2016 IL App (1st) 133743-U

SIXTH DIVISION
March 31, 2016

No. 1-13-3743



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>JUAN SANCHEZ,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Cook County.<br><br><br><br>No. 10 CR 21861<br><br>Honorable Jorge Luis Alonso, Judge Presiding. |

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

**ORDER**

¶1 ***Held:*** The trial court's answer to the jury's question regarding the elements necessary to prove the crime of aggravated battery of a child did not constitute reversible error.

¶2 Following a jury trial, defendant Juan Sanchez was convicted of two counts of aggravated battery of a child and sentenced to 12 years' imprisonment. On appeal, he argues that the trial court erred because of how it answered the jury's question regarding the required intent under the criminal statute at issue. We find no error and affirm.

¶3 BACKGROUND

¶4 Defendant was charged with, among other things, two counts of aggravated battery of a child, (720 ILCS 5/12-4.3(a) (West 2010)). The victim was his daughter, M.S., who has since been diagnosed with cerebral palsy caused by traumatic brain injuries.

¶5 At trial, M.S.'s mother, Angelica Lopez, testified that she, the defendant, and M.S. lived together in an apartment along with Angelica's aunt and uncle. Defendant and Angelica worked adjacent shifts at a fast food restaurant. She returned back to work her normal morning shift after her maternity leave ended; defendant worked a night shift and was responsible for caring for the baby during the daytime. The aunt and uncle took on no care responsibilities for the baby.

¶6 Angelica testified that she returned from work on the morning of November 24, 2010. Defendant had been caring for M.S. while she was at work. Upon arriving back at the house, defendant told Angelica to be quiet because he had just put the baby to sleep. Angelica heard the baby wheezing. She picked up and patted the baby. The baby fell asleep after being put back down. A few hours later, Angelica heard M.S. making crying or whining noises that she had not heard before. M.S. did not move her arms or legs normally, her body went limp, her eyes rolled back, and she refused a bottle. Angelica undressed M.S. to apply ointment to her and discovered dark purple bruises on her chest and abdomen.

¶7 The couple then took M.S. to a hospital, where medical staff informed them that M.S. had numerous rib fractures and bleeding on her brain, and needed to be transferred to a specialty children's hospital. M.S. began having seizures while being treated at the second hospital. Police officers and Department of Children and Family Services (DCFS) workers arrived and interviewed Angelica.

¶8 Angelica testified that defendant had often exhibited frustration when caring for M.S. When he would shake M.S. up and down in his arms quickly, Angelica would ask him to stop. Despite these requests, defendant's frustration would grow worse and he would shake the baby even more vigorously until Angelica would take M.S. away from him. This style of caretaking caused Angelica to become concerned when she left M.S. in defendant's care.

¶9 M.S.'s primary care physician testified that M.S. was fully normal and healthy when she was examined shortly after birth. He stated that brain trauma to babies can cause cerebral palsy. He opined that grabbing and shaking a baby can cause brain trauma that, in turn, leads to cerebral palsy.

¶10 Dr. Kelley Staley, a physician specializing in child abuse prevention was part of a multi-disciplinary team which examined M.S. She stated that M.S. had a "very significant brain injury" including subdural hematomas on the left side and back of her brain, causing severe pressure. M.S. also had extensive areas of stroke throughout her brain, showing damage to brain tissue from oxygen deprivation, retinal hemorrhaging, and a blood-filled pocket in her retina that required a "great amount of force" to produce. Dr. Staley stated that such injuries are very uncommon and are associated with babies who have been shaken or suffer blunt head trauma such as that caused in car accidents. She concluded that there no was no medical explanation for M.S.'s injuries other than shaking or a forceful blow to the head.

¶11 Among other injuries, M.S. suffered 21 rib fractures which were in various stages of healing. Dr. Staley opined that M.S.'s rib injuries were of the type caused by compressing, or squeezing, the rib cage from front to back. She further stated that most of the injuries were caused within 24 hours of M.S.'s admission to the hospital, and were not caused by normal childcare activities or an accident, but rather from forces inflicted upon the body. Dr. Staley

further testified that a child with similar injuries could become limp and refuse a bottle. Dr. Staley concluded that M.S. will never recover from her injuries.

¶12 M.S.'s foster mother testified, explaining M.S.'s disabilities in detail and outlining the various regimes and equipment used in her daily life. Defendant presented no evidence.

¶13 The trial court gave the jury pattern instructions on aggravated battery of a child (Illinois Pattern Jury Instructions, Criminal, Nos. 11.25, 11.26 (4th ed. 2000)) based both on permanent disability and great bodily harm. The pattern instruction set forth that the State was required to prove that the defendant "intentionally or knowingly caused" either great bodily harm or permanent disability to M.S. During its deliberations, the jury sent a note to the court asking: "is the question whether he intended to harm the baby, resulting in permanent disability, or whether he intended to cause her permanent disability?" Defendant's counsel asked that the court not answer the question, but just refer the jurors back to their instructions. However, the trial judge felt that the question was a legal one which it should answer. After a recess, the prosecutor asked that the jury be instructed that the "defendant did not need to know that his shaking of [M.S.] would specifically cause the cerebral palsy or any of the great bodily harm ***." Defense counsel again asked that the court not answer the jury's question, or in the alternative, that it reinstruct the jury with the pattern jury instructions which it previously gave.

¶14 After further argument, the trial judge concluded that "the instruction they have is not clear." He responded to the jury: "The question is whether the State has proven beyond a reasonable doubt the defendant intentionally or knowingly performed the acts which caused permanent disability." Within minutes of receiving this response, the jury returned its verdicts, finding the defendant guilty of aggravated battery of a child involving permanent disability and great bodily harm.

¶15 The defendant filed a motion for a new trial challenging the court's response to the jury's question, which the court denied. The court merged the defendant's conviction count 1 (great bodily harm) and count 2 (permanent disability), and sentenced him to 12 years' imprisonment. This appeal followed.

¶16 ANALYSIS

¶17 Defendant presents only one issue on appeal. He contends that the trial court erred by answering the jury's question in the manner it did. We normally review jury instruction issues for abuse of discretion, but where, as here, the instruction issue is one of statutory interpretation, our review is *de novo*. *People v. Turman*, 2011 IL App (1st) 091019, ¶ 18; see also *People v. Gray*, 346 Ill. App. 3d 989, 993-94 (2004) (trial court's decision whether to answer a jury question is ordinarily reviewed for an abuse of discretion, but whether the trial court misstated the law is reviewed *de novo*).

¶18 The defendant was charged with violating the aggravated battery of a child statute which provides:

> "Any person of the age 18 years and upwards who intentionally or knowingly *** causes great bodily harm or permanent disability *** to any child under the age of 13 years *** commits the offense of aggravated battery of a child." 720 ILCS 5/12-4.3(a) (West 2010).

¶19 A trial court has a duty to provide instruction to the jury when the jury has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion. *People v. Brooks*, 187 Ill. 2d 91, 138 (1999). Under certain circumstances, the duty to respond to the jury's question persists even if the jury already received proper instructions. *People v. Reid*, 136 Ill. 2d 27, 39 (1990). The court must respond to the

jury's request with sufficient specificity and accuracy to clarify the problem, and giving a response which provides no answer to the particular question of law the jury posed can be prejudicial error. *People v. Cortes*, 181 Ill. 2d 249, 280 (1998).

¶20 Section 4-5 of the Criminal Code of 1961 (Criminal Code) defines "knowingly" as it relates to the mental state required to commit a criminal act. It provides:

> "A person knows, or acts knowingly or with knowledge of:
>
> (a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.
>
> (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result *is practically certain to be caused by his conduct*." (Emphasis added.) 720 ILCS 5/4-5 (West 2010).

Section 4-5 also states that when a law defining a crime "provides that acting knowingly suffices to establish an element of an offense, that element also is established if a person acts intentionally." *Id*. Despite the "practically certain" standard in section 4-5, a jury "need not be instructed on the terms knowingly and intentionally because those terms have a plain meaning within the jury's common knowledge." *People v. Powell*, 159 Ill. App. 3d 1005, 1013 (1987).

¶21 The parties focus most of their arguments on whether crimes involving a battery are specific intent or general intent crimes, but we do not find that analysis to be helpful in resolving the question presented here. In *People v. Robinson*, 379 Ill. App. 3d 679, 684-85 (2008), the court set forth an exhaustive historical analysis of the classifications of specific and general intent as they relate to the crime of battery. The court noted that there were numerous Illinois

cases on each side of the issue which could not be easily reconciled with one another. What was more important than this unresolved specific/general categorization, the court determined, was that: "[r]egardless of whether one calls battery a specific intent crime or a general intent crime, however, the criminality of defendant's conduct depends on whether he acted knowingly or intentionally, *or whether his conduct was accidental*. Determining whether the conduct was knowing or intentional, or was accidental, was the responsibility of the trier of fact." (Emphasis added.) *Id.* at 684-85. We find the *Robinson* court's analysis to be sound and will use it in examining the issues presented here.

¶22 In *People v. Psichalinos*, 229 Ill. App. 3d 1058, 1067 (1992), the court addressed the relationship between the required mental state for commission of aggravated battery of a child and the elements of that offense. The court looked to existing cases interpreting the standard aggravated battery statute, that is, those involving battery victims who were not children. Because the operative language in the two battery statutes is worded identically, the *Psichalinos* court determined that the culpability principles established with respect to standard aggravated battery "should apply equally" to aggravated battery of a child. *Id*. Applying that framework, the court held that because aggravated battery of a child is also "defined in terms of particular result," "a person is said to act knowingly when he is consciously aware that his conduct is practically certain to cause the result." *Id*.

¶23 *Psichalinos* relied strongly on *People v. Hickman*, 9 Ill. App. 3d 39 (1973), in which the court stated the well established rule that: "One who does an unlawful act is liable for the consequences even though they may not have been intended. Thus where one in the commission of a wrongful act commits another wrong not meant by him, or where in the execution of an intent to do wrong, an unintended act resulting in a wrong ensued as a natural and probable

consequence, the one acting with wrongful intent is responsible for the unintended wrong." *Id.* at 44 (citing 21 Am. Jur. 2d Criminal Law § 83 (1964)).

¶24 These authorities suggest that the trial court's response to the jury question was correct. Defendant disagrees, arguing that the trial court's answer to the jury understated the level of culpability, or intent, required to prove the crime charged. Defendant provides the example of a father who innocently turns on a defective stove while holding a baby and reaching for a bottle to warm on the stove, but somehow burns the baby. Based on the trial court's response, defendant suggests that the father would be liable for aggravated battery of a child because the father deliberately turned on the stove to ignite a flame. This hypothetical does not, however, parallel this case, largely because that child's burns were accidental and would not have been caused by a wrongful act. Here, in contrast, the scope and severity of M.S.'s manifold injuries, inflicted over many different parts of her body, amply supported—indeed, compelled—a finding that they were caused by an intentional wrongful act and not by accident. Intent may be inferred from the act itself. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009). Based on the pervasive extent and nature of M.S.'s injuries, we cannot find that any reasonable jury would have found, based on the evidence presented, that they were caused by something other than by a wrongful act, and not an accidental act.

¶25 We acknowledge that it might have been preferable, or more precise, to provide the jury with a response which included the "practically certain" standard of section 4-5. There is, in fact, a pattern jury instruction which defines intent and knowledge by using the "practically certain" language of section 4-5. See Illinois Pattern Jury Instructions, Criminal, No. 5.01B (4th ed. 2000) (hereinafter, IPI Crim. 4th No. 5.01B). However, defendant did not request that the court give the jury any additional instruction defining intent and knowledge, and accordingly

cannot argue here that the court should have given that instruction. See Ill. Sup. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. Delgado*, 282 Ill. App. 3d 851, 857 n.1 (1996). Additionally, the committee comments to the instruction indicate that "[t]he Committee takes no position on whether this definition should be routinely given in the absence of a specific jury request," and cite *Powell* for the "general proposition that the words 'intentionally' and 'knowingly' have a plain meaning within the jury's common understanding." The comments continue, "If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense." IPI Crim. 4th No. 5.01B cmt.

¶26 We agree with the State that the trial court's answer to the jury question correctly distinguished between intentional, negligent, and accidental acts, and that omitting the "virtually certain" standard was not error. Under the specific facts of this case, which are quite compelling, and in light of all the instructions given, we cannot find that the trial court erred by answering the jury's question by saying that the State was required to prove that the defendant committed the acts which caused the permanent disability.

¶27 CONCLUSION

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

¶29 Affirmed.