

2013 IL App (2d) 111195-U
No. 2-11-1195
Order filed March 19, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE |) | Appeal from the Circuit Court |
| OF ILLINOIS, |) | of Stephenson County. |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 08-CF-185 |
| |) | |
| NICHELLE M. FANE, |) | Honorable |
| |) | Michael P. Bald, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of criminal damage to property: the jury was entitled to find that defendant intended to swing a tire iron at a person but missed and hit the victim's car and thus was responsible for the damage per the doctrine of transferred intent.
- ¶ 2 Following a jury trial, defendant, Nichelle M. Fane, was convicted of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and criminal damage to property (720 ILCS 5/21-1(1)(a),(2) (West 2008)). She appeals, contending that she was not proved guilty beyond a reasonable doubt of criminal damage to property. We affirm.

¶ 3 On August 8, 2008, Leslie Parker went to visit her friend Aretha Thompson on her way home from work. When she got to Thompson's house, she saw defendant banging on the door. Defendant, who was armed with a tire iron, introduced herself and explained that she had been seeing a man for 11 years and was tired of Thompson "fucking up my man's truck." Defendant called for Thompson to come outside.

¶ 4 According to Thompson, when she opened the door, defendant came inside and hit her with the tire iron. Defendant attempted to hit Thompson a second time, but missed. The two began fist fighting and moved outside. The fight eventually moved to the vicinity of Parker's car, with defendant still holding the tire iron. The combatants were pulling each other's hair.

¶ 5 Parker described what happened next as follows:

"Well, first they were at the front of the car, and they were fighting, and they bumped it and, you know, I just—I didn't say nothing. You know. They bumped it again, but as they were holding each other, the tire iron went up, and then as it was getting ready to come down, I noticed that it was going to hit my car and it did, and I still didn't do anything. So it hit the car, and then it slid down the car, and that's when I said, 'I better just get up,' and I went over there, and I grabbed the tire iron from her, you know, and I just at that moment held it up."

Parker held the tire iron until the police arrived. On cross-examination, Parker testified that defendant swung the tire iron "to hit" Thompson as "part of the fight." Parker testified that repairing the damage to her car cost between \$410 and \$420.

¶ 6 The jury found defendant guilty of home invasion and criminal damage to property. The trial court sentenced her to seven years' imprisonment for home invasion and a concurrent one-year term for criminal damage to property.

¶ 7 Defendant timely appeals. Defendant contends that she was not proved guilty beyond a reasonable doubt of criminal damage to property because there was no evidence that she intended to damage Parker's car. Defendant contends that the evidence shows that she had no disagreement with Parker and that Parker's description of the incident shows that the tire iron incidentally struck her car as defendant was fighting with Thompson.

¶ 8 Where a defendant challenges on appeal the sufficiency of the evidence, the relevant question is whether, after viewing all the evidence in a light most favorable to the prosecution, any rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). We are not permitted to substitute our judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 9 Defendant was charged with criminal damage to property in that she "knowingly damaged property of another without her consent." A person acts knowingly when he or she is consciously aware that a particular result is practically certain to be caused by his or her conduct. 720 ILCS 5/4-5(b) (West 2010).

¶ 10 There is little question that defendant did not intend to damage Parker's car. Defendant wielded the tire iron in order to engage in a fight with Thompson. Thus, the parties agree that the critical issue is whether the doctrine of transferred intent applies here. Under that doctrine, one who does an unlawful act is liable for its natural and probable consequences, even if those consequences were not specifically intended. *People v. Dorn*, 378 Ill. App. 3d 693, 698-99 (2008). In *People v. Hauschild*, 364 Ill. App. 3d 202 (2006), *rev'd in part on other grounds*, 226 Ill. 2d 63 (2007), the defendant and another man entered the victim's home. A struggle ensued during which the

defendant and the other man each discharged a handgun. One of the shots struck the victim and the other wounded his dog. This court affirmed the defendant's conviction of criminal damage to the dog. We found that the defendant had reason to know that there was a dog in the room and that a gunshot might injure it. *Id.* at 220.

¶ 11 Similarly, in *In re Keith C.*, 378 Ill. App. 3d 252, 261 (2007), the court held that it was practically certain that throwing a brick at an occupied car would cause great bodily harm to one or more of the occupants. Here, it was practically certain that wielding a tire iron in the chaotic circumstances of the fight was practically certain to injure another person or damage property such as Parker's nearby car.

¶ 12 Defendant contends that the evidence shows that she did not consciously use the tire iron to damage the car. She argues that she and Thompson were engaged in hand-to-hand combat, with each pulling the other's hair, and that she was not aware that she had the weapon in her hand at that point. She notes that Parker described the movement of the tire iron as if defendant were passively holding it as it damaged the car:

“They bumped it [the car] again, but as they were holding each other, the tire iron went up, and then as it was getting ready to come down, I noticed that it was going to hit my car and it did ***. So it hit the car, and then it slid down the car.”

This proves, defendant contends, that she did not consciously swing the tire iron. She insists that she was so focused on her encounter with Thompson that she forgot about the tire iron and that it accidentally struck Parker's car. Defendant attempts to distinguish *Hauschild* on the ground that defendant's conduct here was not willful.

¶ 13 We reject defendant's argument. The jury could reasonably find that defendant intended to swing the weapon at Thompson but missed and hit Parker's car. The evidence showed that defendant went to Thompson's house to fight Thompson and brought a weapon for that purpose. She actually swung the weapon at Thompson twice (hitting her once), and the fight continued, moving from the house to the vicinity of Parker's car. Parker testified on cross-examination that it appeared that defendant swung the tire iron as part of the fight.

¶ 14 To accept defendant's position, the jury would have to have found that defendant, having gone to Thompson's house to fight and brought a weapon for the purpose, used the weapon twice, but then got so distracted by the fight that she forgot about the heavy weapon in her hand and continued fighting Thompson one-handed while subconsciously swinging the weapon around and accidentally striking Parker's car. The jury was not required to draw such an unreasonable inference.

¶ 15 The evidence was sufficient to prove that defendant swung the tire iron in the course of her fight with Thompson, but struck Parker's car instead of Thompson. Under the doctrine of transferred intent, she was responsible for the damage. Thus, we affirm the conviction of criminal damage to property.

¶ 16 Affirmed.