2015 IL App (1st) 140057-U

FOURTH DIVISION
June 30, 2015

No. 1-14-0057

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 MC1 211877
	)	
JANET KARBOWNIK,	)	Honorable
	)	Joseph M. Sconza,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: Evidence was sufficient to support defendant's conviction for battery where victim and another witness testified that defendant slammed door in victim's face. Record established defendant knowingly waived her right to jury trial.

¶ 2 Following a bench trial in 2013, defendant Janet Karbownik was convicted of battery (720 ILCS 5/12-3(a)(2) (West 2012)). Defendant was sentenced to one month of court supervision and was ordered to have no unlawful contact with complainant Nicole Stolfa. On appeal, defendant contends the State did not prove the elements of battery beyond a reasonable

doubt. She also asserts she did not knowingly and voluntarily waive her right to a jury trial. We affirm.

¶ 3 Defendant was charged with one count of battery based on the act of slamming a door in Nicole Stolfa's face on May 26, 2013, at 4146 North Kedvale in Chicago. The complaint alleged that the door struck Stolfa's face, causing contact of an insulting and provoking nature.

¶ 4 On August 21, 2013, defense counsel answered ready for trial and stated, "I believe the jury waiver is in the court file." The court then addressed defendant:

"THE COURT: Ma'am, I did ask you your name for the record. You understand in a case like this, that you're entitled to a jury trial?

DEFENDANT: Yes, I do.

THE COURT: You know what a jury trial is?

DEFENDANT: Yes, I do.

THE COURT: Was it your intention to give up your right to a jury trial when you signed this document entitled a jury waiver?

DEFENDANT: Yes.

THE COURT: Let the record reflect that the defendant has knowingly and intelligently waived her right to a jury trial. So you want this case tried before a judge alone; is that correct?

DEFENDANT: Yes.

THE COURT: So then he can go forward on the plea of not guilty, jury waived, and the parties are ready to proceed.

MR. COLUCCI [assistant public defender]: That's correct, Judge."

¶ 5 At trial, the State presented the testimony of Stolfa and her boyfriend, Steven Green. Stolfa testified she was 42 years old. On May 26, 2013, she and Green attended a party at the home of Green's father. After the party, Stolfa and Green arrived at Green's residence in a multi-unit building at 4146 North Kedvale between 6 and 6:30 p.m. Green's first-floor unit is immediately inside of the building's outer door. Green went into the kitchen while Stolfa took her dog outside, leaving open both the door to Green's unit and the building's outer door.

¶ 6 Stolfa testified she was outside for less than five minutes. As she approached the building's outer door, "[as] soon as I got up to the door, it was slammed extremely hard right into me basically." Stolfa said the door made contact with the right side of her forehead and "mostly my forearm," indicating her right forearm.

¶ 7 After the door struck Stolfa, she looked through a glass window in the outer door and saw defendant standing on the other side of the door. Stolfa estimated that the window, which was at eye level, was about 24 inches by 12 inches in size. Stolfa testified that defendant then walked slowly up the stairs inside the building and turned to look at Stolfa. Defendant kept walking when Stolfa told her to open the door.

¶ 8 On cross-examination, Stolfa testified that Green had "some beers" at the party but she did not have any alcohol. When asked if she generally left the building's outer door open, Stolfa responded that she did when she was taking the dog out. Stolfa said she did not see anyone pushing the door at her and only saw defendant after the door made contact with her, when Stolfa looked through the door's window and saw defendant staring back. Stolfa said that, after she asked defendant to open the door, defendant looked directly at her as she walked up the stairs to her apartment on the second floor.

¶ 9 When asked if any other incidents had taken place involving defendant, Stolfa stated that in a previous occurrence, she was watching Green's unit in his absence. Stolfa opened the door from Green's apartment into the interior hallway, and defendant was standing immediately outside Green's unit. Defendant called Stolfa a "scumbag" and a "whore."

¶ 10 As to the events that led to the instant charge, Stolfa said that she did not see anyone before the door struck her, and she did not know if defendant saw her before shutting the door. Stolfa testified that the main building door did not have an automatic close mechanism and would remain open if she opened it while taking her dog outside. Stolfa stated she did not see defendant push the door.

¶ 11 Green testified that he was 34 years old and worked for the same company as Stolfa. Green denied consuming any alcohol at his father's party. When Stolfa took the dog outside, the door to his unit was left open because Stolfa did not have a key. Green saw defendant standing in the hallway outside his unit while Stolfa was outside. Green testified he was three feet away from defendant when he observed defendant take hold of the door with both arms, slam the door forcibly and then proceed up the stairs to her apartment. He heard Stolfa say she had been hit by the door. No one else was in the hallway before or after the door was slammed.

¶ 12 On cross-examination, Green said he had lived in the building for one year. Green estimated that defendant was 5 feet tall and weighed between 100 and 115 pounds and said he knew she was 60 years old. Green said defendant walked, and did not run, up the stairs after the door was closed. When defendant slammed the door, Green said Stolfa "popped right in the window and looked at me and said, '[defendant] hit me with the door.' " After Green's testimony, the defense moved for a directed finding, which the court denied.

¶ 13 Defendant testified that she had lived in unit 2B for 25 years. At about 7 p.m. on the night in question, she was planting flowers on her balcony and took some items to her locker in the basement of the building. When she went to the basement, the door to Green's unit, 1B, was closed, as was the door to the building.

¶ 14 When defendant returned to the main floor after putting her items in the basement, the door to Green's unit was open and the door to the building was also "wide open." Defendant testified she "just pushed it with my foot and the door got closed, slammed, basically." Defendant said she did not "see anybody by the door" and said the door "slams very quickly" and "gets slammed all of the time." Defendant said that when she pushed the door shut, the door "went very smooth" and no one was in the doorway. Defendant did not see anyone in the doorway. She did not believe any one was outside. On cross-examination, defendant said she did not have anything in her hands when she returned from the basement. However, she denied using her hands to close the door, saying she used her foot.

¶ 15 At the close of evidence, the court found defendant guilty of battery as charged in the complaint. The court found that defendant was "entirely familiar with this property, having been there for 25 years, and [that defendant] knew exactly how she could close that door." The court noted Green's testimony that he was three feet away from defendant and saw her close the door with both hands. The court further recounted Stolfa's testimony that the door was slammed in her face, and stated that there was "no question *** that the door was closed intentionally in such a fashion to strike somebody on the other side."

¶ 16 The court sentenced defendant to one month of supervision and to have no unlawful contact with the complainant. The defense filed a motion for a new trial and for reconsideration of her sentence, which the trial court denied.

¶ 17 On appeal, defendant first contends that the State failed to prove beyond a reasonable doubt that she committed battery. Defendant argues that she lacked the requisite mental state to commit the offense, asserting the evidence did not show she intended to hit Stolfa when closing the door or knew the door would strike Stolfa. Defendant asserts her actions were those of "any concerned resident" in attempting to keep intruders out of the building. The State responds that the evidence established defendant was aware Stolfa was standing near the door when she acted.

¶ 18 When reviewing a challenge to the sufficiency of the evidence, the relevant question is 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. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). On review, it is not the task of this court to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Rather, the trier of fact is responsible for evaluating the credibility of the witnesses, resolving any conflicts in testimony, weighing the evidence, and determining what inferences to draw from that evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008); see also *People v. Lara*, 2012 IL 112370, ¶ 46. The trier of fact is not required to disregard inferences that normally flow from the evidence or to seek all possible explanations consistent with the defendant's innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. 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. *Brown*, 2013 IL 114196, ¶ 48.

¶ 19 A person commits battery if he or she knowingly and without legal justification, 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 2012). Any contact, however slight, can be sufficient to establish insulting or provoking contact under the definition

of battery. See, *e.g.*, *People v. Dunker*, 217 Ill. App. 3d 410, 415 (1991) (defendant's act of poking his son's teacher with his finger met definition of insulting or provoking contact).

¶ 20 An essential element of the offense of battery is that the conduct of the person alleged to have committed the battery be knowing and not accidental. *Tort v. Chicago Transit Authority*, 405 Ill. App. 3d 379, 385 (2010); *People v. Phillips*, 392 Ill. 2d 243, 258 (2009). A person acts with knowledge of the result of her conduct when she is "consciously aware that such result is practically certain to be caused" by that conduct. 720 ILCS 5/4-5(b) (West 2012). The requisite mental state may be inferred from the character of the defendant's acts and the circumstances surrounding the commission of the offense. *People v. Weeks*, 2012 IL App (1st) 102613, ¶ 35.

¶ 21 Here, viewing the evidence in the light most favorable to the State, the testimony was sufficient to establish that defendant committed the act of battery by closing the door in Stolfa's face. Stolfa testified that, after she was struck by the door, which was slammed "extremely hard" and directly at her, Stolfa viewed defendant through the eye-level window in the door. Defendant also looked at Stolfa as defendant walked upstairs to her own unit and ignored Stolfa's remarks asking her to open the door. Although Stolfa did not see defendant push the door at her, Green testified that defendant stood outside his unit while Stolfa was outside with her dog. Green stated he was several feet away from defendant when he saw her take hold of the door with both arms and forcibly slam it.

¶ 22 Defendant testified that she closed the door with her foot. However, that account was contradicted by both Green, who saw her slam the door, and by Stolfa, who testified the door closed abruptly. It was the role of the trial court, as the trier of fact in this case, to resolve the inconsistencies in the testimony on this issue (see *Ross*, 229 Ill. 2d at 272), and it resolved them in favor of Green's account over that of defendant.

¶ 23 As defendant correctly notes, the biggest question in the State's case is whether defendant knew that Stolfa was approaching the door when she slammed it. Stolfa did not see defendant as Stolfa walked her dog toward the front door; defendant said she did not see Stolfa; and Green did not see Stolfa by the door until after it was slammed, when Stolfa's face appeared in the door window and she called out to Green. If defendant did not know that Stolfa was fast approaching, then all she did was close an outside condominium door—a perfectly innocuous, non-criminal act—having no idea that the door would strike someone, much less being "consciously aware that such result [was] practically certain." 720 ILCS 5/4-5(b) (West 2012).

¶ 24 Defendant's knowledge of Stolfa's presence by that door, like knowledge in virtually every case, was proven by circumstantial evidence. *People v. Nash*, 282 Ill. App. 3d 982, 985 (1996) ("By its very nature, 'knowledge' is ordinarily proven by circumstantial evidence rather than by direct evidence."). The State is not required to show direct evidence of defendant's knowledge as long as it presents sufficient evidence from which an inference of knowledge can be made. *Id.*; *People v. Weiss*, 263 Ill.App.3d 725, 731 (1994).

¶ 25 Taking the evidence in the light most favorable to the State, we find that the State submitted sufficient evidence of defendant's knowledge. First, Stolfa was, in fact, directly at the door when it was closed, such that it made contact with her. Second, defendant closed the door unusually hard, using both hands to slam it, despite her own testimony that the door would slam hard even with the tap of a toe—in the trial court's words, "the door was closed intentionally in such a fashion to strike somebody on the other side." And after the door slam, defendant stared directly at Stolfa through the window, then ignored her request to be let inside, instead walking up the stairs to her own apartment with a second glance back at Stolfa. The evidence revealed no indication that defendant appeared either surprised or remorseful upon realizing that she had

slammed the door into Stolfa. The State also notes that it introduced evidence of defendant's animosity toward Stolfa, the previous incident in which defendant called her derogatory names. All of this evidence leads us to conclude that a rational finder of fact could determine that defendant's actions toward Stolfa were knowing and not accidental. The State presented sufficient evidence to support this conviction.

¶ 26 Defendant's remaining contention on appeal is that she did not knowingly and voluntarily waive her right to a jury trial. She points out that the common law record does not contain a signed jury waiver and further contends the court's inquiries were insufficient to establish her waiver.

¶ 27 The State responds that defendant waived her right to a jury in open court, as established by the record. The State also contends defendant has forfeited this issue by failing to raise it before the trial court or in her post-trial motion. A review of the record indicates defense counsel challenged the validity of defendant's jury waiver in oral argument on defendant's post-trial motion. We will thus consider the merits of this argument.

¶ 28 The right to a trial by jury is a fundamental right guaranteed by the federal and Illinois constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8, §13. "Every person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court." 725 ILCS 5/103-6 (West 2012). Thus, the waiver of the right to a jury trial must be made in open court and must be knowing, voluntary and intelligent. 725 ILCS 5/103-6 (West 2012); *People v. Brown*, 2013 IL App (2d) 110327, ¶ 19.

¶ 29 Here, defendant focuses on the absence of a written jury waiver in the record. The report of proceedings indicates that on August 21, 2013, immediately prior to trial, defense counsel told the court that a written jury waiver had been executed and placed in the court file, and the State

responded by saying "That's correct." The presence or absence of that document in the record on appeal is not dispositive of whether defendant validly waived her right to a jury, though, since a written jury waiver is but one means by which a defendant's intent may be established. See *People v. Bracey*, 213 Ill. 2d 265, 269-70 (2004) (lack of written jury waiver not fatal if it can be ascertained that defendant understandingly waived right to jury trial); see also *People v. Victors*, 353 Ill. App. 3d 801, 806 (2004) (written jury waiver, standing alone, is insufficient to prove valid waiver of right to jury trial).

¶ 30 Whether a jury waiver was knowingly and understandingly made must be considered under the facts and circumstances of the case and cannot be determined by application of a precise formula. *Bracey*, 213 Ill. 2d at 269. For a waiver to be effective, the court is not required to recite any set admonitions or advice. *Id*. at 270; *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001). Still, our supreme court has clarified that the pivotal concept is whether the defendant understands that the facts of the case will be determined by a judge and not a jury. *People v. Bannister*, 232 Ill. 2d 52, 69 (2008).

¶ 31 Here, the record establishes that defendant expressly waived her right to a jury trial under questioning by the court. Prior to trial, and in the presence of defense counsel, the court told defendant she was "entitled to a jury trial." The court asked defendant if she "knew what a jury trial is," and defendant responded affirmatively. The court asked defendant if she intended to give up her right to a jury trial when she signed a jury waiver, and defendant said yes. The court further asked defendant if she wanted her case "tried before a judge alone," to which defendant responded, "Yes." The record therefore indicates that the court explained to defendant the difference between having her case decided by a jury and having her case decided only by the court. The record establishes that defendant understood the difference between a jury trial and a

bench trial and voluntarily chose to proceed with a bench trial. Accordingly, we reject defendant's contention that she did not knowingly waive her right to a jury trial.

¶ 32 Having found the evidence sufficient to support defendant's conviction for battery, and having found that she knowingly and understandingly waived her right to a jury trial, we affirm the judgment of the trial court in all respects.

¶ 33 Affirmed.