

No. 1-13-4020

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 2060
	)	
TONY WILLIAMS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Judgment entered on defendant's conviction for aggravated battery to a police officer affirmed over his claim that the evidence was insufficient to prove him guilty of that offense beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Tony Williams was found guilty of aggravated battery to a police officer, then sentenced to 12 years' imprisonment. On appeal, defendant seeks reversal

of his conviction contending that the State failed to provide credible testimony that he battered the officer and thereby caused him great bodily harm.

¶ 3 At trial, Chicago police officer Robert Lobianco testified that at 7 p.m. on December 28, 2012, he and his partner, Chicago police officer Kevin Fry, were responding to a call of shots fired in the area of 79th Street and Marquette Avenue in Chicago, Illinois. The officers were in an unmarked police vehicle and wearing bulletproof vests. Officer Lobianco's star was displayed on his gun belt, and Officer Fry's star and name tag were embroidered on his vest.

¶ 4 Two blocks from the area of the shots fired report, the officers observed a vehicle being driven at a high rate of speed in the opposite direction. Officer Lobianco observed that the license plate light on the vehicle was not working and activated the emergency lights in an attempt to "curb" the vehicle. The driver did not immediately slow down, but eventually stopped within a few blocks. Officer Lobianco approached the driver's side of the vehicle while Officer Fry approached the passenger side. Officer Lobianco identified defendant as the driver, and saw him making movements toward his waistband. Officer Fry gestured that defendant might have a weapon as Officer Lobianco approached the front, driver's side window of the car. Before either officer said anything, defendant said he was not getting out of the car and spontaneously stated that he was not involved in the shooting.

¶ 5 Officer Lobianco identified himself as a Chicago police officer and asked for defendant's driver's license, which he supplied. Officer Lobianco then asked defendant to step out of the vehicle, and when defendant did not comply, Officer Fry made a radio call asking for a sergeant to respond. Defendant then "flung" the car door open and "jumped" out of the vehicle facing

Officer Lobianco, who told him to turn around and put his hands on the hood so that he could pat him down. Defendant turned his back to Officer Lobianco, then spun around to face him as Officer Lobianco approached.

¶ 6 The next thing Officer Lobianco remembered was "waking up" in the middle of a struggle on the ground while face-to-face with defendant. He then remembered "waking up" in the back of an ambulance and being taken to Northwestern Memorial Hospital where he was treated for a concussion, numerous abrasions on his face, a strained ACL, a broken patella, pain in his back, and cuts on the bridge of his nose. His leg was placed in an immobilizer brace, and he had to see a specialist for treatment for his knee. He was unable to return to work for two months after the incident and was placed on "Injured on Duty." Officer Lobianco identified the pictures of his injuries in the State's three exhibits, which were then admitted into evidence.

¶ 7 On cross-examination, Officer Lobianco stated that it was dark outside when the officers stopped defendant, and that he never saw defendant with a gun.

¶ 8 Officer Fry related the same sequence of events leading up to the officers' "curbing" of defendant's vehicle, but added that defendant's driver's side headlight was also not working. He further testified that as he was approaching the passenger side of the vehicle, he saw defendant making furtive movements with his right hand toward his waistband and signaled to Officer Lobianco that defendant might have a weapon. Officer Lobianco identified himself to defendant as a Chicago police officer, and asked for his driver's license. Defendant spontaneously responded that he had nothing to do with the shots fired, and handed his license to Officer Lobianco.

¶ 9 Officer Lobianco asked defendant to step out of the car, but defendant refused. Officer Fry then radioed for a supervisor to come onto the scene, and defendant "flung" the door open and "charged" out of the vehicle. Officer Lobianco told defendant to turn around and put his hands on the car, and Officer Fry started walking around the vehicle to assist him. Defendant then turned around and pushed Officer Lobianco in the chest, causing him to fall to the ground and hit his head. Officer Fry came around the front of the car and attempted to take defendant into custody, but the two of them fell to the ground with defendant landing on top of Officer Lobianco. Defendant then grabbed Officer Lobianco's head and "smash[ed]" it onto the ground several times.

¶ 10 Officer Fry struck defendant in the side of the head with a closed fist, and then hit him several times on his extremities with his ASP baton while telling defendant to stop fighting and resisting. Defendant ignored these instructions until Chicago police officers Giron and Schaffer arrived to help take him into custody. Officer Fry testified that Officer Lobianco was unresponsive for about a minute until the ambulance arrived and the paramedics were able to wake him. He visited Officer Lobianco in the hospital and observed that he was bleeding from the face and head.

¶ 11 On cross-examination, Officer Fry stated that it was dark and raining that night and there was poor artificial lighting. He also stated that he later learned that defendant was not involved in the reported shooting. Finally, he stated that the three officers on the scene, not including Officer Lobianco, were attempting to subdue defendant so that he could be taken into custody, and that he pulled defendant's thumb back in an attempt to restrain him.

¶ 12 The parties then stipulated that Registered Nurse Alison Hunter would testify that she treated Officer Lobianco in the emergency room at Northwestern Memorial Hospital on December 28, 2012. Hunter would testify that Officer Lobianco complained of a fall and a loss of consciousness, and that his injuries included a blunt head injury, multiple abrasions to his forehead, bridge of the nose, and right cheek bone. Further injuries were identified as soreness to his back and spine, numbness in some of his fingers, loss of consciousness, and a fractured patella. He also received three stitches for a 1.5 centimeter laceration on the bridge of his nose.

¶ 13 Defendant then testified that at 7 p.m. on December 28, 2012, he was at a grocery store when someone came in and said there had been shots fired nearby. Defendant left the store, got into his car, and drove away. He testified that he was not speeding because his brakes did not work, but that his headlights and license plate lights were working. He was stopped by police about two blocks from the store and immediately pulled his car over to the side of the road.

¶ 14 Defendant further testified that Officer Fry approached the driver's side door and asked for his driver's license and insurance information, which he provided. Officer Fry then asked defendant to get out of his car and when defendant asked why, Officer Fry responded that if defendant did not get out of the car, he would break his driver's side window. Defendant stepped out and put his hands on the roof while the officers started tugging at his clothes. Defendant started to turn around to ask the officers to stop pulling his clothes when he was thrown to the ground.

¶ 15 Defendant testified that three or four officers were on top of him while he was on the ground, but that he never saw Officer Lobianco that night. While he was on the ground, one of

the officers was grabbing his thumb, another placed his knee on the back of his knee, while another placed his knee on his head, and someone also placed a foot near his groin. He was pulled to his feet and placed in handcuffs and saw an apparently uninjured Officer Fry on a stretcher being loaded into an ambulance. Defendant further testified that after the incident, his thumb, knee, and ankle were swollen, and he went to the hospital that night for treatment. Finally, he testified that he told a sergeant what transpired that night, but that he did not know whether a formal complaint was filed.

¶ 16 On cross-examination, defendant stated that the brakes on his vehicle worked, but that he had to "pump and really squeeze down." He also stated that after he was stopped by police, he told the officers that the shots came from the other way. Finally, he stated that it was Officer Fry who approached his driver's side window, and who he later saw being loaded into the ambulance, and that he had never seen Officer Lobianco before seeing him in court.

¶ 17 In rebuttal, Officer Schaffer testified that he was working with Officer Giron at 7 p.m. on December 28, 2012, when they responded to a call of shots fired. They were conducting a traffic stop of a vehicle in the area of the 7900 block of Marquette Avenue and 80th Street and Exchange Avenue, when they heard Officer Fry's radio call for a supervisor over the radio and heard a commotion across the street. They then observed Officer Lobianco, who was motionless, on the ground with defendant on top of him and Officer Fry to defendant's side attempting to gain control of defendant's arm. After defendant was arrested, Officer Schaffer observed that Officer Lobianco had numerous abrasions, lacerations, and scrapes on his face. On cross-

examination, Officer Schaffer stated that he and his partner had control of defendant's legs while Officer Fry attempted to control defendant's right arm.

¶ 18 Following closing arguments, the court found that defendant was not involved in the shooting, but because of the report of shots fired, the officers were being "hypervigilant" that night. In an effort to be vigilant, two sets of officers made aggressive stops of people who seemed to be driving away from the shooting. The officers were trying to be careful and cautious with defendant, but things got out of hand.

¶ 19 The court further found that the officers wanted to pat defendant down, but defendant took objection to that and things got physical on both sides. The court determined that defendant smashed Officer Lobianco's head onto the ground until he was basically unconscious. The court noted that Officer Lobianco's injuries, depicted in the State's exhibits, were consistent with someone who had their head bashed into the ground, and defendant was lucky that Officer Lobianco was not killed.

¶ 20 The court concluded that this started out as a misunderstanding, that defendant handled it very poorly, and his poor choices got physical and violent. The court finally determined that the State had met its burden beyond a reasonable doubt on all counts and found defendant guilty of aggravated battery to a police officer. After considering the relevant factors in mitigation and aggravation, including his two prior felony convictions, the court sentenced defendant to a term of 12 years' imprisonment.

¶ 21 In this appeal from that judgment, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He maintains that the officers' testimony does not

match the physical evidence of Officer Lobianco's injuries, and accordingly, there is insufficient evidence to show that defendant battered Officer Lobianco and caused him great bodily harm.

¶ 22 Where defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court must consider whether, after viewing the evidence in a 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. Jordan*, 218 Ill. 2d 255, 270 (2006). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 23 To sustain defendant's conviction for aggravated battery to a police officer in this case, the State was required to prove beyond a reasonable doubt that defendant, while committing a battery, caused great bodily harm to Officer Lobianco, knowing that he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-3.05(a)(3)(i)-(iii) (West 2012).

¶ 24 Viewed in a light most favorable to the prosecution, the evidence presented in this case shows that the two police officers were responding to a call of shots fired when they observed defendant's vehicle being driven in the opposite direction at a high rate of speed. The officers curbed the vehicle, and as they approached, they noticed defendant making furtive movements

toward his waistband leading them to believe that he might have a weapon. Officer Lobianco asked defendant to step out of the car so that he could pat him down and check for a weapon. Defendant initially refused, but eventually jumped out of the car and placed his hands on the hood. However, he then spun around and pushed Officer Lobianco in the chest, causing him to fall and hit his head. Officer Fry came to his assistance and attempted to take defendant into custody, but the two fell to the ground with defendant landing on top of Officer Lobianco. Defendant then grabbed Officer Lobianco's head and smashed it into the ground several times. Eventually, Officer Fry, with assistance from Officers Schaffer and Giron, was able to handcuff defendant and take him into custody, and Officer Lobianco, who was unresponsive for about a minute, was transported to the hospital where he was treated for his injuries.

¶ 25 The parties stipulated to the proposed testimony of Nurse Hunter who treated him at Northwestern Memorial Hospital. The stipulation showed that Officer Lobianco suffered blunt head injury, multiple abrasions to the forehead, bridge of the nose, and right cheek bone. His injuries also included soreness to his back and spine, numbness in some of his fingers, loss of consciousness, a fractured patella, and three stitches for a 1.5 centimeter laceration on the bridge of his nose. The injuries to Officer Lobianco's face and head were depicted in pictures that the State submitted into evidence as exhibits, which showed him strapped to a gurney with his eyes closed, in a cervical collar, and with multiple abrasions on his face. This evidence, and the reasonable inferences therefrom, were sufficient to allow a reasonable trier of fact to find that defendant, knowing that Officer Lobianco was a police officer performing his official duties,

committed a battery that caused Officer Lobianco great bodily harm. *Jordan*, 102 Ill. App. 3d at 1140; *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991).

¶ 26 Defendant contends, however, that "[t]he police story made no sense in several ways." He maintains that it is unbelievable that Officer Lobianco would first ask defendant for his driver's license when he suspected that he had a gun, and that the officers' description of defendant's assault on Officer Lobianco does not match the photographs of his injuries or Nurse Hunter's testimony of them. He asserts that based on the description of the incident provided by Officers Fry and Schaffer's, Officer Lobianco would have substantial injuries to the back of his head, but the evidence presented only showed minor injuries to Officer Lobianco's face.

¶ 27 Insofar as defendant's assertions relate to the credibility of the officers, we note that this matter is within the province of the trier of fact (*Sutherland*, 223 Ill. 2d at 242), and we will not substitute our judgment for that of the trial court unless the proof is so unsatisfactory that a reasonable doubt of guilt appears (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)). We do not find this to be such a case.

¶ 28 Although defendant suggests that Officer Lobianco's injuries are consistent with "a chaotic struggle on top of Lobianco, not discrete acts of battery," his contention is belied by the record and the testimony of the officers, whom the trial court found credible. The record shows that three officers testified consistently to the series of events which began with a call of shots fired and culminated in Officer Lobianco being treated at a hospital after his encounter with defendant.

¶ 29 Nonetheless, defendant contends that police officers are "not presumed to be truthful" and "can lie." Defendant's contention that the trial court should not have accepted the officer's testimony, however, amounts to an invitation to retry defendant and reassess the credibility of the witnesses. This, however, is not our function. *Sutherland*, 223 Ill. 2d at 242. The weight to be given the witnesses' testimony, the credibility of the witnesses, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Id.*

¶ 30 Moreover, the photographs of Officer Lobianco's injuries corroborate the officers' testimony, rather than discredit them as defendant seems to suggest. Although defendant opens his reply brief by contending that the "State cannot explain away its own photographic evidence," his assertion that the photographs discredit Officer Fry's testimony is unfounded.

¶ 31 The photographs consist of pictures of Officer Lobianco's face as he is being transported to the hospital and depict him wearing a cervical collar with his eyes closed and multiple abrasions to his face. Officer Fry testified that defendant pushed Officer Lobianco down and smashed his head against the ground several times. Officer Lobianco testified that he twice lost consciousness and sustained a concussion, and broken patella, and Nurse Hunter's stipulated testimony showed that Officer Lobianco was treated for, among other things, multiple abrasions to the forehead, blunt head injury, and loss of consciousness. Defendant cites a secondary source in an attempt to argue that in some cases abrasions may qualify as blunt head injury. In this case, however, the stipulated medical testimony, in relevant part, distinctly specified that the officer sustained blunt head injury and multiple abrasions to his face, and the officer's testimony showed

this was the result of defendant's battery. Under these circumstances, defendant's attempt to blend the two injuries into the facial abrasions is not supported by the evidence.

¶ 32 Defendant also focuses on the missing evidence of Officer Lobianco's injuries such as evidence of injury or swelling to the back of Officer Lobianco's head. This argument, however, represents a misunderstanding of the standard of review, which focuses on the sufficiency of the evidence actually presented by the State to establish the charged offense. *People v. Howard*, 376 Ill. App. 3d 322, 330 (2007). Once the State has met its burden, the reviewing court need not consider whether more evidence was presented. *Id.* Here, as set forth above, the photographs corroborate the officers' testimony that Officer Lobianco was the officer who defendant battered, in contrast with defendant's trial testimony, and that Officer Lobianco suffered significant injury as a result of defendant's battery. We therefore have no basis for disturbing the trial court's decision that defendant was proved guilty of aggravated battery to a police officer beyond a reasonable doubt.

¶ 33 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.