

No. 1-12-2015

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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. 11 CR 9919
)	
JANUSZ KOPYCINSKI,)	Honorable
)	Thomas V. Gainer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to convict defendant of aggravated battery. DNA analysis fee is vacated.
- ¶ 2 Following a bench trial, defendant Janusz Kopycinski was convicted of aggravated battery and sentenced to three years' imprisonment with fines and fees. On appeal, defendant contends that his conviction should be reversed because his conduct of flailing his arms was a natural reaction rather than an intentional or knowing act. Defendant also contends, and the State agrees, that his DNA analysis fee must be vacated.

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¶ 3 Defendant was charged with aggravated battery and resisting or obstructing a peace officer, both allegedly committed May 13, 2011. The aggravated battery charge alleged that he struck police officer Eugenio Tirado "about the body, which pushed Officer Tirado into a moving CTA bus" and thereby "caused bodily harm."

¶ 4 At trial, Sherann Sanders, Susan Littlefield, and Rebecca Tomlinson testified that they are friends and were standing and conversing on LaSalle Street outside Chicago City Hall at about 4:30 p.m. on the day in question. It was the last day in office for the mayor, so there was both a crowd of onlookers and several uniformed police officers in the area. Defendant spat over Sanders' shoulder and onto the pavement around Littlefield's feet. When Sanders asked him why he did that, he responded to the effect that there are no black people in Russia. Sanders and Littlefield made brief comments in reply and suggested to Tomlinson that she inform the officers of defendant's actions; she did. While Sanders then ignored defendant, Littlefield saw an officer approach defendant and ask him to leave. He did not, but instead cursed at the officer, "pushed at the officer" (by Littlefield's account) or "started flailing his arms" (as Tomlinson described it), and fled.

¶ 5 Tomlinson imitated defendant's flailing, described for the record as "the witness took her right arm from the front of her body extending back to the back of her body in an elbow – her elbow bent at the side," and then testified that the officer "backed up just when he flailed his arm so he did not hit him that I could see." When defendant fled, he was pursued by several officers. One officer caught up to defendant and grabbed him by his backpack, but defendant "tried to elbow [the officer] to get away from him" and then "broke away, and that's when they went into the bus." Just before the bus hit the officer, Tomlinson saw defendant "push him or flail his arms so that he would fall into it" and described his actions as "trying to push [the officer] back off of him" just before the bus struck. When Tomlinson was asked "[w]hen you saw the defendant

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elbow the officer, did it cause him to lose his balance?" she replied "Yes" without further explanation. Tomlinson testified that defendant ran into the street and "then made a quick turn. He got back to the sidewalk and that's when the police officer was in the street. The bus came, and that's when I kind of closed my eyes [be]cause I knew the bus was going to hit him."

Tomlinson heard the bus impact the officer, then saw the officer on the ground. The officer stood up and apprehended defendant. On cross-examination, Tomlinson denied that the officer "lost his grip on the backpack and got hit by the bus," testifying instead that defendant "was flailing his arm back."

¶ 6 Officer Eugenio Tirado testified that, after Tomlinson spoke to him regarding defendant, he approached defendant and told him to stop spitting. Defendant spat towards, but not on, Officer Tirado. Officer Tirado asked him to leave, and he started to walk away. However, a sergeant told Officer Tirado to "make out a contact card on him," so he asked defendant for identification. Defendant yelled "no." Officer Tirado's partner, Officer Thomas Weigand, reached for defendant's wallet in his back pocket, but defendant "swung his hand around," cursed, and fled. Officer Tirado caught up to him and grabbed him by his backpack, but defendant "did a motion like to shake me off." Officer Tirado's imitation of defendant's motion was described as "the officer took his right hand, put it in the air, reached back, and jerked his elbow behind him." "With that motion, it threw me into the bus" passing by on LaSalle Street at that moment, Officer Tirado testified. He "bounced off" and fell down but still had a grip of defendant's backpack, so "as I was falling, he like swung, like to shake me off of him." However, as Officer Tirado was still holding his backpack, "that kind of made him fall [and] lose his balance." Defendant "swung at" Officer Tirado as he was falling, striking him in the chest. Officer Tirado had an "AC separation, fracture, *** bruising, and my rotator cuff," and explained that "AC separation" referred to his left shoulder, onto which he fell after hitting the bus. He was

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treated at a hospital without surgery, was off-work for about five months, and still had pain and discomfort as of trial. On cross-examination, Officer Tirado testified that he viewed a video from the bus that struck him, but did not see defendant being struck by the same bus.

¶ 7 Officer Thomas Weigand testified that he saw defendant spitting before Tomlinson reported this to Officers Weigand and Tirado. When Officer Tirado asked defendant for identification, Officer Weigand felt his back pocket. Defendant fled, and when "Officer Tirado caught up to him, he swung him into the bus." Officer Weigand's imitation of this action was described as "the officer just took his right arm, raised it, and made a backward motion with his arm in the air towards the back wall." After Officer Tirado and defendant both impacted the bus, "they both landed on the sidewalk" and Officer Weigand and other officers apprehended the struggling defendant, who was "rolling around on the ground" to avoid being handcuffed.

¶ 8 The aforementioned video from the bus was shown at trial. Pursuant to this court's order, this video was made part of the record on appeal.

¶ 9 Following closing arguments, the court found defendant guilty on both counts. In describing the evidence, the court found that "the video, *** although it does show that the defendant also made contact with the bus, clearly shows the defendant trying to get away from the grasp that Tirado had him in, which movement then causes Tirado to hit the bus. I think the defendant hit the bus first, actually ran into the side of the bus and that's when he swung around to get Tirado loose of him."

¶ 10 In his post-trial motion, defendant argued that he did not intentionally batter Officer Tirado but "both the victim and defendant fell into the bus due to the impetus of the chase." The State responded that "it was clear in the video that in fact there was an overt action, and that being that the defendant turned and pushed his elbow into Officer Tirado, causing him to strike the bus." Defendant replied that Officer Tirado "said he was shaken off [and] then he fell into

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the bus." The court denied the motion, finding that the testimony of various witnesses "was that as the officer attempted to grab a hold of [defendant,] [defendant] turned and moved his elbow in such a way as to hit the officer, which caused the officer to fall into the bus. The court also found that the video bore out the testimony and concluded that "that motion of shaking off and using his elbow is the conduct that constituted the battery."

¶ 11 Following arguments in aggravation and mitigation, the court sentenced defendant to three years' imprisonment with fines and fees. Defendant's motion to reconsider his sentence was denied, and this appeal timely followed.

¶ 12 On appeal, defendant's primary contention is that his conviction for aggravated battery should be reversed because his conduct of flailing his arms was a natural reaction rather than an intentional or knowing act.

¶ 13 The offense of aggravated battery includes battery of a police officer. 720 ILCS 5/12-4(b)(18) (West 2010). Battery is committed when a person "intentionally or knowingly without legal justification and by any means" either (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a) (West 2010). A person acts intentionally if the "conscious objective or purpose is to accomplish that result or engage in that conduct." 720 ILCS 5/4-4 (West 2010). A person acts knowingly if "he is consciously aware that such result is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2010). Whether a defendant acted intentionally or knowingly with respect to bodily harm due to his actions may be proven by circumstantial evidence as well as direct evidence of intent. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 44. It is not necessary for the State to prove that a defendant intended the specific consequences of his wrongful act, because a defendant is responsible for unintended consequences of his wrongful act where they are "a natural and probable consequence" of that act. *Id.*

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¶ 14 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. *People v. Baskerville*, 2012 IL 111056, ¶ 31. On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Id.*, ¶ 64.

¶ 15 Here, Tomlinson and Officers Tirado and Weigand testified that defendant made a backwards movement with his arm – which they all attributed to an effort to break Officer Tirado's grip on his backpack – causing the officer to fall into the street when the bus was passing. Importantly, Tomlinson and Officer Tirado testified that defendant had flailed or swung his arms before the particular act at issue in his efforts to evade apprehension. The trial court found, and we agree, that the bus video corroborated this testimony. Thus, the evidence before us on review, taken in the light most favorable to the State as we must, supports a reasonable conclusion that defendant made a conscious, rather than inadvertent, movement with the intent or purpose of breaking Officer Tirado's grip. This case is similar to *People v. Phillips*, 392 Ill. App. 3d 243, 257-59 (2009), where we also rejected a defendant's contention that his striking of an officer (there, a sheriff's officer) while flailing his arms was inadvertent rather than intentional or knowing. We inferred the intent of the *Phillips* defendant from circumstantial evidence,

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including his expression of anger shortly before the blow. *Id.*

¶ 16 We note that the State was not required to prove that defendant specifically intended that Officer Tirado fall into the side of the bus, and we need not expound on the natural and probable consequences of struggling vigorously in or next to a downtown Chicago street during rush-hour. We conclude that the evidence was sufficient to convict defendant of aggravated battery.

¶ 17 The parties agree that defendant's DNA analysis fee must be vacated. We also agree. He was assessed a \$200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2010)) though he provided a DNA sample in a prior case. Our supreme court has determined that the DNA analysis fee may not be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 18 Accordingly, we vacate defendant's DNA analysis fee and otherwise affirm the judgment of the circuit court.

¶ 19 Affirmed in part and vacated in part.