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FIRST DIVISION
DATE: March 31, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C4 40953
)	
ANNETTE JACKSON,)	Honorable
)	Lawrence Terrell,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Hall and Justice Rochford concurred in the
judgment.

ORDER

Held: Where the evidence was sufficient to convict defendant of aggravated battery of a senior citizen, the charging instrument did not deprive defendant of her right to due process, and she was not denied effective assistance of counsel, the trial court's judgment was affirmed; where defendant's conviction of aggravated battery violated the one-act, one-crime doctrine, the conviction was vacated.

Following a bench trial, defendant Annette Jackson was convicted of aggravated battery of a senior citizen and aggravated battery, and sentenced to concurrent terms of three

years' imprisonment, in connection with her allegedly striking her 81-year-old landlord. On appeal, defendant contests the sufficiency of the evidence, alleging that the State failed to prove that she inflicted great bodily harm upon the victim. She also contends that the trial court relied upon a defective charging instrument thereby depriving her of her right to due process. Defendant further maintains that she was denied effective assistance of counsel, and that her conviction for aggravated battery violated the one-act, one-crime doctrine.

Because Dorothy was deceased at the time of trial, the State presented her testimony from the preliminary hearing that took place four days after the alleged incident. At that hearing, Dorothy testified that she was 81 years old and owned the apartment building at which the defendant lived. On July 18, 2008, Dorothy went to the apartment building to collect rent from defendant. Defendant gave her the rent, but Dorothy told her that she also had to pay a late fee. Defendant became angry and poked Dorothy in the face with her finger, swore at her, called her names, and, finally, hit her on the side of her head with a phone. The phone made contact with Dorothy's glasses, knocked them off of her face, and caused them to break. According to Dorothy, defendant then ran inside her apartment and slammed the door while Dorothy stood stunned outside the apartment. Dorothy stated that her injuries included a black eye, which was still

black on the day of the preliminary hearing, and a hurt neck.

Cynthia Hokr (Cynthia), Dorothy's daughter, testified that while she was at work on July 18, 2008, she received a phone call from Dorothy. Following the call, Cynthia went home to see Dorothy and called the police. Dorothy had a big bruise on her cheek, her nose was bleeding, and her face "looked terrible." Paramedics arrived at the house and checked Dorothy's blood pressure, which was very high. Dorothy refused to go to the hospital, and Cynthia remained with her throughout the evening. In the early morning hours of July 19, 2008, Cynthia convinced Dorothy to go to the emergency room because the pain under her cheek was getting worse. Cynthia took Dorothy to the hospital, and again noticed that Dorothy's blood pressure had risen higher.

Officer Struska testified that on July 18, 2008, he went to Dorothy's residence. Struska observed that Dorothy had injuries to her face, including a cut to the nose, bruising, and swelling underneath her eye. Struska further testified that on the same day he arrested defendant.

Kirk Diaz, a paramedic, testified that he was dispatched to Dorothy's residence on July 18, 2008. Diaz observed that Dorothy had bruising on the right side of her face and swelling around her eye. He also observed that she was alert and oriented, did not have any loss of consciousness, or any other complaints. He recalled that Dorothy refused transportation to the hospital.

Rosalee Kruse, a registered nurse, testified that she saw Dorothy in a hospital emergency room on the morning of July 19. Dorothy told Kruse that she had been hit in the face with a phone. Kruse observed that Dorothy had a black eye and a scratch on her neck. Kruse testified that Dorothy was diagnosed as suffering from a contusion and was discharged from the hospital after less than four hours.

After the trial court denied defendant's motion for a directed finding, defendant testified in her case-in-chief that on July 18, 2008, Dorothy came to her apartment to collect rent. After defendant gave Dorothy the rent, Dorothy crumpled it up, pointed a finger at her, and told her she was charging her a \$50 late fee. Defendant responded that she was not late with the rent and was not going to pay the late fee. Dorothy became angry, swore at defendant, and then hit defendant's lip with her fingernail. In defense, defendant tried to slap Dorothy's face, and knocked off her glasses. After the altercation, defendant slammed her door. Dorothy banged on the door, continued to call defendant names, and, a short while later, left the building.

During closing argument, defense counsel argued that the State failed to prove defendant guilty beyond a reasonable doubt because the charging instrument had a fatal defect. Defense counsel maintained that the count alleging that defendant committed aggravated battery of a senior citizen was defective

because it stated only that defendant caused bodily harm to Dorothy. The statute for aggravated battery of a senior citizen, however, required that defendant inflict *great* bodily harm upon the victim. Defense counsel maintained that no evidence presented at trial established that defendant caused great bodily harm to Dorothy. The State responded that the error in the charging instrument was a scrivener's error and that it proved that defendant inflicted great bodily harm upon Dorothy. The State added that the injuries Dorothy suffered were magnified due to her age.

Following argument, the trial court found defendant guilty of aggravated battery of a senior citizen and of aggravated battery. In doing so, the court found that the State proved every element of the charged offenses beyond a reasonable doubt.

On appeal, defendant first contests the sufficiency of the evidence. He specifically maintains that his conviction for aggravated battery of a senior citizen must be reversed because the State established only that Dorothy suffered bodily harm, but not *great* bodily harm.

Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court 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 to have been

proven beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

A person commits the offense of aggravated battery of a senior citizen when she, in committing battery, knowingly or intentionally causes great bodily harm or permanent disability or disfigurement to an individual of 60 years of age or older. 720 ILCS 5/12-4.6 (West 2008). Whether a defendant inflicted great bodily harm is a question for the trier of fact. *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993). The term "great bodily harm" is not susceptible of precise legal definition, but requires a more serious injury than "bodily harm," which includes, but is not limited to, temporary or permanent lacerations, bruises or abrasions. *Doran*, 256 Ill. App. 3d at 136, citing *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991).

We conclude that the evidence, viewed in the light most favorable to the State, establishes that defendant struck Dorothy without physical provocation upon learning that a late fee would be assessed. In the light most favorable to the State, the

evidence further establishes that the blow broke Dorothy's glasses and caused her an injured neck, a bloody nose, and a black eye that persisted at least until the preliminary hearing held four days later. Cynthia testified that Dorothy's face "looked terrible," and Dorothy was treated at the hospital for her injuries. We believe that this evidence was sufficient to allow a reasonable trier of fact to conclude that Dorothy's injuries were more serious than the lacerations or abrasions that characterize "bodily harm," and that the injuries signified "great bodily harm."

In reaching this conclusion, we find *In re J.A.*, 336 Ill. App. 3d 814 (2003), *In re T.G.*, 285 Ill. App. 3d 838 (1996), and *Figures*, 216 Ill. App. 3d at 398, relied on by defendant, distinguishable from the case at bar. In those cases, the victims suffered graze wounds or pierced clothing. See *J.A.*, 336 Ill. App. 3d at 817-19 (victim suffered one stab wound, but there was no evidence of bleeding or the extent of the injury); *T.G.*, 285 Ill. App. 3d at 846 (victim suffered stab wounds, but did not realize he had been stabbed until he opened his shirt and saw blood, and there was no other evidence of the extent of his injuries); *Figures*, 216 Ill. App. 3d at 402 (victim suffered a gunshot wound that pierced his shoe, but did not penetrate the skin). Here, by contrast, the evidence established that Dorothy sustained not a grazing or non-existent wound, but injuries more

serious, and more lasting, to her face, to the extent that she required hospital treatment. The question of whether a defendant inflicted great bodily harm is for the trier of fact to decide (*Doran*, 256 Ill. App. 3d 136), and, given the evidence supporting the court's finding, we will not now disturb it.

Defendant also argues that her conviction must be reversed because the State, in making its closing argument, improperly maintained that great bodily harm can be predicated on the victim's age. According to defendant, the prosecutor's use of Dorothy's age as an operative factor rendered the "great bodily harm" element of section 12-4.6 of the Criminal Code of 1961 (Code) (720 ILCS 5/12-4.6 (West 2008)), superfluous, and would effectively eliminate the offense of aggravated battery under section 12-4(b)(10) of the Code (720 ILCS 5/12-4(b)(10) (West 2008)). We disagree, for two reasons.

First, the trial court is presumed to know the law, and this presumption may only be rebutted when the record affirmatively shows otherwise. *People v. Kelley*, 304 Ill. App. 3d 628, 639 (1999). Here, the record shows that the trial court appropriately applied the law to the facts of this case. In making its finding, the court stated that it considered the testimony of the witnesses, the preliminary hearing transcript, exhibits, and the arguments of the lawyers. It further stated that the facts were sharply disputed, considered the age

difference between defendant and the victim, and did not believe defendant's version of the events. The court found that the State proved each element of the offenses beyond a reasonable doubt. Therefore, the record is devoid of any indication that the trial court failed to rely on the evidence presented at trial when it found that the victim suffered great bodily harm.

Second, we see no problem with the State's closing argument. The record shows that, during closing argument, the State indicated that whether great bodily harm exists can be dependent upon whom the victim is. In this case, the State argued that because of the age of the victim, the injuries were more severe than if the offense was committed against a younger person. The prosecutor stated that:

"[T]he People of the State of Illinois are asking that you do find that the injuries to Dorothy Hokr, an 81-year-old feeble looking woman is great bodily harm, not only because *** of the injuries that she suffered but the injuries were inflicted upon an 81-year old woman. And in using the totality of the circumstances, we're asking you to find that she used great bodily harm and to find the defendant guilty of all counts."

Statements made by a prosecutor must be considered in the context of the closing argument as a whole. *People v. Evans*, 209 Ill. 2d 194, 225 (2004). The above passage was presented as part

of an argument in which the prosecutor repeatedly asserted that, because of the age of the victim, her injuries were more severe than those that might have been suffered by a younger victim. When taken in context and in its entirety, it is clear that the prosecutor in the above passage was referring to Dorothy's age not to argue that age alone satisfies the "great bodily harm" requirement, but to show that Dorothy was more susceptible to great bodily harm than a younger person.

Defendant next contends that her conviction must be reversed because, in finding her guilty of aggravated battery of a senior citizen, the trial court relied on an erroneous charging instrument that omitted the essential element of *great* bodily harm. Under section 111-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-3 (West 2008)), an indictment will be deemed sufficient if it states the name of the offense, the statutory provision alleged to have been violated, the nature and elements of the offense charged, the date and county of the offense, and the name of the accused. As defendant acknowledges in his brief, when a defendant challenges a charging instrument after commencement of trial, she must show that the defect prejudiced her in the preparation of her defense. See *People v. Cuadrado*, 214 Ill. 2d 79, 87 (2005).

In this case, the count at issue states that the offense of aggravated battery of a senior citizen took place on July 18,

2008, in Cook County, where defendant, "in committing a battery, knowingly caused harm to Dorothy Hokr, an individual of 60 years of age or older by punching her in the right side of her face with an object in her hand in violation of" section 12-4.6(a) of the Code (720 ILCS 5/12-4.6(a) (West 2008)).

The indictment meets the requirements of section 111-3 of the Code, where it stated the name of the offense, the statutory provision, the elements of the offense charged, the date and county of the offense, and the name of the accused. Since the charging instrument did not hinder defendant's ability to prepare a proper defense, her claim fails.

Notwithstanding, defendant claims that because the indictment did not state the essential element of *great* bodily harm, the defective charging instrument misled the trial court as to the State's burden of proof, making it easier to deny her motion for a directed finding, and to secure a conviction for aggravated battery of a senior citizen. Again, however, the trial court is presumed to know and apply the law absent some contrary indication in the record. *Kelly*, 304 Ill. App. 3d at 639. The record here lacks any indication that the trial court was misled by the omission in the charging instrument.

Defendant's defense revolved around the extent of Dorothy's injuries, and the court never indicated that the State had to show only bodily harm, rather than great bodily harm, to convict

defendant of aggravated battery of a senior citizen. Defense counsel even brought the error in the charging instrument to the court's attention during closing argument. Because any defect in the charging instrument did not hinder defendant's ability to prepare a proper defense, and because the trial court was not misled by the error in the charging instrument, defendant cannot show the prejudice necessary to prevail on her challenge to the charging instrument.

Defendant next contends that she received ineffective assistance of trial counsel, because counsel failed to object to Cynthia's inadmissible testimony regarding Dorothy's blood pressure, failed to alert the trial court to the critical defect in the charging instrument during her motion for a directed finding, and failed to object to the State's improper argument during rebuttal.

Under the test set forth in *Strickland v. Washington*, a defendant arguing ineffective assistance of counsel must demonstrate both that her counsel's representation fell below an objective standard of reasonableness and that she was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 377 (2000)), citing *Strickland*, 466 U.S. at 697.

In this case, defendant cannot satisfy the prejudice prong for any of her claims of ineffective assistance. First, defendant alleges Cynthia's testimony regarding Dorothy's high blood pressure was inadmissible hearsay and thus counsel's failure to object to that testimony established ineffective assistance. Even if defendant is correct that Cynthia's testimony regarding Dorothy's blood pressure was hearsay, the trial court is presumed to recognize and disregard improper arguments presented to it, and consider only competent evidence in ruling on the merits. *Kelley*, 304 Ill. App. 3d at 639. Furthermore, reversal is not required if the admission of the hearsay evidence was harmless beyond a reasonable doubt. *People v. Jura*, 352 Ill. App. 3d 1080, 1089 (2004). Here, the admission of the alleged hearsay statements regarding Dorothy's blood pressure were harmless because the injuries to Dorothy's face established that she suffered great bodily harm.

Second, defendant asserts that trial counsel provided ineffective assistance by failing to alert the trial court to the erroneous charging instrument when counsel requested a directed finding. As detailed above, however, defendant was not prejudiced by this alleged error because the indictment provided sufficient particularity to enable defendant to prepare a proper defense, and the trial court was not misled by the error.

Third, defendant maintains that trial counsel was

ineffective for failing to object to the State's closing argument, which referenced Dorothy's age in arguing for a finding of great bodily harm. We reiterate that the State's closing argument did not improperly suggest that Dorothy's age was the basis for a finding of great bodily harm, and, in any event, that any impropriety did not affect the trial court's consideration of the case.

Defendant finally maintains, and the State concedes, that this court should vacate her conviction for aggravated battery because it violates the one-act, one-crime rule. The one-act, one-crime doctrine prohibits multiple convictions when the convictions are carved from precisely the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). If the same physical act forms the basis for two separate offenses charged, a defendant could be prosecuted for each offense, but only one conviction and sentence may be imposed. *People v. Segara*, 126 Ill. 2d 70, 77 (1988). Where guilty verdicts are obtained for multiple counts arising from the same act, a sentence should be imposed on the most serious offense. *People v. Garcia*, 179 Ill. 2d 55, 71 (1997).

Here, the trial court found defendant guilty of both aggravated battery of a senior citizen and aggravated battery based on defendant's single strike to Dorothy's head. At sentencing, the trial court stated that defendant was sentenced

to three years' imprisonment for aggravated battery of a senior citizen. The mittimus, however, reflects that the trial court imposed sentences for both aggravated battery of a senior citizen and aggravated battery. Because the convictions are based on the same physical act, the two convictions cannot stand under the one-act, one-crime rule. We thus vacate defendant's conviction for aggravated battery. See *People v. Lee*, 303 Ill. App. 3d 356, 368 (1999) (vacating defendant's conviction for aggravated battery because it is a lesser included offense of aggravated battery of a senior citizen, for which defendant was also convicted).

Accordingly, we vacate the judgment entered on defendant's conviction of aggravated battery, and affirm the judgment in all other respects. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we also order the clerk of the court to correct the mittimus to reflect a single conviction for aggravated battery of a senior citizen in violation of section 12-4.6 of the Code (720 ILCS 5/12-4.6 (West 2008)).

Affirmed in part; vacated in part; mittimus corrected.