2016 IL App (4th) 140890-U

NO. 4-14-0890

FILED
September 19, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
ADAM C. SMITH,	)	No. 12CF1494
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The State's circumstantial evidence was sufficient for the jury to find beyond a reasonable doubt defendant was the inmate who squirted urine at the correctional officer.

¶ 2 In October 2012, the State charged defendant, Adam C. Smith, by information with one count of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West Supp. 2011)). After a July 2014 trial, a jury found defendant guilty of the charge. In September 2014, the Macon County circuit court sentenced defendant to five years' imprisonment. Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 3 On appeal, defendant contends the State's evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's information asserted defendant committed the offense of aggravated

battery on October 24, 2012, in that he, without legal justification, knowingly made physical contact of an insulting or provoking nature with Samuel Hubner by throwing urine onto Hubner's arm and with the knowledge Hubner was a correctional institution officer engaged in the execution of his official duties. On July 16, 2014, the circuit court held a jury trial on the aggravated-battery charge. The State presented the testimony of Officer Hubner and the security camera footage of the incident. Defendant presented the testimony of Gregory Freeman, the inmate in cell 4 of the segregation unit at the time of the incident, and Scott Flannery, a Macon County sheriff's sergeant assigned to the Macon County jail. The evidence relevant to the issue on appeal is set forth below.

¶ 6 Officer Hubner testified that, on October 20, 2014, he took defendant to the restraint chair, in which defendant was strapped down for an hour to prevent him from causing harm to himself, others, or property. Officer Hubner could not recall the incident that led to defendant needing the restraint chair. On October 23, 2014, when Officer Hubner was conducting the nightly shakedown, defendant told him " 'payback's a bitch.' " The next night, when Officer Hubner was conducting one of his 30-minute checks on the inmates in the segregation pod, he felt liquid hit his arm when he approached cell 3. Officer Hubner believed the person squirted urine on him and did not think he was actually urinated on. He felt a "shhht" on his arm, like when one is hit with a squirt gun. Officer Hubner also heard a noise like one caused by squirting something out of a bottle. Defendant was the only inmate in cell 3 at the time. Officer Hubner testified defendant was "mouthy" but had never physically assaulted anyone.

¶ 7 Officer Hubner described the cells in the segregation pod as having a toilet, a sink, a cot, a desk, and a stool. The door to the cell had a viewing window and a locked chuck

hole. One side of the door butted up against the wall, and the other side of the door had a two-inch gap between it and the wall. The only actual opening from the inside of the cell to the outside of the cell was the crack between the wall and the door. Officer Hubner testified the crack between cells 2 and 3 in the segregation unit were opposite sides of the door, which would make them about eight feet apart. Officer Hubner did not recall who was in cell 2 on the night of the incident. However, he did recall Andrew Wilson, another Macon County jail inmate, had been charged with throwing urine on a correctional officer. Moreover, Officer Hubner testified he felt the urine hit his arm when he was immediately in front of the crack of cell 3. He walked past the crack for cell 2 and then the solid area of cell 2 before coming to the crack of cell 3.

¶ 8 After the liquid was thrown on him, Officer Hubner immediately left the segregation pod. He did not photograph his shirt or the area outside the cells. Officer Hubner was not involved in the search of defendant's cell. He did not believe any containers were recovered from defendant's cell after the incident.

¶ 9 The video footage of the incident shows Officer Hubner raise his arm and immediately leave the segregation unit. However, the video does not clearly show which cell he was in front of when he raised his arm.

¶ 10 Freeman testified that, on the evening of the incident, he never saw Officer Hubner make any motions that would indicate something had happened to him. According to Freeman, Officer Hubner's shirt was not wet when he returned to the segregation unit, and he smelled of cologne. Freeman also testified defendant offered to pay $100 to write an affidavit stating what he witnessed the night of the incident. Defendant had not paid him yet.

¶ 11 Sergeant Flannery testified he was working the night of the incident and responded to Officer Hubner's call for a command officer. When defendant's cell was opened, a

liquid substance was inside the cell, and the substance was consistent with what Sergeant Flannery had observed outside the cell and on Officer Hubner's uniform. He explained there was a general pool of liquid on the floor outside the cell, then in the crack area, and then on the inside. The liquid was yellowish and smelled like urine. Sergeant Flannery personally questioned defendant about what the liquid was. Defendant "just kind of smiled" and refused to tell him what it was. Sergeant Flannery admitted he did not take pictures of the substance on the floor or of Officer Hubner's uniform. No container of any sort was found in defendant's cell. Additionally, Sergeant Flannery explained they did not put inmates in the restraint chair for "running their mouth." The chair was for keeping an inmate from hurting himself or others. Sergeant Flannery testified defendant had "quite a mouth." To his knowledge, defendant had never been placed in the restraint chair for any actual assault against another individual. Last, Sergeant Flannery testified he had recently looked at the doors to cells 2 and 3, and the cracks for those doors are adjacent to each other.

¶ 12 At the conclusion of the trial, the jury found defendant guilty of aggravated battery.

¶ 13 At a September 4, 2014, hearing, the circuit court sentenced defendant to five years' imprisonment for aggravated battery. Defense counsel filed a timely motion to reconsider defendant's sentence. Defendant filed a *pro se* motion for the reduction of his sentence. On October 7, 2014, the circuit court denied both defendant's *pro se* motion after a hearing under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and the motion to reconsider defendant's sentence. On October 14, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, this court has jurisdiction of this cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 14 II. ANALYSIS

¶ 15 Defendant's sole argument is the State's evidence was insufficient to prove beyond a reasonable doubt he was the inmate who sprayed Officer Hubner with urine. The State asserts the evidence was sufficient

¶ 16 When presented with a challenge to the sufficiency of the evidence, a reviewing court considers " '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.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). " 'Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence.' " *People v. Washington*, 2012 IL 107993, ¶ 33, 969 N.E.2d 349 (quoting *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008)). Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010).

¶ 17 In this case, the victim and sole eyewitness, Office Hubner, did not see exactly where the urine came from. However, "[a] defendant can be convicted solely on circumstantial evidence." *People v. Saxon*, 374 Ill. App. 3d 409, 417, 871 N.E.2d 244, 251 (2007). "Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish guilt or innocence of the defendant." *Saxon*, 374 Ill. App. 3d at 417, 871 N.E.2d at 251. A jury does not have to be satisfied beyond a reasonable

doubt as to each link in the chain of circumstantial evidence. *Saxon*, 374 Ill. App. 3d at 417, 871 N.E.2d at 251. The circumstantial evidence is sufficient if all of the evidence taken as a whole satisfies the jury beyond a reasonable doubt of the defendant's guilt. *Saxon*, 374 Ill. App. 3d at 417, 871 N.E.2d at 251. Moreover, "an assertion that another person committed the offense does not necessarily raise a reasonable doubt as to the guilt of the accused." *People v. Tenney*, 205 Ill. 2d 411, 429, 793 N.E.2d 571, 582 (2002). Likewise, a jury is " 'not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.' " *Tenney*, 205 Ill. 2d at 429, 793 N.E.2d at 582 (quoting *People v. Herrett*, 137 Ill. 2d 195, 206, 561 N.E.2d 1, 6 (1990)).

¶ 18 Officer Hubner testified that in the jail's segregation unit, the only actual opening from the inside of the cell to the outside of the cell was the crack along the wall. He felt the liquid hit his arm when he was in front of the crack of cell 3. Officer Hubner testified the cracks for cells 2 and 3 were on opposite sides and were about eight feet apart from each other. According to Officer Hubner, he passed the crack in cell 2, the solid area of cell 2, and then came to the crack in cell 3. Defendant notes Sergeant Flannery testified the cracks for cell 2 and 3 were adjacent to each other. However, it was the jury's responsibility to determine the inconsistencies in the witnesses' testimony, the bias or interest affecting their credibility, and the weight to be given to their testimony. *People v. Hernandez*, 319 Ill. App. 3d 520, 533, 745 N.E.2d 673, 684-85 (2001). Accordingly, the jury could have found that, based on the State's evidence, defendant was the only inmate who had an opportunity to throw the urine at Officer Hubner.

¶ 19 In addition to Officer Hubner's location in front of the crack for cell 3, Sergeant Flannery testified he found a general pool of liquid that was outside, in the crack area, and then

inside of cell 3. The pool was yellowish and smelled like urine. Moreover, when Sergeant Flannery questioned defendant about the liquid, he smiled and refused to talk about it. Additionally, Officer Hubner testified he had taken defendant to the restraint chair four days before the incident, and during the shakedown on the night before the incident, defendant had told him " 'payback's a bitch.' " Defendant also offered to pay Freeman a $100 for his affidavit related to this case. Thus, the State presented sufficient circumstantial evidence to prove beyond a reasonable doubt defendant was the inmate who squirted urine on Officer Hubner. Additionally, we note that, unlike in *People v. Dowaliby*, 221 Ill. App. 3d 788, 801, 582 N.E.2d 1243, 1251 (1991), cited by defendant, the aforementioned circumstantial evidence is more than just evidence of opportunity.

¶ 20 However, defendant contends a reasonable doubt did exist because a container that could squirt urine was never recovered from his cell after the incident. However, Officer Hubner testified the inmates were allowed to have small bottles of toiletries in their cells. Thus, defendant would have had access to a container that was able to squirt liquid. Moreover, the cells had toilets, and Officer Hubner immediately left the segregation pod upon being hit with the liquid. Thus, an opportunity did exist for defendant to flush a small bottle down the toilet. Accordingly, we find the fact a container was never found in defendant's cell does not establish a reasonable doubt of his guilt.

¶ 21 Last, we note this case is distinguishable from *In re Nasie M.*, 2015 IL App (1st) 151678, 45 N.E.3d 347, which was cited by defendant in support of his argument. There, the First District reversed the defendant's convictions, which were based on his possession of a firearm. *Nasie M.*, 2015 IL App (1st) 151678, ¶¶ 37, 39, 45 N.E.3d 347. The reviewing court noted the State failed to establish the defendant had possessed a firearm because it did not

present (1) testimony from any eyewitnesses seeing the defendant holding a gun, (2) forensic evidence showing the defendant fired a gun, or (3) medical evidence establishing the gunshot wounds were self-inflicted. *Nasie M.*, 2015 IL App (1st) 151678, ¶ 37, 45 N.E.3d 347. Here, circumstantial evidence was presented showing the urine came from defendant's cell based on where Officer Hubner was when he was struck by the urine, evidence of defendant's motive, and the location of the pool of urine found by Sergeant Flannery.

¶ 22 Accordingly, we find the State's evidence was sufficient to prove defendant guilty beyond a reasonable doubt of being the person who squirted the urine on Officer Hubner.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.