

2015 IL App (2d) 131253-U
No. 2-13-1253
Order filed August 19, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kendall County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-77
)	
JUAN PADILLA,)	Honorable
)	Timothy J. McCann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The State proved defendant guilty beyond a reasonable doubt of aggravated battery, as the jury was entitled to credit the State's evidence, including video evidence, tending to show that defendant hit the police officer who was trying to detain him; (2) the trial court did not abuse its discretion in admitting defendant's prior conviction of aggravated battery, among other convictions, for impeachment: although defendant was charged here with aggravated battery, defendant's credibility was a key issue, and the court issued proper limiting instructions.

¶ 2 Following a jury trial, defendant, Juan Padilla, was convicted of various offenses, including aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)). Before trial, defendant

filed a motion *in limine*, seeking to prevent the State from impeaching him at trial with evidence that defendant had been previously convicted of a number of crimes. One of those convictions was of aggravated battery. The trial court denied the motion. At trial, the arresting officer and two civilians testified for the State. Although their testimony differed on some points, they all stated that defendant struggled with the officer before he was arrested. After defendant testified, indicating that he never intentionally struggled with the officer, the State presented evidence that defendant had been previously convicted of various offenses, including aggravated battery. The jury, which was instructed that it should consider defendant's prior convictions only for the purpose of assessing his credibility, found defendant guilty. Following a sentencing hearing, defendant was sentenced to 4½ years' imprisonment for aggravated battery. This timely appealed followed. On appeal, defendant argues that (1) he was not proved guilty beyond a reasonable doubt of aggravated battery and (2) the trial court abused its discretion when it permitted the State to impeach him with his prior conviction of aggravated battery. For the reasons that follow, we affirm.

¶ 3 The following facts are relevant to the issues raised. Prior to trial, a hearing was held on defendant's motion *in limine*. At that hearing, the court was advised that defendant had been convicted of four offenses that could be used to impeach him if he chose to testify at trial. Those four convictions were of aggravated battery, unlawful possession of a controlled substance, retail theft, and obstruction of justice. Defendant argued, among other things, that the State should be prohibited from presenting evidence of the prior aggravated battery, as that offense was one of the same offenses with which defendant was charged now. Thus, defendant claimed that admitting evidence of the prior aggravated battery would be unduly prejudicial. The State claimed that the two offenses were different, as the prior aggravated battery involved bodily

harm and the current aggravated battery concerned insulting or provoking contact. The court denied defendant's motion. In doing so, the court noted that, among other things, the fact that the two offenses were identical did not preclude the State from using the prior offense for impeachment purposes.

¶ 4 At trial, Officer Robert Lechowicz testified that he was on patrol on March 31, 2013, at around midnight when he saw defendant drive through a red light. Defendant claimed that he stopped at the light. Based on what Lechowicz saw, he proceeded to follow defendant at a close distance, intending to stop defendant for the traffic violation.

¶ 5 As Lechowicz followed defendant, another car got between them. That car was driven by Dale Wagner. Lechowicz passed Wagner, got behind defendant, and activated the lights on his marked squad car. When defendant saw the lights, he thought about his prior "confrontations with [the police], and [he] wasn't sure, you know, what kind of police officer [Lechowicz] was." Defendant explained that he had been convicted of unlawful possession of a controlled substance, aggravated battery, obstruction of justice, and retail theft. Because of this prior interaction with the police, defendant wondered what was going to happen now.

¶ 6 Wagner testified that he followed Lechowicz's squad car. Because defendant refused to stop, Lechowicz activated his siren and air horn. Defendant continued to drive, stopping at the stop signs he encountered as he drove and pulling over momentarily at one point.¹ Defendant testified that he stopped momentarily "to see if [Lechowicz] was going to go around [defendant] or if [the officer] was pulling [defendant] over." When defendant briefly stopped, Lechowicz pulled behind defendant, and Wagner pulled behind Lechowicz's squad car. Lechowicz, who believed that defendant was pulling over in response to the lights, siren, and air horn, started to

¹ Wagner testified that defendant stopped for three or four seconds.

contact dispatch to let them know how things were proceeding. However, before Lechowicz could advise dispatch about what was going on, defendant accelerated and got behind another car traveling in the same direction. This second car was driven by Tim Isberg.

¶ 7 Defendant testified that, when he learned that Lechowicz was trying to stop him, he decided to drive home. Defendant did so because of the past “harassment and police brutality” and because the officer “probably wouldn’t do nothing like that in front of [defendant’s nephew].” Defendant later explained that, because of his past experience with the police, he wanted to drive home so that his nephew could witness anything that occurred between defendant and Lechowicz. Defendant stated that he did not know why Lechowicz wanted to stop him and that he thought that the officer just wanted to “mess with [him].” According to defendant, the police had done that many times in the past.

¶ 8 Lechowicz followed defendant, with Wagner following behind him. Lechowicz passed Isberg and saw defendant throw something out of the window of his car.² Lechowicz then observed defendant pull into the driveway of a nearby home, park his car, and turn off the engine. Lechowicz pulled in the driveway behind defendant’s car, exited his squad car, and saw defendant step out of his car. According to defendant, Lechowicz ordered him to “stay in the car, mother [f-----].” Lechowicz testified that defendant turned around and looked directly at the squad car and that the officer ordered defendant to return to his car. Although Wagner could not confirm what Lechowicz said, he testified that the officer was giving defendant verbal commands. According to Lechowicz, defendant disobeyed the officer’s order by turning back

² Later, deputies returned to this site and searched the area for what defendant had thrown out of his car. Nothing was found.

around and walking toward the house. Wagner testified that defendant walked to the middle of the front yard.

¶ 9 Lechowicz stated that, at this point, he ran up to defendant. Defendant stated that, as the officer was running at him, he raised his hands, showing the officer that “[he was] not trying to do anything.” Defendant denied making fists. According to Isberg, Lechowicz did not run up to defendant, as defendant was only about 10 feet away from him. As Lechowicz closed in on him, defendant turned around to face the officer. Wagner confirmed that defendant turned all the way around. At this point, Lechowicz and defendant were standing face-to-face. Lechowicz and defendant made “simultaneous contact,” with Lechowicz grabbing hold of defendant’s shoulders and pushing him 20 feet into the home’s front yard.

¶ 10 Wagner testified that, as defendant was standing in the middle of the yard, he saw “[defendant] raise[] his fists like they were going to fight.” Wagner admitted that he did not put in his written statement anything about this. Wagner had “turned [his] head,” taking his eyes off of what was transpiring between defendant and Lechowicz. Wagner explained that, given what he had seen and noting that “[i]t looked like the officer might have needed help,” Wagner decided to find a place to park his car so that he could aid Lechowicz. Isberg, although confirming that defendant and Lechowicz pulled into the driveway and exited their cars, testified that the fight between Lechowicz and defendant took place on the edge of the driveway or edge of the grass or “[s]omewhere in there.” Isberg testified that he “could [not] make out” defendant striking the officer.

¶ 11 According to Lechowicz, defendant threw a left punch at Lechowicz’s face, which the officer deflected. Defendant’s punch ended up hitting Lechowicz on the right arm.³ Lechowicz

³ On cross-examination, Lechowicz was asked about the fact that, in his report, he

then tackled defendant, the two men ended up on the ground with the officer on top of defendant, and defendant started “striking upwards at [the officer].” Lechowicz explained that defendant was throwing jabs that were hitting the officer in the chest and shoulder area and disconnected the officer’s radio communication with dispatch. Isberg testified that he did not see defendant fall onto his back, because he believed that at that point he was parking his car.

¶ 12 Defendant denied ever striking the officer. He claimed that Lechowicz grabbed him, holding his arms down and ramming his head into defendant’s ribs twice. At that point, defendant fell to the ground with Lechowicz on top of him. Lechowicz then pinned defendant’s arms on the ground, and defendant “wasn’t trying to, you know, to get into it with him.” Indeed, according to defendant, when Lechowicz alerted dispatch to the fact that they were fighting, defendant “tried saying we ain’t fighting”; he testified that he was not struggling with Lechowicz when they were on the ground; and he told Lechowicz at one point that he would cooperate.

¶ 13 In an effort to gain control as quickly as possible and prevent the situation from escalating further, Lechowicz began yelling at defendant to stop resisting and attempted to roll defendant onto his stomach so that he could handcuff defendant. As Lechowicz was trying to do this, Wagner, who saw “[defendant] struggling with [the officer],” came to Lechowicz’s aid, and, according to Lechowicz, Wagner held down defendant’s shoulder area. Isberg saw Wagner jump out of his car and run toward Lechowicz and defendant. Wagner testified that he jumped onto defendant’s side, grabbed his left arm, and helped flip defendant over. Lechowicz then handcuffed defendant’s right wrist. Isberg arrived a short time later, as he too noticed that

indicated that defendant threw a left punch that missed him. Although Lechowicz confirmed that that is what the report states, he explained that he meant that defendant missed his intended target.

Lechowicz and defendant were struggling. Isberg held down defendant's legs, because, according to Wagner, defendant continued to struggle. Lechowicz indicated that the three men were able to handcuff defendant's left wrist. Wagner testified that defendant was already handcuffed when Isberg came to help. Isberg testified that Lechowicz was trying to handcuff defendant when he was holding down defendant's legs. According to Wagner, once defendant was handcuffed, defendant said to Lechowicz, "I should have gave your ass an upper cut." Isberg heard defendant say to Lechowicz, "I should have upper cut you."⁴

¶ 14 Lechowicz testified that he followed defendant's car for about 3 minutes and that, although the struggle with defendant lasted only 45 seconds or so, he was at the scene for approximately 1½ hours. At no point during that time did defendant's nephew, or anyone else, ever come out of the house. However, the homeowners, defendant's sister and brother-in-law,

⁴ Video of the fight taken from the officer's squad car was admitted at trial. The picture quality is poor and the fight takes place some distance away from the squad car. However, one can see from the video that defendant does turn to look at the officer after he exits his car and while he continues to walk toward the house. Lechowicz then runs up to defendant, as defendant takes a few steps back, and the officer grabs hold of defendant's shoulders, with defendant responding by grabbing the officer's jacket. The initial contact between the officer and defendant takes place in the upper left corner of the video screen, with Lechowicz's back to the camera, blocking defendant from view. While they are holding onto each other, Lechowicz pushes defendant to the right and several feet into the front yard. Both men fall on the ground, and defendant is seen kicking his feet. Although not very clear, it appears as if defendant's hands are moving between himself and Lechowicz. When Wagner and Isberg arrive, it takes all three men several seconds to subdue defendant.

did come home during that time. Lechowicz also indicated that, after defendant was handcuffed for a while, he told Lechowicz that the handcuffs were too tight. Consequently, Lechowicz, with a sergeant's help, loosened the handcuffs for defendant. Defendant stated that, when he had the handcuffs on, "[he] felt [his] bones crush." However, defendant admitted that he was never diagnosed with a fractured or broken wrist.

¶ 15 In rebuttal, the State introduced certified copies of defendant's convictions of aggravated battery, retail theft, obstruction of justice, and unlawful possession of a controlled substance. Defendant objected, and the court admitted them over that objection.

¶ 16 Before the jury began its deliberations, it was given a number of instructions. Two jury instructions are relevant to this appeal. One of those instructions provided that "any evidence received for a limited purpose should not be considered by [the jury] for any other purpose." The other instruction provided that "[e]vidence of a defendant's previous conviction of an offense may be considered by [the jury] only as it may affect his believability as a witness and must not be considered by [the jury] as evidence of his guilt of the offense with which he is charged."

¶ 17 During deliberations, the jury contacted the court four times, inquiring twice about whether they could view the squad-car video again, asking what physical contact of an insulting or provoking nature means, and informing the court that they had reached a verdict on all but one of the charges. The court responded, and the jury eventually found defendant guilty of, among other things, aggravated battery. Defendant moved for a new trial, arguing that he was not proved guilty beyond a reasonable doubt and that the court erred in denying his motion *in limine*. The trial court denied the motion and sentenced defendant, and, after the court denied defendant's motion to reconsider his sentence, defendant appealed.

¶ 18 Defendant raises two issues in this appeal. Specifically, he argues that he was not proved guilty beyond a reasonable doubt of aggravated battery and that the trial court erred in denying his motion *in limine*. We address each issue in turn.

¶ 19 The first issue we consider is whether defendant was proved guilty beyond a reasonable doubt of aggravated battery. In considering a challenge to the sufficiency of the evidence, we note that it is not the function of this court to retry a defendant. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). Rather, we will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When we review 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact, not this court, is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and we will not substitute our judgment on these matters for that of the trier of fact. See *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 20 As charged here, defendant could be found guilty of aggravated battery only if the State first established that he committed a battery. 720 ILCS 5/12-3.05(d)(4) (West 2012). A battery is committed when, as charged here, a defendant knowingly and without legal justification makes physical contact of an insulting or provoking nature with another individual. 720 ILCS 5/12-3(a)(2) (West 2012). Battery is enhanced to aggravated battery when, as relevant here, the State proves that defendant knew that the person he battered was a police officer. See 720 ILCS 5/12-3.05(d)(4) (West 2012).

¶ 21 Defendant argues that, given discrepancies between the video and the trial testimony, he was not proved guilty beyond a reasonable doubt. More specifically, defendant argues that the State failed to prove beyond a reasonable doubt that he made physical contact of an insulting or provoking nature with Lechowicz, as, according to defendant, the video does not show him striking the officer when the officer runs at him or while the men are lying on the ground, and neither Wagner nor Isberg confirmed that defendant threw a punch at Lechowicz. We disagree.

¶ 22 Lechowicz testified that defendant swung at his face after he ran up to defendant. In his report, Lechowicz indicated that defendant missed, but the officer explained that, because the officer deflected the punch, defendant ended up striking the officer's arm and not the officer's head or face, which was defendant's intended target. When Lechowicz and defendant were on the ground, Lechowicz testified that defendant was punching him in the shoulders and chest. Lechowicz's testimony was sufficient to prove defendant guilty beyond a reasonable doubt. As defendant observes, our supreme court has recognized "that the testimony of a single witness, if positive and credible, is sufficient to convict, even though [such testimony] is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 23 Based on *Siguenza-Brito*, the fact that neither Wagner nor Isberg could confirm that defendant hit the officer is irrelevant, as the jury found Lechowicz credible. See *People v. Novy*, 232 Ill. App. 3d 631, 663 (1992) (court presumes that jury found in favor of State when it finds the defendant guilty). Moreover, neither man testified that defendant did not hit the officer. Rather, Wagner stated that, after he saw defendant standing with his fists raised to fight Lechowicz, he turned his attention to parking his car, as Wagner believed that it looked like the officer needed help. Similarly, Isberg stated only that he "could [not] make out" whether defendant hit Lechowicz. Further, although the video does not show defendant striking the

officer after Lechowicz runs up to him, mostly because of the poor quality of the video and the fact that Lechowicz is blocking defendant from view, the video does show defendant, while lying on the ground with Lechowicz, moving his hands between them. This tends to confirm Lechowicz's testimony that defendant was hitting him while the two men were on the ground. Wagner's and Isberg's testimony also supports this to a certain extent, as both men testified that defendant was struggling with the officer, and, after defendant was handcuffed, both men heard defendant say to the officer that defendant should have "upper cut" him.

¶ 24 Added to this is the fact that defendant's version of events is simply unbelievable. According to defendant, he felt that he needed to drive home and get his nephew, because Lechowicz, whom defendant had never had contact with before, was going to harass him in some unspecified way. After defendant exited his car, he raised his hands to show the officer that he was not "trying to do anything." The video does not reflect this. Defendant then indicated that the officer head-butted him twice and knocked him to the ground. Although the video does show defendant and Lechowicz on the ground, they got there because, as Lechowicz testified, he grabbed defendant by the shoulders while, as the video shows, defendant grabbed Lechowicz's jacket. Nowhere in the video is Lechowicz seen head-butting defendant. Once on the ground, defendant essentially contended that he did nothing but lie there motionless while advising the officer that they were not fighting and that he would cooperate. In contrast, the video clearly shows the men struggling, which all of the State's three witnesses confirmed by stating that defendant was struggling with the officer. Indeed, in contrast to defendant's version of events, defendant was fighting with Lechowicz to such a degree that it took Lechowicz, with the help of two other men, several seconds to restrain defendant. After he was restrained, defendant testified that the handcuffs were so tight that it felt like his bones were being crushed. Yet, defendant

admitted that he was never treated for a broken or fractured wrist. Based on the evidence presented, we can see why the jury assessed the conflicting evidence in the State's favor. See *id.* (noting that, based on the evidence, a reasonable jury could have found the defendant guilty despite the defendant's denial that she inflicted the fatal injury).

¶ 25 Citing *People v. Kotlinski*, 2011 IL App (2d) 101251, defendant argues that, because “the video evidence presented at trial not only failed to corroborate the officer's testimony, but contradicted it as far as the aggravated battery was concerned,” defendant's conviction must be reversed. We disagree.

¶ 26 In *Kotlinski*, the defendant, a passenger in the car his wife was driving, was convicted of obstruction of a peace officer when he allegedly interfered with a police investigation into whether his wife was driving while under the influence. *Id.* ¶¶ 1, 15. This court reversed the defendant's conviction, noting that video taken of the encounter contradicted the two officers' testimony at trial. *Id.* ¶ 41. In discussing what the video depicted, we never even suggested that ascertaining what was transpiring on the video was difficult. Indeed, we noted that the area was well lit with ambient light from the roadway, the headlights from one of the officer's squad cars, the flashing roof lights from the officer's car, and the officer's flashlight. *Id.* ¶ 7. Moreover, we observed that the testimony of the two officers was contradicted by “what is plainly on the video.” *Id.* ¶ 38.

¶ 27 Here, unlike in *Kotlinski*, the video is not clear and does not “plainly” contradict the State's witnesses' testimony. Rather, if anything, the video contradicts defendant's testimony. Accordingly, we find *Kotlinski* unpersuasive here.

¶ 28 Defendant also claims that, because the jury sent several questions to the court, the jury was unsure about whether defendant was guilty of aggravated battery. We find such claims pure

speculation. Only one of the questions specifically referenced the aggravated-battery charge. With that question, the jury wanted to know how insulting or provoking contact is defined. Arguably, that question indicated that the jury thought that the evidence was close. However, the question here is not whether the evidence was close but whether it was legally sufficient. For the above reasons, it was.

¶ 29 The next issue we address is whether the trial court erred in denying defendant's motion *in limine* to prevent the State from introducing evidence of defendant's prior conviction of aggravated battery to impeach defendant. Defendant argues that the trial court abused its discretion, as the probative value of admitting evidence of the prior aggravated battery for impeachment purposes was outweighed by its prejudicial effect. More specifically, defendant claims that the prior aggravated battery should not have been admitted, because one of the offenses with which defendant was charged here was aggravated battery and aggravated battery does not directly relate to dishonesty.

¶ 30 “[E]vidence of a prior conviction may be introduced if the prior conviction is for a crime punishable by imprisonment in excess of one year, and less than 10 years have passed since the conviction or the witness'[s] release from confinement.” *People v. Rixie*, 190 Ill. App. 3d 818, 826 (1989). “Once it is established that the prior conviction falls within the class of convictions outlined above, the court must weigh the prejudicial effect of admitting evidence of the prior conviction against the probative value.” *Id.* “Factors for consideration by the trial court are the nature of the crime, the nearness in time of the prior conviction to the present trial, the subsequent career of the defendant, and the similarity of the crimes.” *Id.* “The trial court is to exercise its discretion in admitting evidence of a prior conviction for the purpose of impeaching a witness'[s] credibility.” *Id.* “If the conviction is admitted, the impeached party is entitled to a

limiting instruction admonishing the jury to consider the conviction only as it affects the witness's credibility." *People v. Medreno*, 99 Ill. App. 3d 449, 451 (1981).

¶ 31 "Clearly, courts should be particularly wary of admitting similar prior convictions because they tend to suggest not only that the defendant had general propensity to commit crimes, but that his propensity runs toward the crime charged at present." *Id.* at 453-54. "On the other hand, the law in Illinois is well established that similarity alone does not demand exclusion." *Id.* at 454. "The fact that the prior conviction and the present charge are similar does not prohibit the prior conviction from being admitted for impeachment purposes." *Rixie*, 190 Ill. App. 3d at 826. "'[A] serious felony conviction evinces a disrespect for societal order and thus adversely affects [the defendant's] veracity.'" *People v. Saunders*, 122 Ill. App. 3d 922, 938 (1984) (quoting *Medreno*, 99 Ill. App. 3d at 452). "The more important a witness's credibility is to the determination of the truth, the more compelling is the argument against exclusion of the impeachment." *People v. Marron*, 145 Ill. App. 3d 975, 984 (1986).

¶ 32 Here, the mere fact that one of defendant's current charges was for aggravated battery does not mean that his prior conviction of aggravated battery could not be used to impeach him. *Id.* Moreover, a defendant's prior conviction of aggravated battery may be used for impeachment purposes even though that crime does not directly relate to dishonesty. *People v. Williams*, 173 Ill. 2d 48, 83 (1996); Ill. R. Evid. 609(a) (eff. Jan. 6, 2015). Because resolving this case came down to whether to accept defendant's version of events or the State's, especially given the equivocal value of many parts of the video, defendant's credibility became crucial, and the State could use his prior conviction as an aid to the jury in assessing which version of events was true. See *People v. Barner*, 374 Ill. App. 3d 963, 971 (2007) ("If a defendant's credibility is a central issue in a trial where the defendant chooses to testify, the State has the right and

obligation to use impeaching evidence to destroy the defendant's credibility.''). Additionally, the jury was given two instructions that advised them not to use defendant's prior convictions, including his prior conviction of aggravated battery, for any purpose other than assessing his credibility. When the jury is given such an instruction, the potential prejudice to the defendant is minimized. *People v. Mullins*, 242 Ill. 2d 1, 19 (2011). Given all of these factors, we cannot conclude that the court abused its discretion when it denied defendant's motion *in limine* and allowed the State to use the prior aggravated battery for impeachment purposes. See *People v. Raney*, 2014 IL App (4th) 130551, ¶ 31.

¶ 33 In his reply, defendant argues that the trial court abused its discretion, because the court could have allowed the State to submit evidence of the other prior convictions without permitting the State to introduce the prior aggravated-battery conviction. Although we understand defendant's position, we cannot conclude that the admission of the prior aggravated-battery conviction *in addition* to the other three convictions constituted an abuse of the trial court's discretion. Because, as noted, defendant's credibility was crucial in this case, we believe that the State had an obligation to present all the prior convictions so that defendant's truthfulness could be properly assessed. See *Barner*, 374 Ill. App. 3d at 971. Moreover, we note that courts have denied similar arguments where the risk of unfair prejudice was far greater. See, *e.g.*, *People v. Hall*, 95 Ill. App. 3d 1057, 1058-59 (1981) (admission of the defendant's 11 prior convictions for impeachment purposes, where 5 of the prior convictions were similar to the current charge and 10 were veracity-related, did not constitute an abuse of discretion).

¶ 34 For these reasons, the judgment of the circuit court of Kendall County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this

appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 35 Affirmed.