2015 IL App (1st) 133412-U

SIXTH DIVISION
October 30, 2015

No. 1-13-3412

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. 13 CR 9133
	)	
TREON SANDERS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction affirmed where the State presented sufficient evidence to prove he committed aggravated battery to a peace officer.

¶ 2 Following a bench trial, defendant Treon Sanders was found guilty of aggravated battery to a peace officer and sentenced to three years' imprisonment. On appeal, defendant argues that the State failed to prove, beyond a reasonable doubt, that he acted with intent to cause, or with knowledge that he would cause the officer harm. For the reasons that follow, we affirm.

¶ 3 Defendant was charged with committing the aggravated battery of police officer, Kevin Deeren, on April 24, 2013, in violation of section 5/12-3.05 of the Criminal Code of 2012 (720 ILCS 5/12-3.05 (West 2015)).

¶ 4 At trial, Kevin Deeren, a Chicago police officer for over ten years, testified that at approximately 5 or 5:30 p.m. on April 23, 2013, he and his partner, Officer Cox, were driving an unmarked police vehicle near 3315 West Ogden Avenue in Chicago. He observed defendant, who had an outstanding arrest warrant, standing on the corner. Officer Deeren turned the vehicle around to approach defendant, and defendant fled westbound. Office Cox exited his vehicle and pursued defendant through an alley. Defendant attempted to evade the police by hiding in a bush, jumping fences and running through a gangway. Officer Cox, eventually, arrested defendant in a backyard. The officers transported defendant to the 10th District police station for processing on the outstanding arrest warrant.

¶ 5 When they arrived at the police station, Officer Deeren escorted the handcuffed defendant through a processing room, when defendant "began pulling away" into a nearby interview room. As the officer attempted to restrain defendant, defendant physically separated himself from the officer threw himself against a wall and onto a bench in the interview room. At that point, defendant was laying face-up when he kicked Officer Deeren in the face. Officer Deeren testified that, during this time, defendant "kept talking about suing us."

¶ 6 As a result of the kick, Officer Deeren sustained injuries to his mouth which included minor swelling, a laceration, and bruising. A photograph of those injuries was introduced into evidence by the State. The State also introduced into evidence a photograph of defendant which was taken after the incident which, Officer Deeren testified, showed no injuries to defendant.

¶ 7 On cross-examination, Officer Deeren denied that he had been frustrated or angry because defendant had fled, and acknowledged that such incidents are "part of [the] job" and "happen[] every day." Officer Deeren also denied that neither he, nor Officer Cox, had pushed defendant into a fence after he was apprehended. Officer Deeren further testified that while defendant was being transported to the police station, defendant said that Officers Deeren and Cox were "weak," that they should let him go, and that a friend of defendant's had sued the police and "made a lot of money." Officer Deeren denied telling defendant that he was "going to kick his ***" once they entered the police station and admitted that defendant "definitely had energy" when he was being escorted to the interview room. Officer Deeren said that, after defendant threw himself on to the bench, and the officer was "trying to control him," defendant "may have" gotten into a fetal position.

¶ 8 Officer Rosen of the Chicago police department testified that he observed Officer Deeren escorting defendant into the police station. While Officer Rosen was processing another arrest, he became aware of "a disturbance" and heard defendant "yelling [and] arguing." Officer Rosen testified that defendant was "very combative, very upset, *** jerking his body in certain ways" to escape from Officer Deeren and yelling that "he was going to sue everybody." As Officer Deeren brought defendant into the interview room, defendant "began to twist his body" in an attempt to get away from the officer. Officer Deeren attempted to handcuff defendant to the wall, but defendant had physically separated himself from the officer and, as Officer Deeren again attempted to restrain defendant, he "kicked [Officer Deeren] in the face." Officer Rosen denied that Officer Deeren ever threatened defendant or initiated any physical contact with defendant.

¶ 9 The State rested, and defendant moved for a directed verdict, which the trial court denied.

¶ 10 Detective Richard Hagen of the Chicago police department testified on behalf of defendant that he had been assigned to the investigation of the matter. In the course of this routine investigation, Detective Hagen interviewed defendant and the arresting officers. Detective Hagen also sought a digital recording of the incident to "corroborate or impeach the statements given by any of the parties." Based on the interviews, Detective Hagen learned that defendant's alleged assault of Officer Deeren had occurred in an interview room located to the side of the station's main processing room. The detective testified that there were two video surveillance cameras at the police station, but they were located in the main processing room, and not the interview room where the incident occurred. Additionally, there did not appear to be any video surveillance footage recorded from the time of the incident from the cameras located in the main processing room. Defendant did not testify.

¶ 11 The trial court found defendant guilty of aggravated battery to a peace officer. In reaching this conclusion, the trial court found that the testimonies of Officers Deeren, Cox, and Rosen were credible and compelling beyond a reasonable doubt. The trial court remarked that Officer Deeren, an experienced tactical officer, had previous experience with this kind of behavior from defendants. The trial court further noted that defendant was "angry and upset" that the police arrested him, became "physical," and then kicked Officer Deeren in the face.

¶ 12 Defendant filed a motion for a new trial, which the trial court denied. Defendant was subsequently sentenced to three years' imprisonment. This appeal followed.

¶ 13 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that his kicking of Officer Deeren was, at best,

reckless behavior where the evidence established defendant engaged in "self-injurious behavior," and that Officer Deeren did not believe defendant was attempting to hurt him. The State responds, arguing that the facts adduced at trial, along with all reasonable inferences drawn from them, sufficiently support the finding that defendant knowingly caused bodily harm to Officer Deeren.

¶ 14 Initially we note that the parties dispute the applicable standard of review. Defendant argues we should review the sufficiency of the evidence claim *de novo* because the facts and credibility of the witnesses are uncontested. In support of his argument, defendant cites *In Re Ryan B.*, 212 Ill. 2d 226 (2004), where our supreme court applied such a standard. *Id*. at 231. The State responds that, because defendant challenges the trial court's inferences drawn from the evidence concerning his mental state, the more deferential standard of review should be applied for sufficiency of evidence claims. We agree and, accordingly, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)).

¶ 15 We will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. While we must carefully examine the evidence before us, we must give proper deference to the trial court who observed the witnesses testify *(id.*), and who was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 16 To commit aggravated battery to a peace officer, essentially, the defendant must commit a battery against a peace officer. (720 ILCS 5/12-3.05(a)(3) (West 2012). "A person commits battery if he or she knowingly without legal justification by any means (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 2012). Additionally, the State must prove that the defendant, in committing the battery, knew the victim was performing his official duties and committed the battery to prevent the officer from performing his official duties or in retaliation for performing those duties. 720 ILCS 5/12-3.05(a)(3)(i) (West 2012).

¶ 17 "Regardless of whether one calls battery a specific intent crime or a general intent crime, however, the criminality of [a] defendant's conduct depends on whether he acted knowingly or intentionally, or whether his conduct was accidental." *People v. Robinson*, 379 Ill. App. 3d 679, 684-85 (2008). Indeed, an amendment of 720 ILCS 5/12-3, effective July 1, 2011, removed the mental state of "intentionally" from the battery statute leaving only the mental state of "knowingly." See 720 ILCS 5/12-3(a) (West 2012); P.A. 96-1551, art. __, §5 (eff. July 1, 2011).

¶ 18 Therefore, to support a battery, the State must prove that the defendant was "consciously aware" that his conduct "was practically certain" to cause bodily harm. 720 ILCS 5/4-5(a)(b) (West 2012); see also *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 43. Whether the defendant acted intentionally or knowingly, with respect to bodily harm resulting from a defendant's actions is, due to its very nature, often proved by circumstantial evidence, rather than by direct evidence. *Id*. ¶ 44. However, "[i]t is not necessary that a defendant intended the particular injury or consequence that resulted from his conduct." *Id.*

¶ 19 In the instant case, defendant does not dispute that he was aware Officer Deeren was a peace officer performing his official duties, or that the officer suffered bodily harm. Defendant does not contest that his conduct was done in retaliation or to prevent Officer Deeren from performing his duties. The only issue raised by defendant concerns his mental state.

¶ 20 The evidence at trial established that defendant fled after seeing Officers Deeren and Cox. After defendant was arrested and while being transported to the police station, he made several remarks which indicated that he was angry with the police, calling the officers "weak," and telling them to let him go and that he had a friend who sued the police and made a lot of money. After the officers arrived at the police station, defendant remained angry and agitated, yelling and arguing with Officer Deeren, behaving combatively and threatening to sue the police. As Officer Deeren walked defendant into an interview room, defendant physically separated himself from Officer Deeren and threw himself against a wall, landing on a bench. As Officer Deeren attempted to restrain defendant to prevent him from hurting himself, defendant kicked Officer Deeren in the face.

¶ 21 A rational trier of fact could reasonably infer that defendant was consciously aware that when he kicked Officer Deeren, that it was virtually certain to cause bodily harm to him. See *Id.* ¶¶ 13, 63 (finding that it was virtually certain that someone would be injured when a store security guard attempted to restrain a combative defendant accused of retail theft); see also *Phillips*, 392 Ill. App. 3d at 259 (stating that a trier of fact could reasonably infer the mental state required to prove a battery from a defendant's "expressions of anger, made immediately prior to the battery"). Viewing the evidence in the light most favorable to the State and drawing all

reasonable inferences therefrom, we find there was sufficient evidence to prove that defendant knowingly caused bodily harm to Officer Deeren. *Lattimore*, 2011 IL App (1st) 093238, ¶ 48.

¶ 22 Nevertheless, defendant argues that there was insufficient evidence that he knowingly caused bodily harm to Officer Deeren. Specifically, according to defendant, the officer testified that he "did not believe that [defendant] was trying to hurt him" when he kicked the officer. The State disagrees with defendant's characterization of Officer Deeren's testimony.

¶ 23 During defendant's cross-examination of Officer Deeren, the following colloquy occurred:

"Q. Okay. That is another thing I wanted to ask you about, Officer. You indicated today that you were eventually able to control [defendant], correct?

A. Correct.

Q. Or calm him down, correct?

A. Correct.

Q. How did you do this?

A. I was attempting to spin him to face the wall to kind of pin him between the bench and the wall so he couldn't further any of his actions. To me it seemed like he was trying to hurt himself, so I wanted to prevent this movement and calm him down. I got him calmed down, and we sat him, or I sat him, down.

Q. So, it didn't seem to you, Officer, that he was trying to hurt you?

A. Correct.

Q. However, in this process of him trying to hurt himself and you trying to control him, you were kicked in the lip?

A. Correct.

Q. And in your efforts to control him and to calm him down, are you telling him to relax, and things of this nature?

A. Yes."

The State argues that Officer Deeren's response to the question of whether it seemed as though defendant was trying to hurt him, referred only to defendant's initial behavior of physically separating himself from the officer by throwing himself into a wall and bench, and not to the act of kicking Officer Deeren in the face. Regardless, "[t]he trier of fact *** is in the best position to resolve any conflicting inferences produced by the evidence." *People v. Bonaparte*, 2014 IL App (1st) 112209, ¶ 41. Under our system, the trier of fact is allowed to decide the inferences drawn from ambiguous testimony. *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 25.

¶ 24 Here, the trial court implicitly resolved the perceived ambiguity in Officer Deeren's testimony in the State's favor when it concluded that defendant committed an aggravated battery against the officer. Accordingly, we will not second-guess the inferences drawn from Officer Deeren's testimony, nor usurp the trial court's role as fact finder. *People v. Murray*, 194 Ill. App. 3d 656, 657 (1990).

¶ 25 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 26 Affirmed.