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2015 IL App (3d) 130506-U

Order filed May 21, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0506
)	Circuit No. 12-CF-199
GERALD R. PULLEY, SR.,)	Honorable
Defendant-Appellant.)	Paul L. Mangieri, Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Evidence at trial was sufficient to prove beyond a reasonable doubt that the victim suffered great bodily harm. (2) Cause is remanded for proper judicial entry of a written order enumerating financial charges assessed against defendant.
- ¶ 2 Defendant, Gerald R. Pulley, Sr., was convicted of two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a), (a-5) (West 2010)). The trial court sentenced defendant to a term of 18 months' probation and 70 days in the Knox County jail. On appeal, defendant argues that the State failed to prove the element of great bodily harm beyond a reasonable doubt. He also

contends that a number of his monetary assessments were improperly imposed by the circuit clerk. We affirm defendant's conviction and remand for the proper judicial entry of a written order enumerating financial charges assessed against defendant.

¶ 3

FACTS

¶ 4

Defendant was charged by indictment with two counts of aggravated domestic battery. Count I of the indictment alleged that defendant struck Michelle Pulley about head and face, causing great bodily harm (720 ILCS 5/12-3.3(a) (West 2010)). Count II alleged that defendant strangled Michelle (720 ILCS 5/12-3.3(a-5) (West 2010)). The case proceeded to a bench trial commencing on April 8, 2013.

¶ 5

At trial, Michelle, defendant's daughter, testified that she was visiting her parents' home on the afternoon of November 29, 2011. Michelle testified that defendant was in a bad mood that day. While Michelle, defendant, and Michelle's mother—Betty Pulley—were in the kitchen, defendant began yelling at Michelle. Michelle testified that when she went to retrieve her purse and jacket, defendant pushed her in the shoulder. Betty moved in between Michelle and defendant, but defendant reached around Betty and struck Michelle in the face with his fist. Michelle attempted to defend herself with a broom that was hung on the back of a door, but was unable to free the broom from its rack. Defendant approached her and struck her in the face multiple times with his fists.

¶ 6

Michelle testified that defendant then began to strangle her. Michelle testified "[h]is thumbs, I recall clearly, were in my throat, dug in, gouged into my throat." When Michelle fell to the ground, defendant got on top of her, and continued to strike her with his fists. Michelle tried unsuccessfully to push defendant off of her, scratching his face in the process. Eventually defendant relented, and Michelle attempted to leave the house. Michelle testified that as she

was leaving, defendant discovered that his face had been scratched, and began hitting her again. When Michelle finally got out of the house, she got into her car and began driving. She testified that she originally began driving to her home, but changed her mind and went to the police station instead.

¶ 7 Larry Rigg of the Galesburg police department testified that he spoke with Michelle on the afternoon of November 29, 2011. Michelle had come to the police department to report an incident with defendant. While talking with Michelle, Rigg noticed that she had a scratch on her nose and that she spit out some blood. Michelle also complained to Rigg of having some loose teeth.

¶ 8 Betty testified that defendant strangled Michelle, causing Michelle to fall down. Defendant then got on top of Michelle and began striking her. Betty testified that she saw defendant hit Michelle "quite a few" times with a closed fist. She never saw Michelle hit defendant.

¶ 9 The day after the incident, Michelle could feel that her teeth were loose and that there was a space between the bottom of her teeth. She also had bruising in her mouth and under her arms. She went to the dentist that day. After having x-rays taken that day, Michelle subsequently underwent a series of root canals on January 4, 2012. The root canals were necessary to save her teeth. Following those procedures, Michelle began wearing an orthodontic device to fix the space in her teeth caused by the incident. She was still wearing the device on the day of the trial.

¶ 10 Dr. Byron Renfroe testified that he was Michelle's dentist. On November 30, 2011, Michelle visited his office for an emergency appointment at which she complained of several sore teeth and one loose tooth. Renfroe testified that upon examining Michelle he discovered

tenderness in her chin and some bruising inside her mouth. He also noted that one of her lower teeth was misaligned. Renfroe had filled a cavity for Michelle in August of 2011, and those injuries were not present at that time.

¶ 11 Renfroe testified that he took x-rays of Michelle's mouth. Through the x-rays, Renfroe discovered that one tooth had been moved, and two others had suffered fractures at the root. Such fractures, Renfroe testified, are usually indicative of blunt force trauma. Renfroe testified that he refers all cases of fractured roots to an endodontist—a specialist in root canals. Renfroe also noted that Michelle complained of soreness in some upper teeth, but the x-rays did not reveal any root damage in those teeth.

¶ 12 Defendant testified in his own defense. He testified that the altercation in the kitchen began when Michelle shoved him. He then grabbed her under her arms in an effort to restrain her. Michelle grabbed a bowl and struck defendant in the head. Defendant testified that Michelle then grabbed the phone and struck him about the head and face with it. He testified that the blows knocked two of his teeth out, and knocked a third tooth loose. Defendant recalled that Betty entered the room only after Michelle had struck him with the bowl and phone. Michelle then struck him in the throat with a dust handle, causing him to fall to the ground. Defendant admitted that he then hit Michelle, but not with a closed fist.

¶ 13 The court found defendant guilty on both counts of aggravated battery. The court explicitly stated that it found the testimony of Michelle and Betty to be more credible than that of defendant. Following a full sentencing hearing, the court sentenced defendant to a term of 18 months' probation and 70 days in the Knox County jail, to be served concurrently on each count. The court also stated that "statutory fines, fees, and court costs and penalties" would be imposed. The court expressly noted a \$200 domestic violence fine and a \$10 domestic battery fee.

Additionally, the court stated that "all penalties and court costs that are statutory in nature *** will be imposed." The domestic violence and domestic battery assessments referenced by the court, as well as a \$250 DNA fee, were included on the court's written sentencing order.

Defendant was also ordered to pay restitution in the sum of \$2,008.48.

¶ 14 A costs sheet was filed on July 11, 2013. Seventeen separate assessments, totaling \$787, appear on the costs sheet. The sheet is not signed by the trial court.

¶ 15 ANALYSIS

¶ 16 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that Michelle suffered great bodily harm, a required element for the first count of aggravated domestic battery. See 720 ILCS 5/12-3.3(a) (West 2010). Defendant also argues that a number of his monetary assessments were improperly imposed by the circuit clerk. Upon review, we affirm defendant's conviction on the grounds that the record supports the trial court's factual finding that Michelle suffered great bodily harm at the hands of defendant. We remand the matter, however, for the proper judicial entry of a written order enumerating financial charges assessed against defendant.

¶ 17 I. Sufficiency of the Evidence

¶ 18 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 19 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, e.g., *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). The weight to be given to witnesses' testimony, the witnesses' credibility, and the reasonable inferences to be drawn from the evidence, are all the responsibility of the fact finder. *Milka*, 211 Ill. 2d at 178. The trier of fact is not required to accept or otherwise seek out any explanations of the evidence that are consistent with a defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 20 "A person who, in committing a domestic battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery." 720 ILCS 5/12-3.3(a) (West 2010).¹ It is well-settled that the element of great bodily harm requires proof of an injury of a more serious nature than a simple battery. *In re J.A.*, 336 Ill. App. 3d 814, 817 (2003).

¶ 21 In *People v. Mays*, 91 Ill. 2d 251, 256 (1982), our supreme court defined bodily harm as "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent[.]" Subsequently, the appellate court has "repeatedly articulated the proposition that 'great bodily harm' is more serious or grave than lacerations, bruises, or abrasions that characterize 'bodily harm.'" *J.A.*, 336 Ill. App. 3d at 817. "In determining whether an injury constitutes great bodily harm, the relevant question for the trier of fact to answer is not what the victim did or did not do to treat the injury but what injuries the victim in fact received." *People v. Edwards*, 304 Ill. App. 3d 250, 254 (1999).

¹ On appeal, defendant only challenges the element of great bodily harm, conceding that the evidence was sufficient to prove simple domestic battery.

¶ 22 In the present case, defendant's punches fractured two of Michelle's teeth at their roots. These injuries necessitated root canals in order to save the teeth. Defendant's punches also dislodged a third tooth in Michelle's mouth, an injury for which Michelle was still wearing a corrective device more than 16 months later. All of these injuries were attested to by Michelle, whom the court explicitly found to be a credible witness. Michelle's description of the injuries was corroborated by Renfroe. The attack also apparently caused bleeding within Michelle's mouth, as evidence by Rigg's observations. A rational trier of fact could surely find beyond a reasonable doubt that these injuries were far "more serious or grave than lacerations, bruises, or abrasions that characterize 'bodily harm.'" *J.A.*, 336 Ill. App. 3d at 817.

¶ 23 Defendant cites to three cases in which, he believes, injuries more serious than those suffered by Michelle were held not to constitute great bodily harm: *In re T.G.*, 285 Ill. App. 3d 838 (1996) (victim stabbed three times); *J.A.*, 336 Ill. App. 3d 814 (victim stabbed once); *In re Vuk R.*, 2013 IL App (1st) 132506 (victim's nose and cheek broken). In each of those cases, the appellate court found that evidence of the extent or nature of the injuries—aside from evidence of the injuries themselves—was lacking. *T.G.*, 285 Ill. App. 3d at 846; *J.A.*, 336 Ill. App. 3d at 817-18; *Vuk R.*, 2013 IL App (1st) 132506, ¶ 9.

¶ 24 The cases cited by defendant are not on point with the facts of the present case. See also *People v. Tainter*, 304 Ill. App. 3d 847, 851 (1999) (noting that cases must be decided on their own facts in "great bodily harm" context). Here, both Michelle and Renfroe described Michelle's injuries in great detail. Renfroe meticulously described the location and nature of Michelle's fractures, and explained what procedures were necessary to correct them. Michelle even explained the lasting effects of the injuries, in the form of the orthodontic device that she continued to wear. Indeed, evidence of the nature and extent of Michelle's injuries was

abundant, and was more than enough for a rational trier of fact to conclude that she had suffered great bodily harm.

¶ 25

II. Fines and Fees

¶ 26

Defendant also contends that a number of fines were improperly imposed by the circuit clerk. Initially, we note that defendant did not allege specifically which assessments were fines—and therefore improper—until his reply brief. In its response, the State thus asserted that defendant had waived the issue. However, where a circuit clerk acts beyond his or her authority by imposing a fine, that order is void. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14. A void order may be attacked at any time and in any court, and is not subject to waiver. *People v. Thompson*, 209 Ill. 2d 19, 25-26 (2004). We will thus address defendant's argument.

¶ 27

It is well-settled that the imposition of fines is a judicial act; the imposition of fines by a clerk constitutes an improper delegation of judicial power. *People v. Warren*, 2014 IL App (4th) 120721 (collecting cases). " ' "The clerk of the court is a nonjudicial member of the court and, as such, has no power to impose sentences or levy fines." ' " *People v. Shaw*, 386 Ill. App. 3d 704, 710 (2008) (quoting *People v. Swank*, 344 Ill. App. 3d 738, 747-48 (2003), quoting *People v. Scott*, 152 Ill. App. 3d 868, 873 (1987)).

¶ 28

When assessments are imposed by a circuit clerk, rather than the trial court, the cause should be remanded for proper judicial entry of fines and fees. *E.g.*, *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 17; *People v. Williams*, 2014 IL App (3d) 120240, ¶ 19. This court has consistently found remand to be appropriate because "[a]ny miscalculations with regard to monetary charges are best addressed in the trial court, with both parties present." *Hunter*, 2014 IL App (3d) 120552, ¶ 17.

¶ 29 In the case at hand, the trial court only included three assessments in its written order: a DNA fee, a domestic violence fine, and a domestic battery fee. Of the 14 other assessments later imposed by the circuit clerk, a number were fines, including the Knox County Child Advocacy Center fine (*People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009)), the arrestee's medical fee (*People v. Larue*, 2014 IL App (4th) 120595, ¶ 57), and the teen court fine (*People v. Richards*, 394 Ill. App. 3d 706, 709 (2009)). Although the court referenced statutory penalties and costs at sentencing, it did not include those in its written order. The calculation of defendant's assessments was apparently completed by the clerk, and reflected in a costs sheet that does not bear a judicial signature. Furthermore, because the costs sheet was issued well after the parties' final appearance before the court, "neither defendant nor the State had an opportunity to raise any issue with respect to costs as calculated by the circuit clerk." *Hunter*, 2014 IL App (3d) 120552, ¶ 16.

¶ 30 Because we find remand to be the appropriate remedy here, this court need not decide the propriety of each individual assessment. Instead, we remand the matter to the trial court with directions to review and, if necessary, correct the costs summarized in the clerk's costs sheet, and enter the correct amount of all financial charges in a written order. Each charge should be supported by the relevant statutory authority.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Knox County is affirmed in part and remanded with instructions.

¶ 33 Affirmed in part; remanded with instructions.