the individual he or she battered was 60 years of age or older in order to be convicted of aggravated battery based on this section. The statute states that a person commits aggravated battery if he or she "[k]nows the individual harmed to be an individual 60 years of age or older." 720 ILCS 5/12-4(b)(10) (West 2008). In the previous version of the statute, the adverb "knowingly" was located before the verb "causes" and therefore modified "causes bodily harm." However, in the current version of the statute, the word "knows" comes directly before the phrase "the individual battered to be a person 60 years of age or older." It is therefore clear that the word "knows" refers to the individual's age. Accordingly, the plain language of the statute requires that a defendant know that the person he or she batters is 60 years of age or older at the time of the battery in order to sustain a charge of aggravated battery under this section.

¶ 17 It is axiomatic that, when a statute is amended, the amendment is presumed to have some purpose. *People v. Woodard*, 175 Ill. 2d 435, 444 (1997). That is, when the General Assembly amends a statute, it presumptively intends to make some change in the existing law. *In re K.C.*, 186 Ill. 2d 542, 548 (1999); see also *Board of Trustees of Southern Illinois University v. Department of Human Rights*, 159 Ill. 2d 206, 213 (1994); *In re Marriage of Sutton*, 136 Ill. 2d 441, 447 (1990). Therefore, we typically will not construe a statute following an amendment in the same manner as we did before the amendment. See *Lindley v. Murphy*, 387 Ill. 506, 519 (1944).

¶ 18 Here, in Public Act 94-327, the General Assembly expressly inserted the word "knows" before "the individual battered to be a person 60 years of age or older." We do not agree, as the State implies, that notwithstanding the statutory amendment the statute should be interpreted in the same manner as formerly. See *Woodard*, 175 Ill. 2d at 444. Rather, we presume that the legislature intended to change the law of aggravated battery. See *In re Marriage of Sutton*, 136 Ill. 2d at 447. Therefore, we must conclude that the legislature chose to amend the statute and depart from the previous interpretation, as set forth in *White* and *Jordan*. Moreover, as noted previously, the plain language of the statute makes clear that the General Assembly intended that a defendant know that the person he or she battered was 60

years of age or older before a conviction of aggravated battery could stand. Accordingly, we hold that section 12-4(b)(10) of the Code requires a defendant to know that the victim is 60 years of age or older at the time of the battery in order to sustain a charge of aggravated battery under this section. As *White* and *Jordan* rest on an interpretation of the earlier version of the statute, they do not provide a valid interpretation of the current version at issue here.

¶ 19 We turn now to the question of whether defendant knew that Briggs-Gunther was 60 years of age or older at the time of the battery. Defendant claims that the evidence in this case is insufficient to prove that he knew that Briggs-Gunther was 60 years of age or older. When reviewing the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). In making this determination, the "reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or the credibility of witnesses." *People v. Phelps*, 211 Ill. 2d 1, 7 (2004). A conviction based on circumstantial evidence must rest on proof of a conclusive nature that tends to lead to a satisfactory conclusion and produces a reasonable and moral certainty that the defendant and no one else committed the crime. *People v. Williams*, 66 Ill. 2d 478, 484-85 (1977). This court will not disturb a guilty verdict unless the evidence is so improbable or unsatisfactory that it raises a reasonable doubt as to the defendant's guilt. *People v. Brandon*, 197 Ill. App. 3d 866, 874 (1990).

¶ 20 Knowledge is often proven by circumstantial evidence. See *People v. Faginkrantz*, 21 Ill. 2d 75, 80 (1960); *People v. Utinans*, 55 Ill. App. 3d 306, 316 (1977). This court has previously explained, "Because of its very nature, the mental element of an offense, such as knowledge, is ordinarily established by circumstantial evidence rather than direct proof." *People v. Farrokhi*, 91 Ill. App. 3d 421, 427 (1980). An admission by a defendant is not required for the trier of fact to conclude that a defendant had knowledge of something. *People v. Rader*, 272 Ill. App. 3d 796, 806 (1995).

¶ 21 Defendant claims that the evidence in this case is insufficient to prove that he knew that Briggs-Gunther was at least 60 years of age when the battery occurred. He notes that all the evidence of his guilt is circumstantial and he asserts that none of it supports an inference that he knew she was 60 years of age or older. While he admits that he had known Briggs-Gunther for 20 years, he claims that there is no evidence that he knew of her age. He points out that the record is silent regarding how much he saw her. Since he was often in Oregon and she lived in Illinois, he claims, he did not see her frequently. Moreover, defendant asserts that there is no evidence that he was aware of Briggs-Gunther's birthday or of any other events, like collecting Social Security or retiring, that might signify her age.

¶ 22 Despite this lack of direct evidence, we find that there is sufficient circumstantial evidence for the trier of fact to have concluded that defendant knew that Briggs-Gunther was at least 60 years of age. Indeed, construing the evidence in the light most favorable to the State, as we must (*Wheeler*, 226 Ill. 2d at 114), we find ample circumstantial evidence to support that conclusion. First, defendant had known Briggs-Gunther for 20 years at the time of the battery. They were not mere acquaintances; rather, defendant had been married to her daughter for 14 years at the time of her daughter's death. The trier of fact could have quite

reasonably rejected the notion that defendant did not know of Briggs-Gunther's age, in light of the fact that he had known her for such a long period of time, particularly in a close familial relationship. Second, defendant's son was Briggs-Gunther's grandson, and, as a result, Briggs-Gunther was often at defendant's home. Briggs-Gunther testified that she frequently visited defendant's home to see her grandson and that her grandson slept at her house on many Fridays. In fact, on the day of the altercation, she came to defendant's home to care for her grandson. This casts serious doubt on defendant's claim that he saw Briggs-Gunther only infrequently. In any event, resolving such a conflict in the evidence is primarily a matter for the trier of fact. *People v. Saunders*, 2012 IL App (1st) 102040, ¶ 15. Third, defendant lived in an apartment that was leased by Briggs-Gunther, and he paid rent to her. He shared the apartment with her son. This is further proof that defendant had a close relationship with Briggs-Gunther and, therefore, likely knew she was at least 60. Fourth, Briggs-Gunther's age was actually 68, which is well over the statutory minimum. Indeed, we note that, because Briggs-Gunther testified, the trier of fact had an opportunity to observe her appearance and assess whether it provided an indication of her age. See *People v. Dalton*, 93 Ill. App. 3d 264, 266 (1981), *rev'd on other grounds*, 91 Ill. 2d 22, 30 (1982) (considering a defendant's appearance while testifying as evidence possibly corroborating an admission by the defendant of his age (for *corpus delicti* purposes), through ultimately finding it of insufficient weight); *cf. People v. True*, 314 Ill. 89, 93 (1924) ("The jury had an opportunity, which is denied us, to see and observe the witnesses, to judge their character from their appearance and conduct on the witness stand, and to form an opinion upon the accuracy of their observation, the clearness of their recollection, and the trustworthiness of their narrative.").

¶ 23 We find additional support for the trier of fact's decision in *Farrokhi*, 91 Ill. App. 3d 421, where the defendant was convicted, based on circumstantial evidence, of rape. In that case, the defendant had intercourse with a mentally handicapped woman. The prosecution needed to prove that the defendant knew that the woman was mentally handicapped in order to convict him of rape. The defendant argued that he did not know that the woman was mentally handicapped, citing a lack of direct evidence proving his knowledge of her handicap. However, the court found enough circumstantial evidence to prove that the defendant knew of the victim's handicap. The court noted that the victim had a limited vocabulary, an inability to articulate words, a mental age of around four, and a lack of understanding and knowledge of sexual acts and the sexual functions of genitalia. *Id.* at 427-28. Based on this circumstantial evidence, the court concluded that it would be unreasonable to believe that the defendant did not know of the victim's handicap. *Id.* The lack of direct evidence proving the defendant's knowledge was not a barrier to the court's conclusion that the defendant had knowledge.

¶ 24 Similarly, in this case, the circumstantial evidence allowed the trier of fact to find that defendant knew that Briggs-Gunther was 60 years of age or older at the time of the battery. Defendant had known Briggs-Gunther for 20 years, was married to her daughter for 14 years, paid her rent, lived with her son, and interacted with her regularly. This circumstantial evidence provides an adequate basis for a conclusion that defendant knew Briggs-Gunther well, which, in turn, supports an inference that he knew she was at least 60 years of age. Like

in *Farrokhi*, a lack of direct evidence of defendant's knowledge was no barrier to the trier of fact's conclusion that defendant possessed this knowledge.

¶ 25 Accordingly, in viewing the evidence in the light most favorable to the State (*Wheeler*, 226 Ill. 2d at 114), we find that a rational trier of fact could conclude that defendant knew that Briggs-Gunther was 60 years of age or older at the time of the battery. Contrary to defendant's assertions, the trier of fact could have inferred that he maintained a close relationship with Briggs-Gunther and treated her like a family member. Additionally, most people have a general idea of the ages of their family members. *Cf. Curran v. Bosze*, 141 Ill. 2d 473, 481 (1990) (noting that family members are typically most familiar with various aspects of each other's lives). In sum, we hold that there was sufficient evidence for the trier of fact to find that defendant knew Briggs-Gunther to be at least 60 years of age at the time of the battery.

¶ 26 IV. CONCLUSION

¶ 27 In conclusion, we hold that, under section 12-4(b)(10) of the Code (720 ILCS 5/12-4(b)(10) (West 2008)), the evidence must establish that the defendant knew the victim to be 60 years of age or older at the time of the battery in order to sustain a conviction of aggravated battery. Furthermore, construing the evidence in the light most favorable to the State, we hold that a rational trier of fact could have found that defendant knew that the victim was 60 years of age or older at the time of the battery in this case. Therefore, we affirm the judgment of the circuit court of Winnebago County finding defendant guilty of aggravated battery.

¶ 28 Affirmed.