

No. 1-13-0954

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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. 12 CR 12297
)	
THOMAS RYAN,)	Honorable
)	Mary Colleen Roberts,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

O R D E R

¶ 1 **Held:** Defendant's aggravated battery conviction is affirmed because the State's evidence that defendant stabbed the victim with a deadly weapon was not improbable, unconvincing, or contrary to human experience.

¶ 2 Following a bench trial, defendant, Thomas Ryan, was convicted of aggravated battery with a deadly weapon other than a firearm and sentenced to five years in prison. He appeals, asserting the State failed to prove him guilty beyond a reasonable doubt because it presented

evidence that was improbable and contrary to human experience. For the following reasons, we affirm.

¶ 3 At trial, John Leby testified that he and his girlfriend went to Northwoods Lounge in Chicago at approximately 9 p.m. on March 26, 2011. Leby drank at the bar until about 3 a.m. on March 27. Leby's friend and coworker, Joe Nowak, and one of the bar's owners, Tony Hoffman, were also at Northwoods Lounge. At some point, Nowak asked Leby for \$40. Leby gave Nowak the money and saw Nowak walk across the bar and hand it to defendant. Leby called Nowak back over and asked him to return the money, stating he did not want to have any affiliation with defendant because he knew defendant had "scammed" other people. Nowak retrieved the money from defendant and gave it back to Leby, but he continued trying to convince Leby to lend him the money. As they were talking, Leby called defendant a "scum bag," unaware that defendant had approached and was standing right beside him. Defendant and Leby started arguing, eventually falling onto the ground and using their hands and fists to fight. Leby did not have a knife or see anybody with a knife.

¶ 4 After defendant and Leby fought for a minute, Nowak pulled Leby off of defendant. Leby saw that defendant had a little cut above his eye and was bleeding. Leby did not notice whether or not he had been hurt. Hoffman escorted defendant out of the bar, and Nowak escorted Leby out afterward, holding him by his arms. As Leby was stepping outside the door, defendant punched him, and the two men started fighting again. Leby got on top of defendant and held his arms down. Within a minute, Nowak got on top of the two men and broke up their fight. Defendant walked across the parking lot, and Leby did not see him throw anything. Leby then reached for a cigarette and "felt very sticky and looked at [his] hand and it was covered with blood." Leby opened his coat and saw his entire shirt "was stained with blood."

¶ 5 The bartender and Lebby both called an ambulance. Inside the ambulance, the paramedics cut off Lebby's clothes. Lebby discovered he had been stabbed three times, although he never felt being stabbed. Lebby removed his shirt and showed the trial court a five-inch wound just below his left shoulder and a three- to four-inch wound on his stomach area, just above his navel. He also pointed to an area "just below the belt line" and told the court the wound there was approximately three to four inches long. Lebby was admitted to Lutheran General Hospital for two days, where he underwent three surgeries. All three stab wounds required stitches.

¶ 6 Joseph Nowak testified that he approached Lebby at Northwoods toward the end of the evening and asked to borrow \$40. Lebby initially gave Nowak the money but then asked for it back because he did not want Nowak to give it to defendant. As Lebby was talking to Nowak about defendant, defendant approached, "[g]ot into [Lebby]'s face," and "lunged into" Lebby. The assistant State's Attorney described Nowak as "indicating with his right hand with a closed fist lunging as indicating as if he had something in his hand moving towards the victim." When asked whether he saw defendant "use a stabbing motion" on Lebby, Nowak said he did not "see a chopping," but did see "a hand go forward." Nowak was about two feet from defendant and did not see him holding any weapons. After defendant lunged at Lebby, Lebby punched him. The two men then fell onto the floor, with Lebby on top of defendant. Hoffman told Lebby and defendant to leave the bar, and Nowak grabbed Lebby while Hoffman grabbed defendant. At that point, Nowak did not see any blood on defendant or Lebby.

¶ 7 Nowak walked Lebby out of the bar, holding him up by either his armpits or his arms. Lebby "had been drinking so he was stumbling a little bit." Nowak, who acknowledged he "drank a lot" that evening, did not notice any blood on Lebby. As Lebby walked out the door,

defendant, who had exited first, punched him. The two started fighting again, falling down on top of each other. Within two minutes, Nowak got on top of them, and they agreed to stop fighting. Nowak saw Leby holding defendant down by his arms, but he did not see a knife in defendant's hand at that point.

¶ 8 After Nowak picked Leby up, Leby opened his jacket and said, "I think I have been stabbed." Nowak opened Leby's jacket further, saw blood on his stomach, and accompanied Leby back inside the bar. He did not see any cut wounds on Leby but saw blood on his "left front, above his belt." The police arrived shortly thereafter, and Nowak watched Leby get into an ambulance. Nowak denied seeing defendant or Leby with weapons that evening. Nowak said Leby and defendant did not have "a very good relationship" because of "something that happened when they took a previous trip to Vegas together."

¶ 9 Anthony Hoffman, a co-owner of the Northwoods Lounge, testified that he saw defendant walk over and sit next to Leby as the bar was closing on March 27. After looking away, Hoffman "heard a thump" and saw defendant and Leby "locked up together on the floor." Nowak helped Hoffman kick the men out, and Hoffman locked the door after Nowak, Leby, and defendant were outside. Hoffman did not see either man with a knife or weapon, and he did not notice any injuries on either man. However, he remembered wiping blood off the floor.

¶ 10 Maureen Strauser testified that she accompanied defendant to the bar on the evening of March 26 and met his friends, Leby and Nowak. Strauser and defendant had been together since the day before, and Strauser never saw him with a knife or weapon. Inside the bar, Strauser felt uncomfortable because Leby and Nowak were drinking and loud. Strauser was not drinking. She did not observe defendant arguing with either Leby or Nowak. At some point, defendant, Hoffman, and Leby left the bar and sat in her car to smoke a cigarette. When Strauser went out

to her car and opened the door, she smelled marijuana but did not see anybody smoking it. She also saw cocaine on a CD case with a rolled up dollar bill nearby. Strauser walked away and waited outside the bar. After the men got out of her car, Strauser got in to leave. As Strauser was saying good-bye to defendant, Nowak approached and asked defendant "for hookers." Strauser then departed.

¶ 11 The trial court found defendant guilty of two counts of aggravated battery. It reasoned that although it could not determine exactly when Leby was stabbed, the circumstantial evidence proved beyond a reasonable doubt that defendant stabbed Leby with a deadly weapon other than a firearm and the stabbing caused great bodily harm to Leby. The court later sentenced defendant to five years in prison. This appeal followed.

¶ 12 On appeal, defendant asserts the evidence was insufficient to sustain his conviction because the State failed to prove that he stabbed Leby or that he used a deadly weapon. He maintains that the State's witnesses' testimony regarding the fight and the stab wounds Leby sustained was improbable and contrary to human experience. In particular, he observes the two-part fight lasted no more than two minutes, and Leby was on top of defendant for the majority of the time and able to pin him down. He further notes Leby never felt himself being stabbed, despite sustaining over 10 inches of stab wounds in three separate areas, and Leby said the men used their hands and fists during the first part of the fight. In addition, defendant observes the State presented no expert testimony to establish that Leby's scars were consistent with being stabbed, and none of the witnesses observed wounds on Leby or saw defendant with a knife or weapon. We find the evidence was sufficient to sustain defendant's conviction.

¶ 13 In resolving a challenge to the sufficiency of the evidence, we must determine whether, considering all of the evidence in the light most favorable to the prosecution, "any rational trier

of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The standard of review applies whether evidence is direct or circumstantial, and circumstantial evidence meeting the standard is sufficient to sustain a conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). We will not substitute our judgment for that of the trier of fact on issues relating to the weight of the evidence or witness credibility, and we will reverse only where "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. Testimony may be deemed insufficient under the *Jackson* standard but only where the evidence "compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 14 To prove defendant guilty of aggravated battery, the State was required to show that without legal justification, he intentionally or knowingly caused bodily harm to Leby while using a deadly weapon other than a firearm. 720 ILCS 5/12-3(a), 4(b)(1) (West 2010).

¶ 15 The evidence was sufficient to establish that Leby stabbed defendant with a deadly weapon. Defendant and Leby engaged in two fights, each lasting about one minute. Although Leby did not feel himself being stabbed and nobody saw defendant with a weapon, Nowak observed defendant's "hand go forward" during the first fight, and both Leby and Nowak noticed after the second fight that Leby was bleeding. Leby subsequently discovered in the ambulance that he had stab wounds on his shoulder, on his abdomen, and below his belt line. Leby underwent three surgeries and received stitches for each of his wounds. At trial, he showed the court two of his scars and described the third. Based on the foregoing, the trial court could reasonably find that defendant stabbed Leby with a deadly weapon. See *People v. Nard*,

32 Ill. App. 3d 634, 638-39 (1975) (the evidence was "overwhelming" that the defendant slashed the victim where the defendant and the victim engaged in a fight, the victim sustained slashes, a witness saw the defendant with a knife after the fight, and no evidence was presented of any intervening cause of the victim's injuries).

¶ 16 Defendant points out that, unlike in *Nard*, nobody saw defendant with a knife after the fight and no expert testimony was presented as to the cause of Lebby's wounds. Despite these distinctions, the evidence was nevertheless sufficient to sustain defendant's conviction because the trial court was not required to disregard inferences that "'flow normally from the evidence.'" *People v. Kiertowicz*, 2013 IL App (1st) 123271, ¶ 20 (quoting *People v. Hall*, 194 Ill. 2d 305, 332 (2000)). Based on Lebby's discovery of his stab wounds shortly after the fight and the lack of evidence of any intervening cause of Lebby's wounds, the court could reasonably infer that defendant caused Lebby's three stab wounds. Defendant also notes the State presented no evidence that Lebby's scars were not on his body prior to the fights with defendant. However, "[t]he State is not required to exclude every reasonable hypothesis of innocence," and "[p]roof of guilt beyond a reasonable doubt does not require proof beyond any possibility of a doubt." *People v. Larson*, 379 Ill. App. 3d 642, 654 (2008).

¶ 17 Defendant has failed to establish that the testimony of the State's witnesses was "improbable, unconvincing, and contrary to human experience." (Internal quotation marks omitted.) *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). It is plausible that defendant stabbed Lebby three times even though Lebby did not feel himself being stabbed and nobody saw defendant with a knife, particularly because the men were close to each other, fighting, and the other witnesses became occupied breaking up the fights shortly after they started. Likewise, it is plausible that Lebby was able to get on top of defendant and pin his arms down after being

stabbed, as he testified he did not feel the stab wounds and he and defendant continued fighting for only a short time. Finally, neither the brevity of the fights nor Leby's position on top of defendant makes it implausible that defendant stabbed Leby three times. It was for the trial court to judge the witnesses' credibility, weigh the evidence, and draw reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The undisputed evidence demonstrates that Leby did not have any stab wounds prior to his two physical fights with defendant and he had three separate stab wounds, each one measuring over three inches, after the fights. The evidence also reveals no intervening circumstance to account for the three stab wounds. Based on its guilty finding, the court evidently found the State's witnesses' testimony credible, and defendant has failed to establish any of the witnesses' testimony was so improbable, unlikely, or contrary to human experience that reversal is required.

¶ 18 For the reasons stated, we affirm the trial court's judgment.

¶ 19 Affirmed.