

2011 IL App (2d) 110153-U
No. 2-11-0153
Order filed December 15, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CM-982
)	
RAY C. SPICER,)	Honorable
)	Melissa S. Barnhart,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of battery: the trial court was entitled to reject defendant's self-serving (though uncontradicted) testimony, to credit the victim's testimony, and to conclude that defendant hit the victim with a door while knowing that she was behind it and without any need to protect himself.

¶ 1 Defendant, Ray C. Spicer, appeals his conviction of battery (720 ILCS 5/12-3(a)(1) (West 2010)); he asserts that the evidence was insufficient. He argues that the testimony tends to show that the "action in question" was not done knowingly and that the testimony of the State's primary witness, the victim, was inherently incredible given the layout of the area in which the incident

occurred. We disagree with both arguments and, consequently, hold that the evidence was sufficient. We therefore affirm.

¶ 2

I. BACKGROUND

¶ 3 Defendant was charged by complaint with the battery (causation of bodily harm) of Kathryn L. Hubbard. According to Hubbard's complaint, defendant "opened his door hitting Hubbard and then grabbing Hubbard's shoulder and pushing her down the stairs with his hand." Defendant had a bench trial on November 23, 2010.

¶ 4 Hubbard testified that she was a humane investigator for the TAILS Humane Society of De Kalb County. The society had received a call about possible neglect of a cat at defendant's mobile home. On Tuesday, July 11, 2010, she had left a "notice of an apparent violation of the Humane Care of Animals Act" on defendant's door. At that time, she took a series of photographs of the area around defendant's home as part of her investigation of the neglect.

¶ 5 On July 14, 2010, she returned to see if the notice had been removed. When Hubbard started to testify about her return trip, the State asked Hubbard to describe the physical setting of the incident. The State, over defendant's objection, introduced the photographs that she had taken on July 11, 2010. Hubbard, using the photographs, described the setting. The door of the mobile home was up four steps from ground level, with a small metal stoop at the door level.

¶ 6 As Hubbard turned onto defendant's street on July 14, 2010, she could see that the notice she had placed on defendant's door was no longer there. She parked her car on the street near his driveway. She took her clipboard from her car, went to defendant's door, and knocked. Defendant answered, and she began discussing the allegations of animal neglect. Defendant became angry and said, " 'Get the fuck off my property.' " He closed the door in Hubbard's face.

¶ 7 Hubbard returned to her car to get brochures on cat care that she was going to leave for defendant, and then returned to the door of defendant's home. She was attaching the brochure to the door when defendant opened it "very forcefully," knocking Hubbard backward. The opening of the door knocked Hubbard back into the handrail at the hinge side of the door.

¶ 8 Defendant came out, grabbed Hubbard by the shoulders, turned her around, and pushed her down the steps. She fell into the grass at the bottom of the stairs, landing on her right knee and right hand. She was holding her clipboard in her left hand. She left the property and used her cell phone to call 911. As a result of "the incident," Hubbard had pain and swelling in her left big toe, which began to swell and throb while she remained at the scene. It continued to throb for some time and eventually turned purple.

¶ 9 Brad Caldwell of the Sycamore police testified that he came to defendant's address as a result of Hubbard's 911 call. He spoke to defendant, who said that, when he opened the door the second time, he was going outside to call the police. The door struck Hubbard. Caldwell arrested defendant for battery. Defendant asked to call a lawyer, saying that Hubbard's description of the incident was incorrect. He also said that, when he saw Hubbard fall, his first thought was that he hoped that she was not hurt.

¶ 10 Caldwell described the door of the mobile home as "not a normal house door where it's real thick. It's got two thin pieces of metal on the other side and a foam pad almost in the middle for insulation, so it's a lot lighter than a normal exterior residential door is for a house." He described the stoop as "maybe three feet wide by four feet deep from the front of the stair to [the] residence." There was a small window in the door, but Caldwell did not remember if it was possible to see through it. He agreed that, in his report, he had noted that defendant had told him that he had not

seen Hubbard at the door and that, when defendant had tried to open the door, Hubbard had pushed back.

¶ 11 The State rested after Caldwell's testimony, and defendant moved for a directed finding, arguing that nothing showed any intentional act of his. The court denied the motion.

¶ 12 Defendant testified as the only defense witness. He said that the window in his door was not clear enough to see through. He never looked out the window before opening his door. When the door was open, there was only about six inches of clearance between its outer edge and the first step down from the stoop.

¶ 13 The first time Hubbard came to his door, he knew that she was there because she knocked. They spoke; defendant told her, " 'Get the F off my property,' " and closed the door. He watched from a hallway window as she walked to her car and he then went to his bedroom and started reading. He could see the bumper of her car out of his bedroom window. When he noticed that the car was still there after four minutes, he decided to call 911 to get the police "to explain trespassing laws." He picked up his cell phone, and, because the signal was unreliable indoors, he started to take it outside to make the call.

¶ 14 He opened the door and started to step down. He saw a hand on the door—Hubbard's. Hubbard pushed back on the door. Defendant was pushed part of the way back through the door, but he continued pushing. Hubbard also continued pushing. Next:

"The door was between us and then she popped—or it happened one more time, she pushed back and I pushed back and then she popped out behind the door and there's no room for her to stand there. She went down the stairs and she didn't have a clipboard in her hand because she grabbed the handrail and went down both hands on the handrail, stumbled down the

stairs and then stumbled across the driveway and rolled over backwards in the yard. I never got out of my house because she kept pushing the door open—or closed.”

¶ 15 Defense counsel asked defendant if he made a decision to push the door, and defendant said, “It was a reaction because I was—my toes were still on the threshold [and] because I didn’t have shoes on.” Asked whether it was possible to open the door without much force, he said that that was what he tried to do.

¶ 16 Hubbard testified in rebuttal that, because she had her clipboard in her hand, she could not push on the door; indeed, she had never pushed on the door.

¶ 17 Defense counsel argued that there was no way for defendant to know, and no reason for him to expect, that Hubbard was behind his door. The court stated:

“Even if you assume that he didn’t know she was there the first time, after she, according to his words, shoves the door, why does he shove it back? Close the door, call the police and say ‘I’ve got a crazy lady on my porch who is shoving my door’, but his own argument sinks him or his own testimony sinks him.”

Defense counsel asked the court to consider defendant’s testimony that his toes were in the way of the door. The court said, “Three times so no.”

¶ 18 The court the same day sentenced defendant to 12 months’ supervision, 30 hours of community service, and an amount of restitution to be decided later.

¶ 19 Defendant moved to reconsider the finding of guilt. He argued that, if the court was going to decide that defendant could be convicted out of his own testimony, it could not arbitrarily discount defendant’s statement that his toe was in the way of the door, so that his pushing back on the door was an essentially reflexive response. After a January 7, 2011, hearing on the matter, the court denied the motion, saying that defendant had contradicted himself and that the resulting lack

of credibility counted highly in its decision. On January 18, 2011, the court ruled that it would award no restitution. On February 4, 2011, defendant filed his notice of appeal.

¶ 20

II. ANALYSIS

¶ 21 On appeal, defendant makes two arguments. First, he argues that the testimony tends to show that the “action in question” was not done knowingly: he asserts it was uncontroverted that there was no way to see through the door and that the ensuing pushing match was the result of defendant’s reflexive protection of his toes. He also claims that the court improperly ignored his “uncontroverted” testimony on this point. He says that the “court in its ruling assumed that Spicer knew that Hubbard was behind the door and *** had time to decide whether or not he was going to keep shoving the door.” Second, he argues that Hubbard’s testimony was inherently incredible based on the layout of the stoop and stairs. Defendant implies a link between the two arguments. Because Hubbard’s testimony was physically implausible, one should not accept it; the alternative is to accept defendant’s testimony, by which the contact with Hubbard was unintentional.

¶ 22 The form of battery at issue is the following: “A person commits battery if he or she knowingly without legal justification by any means *** causes bodily harm to an individual.” 720 ILCS 5/12-3(a)(1) (West 2010). When we review the sufficiency of the evidence in a criminal case, “our inquiry is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.” *People v. Martin*, 2011 IL 109102 ¶ 15. “We view the evidence in the light most favorable to the prosecution, and allow all reasonable inferences from that evidence to be drawn in favor of the prosecution.” *Martin*, 2011 IL 109102 ¶ 15.

¶ 23 We start with defendant’s claim that the State did not adequately prove that defendant acted knowingly. He asserts that the “court in its ruling assumed that Spicer knew that Hubbard was behind the door.” That is an incorrect statement of the court’s reasoning. Defense counsel made

the same argument to the trial court. It responded, “Even if you assume that he didn’t know she was there the first time, after she, according to his words, shoves the door, why does he shove it back?” When defense counsel argued that defendant shoved back because his toes were stuck in the door, the court said, “Three times [shoving back,] so no.” In other words, the court concluded that the act constituting battery was defendant’s shoving back *after* he opened the door and discovered that Hubbard was there, and it further concluded that defendant’s testimony that he was protecting his toes was unavailing.

¶ 24 We reject defendant’s assertion that the court was required to accept defendant’s testimony on these points, even if the testimony was uncontroverted. A trier of fact may always discount a defendant’s self-serving testimony. See, *e.g.*, *People v. Johnston*, 267 Ill. App. 3d 526, 532-33 (1994). Here, it appears that the court gave at least some weight to defendant’s testimony that he could not see out the door. However, it was nevertheless free to reject his self-serving claim that he had no choice but to push back to spare his toes.

¶ 25 We turn now to defendant’s claim that Hubbard’s testimony was inherently incredible. As we have suggested, the court’s statements imply that it relied at least as much on defendant’s own statements as on Hubbard’s. However, the evidence in the record reveals no fatal flaws in Hubbard’s testimony, so the court would not have erred in relying on it. Her testimony and Caldwell’s showed that the incident’s setting was a small metal stoop with railings at the sides and steps at the front. The outward-opening door, according to defendant, swept across all but six inches of the stoop. Defendant argues that, if he had opened the door so wide that it gave him space to get out, the door would have pushed Hubbard off the stoop and down the stairs. He asserts that it thus would have been impossible for him to have grabbed her and shoved her down the stairs. That assertion does not follow from the facts. Hubbard testified that the opening of the door pushed her

toward the handrail. Because a door swings in an arc, Hubbard's description of what happened is more physically plausible than defendant's. To the extent that the court relied on Hubbard's testimony, it was not wrong to do so.

¶ 26

III. CONCLUSION

¶ 27 Neither of the arguments that defendant has presented for the insufficiency of the evidence is persuasive. For the reasons stated, we affirm defendant's conviction.

¶ 28 Affirmed.