

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).

2013 IL App (4th) 110864-U

NO. 4-11-0864

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 20, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
KEON LIPSCOMB,	)	No. 10CF330
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of aggravated battery.

¶ 2 In June 2011, the trial court convicted defendant, Keon Lipscomb, of aggravated battery, a Class 2 felony (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)). In August 2011, the court sentenced defendant to six years in prison, with three years of mandatory supervised release to run consecutive to his sentence of natural life without parole in Cook County case No. 01-CR-445001.

¶ 3 Defendant appeals, arguing the State did not prove him guilty beyond a reasonable doubt of aggravated battery. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2010, the State charged defendant with aggravated battery, a Class 2

felony (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)), alleging that defendant "knowingly made physical contact of an insulting or provoking nature" with a correctional officer when he struck the correctional officer in the head on August 6, 2010. A bench trial commenced in June 2011.

¶ 6 Officer Greg Unthank testified he was a correctional officer at Pontiac Correctional Center (Pontiac). On August 6, 2010, Unthank was the gallery officer in the healthcare unit at Pontiac. A nurse in the infirmary instructed Unthank to take defendant to urgent care so he could have a feeding tube placed in him. Unthank brought Officer Ronald Krominga and Lieutenant Cromie with him to defendant's cell because Unthank had "prior incidents" with defendant and wanted to be prepared. The officers cuffed defendant through a "cuffing hatch," then entered his cell and instructed him to go to his knees for leg irons, but defendant "became combative." Unthank swept defendant's feet from underneath him and "put him on the floor facedown" while Krominga put on leg restraints. Unthank took defendant down the hall to urgent care but was instructed by a nurse they had to wait because another inmate was in the room. Unthank "turned around to go back out the door, and [defendant] lunged backwards with his head and tried to slam it into [Unthank's] face; but [Unthank] got [his] head down, and [defendant] got [him] on top of the head." Unthank returned defendant to his cell after the incident.

¶ 7 Krominga testified he was instructed to assist Unthank in escorting defendant to urgent care. When defendant was instructed to get on his knees so the officers could put leg irons on him, defendant "became agitated, started resisting, and he had to be held down." Unthank held defendant down and Krominga put the leg irons on him. The nurses instructed the officers to wait with defendant in the hallway until they were finished with another inmate. As

the officers "escorted [defendant] back out the doorway to the hallway \*\*\* [he] proceeded to jerk his head backwards and head[-]butt Officer Unthank."

¶ 8 Defendant testified he was placed in the healthcare unit because he was on a hunger strike. Defendant had not eaten on the day of the incident. When the officers came to his cell, defendant was "weak" and "tired." Unthank was "upset" with defendant because they had "been having words all while he was back there [sic]." Defendant stated he was never given orders to have the leg restraints put on and he did not resist the officers. Defendant explained the officers were "trying to beat [him] up." Defendant said Unthank took him to the ground "forcefully and aggressively and [Unthank] was beating [him] up in the process" because he refused to receive medical treatment. The officers took defendant to urgent care, but they did not enter the room because the nurse was with another patient. Defendant told the officers he needed to sit down because he was about to fall. Defendant became dizzy and fell backward. He did not throw his body backward or jump off the ground. Defendant did not know he hit Unthank when he fell.

¶ 9 On this evidence, the trial court convicted defendant of aggravated battery. The court sentenced defendant as stated.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the State did not prove him guilty beyond a reasonable doubt of aggravated battery. We disagree and affirm.

¶ 13 When reviewing a challenge to the sufficiency of the evidence, a reviewing court considers " 'whether, after viewing the evidence in the light most favorable to the prosecution,

any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Cox*, 195 Ill. 2d 378, 387, 748 N.E.2d 166, 172 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). A conviction will only be reversed if "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 14 Defendant's sole contention on appeal is that his testimony was more credible than Unthank and Krominga's testimony. Defendant does not deny he struck Unthank. He argues, rather, that his head struck Unthank's head after he fainted due to his weakened state, which was the result of his hunger strike. Defendant characterizes the officers' testimony as "improbable" and argues it is more "plausible" defendant accidentally struck Unthank as he fell.

¶ 15 The trier of fact has the responsibility of determining witness credibility and weighing the testimony, as well as drawing reasonable inferences from the evidence. *People v. Johnson*, 353 Ill. App. 3d 954, 956, 819 N.E.2d 1233, 1235 (2004). We will not substitute our judgment for that of the fact finder. *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 16 Unthank and Krominga both testified defendant was "combative" when they attempted to put leg irons on him. Unthank testified defendant "lunged backward" and tried to slam his head into Unthank's head. Krominga testified defendant jerked his head backward and head-butted Unthank. The trial court noted Krominga's testimony was "identical to Officer Unthank's but for what transpired immediately after \*\*\* defendant struck Officer Unthank's head." The court found both officers testified "pretty candidly" and they "told exactly what

happened." The court also found defendant's testimony of falling backward due to his weakened state was not "a credible version of what, in fact, happened here." We defer to the court's credibility determinations and conclude the record supports the court's finding that the State proved defendant guilty beyond a reasonable doubt of aggravated battery.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.