FOURTH DIVISION
May 7, 2015

No. 1-13-0799

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. 12 MC 4004272
	)	
TAMIKA P. OWENS,	)	Honorable
	)	Ramon Ocasio, III,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the judgment of the circuit court where the State proved defendant guilty of battery beyond a reasonable doubt, and there was no material variance between the complaint and the evidence presented at trial.

¶ 2 Following a bench trial, defendant Tamika Owens was convicted of battery and sentenced to 12 months of supervision. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt all of the material facts of the offense as alleged in the complaint, particularly that she caused bodily harm to the victim by punching her in the head and face. We affirm.

¶ 3 Defendant and codefendants Cornelius Humphries and Lisa Simmons, who were tried jointly with defendant but are not parties to this appeal, were charged with one count of battery for beating Vanessa Beltran at her Cicero apartment on July 15, 2012. The complaint specifically alleged that defendant committed the offense of battery in that she:

> "without legal justification, knowingly and intentionally caused bodily harm to Vanessa Beltran in that she through multiple punches [with] closed fist striking Vanessa Beltran about the head and face."

¶ 4 At trial, Vanessa Beltran, who had pled guilty to battery in 2010, testified that on July 15, 2012, she resided in a second floor apartment located at 5424 West 26th Street in Cicero. Beltran was sitting on her porch at about midnight when she saw defendant, Humphries, Simmons, and two unidentified women downstairs in the driveway near a truck which they arrived in. Defendant and Simmons began yelling at Beltran about a prior fight she had lost. Beltran laughed, and then the five people in the driveway ran up the stairs. Simmons was the first person up the stairs and started hitting Beltran in the face with her fists. While Beltran fought back, Humphries grabbed her by the neck and held her against a wall. The other three women, including defendant, "jump[ed]" Beltran. Simmons and an unidentified woman started pulling her hair, and defendant tried to kick Beltran in the face and stomach. Beltran's fiancé, Michael LaFaire, who was at the scene, grabbed Humphries and pulled him off of Beltran, but the other offenders, including defendant, continued striking her until the police arrived. On re-direct examination, Beltran clarified that defendant kicked her and tried to bring her head down in order to "knee" her. As a result of the attack, Beltran suffered bruises, scratches, and a bloody lip.

¶ 5 Michael LaFaire, who was standing on the balcony of the residence in question with Beltran, testified similarly to Beltran. He also testified that four women, including defendant, were hitting, kicking, and punching Beltran "wherever they could," including the head, face, stomach, and legs. In particular, LaFaire testified that Simmons and defendant were kicking and punching Beltran "in the back of the head" and "swinging wherever you could hit somebody." While the offenders were attacking Beltran, LaFaire was struggling with Humphries. The fighting between LaFaire and Humphries stopped when LaFaire pulled out his pocket knife, and the police arrived shortly thereafter. At the time of trial, LaFaire was on probation for "displaying an altered registration," and was convicted of aggravated battery in 2004.

¶ 6 Tina Jones testified for the defense that she lived in a downstairs apartment at the same complex where the incident in question occurred. At about 11:30 p.m. on July 15, 2012, Jones was exiting her apartment to take out the garbage when she saw Simmons, who was coming up the stairs of the complex to visit a relative, arguing with Beltran. Beltran struck Simmons first by shoving Simmons' face with her hands. Simmons retaliated by striking Beltran, and defendant tried to break up the fight. At some point during the altercation, LaFaire tried to stab Simmons, and Humphries tried to stop LaFaire. According to Jones, Beltran started the fight by making physical contact with Simmons. When the police arrived, the fighting stopped and Jones returned to her residence. She never spoke to police about the incident.

¶ 7 Officer Jesus Vargas testified for the defense that he responded to a disturbance in progress at 5424 West 26th Street at about midnight on July 15, 2012. At the scene, Vargas interviewed Beltran and wrote a police report detailing the incident. Beltran told Vargas that Humphries grabbed her in a headlock and pulled her hair, but did not state that he grabbed her throat or pushed her against a wall.

¶ 8 Codefendant Lisa Simmons testified that she was dropping off her cousin in the area of 5424 West 26th Street at the date and time in question. Her cousin lived in one of the apartments, and Simmons walked upstairs to use the bathroom. As Simmons walked upstairs, Beltran started to say something about the Latin Kings. Simmons did not respond and continued walking to her cousin's residence. Beltran, who was on the balcony of the second floor, pushed Simmons in the face. Simmons pushed Beltran back and they began fighting. Defendant and Humphries attempted to break up the fight and separated Beltran and Simmons. LaFaire then went inside the house and got out a knife. Humphries tried to push LaFaire, and Simmons thought LaFaire may have cut Humphries. After the police arrived, Simmons attempted to tell them what Beltran did to her and asked them to look at her cuts, but she was arrested.

¶ 9 Following closing arguments, the trial court found defendant guilty of battery. In doing so, the court held that the State proved each defendant knowingly and intentionally caused bodily harm to Beltran by striking her about the head and face. The court also discounted Simmons' testimony.

¶ 10 On appeal, defendant contends that because the State did not present evidence at trial of the material facts alleged in its complaint, her battery conviction should be reversed. She specifically maintains that the State's case at trial focused on the actions of defendant's codefendants, and did not include evidence that she punched Beltran in the head or face, or caused bodily harm thereby.

¶ 11 We initially reject defendant's assertion that we should review this issue *de novo*. Where, as here, defendant disputes the inferences to be drawn from the facts, we apply the deferential standard of review. *People v. Gilmore*, 356 Ill. App. 3d 1023, 1034 (2005).

¶ 12 Under that standard, this court must determine 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is so "unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of [the] defendant's guilt." *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 13 As relevant to this appeal, a person commits battery when she "knowingly without legal justification and by any means *** causes bodily harm to an individual." 720 ILCS 5/12-3(a)(1) (West 2012).

¶ 14 Viewed in the light most favorable to the State, we find that the evidence sufficiently established that defendant was guilty of battery. On the evening of July 15, 2012, Beltran was sitting on her porch when she heard someone yelling at her regarding a previous incident where she had allegedly been beaten up. Beltran laughed and Simmons, Humphries, and defendant went up the stairs to where Beltran was located. When Simmons got to the top of the stairs, she started hitting Beltran in the face with her fists. Humphries grabbed Beltran and held her against the wall while defendant and two other women jumped her. Four women, including defendant, hit, kicked, and punched Beltran in the head, face, stomach, and legs. Beltran suffered scratches, bruises, and a bloody lip from the attack.

¶ 15 Nevertheless, defendant contends that the State's evidence focused on the actions of defendant's codefendants, and did not include evidence that defendant punched Beltran in the

head or face, causing bodily harm thereby. She specifically points out that Beltran testified that defendant was "trying to kick me in my face and stomach," and that defendant was one of several girls "trying to attack me." Taking Beltran's testimony in its entirety, however, shows that she testified that defendant succeeded in striking her. Beltran stated that defendant was one of the women who "jumped" her, and continued "striking" her until police arrived. As defendant even acknowledges in her brief, Beltran testified on cross-examination that after Humphries put her in a headlock, "[defendant] and all of them approached up and attacked me," and, on re-direct examination, Beltran testified that defendant was "kicking me and then she tried to like knee me, bring my head down to knee me and stuff like that." In addition, LaFaire specifically testified defendant and Simmons punched Beltran "in the back of the head."

¶ 16 Defendant's argument that the evidence only showed her codefendants struck Beltran in the face and head does not exonerate her of the offense. Even assuming, *arguendo*, that the evidence did not show defendant struck Beltran in the face or head, she would have been found guilty under an accountability theory. "Under Illinois law, to be legally accountable for the conduct of another, either before or during the commission of the offense, a person with the intent to promote or facilitate the commission of the offense must aid, abet, or attempt to aid another in planning or committing the offense." *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 22 (citing 720 ILCS 5/5-2(c) (West 2012)). Here, as argued by the State, defendant not only kicked and struck Beltran causing her bodily harm, but also aided Simmons and Humphries in attacking Beltran. As a result, defendant was also guilty beyond a reasonable doubt of battery under an accountability theory. Defendant acknowledges that a "defendant charged as a principal can be convicted on a theory of accountability if supported by the evidence." *People v. Ceja*, 204 Ill. 2d 332, 361 (2003). This pleading practice is permissible because accountability is an

alternative theory of liability, not an additional theory, of proving a defendant guilty of the substantive offense. *Id*. The evidence reveals that defendant and Simmons were acting in concert in committing a battery against Beltran. The trial court's recitation of the language in the complaint in finding defendant guilty does not preclude accountability as an alternative theory of liability.

¶ 17 Defendant further argues that the variance between the complaint and the evidence at trial was so material that her conviction should be reversed. We disagree.

¶ 18 "To vitiate a trial, a variance between allegations in a complaint and proof at trial must be material and be of such character as may mislead" the defendant in making her defense. *People v. Collins*, 214 Ill. 2d 206, 219 (2005). In examining the variance, courts look to "whether the defendant was prejudiced in the preparation of his defense" by the variance. *People v. Santiago*, 279 Ill. App. 3d 749, 753 (1996) (incorrect victim named in indictment, but no prejudice); *People v. Jones*, 245 Ill. App. 3d 674, 677 (1993) (indictment stated the defendant improperly exchanged goods for money instead of store credit, but no prejudice).

¶ 19 In the case at bar, the complaint stated that defendant "without legal justification, knowingly and intentionally caused bodily harm to Vanessa Beltran in that she through multiple punches [with] closed fist striking Vanessa Beltran about the head and face." There was no material variance between the complaint and the evidence because, as shown above, the evidence proved that defendant punched Beltran. Nevertheless, even assuming, *arguendo*, that the evidence did not show defendant punched Beltran, there was no material variance between the complaint and the evidence because "[w]hen a crime can be committed by several acts *** a variance between the act named in the indictment and the act proved will not be fatal." *People v. Burdine*, 362 Ill. App. 3d 19, 24 (2005). For example, in *Burdine*, this court found no variance

where the proof at trial showed the defendant committed aggravated battery when he bit the victim, even though the State charged the defendant with striking the victim. *Id.*; see also *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 70 (holding that there was no material variance where the State charged the defendant with striking the victim about the body and the evidence at trial showed that the defendant caused the victim to be struck about the body). Therefore, even if the evidence in this case only proved that defendant kicked or struck Beltran, there was no material variance between those acts and the act alleged in the complaint, *i.e.*, punching Beltran with a closed fist, and defendant suffered no prejudice.

¶ 20 In reaching this conclusion, we find *People v. Durdin*, 312 Ill. App. 3d 4 (2000) and *People v Daniels*, 75 Ill. App. 3d 35 (1979), relied on by defendant, distinguishable from the case at bar. In *Durdin*, 312 Ill. App. 3d at 7, the defendant was convicted of delivery of cocaine within 1,000 feet of a school, although the parties stipulated that the controlled substance at issue was heroin. The appellate court reversed the defendant's conviction, noting that the Sate had confessed error and that the defendant had been convicted of the wrong crime. *Id*. at 6, 8. Unlike *Durdin*, defendant here was not convicted of the wrong crime, and the State did not confess error. In *Daniels*, not only was there a variance between the charging instrument and the evidence adduced at trial, *i.e.*, the defendant was charged with armed robbery of money but the evidence at trial proved he took a watch, but the reviewing court also found that the evidence adduced at trial was circumstantial and insufficient to prove the defendant guilty of the charged offense beyond a reasonable doubt. *Daniels*, 316 Ill. App. 3d at 40-41. Here, however, the evidence overwhelmingly proved that defendant hit Beltran, and the alleged difference between the indictment and the evidence adduced at trial was nowhere near as drastic as in *Daniels* where money was never mentioned in that trial and the indictment said nothing about a watch.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.