Illinois Official Reports

Appellate Court

***People v. Ford*, 2015 IL App (3d) 130810**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL A. FORD, Defendant-Appellant.
District & No.	Third District Docket No. 3-13-0810
Filed	October 28, 2015
Decision Under Review	Appeal from the Circuit Court of Henry County, No. 13-CF-137; the Hon. Richard A. Zimmer, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Michael J. Pelletier and Thomas A. Karalis, both of State Appellate Defender's Office, of Ottawa, for appellant. Matthew P. Schutte, State's Attorney, of Cambridge (Robert M. Hansen, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

Panel JUSTICE CARTER delivered the judgment of the court, with opinion. Presiding Justice McDade and Justice Lytton concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Michael A. Ford, was found guilty of two counts of aggravated battery (720 ILCS 5/12-3.05(a)(5) (West 2012)) and two counts of battery (720 ILCS 5/12-3(a) (West 2012)). The trial court sentenced defendant to three years' imprisonment on the first aggravated battery charge. The court did not enter a sentence on the remaining three charges. On appeal, defendant argues that: (1) the evidence was insufficient to establish that T.B.'s bloody nose was caused by defendant's choke hold; (2) the State did not prove that defendant acted with the required mental state to support a charge of aggravated battery; and (3) defendant's conviction should be reversed or reduced to the lesser offense of reckless conduct because T.B. consented to the conduct that gave rise to the charge. We affirm.

¶ 2 FACTS

¶ 3 Defendant was charged by amended information with two counts of aggravated battery and two counts of battery. The first aggravated battery charge[1] alleged that defendant "knowingly caused bodily harm to [T.B.] in that he strangled [T.B.] causing his nose to bleed." The case proceeded to a bench trial, and defendant was represented by counsel.

¶ 4 At trial, T.B. testified that he was 15 years old. In December 2012, T.B., defendant, and several other individuals were at Bri Minnaert's home. At the time, the group was "[h]anging out" and smoking cigarettes and marijuana in the basement. While in the basement, T.B. gave defendant permission to place him in a choke hold in exchange for four or five cigarettes. The purpose of the choke hold was to cause him to pass out. While T.B. was in the hold, he tapped on defendant's arm, which was the signal to release the hold. Defendant did not release the hold, and T.B. lost consciousness, had a seizure, and awoke with a nosebleed. The incident was video recorded, and the State played the recording for the court.

¶ 5 The recording showed defendant positioned himself behind T.B. with his right arm wrapped around T.B.'s neck. Approximately 10 seconds into the recording, T.B. taps on defendant's arm, and thereafter, defendant and T.B. fall to the side. Approximately 29 seconds into the recording, defendant releases the hold. T.B. is heard gasping or coughing, and he moves to his knees. An individual is heard saying that T.B.'s nose is bleeding. Blood is briefly seen on an unidentified individual's hand.

[1]This fact section only includes a recitation of the charge that is at issue in this appeal. The remaining charges cannot be directly contested because the trial court did not enter a sentence, which is the judgment that would render the charges final and appealable. See *People v. Caballero*, 102 Ill. 2d 23, 51 (1984) (in the absence of imposition of a sentence, an appeal cannot be entertained).

¶ 6 On cross-examination, T.B. stated that he did not tell defendant to ignore his tap out. T.B. said there were "no rules," and he told defendant that "it was OK to choke" him. T.B. had let other individuals attempt to choke him to the point of syncope in the past. One of the prior incidents was video recorded, and the recording was played for the court. During this incident, T.B. stopped the choke hold before he lost consciousness because the hold was hurting his throat. T.B. participated in the prior choke holds because he was "bored and had nothing to do."

¶ 7 A.P. testified that he was 16 years old, and on the date of the incident, another individual used his cell phone to video record the choke hold. After the incident began, A.P. saw T.B. lose consciousness and have a seizure. When T.B. regained consciousness, his nose was bleeding, and he seemed disoriented. Additionally, T.B. appeared to be shaking, and he hit his head on the wall.

¶ 8 Detective Sean Johnson testified that he interviewed defendant regarding the choking incident. On the date of the incident, defendant was at Minnaert's home when T.B. agreed to be choked in exchange for a cigarette. Defendant did not have a cigarette at the time and did not intend to give T.B. a cigarette at a later date. Defendant was familiar with the choke hold prior to the incident and released T.B. from the hold because it "took so long and that [T.B.] should have been out by then." Defendant noted that T.B.'s tapping gesture was an indication to stop. After the choke hold ended, T.B.'s nose was bleeding, and defendant became worried that he might have performed the choke hold incorrectly. At the conclusion of Johnson's testimony, the State rested.

¶ 9 The defense called Minnaert to testify. Minnaert said that she was 18 years old, and defendant was her boyfriend. On the day of the incident, T.B. agreed to submit to a choke hold in exchange for five cigarettes. Minnaert heard T.B. say that he could withstand the choking, and if he attempted to tap out, to continue the hold because he could "take it." During the hold, Minnaert told defendant to stop.

¶ 10 Defendant elected to testify in his defense. Defendant stated that he was 19 years old, and he had prior convictions for escape and burglary. On the date of the incident, defendant was "hanging out" at Minnaert's house with several other individuals. Prior to the choking incident, defendant saw another individual kick T.B. in the groin. Other individuals told defendant that T.B. had appeared on other videos being beaten up while boxing and letting people choke him. As defendant was old enough to purchase cigarettes, two individuals suggested that defendant place T.B. in a choke hold in exchange for cigarettes. T.B. agreed to participate in exchange for five cigarettes. Defendant asked T.B. if he should stop the choke hold if T.B. attempted to tap out, and T.B. said that he could "take it" and to continue the hold until he lost consciousness. Defendant placed T.B. in a "rear naked choke," a hold that cut off T.B.'s oxygen flow by squeezing the sides of his neck. Defendant was careful not to squeeze the center of T.B.'s neck as it would crush T.B.'s Adam's apple. During the hold, T.B. began to shake and make noises. Defendant thought that T.B. was possibly having a seizure and attempted to hold him on the bed so that he did not hit his head. Eventually, defendant loosened his hold, and T.B. jumped up on his hands and knees. Defendant was unsure if T.B. was awake as his eyes were closed and his body seemed rigid. Defendant then yelled for T.B. to wake up.

¶ 11 On cross-examination, defendant acknowledged that there was nothing safe about the choke hold he used on T.B. and that a professional fighter put his competitor's life in danger

when he used this hold. Defendant did not think about the repercussions and agreed to place T.B. in the choke hold without considering that T.B. might get hurt. Defendant said that he was young, "playing around," and had seen people engage in similar acts.

¶ 12 At the conclusion of the case, the court found that a choking had occurred, on some level T.B. gave consent, and defendant knew what he was doing and the act would cause bodily harm. The court concluded that the State had proved its case beyond a reasonable doubt, and it found defendant guilty of the four counts in the indictment. After a hearing, the court sentenced defendant to three years' imprisonment on count I. The court did not enter sentences on the remaining counts. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that the evidence was insufficient to sustain his aggravated battery conviction because: (1) T.B. consented to the choke hold; (2) the State did not establish that T.B.'s bloody nose was caused by the choke hold; and (3) the State did not prove that defendant acted with the requisite mental state. Upon review, we reject all three of defendant's arguments.

¶ 15 At the outset, we note that the parties dispute the applicable standard of review. Defendant argues that *de novo* review applies to some of his arguments because the only question is whether a set of accepted facts met the State's burden of proof. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000). The State contends that the *Collins* standard applies to all of defendant's arguments as defendant challenges the legal inferences drawn by the fact finder. See *People v. Collins*, 106 Ill. 2d 237 (1985); *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 12.

¶ 16 *De novo* review does not apply in every case where the facts are not in dispute. Where a reasonable person could draw different inferences from a set of undisputed facts, it is left to the trier of fact to resolve those questions. *People v. Brown*, 345 Ill. App. 3d 363, 366 (2003). Here, the issues raised by defendant require us to determine whether defendant's conduct caused T.B.'s injury. The parties do not dispute the facts leading to T.B.'s injuries, but defendant argues that the facts were insufficient to establish the causal link between defendant's act and T.B.'s injury. This argument requires that we examine the evidence to determine if the fact finder could reasonably infer that the alleged harm was the result of defendant's actions. As a reasonable person could draw different inferences from the undisputed facts at issue, we find that the *Collins* standard applies.

¶ 17 Under the *Collins* standard, a reviewing court considers whether, 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.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We note that it is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, the fact finder's determinations regarding the credibility of the witnesses and the inferences to be drawn from the testimony are given great deference. *People v. McLaurin*, 184 Ill. 2d 58, 79 (1998). We will only reverse a defendant's conviction if "the evidence is so improbable or unsatisfactory that a reasonable doubt of the guilt of the defendant remains." *Id.*

¶ 18 To sustain the charge of aggravated battery, the State was required to prove that: (1) defendant knowingly without legal justification caused bodily harm to T.B.; and (2) that in doing so, defendant knowingly strangled T.B. 720 ILCS 5/12-3(a), 12-3.05(a)(5) (West 2012). The legislature defined strangle as "intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual." 720 ILCS 5/12-3.05(i) (West 2012).

¶ 19 I. Consent

¶ 20 Defendant argues that his conviction should be reversed or reduced to the lesser offense of reckless conduct because T.B. consented to the conduct which gave rise to the charge of aggravated battery. Defendant acknowledges that consent is not a recognized defense to aggravated battery in Illinois, but he makes a good-faith argument for the extension or modification of the existing law.[2] See *People v. Morales,* 251 Ill. App. 3d 1001 (1993); *People v. Reckers*, 251 Ill. App. 3d 790 (1993). Defendant contends, however, that both of these cases are inapplicable. The State argues that consent is not a defense to "this aggravated battery." After reviewing the law regarding consent, we conclude that consent was not a defense to the charge of aggravated battery.

¶ 21 Generally, consent of the victim is not a defense in a criminal prosecution. 1 Wayne R. LaFave, Substantive Criminal Law § 6.5(a), at 504 (2d ed. 2014). "[A] criminal offense is a wrong affecting the general public, at least indirectly, and consequently cannot be licensed by the individual directly harmed." *Id*. However, in the context of a battery charge, consent is a defense to "what otherwise would be a minor sort of offensive touching," medical procedures, and batteries that are incident to participating in certain sporting events. 1 Wayne R. LaFave, Substantive Criminal Law § 16.2(e), at 564 (2d ed. 2014). "Other things being equal, consent is more effective for offensive touchings and insignificant bodily injuries than for hard blows and more serious injuries." *Id.*

¶ 22 In contrast, in a civil proceeding, consent is recognized as a bar to recovery in a tort action. See Restatement (Second) of Torts § 892A (1979). Generally, a civil consent defense is limited, and to be effective a plaintiff must (1) have the capacity to consent[3] and (2) the consent given must be to the particular conduct or substantially similar conduct. *Id*. Consent is an effective bar to recovery when the conduct consented to is a crime. Restatement (Second) of Torts § 892C (1979). However, because "there is no consent on the part of the State, which is the complaining party in a criminal prosecution and represents the public interest invaded by the crime itself, the consent of the individual is ordinarily no bar to a criminal prosecution, except as it may be made one by a definition of the crime or by rules of

[2]We note that the offense of battery includes the element of "without legal justification." 720 ILCS 5/12-3(a) (West 2012). The parties do not argue that T.B.'s consent negates this element of defendant's aggravated battery charge. Therefore, we limit our analysis to the issue of whether consent is a distinct defense to aggravated battery as charged under section 12-3.05(a)(5) of the Criminal Code of 2012 (Code). 720 ILCS 5/12-3.05(a)(5) (West 2012).

[3]We note that T.B. was a minor at the time of the instant offense; however, the parties do not raise the issue of whether he had the ability to give valid consent to the strangulation at issue.

the criminal law applicable to particular offenses." Restatement (Second) of Torts § 892C cmt. b (1979). Thus, our analysis begins with a review of the Code.

¶ 23 Defendant was charged with aggravated battery under section 12-3.05(a)(5) of the Code. The assault and battery subdivision of the Code does not include a defense of consent to the offenses of battery or aggravated battery. See 720 ILCS 5/12-1 *et seq.* (West 2012). The only reference to consent in this subdivision is found under section 12-3.1(d), battery of an unborn child; aggravated battery of an unborn child.[4] The Illinois legislature has also codified a defense of consent in regards to the offenses of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, and aggravated criminal sexual abuse. 720 ILCS 5/11-1.70(a) (West 2012). Under section 11-1.70(a), consent is a defense to these sex crimes

> "where force or threat of force is an element of the offense that the victim consented. 'Consent' means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent." *Id.*

¶ 24 In contrast to the discussed situations where the legislature created a consent defense, the legislature has not enacted a statutory consent defense to aggravated battery. Instead, in a 2009 amendment, the legislature criminalized strangulation as an aggravated battery and provided enhanced penalties for variations and repetitions of this act. See Pub. Act 96-363, § 5 (eff. Aug. 13, 2009) (amending 720 ILCS 5/12-4 (West 2008)).[5] Specifically, subsection 12-3.05(h) elevates an aggravated battery based on a strangulation from a Class 3 felony to a Class 1 felony if:

> "(A) the person used or attempted to use a dangerous instrument while committing the offense; or
>
> (B) the person caused great bodily harm or permanent disability or disfigurement to the other person while committing the offense; or
>
> (C) the person has been previously convicted of a violation of subdivision (a)(5) under the laws of this State or laws similar to subdivision (a)(5) of any other state." 720 ILCS 5/12-3.05(h) (West 2012).

During the third reading of House Bill 594, which was enacted as Public Act 96-363 and gave rise to sections 12-3.05(a)(5) and 12-3.05(h), Representative Michael J. Zalewski described the bill as:

> "an initiative of the Cook County State's Attorneys Office. And it is a Bill which adds strangulation as an aggravating factor in aggravated domestic battery. And it also makes the offense of aggravated battery go from a Class III felony to a Class I felony

[4]Section 12-3.1(d) provides "[t]his Section shall not apply to acts which cause bodily harm to an unborn child if those acts were committed during any abortion, as defined in Section 2 of the Illinois Abortion Law of 1975, as amended, to which pregnant woman has consented." 720 ILCS 5/12-3.1(d) (West 2012).

[5]This section was renumbered and amended as section 12-3.05 by Public Act 96-1551 (eff. July 1, 2011).

> if strangulation is involved." 96th Ill. Gen. Assem., House Proceedings, Apr. 2, 2009, at 256 (statements of Representative Zalewski).

While the sentence enhancing subsection is not at issue in the instant case, we find that it, along with the strangulation subsection, are indicative of the legislature's position on this issue.

¶ 25 After reviewing the aggravated battery statute and legislative history, we find that recognizing consent as a defense to the aggravated battery that was charged in this case would be inconsistent with the current version of the statute. However, this does not end our inquiry, and in the absence of statutory guidance, we look to the common law for further direction.

¶ 26 The defense of consent to a battery was recognized in *People v. Dudgeon*, 341 Ill. App. 533, 539 (1950). See also 3 Ill. L. and Prac., *Assault, Battery and Bodily Harm* § 44 (2015). In *Dudgeon*, the Second District noted that "the consent of the one assaulted to the act complained of is a good defense." *Dudgeon*, 341 Ill. App. at 539. However, the *Dudgeon* court concluded that, under the facts of the case, consent was not an applicable defense. *Id*.

¶ 27 In *Morales*, the Second District declined to apply the *Dudgeon* reasoning where a defendant argued that the victim's consent was a mitigating factor in regards to his sentence for aggravated battery. *Morales*, 251 Ill. App. 3d at 1017. The aggravated battery charge arose from the victim's agreed participation in a three-minute "violation," or beating. *Id*. at 1004. In order to be released from his gang membership, the victim was required to fight the three defendants for a three-minute period. *Id.* During the beating, the victim fell unconscious and was later transported to the hospital. *Id*. On appeal, one of the defendants argued that the victim's consent was a mitigating factor that the court should have considered during sentencing. *Id*. at 1017. In support of his position, the defendant cited to *Dudgeon* and Decker's Illinois Criminal Law for the proposition that consent has been recognized as a defense to assault. *Id*. at 1017-18 (citing John F. Decker, Illinois Criminal Law 305 n.113 (1986)). However, the court found *Dudgeon* inapplicable because it was a sex case that focused on a masked man's assault upon a woman. *Id*. The court also found that the treatise did not support defendant's position as it noted " '[w]here a defendant brutally beats a victim, he or she has no defense to a battery charge assuming the victim agreed to the beating.' " *Id*. at 1018 (quoting Decker, *supra*, at 724).

¶ 28 In *Reckers*, two groups of high school students met in a park with the anticipation that a fistfight would occur between one or two designated young men from each group. *Reckers*, 251 Ill. App. 3d at 792. At the park, three individuals attacked the victim while he was still in a car. *Id*. The individuals pulled the victim from the car and beat him until the police were called. *Id*. As a result of the incident, defendant was convicted of aggravated battery based on a theory of accountability, as he had not directly participated in the victim's beating. *Id*. On appeal, defendant argued that he could not be found guilty of aggravated battery beyond a reasonable doubt where a consensual fight was anticipated by those involved. *Id*. The court noted that consent as a defense to a criminal battery is a relatively novel idea in Illinois, and the consent defense was not defendant's theory of the case and was not before the trial court. *Id*. However, the court said that "any consent the victim may have given here would presumably have been to a fistfight between equal numbers and not to a pummeling by three of defendant's friends." *Id*. at 792-93. The court further agreed with the commentators and a number of sister states who held that consent was not a defense to a battery based on

injurious touching. *Id*. at 793 (citing 2 Wayne R. LaFave & Austin W. Scott, Substantive Criminal Law § 7.15(e), at 311 (1986), *Jaske v. State*, 539 N.E.2d 14 (Ind. 1989), *People v. Lucky*, 753 P.2d 1052 (Cal. 1988), *State v. Richards*, 365 N.W.2d 7 (Wis. 1985), *State v. Hatfield*, 356 N.W.2d 872 (Neb. 1984), *Commonwealth v. Burke*, 457 N.E.2d 622 (Mass. 1983), *Lyons v. State*, 437 So. 2d 711 (Fla. Dist. Ct. App. 1983), and *State v. Fransua*, 510 P.2d 106 (N.M. Ct. App. 1973)).

¶ 29 In this case, defendant argues that consent is a defense to the charged conduct and the *Morales* and *Reckers* decisions are not directly applicable. Defendant contends that the harm at issue was not of such a degree that society's interests in protecting the public peace must necessarily override an individual's right to engage in a physical activity during which some pain is anticipated.

¶ 30 While we agree that the harm in this case is not as great as that at issue in *Morales* and *Reckers*, we adhere to the position that consent is not a valid defense to the aggravated battery charge in this case. See *Morales*, 251 Ill. App. 3d 1001; *Reckers*, 251 Ill. App. 3d 790. In this case, the societal interest in deterring individuals from knowingly participating in these types of activities justifies overriding an individual's right to consent. See 1 Wayne R. LaFave, Substantive Criminal Law § 6.5(a) (2d ed. 2014). The instant defendant received relatively minor injuries from the choking at issue; however, the Centers for Disease Control (CDC) noted that news media reports have described numerous deaths among youths attributed to similar choking games. See Centers for Disease Control and Prevention, *Unintentional Strangulation Deaths From the "Choking Game" Among Youths Aged 6-19 years–United States, 1995-2007* (Feb. 15, 2008), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5706 al.htm. The CDC stated that these activities can result in neurological damage or death. *Id*. Between 1995 and 2007, the CDC documented 82 probable deaths resulting from youth participation in these activities. *Id*. As a result, we conclude that consent is not a defense to the activity that was alleged in count I of the indictment.

¶ 31 II. Causation

¶ 32 Defendant argues that the State failed to prove the aggravated battery charge beyond a reasonable doubt because the evidence did not establish that T.B.'s nosebleed was caused by defendant's act of choking T.B. The State argues that the evidence was sufficient to establish that T.B.'s nosebleed, seizure, and loss of consciousness was caused by defendant's act of choking T.B. After reviewing the record, we find that the evidence was sufficient to sustain defendant's aggravated battery conviction.

¶ 33 Defendant argues that the connection between the act of choking and a nosebleed was not readily apparent to a lay person, and therefore the fact finder could not conclude, beyond a reasonable doubt, that the alleged harm resulted from defendant's conduct. Initially, we note that direct evidence of injury is not required, and the trier of fact may infer injury based upon circumstantial evidence in light of common experience. *People v. Durham*, 312 Ill. App. 3d 413, 419 (2000). Here, the video recording of the incident showed defendant place T.B. in a choke hold. While in the hold, T.B. writhes and twists to the side. After defendant releases T.B., an individual is heard saying that T.B.'s nose is bleeding. The video-recorded evidence was supported by the testimony from T.B., A.P., and Johnson who each noted that T.B.'s nose was bleeding after he was released from the hold. Viewing this evidence in the light

most favorable to the State, the fact finder could rationally infer that T.B.'s nosebleed resulted from defendant's act of placing T.B. in a choke hold.

¶ 34 Defendant also argues that because the relationship between defendant's act and T.B.'s injury is not readily apparent, expert medical testimony was necessary to connect the physical act and injury. See *People v. Steele*, 2014 IL App (1st) 121452. In *Steele*, the defendant was convicted of aggravated battery and aggravated fleeing and eluding a peace officer. *Id.* ¶ 2. On appeal, defendant argued that the State failed to prove that the victim suffered great bodily harm. The court found that the victim's testimony that he had received torn ligaments and needed shoulder surgery as a result of defendant's acts did not establish great bodily harm when contrasted with the medical reports and a photograph in evidence that indicated the victim had an abrasion on his knees and right elbow. *Id.* ¶¶ 29-30. The court noted that it was generally not necessary to present expert testimony on the issue of causation "when the relationship between cause and effect is readily apparent based on common knowledge and experience. [Citation.] But where the question of causation is beyond the general understanding of the public, the prosecution must present expert evidence." *Id.* ¶ 31 (citing *People v. Anderson*, 95 Ill. App. 3d 143, 148 (1981)). The court concluded that "[b]ecause [the victim] was treated at a hospital and released with only abrasions and bruising, the cause of the injuries to which he testified–torn ligaments and loose bone fragments in his shoulder–would not be readily apparent based on common knowledge and experience." *Id.*

¶ 35 In contrast to *Steele*, expert testimony was not required in the present case to sustain defendant's conviction. The choke hold at issue required defendant to position himself behind T.B. with his arm wrapped around T.B.'s neck. This positioning placed defendant's arm and fist near T.B.'s face such that the fact finder could logically infer that when T.B. began to move, defendant struck T.B. in the nose and caused the bleed. Further, defendant's explanation that the choke hold restricted oxygen flow via constriction of the sides of the neck, allowed the fact finder to reasonably infer that T.B.'s nosebleed was the result of the choke hold. Therefore, we conclude that the evidence was sufficient for the fact finder to reasonably conclude without the need for expert medical testimony that defendant's choke hold caused T.B.'s nosebleed.

¶ 36 III. Intent

¶ 37 Defendant argues that his conviction should be reversed or he should be convicted of the lesser offense of reckless conduct because the State did not prove that he knowingly caused bodily harm to T.B. The State argues that it proved that defendant acted knowingly in committing the battery against T.B. We find that the evidence was sufficient for the fact finder to conclude that defendant knowingly caused bodily harm to T.B.

¶ 38 A person acts knowingly if he is consciously aware that his conduct is practically certain to cause bodily harm. *People v. Vazquez*, 315 Ill. App. 3d 1131, 1133 (2000). Where defendant denies intent, the State may prove defendant's knowledge through circumstantial evidence. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009). Intent may be proved by a defendant's conduct surrounding the act and from the act itself. See *People v. Begay*, 377 Ill. App. 3d 417, 421-22 (2007) (intent could be inferred from defendant's conduct immediately prior to the battery); *People v. Barnes*, 364 Ill. App. 3d 888, 896 (2006) (intent could be

inferred from the nature of the act itself). A defendant need not intend the particular injury or consequence that resulted from his conduct. *People v. Hickman*, 9 Ill. App. 3d 39, 44 (1973).

¶ 39 Defendant argues that the evidence was insufficient to establish that he knowingly caused bodily harm to T.B. However, defendant's intent to cause bodily harm can be inferred where defendant choked T.B. until he lost consciousness. A choke hold restricts the flow of oxygen to the brain resulting in a loss of consciousness, possible neurological damage or death. See Centers for Disease Control and Prevention, *Unintentional Strangulation Deaths From the "Choking Game" Among Youths Aged 6-19 years–United States, 1995-2007* (Feb. 15, 2008), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5706al.htm. In this case, the fact finder could reasonably infer from the evidence that defendant knowingly caused T.B. to lose consciousness, which itself is a form of bodily harm. Therefore, viewed in the light most favorable to the State, the evidence was sufficient for the fact finder to reasonably conclude that defendant knowingly caused bodily harm to T.B.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court of Henry County is affirmed.

¶ 42 Affirmed.