2017 IL App (4th) 141008-U

NO. 4-14-1008

FILED
March 3, 2017
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.	)	McLean County
BRANDON M. BECK,	)	No. 14CF36
Defendant-Appellant.	)	
	)	Honorable
	)	John Casey Costigan,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: We affirm defendant's conviction where the evidence was sufficient to prove him guilty beyond a reasonable doubt of aggravated battery to a peace officer and affirm the $600 lump sum probation fee.

¶ 2 Defendant, Brandon M. Beck, appeals the jury's verdict finding him guilty of one count of aggravated battery to a peace officer. 720 ILCS 5/12-3.05(d)(4) (West 2012). He contends the evidence was insufficient to support the jury's verdict. Defendant also appeals the imposition of a $600 lump-sum probation fee. After our review of the record, we affirm defendant's conviction and the imposition of the lump-sum probation fee.

¶ 3 I. BACKGROUND

¶ 4 In January 2014, the State charged defendant with three counts of aggravated battery to a peace officer: one count for biting Officer Timothy Carlton (count I), one count for kicking Carlton (count II), and one count for pushing Carlton (count III). The jury found

defendant not guilty of counts I and II but guilty of count III. In his appeal, defendant contends the other officers at the scene testified they did not see defendant push Carlton, and therefore, he argues, the evidence was insufficient to convict him.

¶ 5 The charges stemmed from an incident in the early morning hours of January 12, 2014, when Bloomington police officer, James Clesson, while assisting with a traffic stop of an intoxicated person, noticed a vehicle traveling on its rims only, with two flat tires. Because he was unable to leave the scene of the traffic stop, Clesson radioed for assistance. Officers Carlton and Scott Wold responded to the nearby parking lot of Don Owens Tire, where the vehicle had stopped.

¶ 6 At the trial, Carlton testified, at the time of the dispatch, he was a uniformed officer on patrol with Officer Wold in a marked squad car. They parked on the street in front of Don Owens Tire and saw the driver exiting the vehicle. They made contact with the driver, Justin Brookshier, as he exited. With the driver's door open, Carlton said he smelled cannabis. He initially stood by as Wold spoke with Brookshier. They all stepped away from the vehicle and Carlton told Wold he smelled cannabis emanating from the vehicle.

¶ 7 Carlton went back to the vehicle and saw the front passenger door open and defendant in the process of exiting. Carlton told defendant he was not free to leave and "placed [his] body in front of him." Defendant said he was leaving, as Carlton had no reason to keep him there. Carlton explained to defendant that based on the smell he was not free to leave. Carlton said he put his "body in front of [defendant] so he couldn't get past [him] again." Carlton said defendant "pushed [him] to the side, tried to step through with his leg to try to get past [him] and shoved [him] out of the way." Carlton said defendant grabbed his shoulder and pulled past him.

¶ 8 Carlton forced defendant "back up against the car." Carlton ordered defendant to place his hands behind his back; he was under arrest for resisting a peace officer. Defendant did not comply. Defendant "attempted to get past [Carlton] again at which time [Carlton] was able to spin [defendant] around so now he was facing the car, grabbed hold of his right arm, and placed a cuff on his right arm." Carlton told defendant to stop resisting and keep his hands behind his back. Instead, defendant pulled his arm away to avoid the other handcuff.

¶ 9 By this time, Sergeant Richard Beoletto had arrived on the scene and came to assist Carlton. Defendant pulled his arm away from Beoletto as well. They continued to struggle with defendant for approximately 30 seconds. The officers determined they would take defendant to the ground. Defendant leaned to his left and kicked Carlton on the inside of his right leg, causing Carlton to fall. Carlton got back up and "tried to re-engage" when defendant bit Carlton's hand.

¶ 10 Officer Wold, who had been speaking with Brookshier at the patrol car, came over and tackled defendant to the ground. Sergeant Donath was also present, standing at the front of Brookshier's car yelling at defendant to stop resisting. On the ground, defendant continued to resist by lying on his hands. Eventually, the officers were able to handcuff defendant and transport him to jail. Carlton said he went to the hospital to be treated for injuries to his hands and knees. Photographs of his injuries were published to the jury.

¶ 11 Officer Wold next testified, corroborating Carlton's testimony about the events that occurred when they first arrived on the scene. Wold said while he was speaking with Brookshier, he "heard a commotion at the back of the vehicle more towards the passenger side where Officer Carlton and Officer Beoletto were addressing the passenger." He observed "some kind of struggle going on," but he could not "exactly say for sure what was going on but [he]

knew they were struggling with him." Wold left Brookshier and approached the other officers and defendant. He "personally observed" Carlton on the ground. Wold said defendant's back was exposed to him, "so [he] just wrapped him up and threw him forward and fell on top of him." Wold described Carlton as "wincing in pain." On cross-examination, Wold said he did not see defendant shove, kick, or bite Carlton.

¶ 12 Sergeant Beoletto also testified. He recalled responding to the area with his partner, Officer Alex Vasquez. They exited the squad car to assist Carlton, who had just informed them he smelled cannabis in the vehicle. Carlton was standing on the passenger side of the vehicle as Beoletto approached. According to Beoletto, Carlton asked defendant to exit the vehicle so he could search defendant due to the odor. Defendant exited but said he was not going to be searched. Defendant tried to move away from Carlton. The following exchange occurred:

"Q. Did you see the defendant make physical contact with Officer Carlton in any way?

A. I saw him trying—I wouldn't say physical contact. He tried to move away from him in a manner that he was trying to get away.

Q. Okay. At some point did you see the defendant make physical contact with Officer Carlton?

A. Um, I saw him resisting. I didn't see him physically strike him as far as I know.

Q. When you say he was resisting, tell me what the defendant was doing?

A. Continuously pulling away, just trying to get distance between himself and Officer Carlton.

Q. Was he successful in doing so?

A. No ma'am.

Q. Why not?

A. Because I moved in to assist Officer Carlton in trying to restrain him."

¶ 13 Beoletto said he tried to secure defendant's left hand in handcuffs, but he "wasn't having much luck with doing that." They decided to take defendant to the ground. Carlton "ended up falling and landing on his back directly underneath [defendant] as he was standing over him." Beoletto tried to maintain his hold on defendant but he slipped on the ice and fell to his knee. Carlton was getting back up when Wold came over and took defendant to the ground. They were then successful in placing defendant in handcuffs. According to Beoletto, Carlton indicated "he'd been bitten and he was complaining of some soreness to his knees."

¶ 14 On cross-examination, the following exchange occurred:

"Q. During this time, did you ever see my client kick Carlton?

A. Not that I know of sir, no.

Q. Did you see him bite Carlton?

A. No, I did not see him."

¶ 15 On redirect, the prosecutor asked Beoletto the following question:

"Q. I want to make sure I understand your testimony. It's not that the defendant didn't bite or kick Officer Carlton, but that you did not personally see it?

A. Correct."

The State rested.

¶ 16 Defendant testified on his own behalf. He said Carlton told him he was not free to leave and he was going to be searched. Defendant informed Carlton he was not going to

search him. Defendant explained he was "trying to at least move out of his grasp." When Carlton grabbed defendant, defendant continued to try to move away. Defendant said he just stood stiff while the officers tried to handcuff him. He said he "was tense, [he] was just trying to hold [his] ground and figure out what was going on." He denied pushing, kicking, or biting any officer.

¶ 17 The jury found defendant not guilty of aggravated battery to a peace officer as alleged in counts I (kicking Carlton) and II (biting Carlton) but guilty of the offense as alleged in count III (pushing Carlton). After denying defendant's posttrial motion, the trial court sentenced defendant to 24 months' probation and 100 hours of community service, with a stayed jail sentence of 30 days contingent upon defendant's compliance with the terms of his probation and community service.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Sufficiency of the Evidence

¶ 21 Defendant contends the State failed to sufficiently prove beyond a reasonable doubt he pushed Carlton as alleged in count III. He claims Beoletto's testimony contradicted Carlton's and indicated there was no physical contact other than defendant trying to move away. We disagree and find the evidence sufficient to support the jury's verdict.

¶ 22 When challenging the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its own judgment for the trier of fact on issues of the credibility of witnesses or the weight of the evidence. *Brown*, 2013 IL 114196, ¶ 48. The trier of fact has the responsibility to determine the credibility of

witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of the defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 23 Defendant was charged with having "knowingly made physical contact of an insulting or provoking nature with *** Carlton, in that he pushed *** Carlton, knowing *** Carlton to be a peace officer engaged in the execution of his official duties." The essential elements of aggravated battery to a peace officer are contained in the descriptions of the offenses of both battery and aggravated battery. *People v. Phillips*, 392 Ill. App. 3d 243, 257-58 (2009). "A person commits battery if he or she knowingly without legal justification by any means (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). That is, the State has to prove defendant's conduct was knowing or intentional. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 42. The State also has to prove defendant, in committing a battery, knew that Carlton was a peace officer performing his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2012).

¶ 24 Of these elements, defendant challenges only the sufficiency of the evidence as it relates to him making physical contact with Carlton by pushing him. He does not contend he did not realize Carlton was a peace officer. He claims the relevant evidence was contradictory, namely that Carlton testified defendant pushed him but according to Beoletto, defendant did not physically strike or make physical contact with Carlton. Further, defendant argues, his own testimony corroborated Beoletto's testimony, stating he merely stepped aside and continued to try to move from Carlton's grasp. He denied pushing Carlton.

¶ 25 We disagree with defendant's characterization of Beoletto's testimony. Beoletto testified he did not *see* any physical contact. Specifically, Beoletto said: "Um, I saw him resisting. I didn't see him physically strike him as far as I know." Beoletto said he did not see defendant bite or kick Carlton, but he was not asked specifically if he saw defendant push Carlton. As such, Beoletto did not testify defendant *did not* push Carlton, only that he *did not see* defendant physically strike Carlton. The jury found defendant guilty of the offense after considering all of the testimony, including that from (1) Beoletto; (2) defendant denying he pushed Carlton; and (3) Carlton stating defendant "pushed [him] to the side, tried to step through with his leg to try to get past me and shoved me out of the way."

¶ 26 The " 'testimony of a single witness is sufficient to convict *if positive and credible*.' " (Emphasis in original.) *People v. Heller*, 2017 IL App (4th) 140658, ¶ 35 (quoting *People v. Smith*, 185 Ill. 2d 532, 545 (1999)). " 'It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts.' " *Heller*, 2017 IL App (4th) 140658, ¶ 35 (quoting *People v. Bradford*, 2016 IL 118674, ¶ 12). " '[A] reviewing court will not substitute its judgment for the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.' " *Heller*, 2017 IL App (4th) 140658, ¶ 35 (quoting *Bradford*, 2016 IL 118674, ¶ 12).

¶ 27 "When reviewing a challenge to the sufficiency of the evidence, we ask whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Heller*, 2017 IL App (4th) 140658, ¶ 35 (citing *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007)). We find, under this standard, viewing the evidence in the light most favorable to the State, the jury could have easily found the essential elements of the crime considering it heard testimony from Carlton, that

defendant pushed and shoved him during the struggle. The jury made its credibility determination and we will not disturb that determination given this record on review. *People v. Moss*, 205 Ill. 2d 139, 164-65 (2001) (the jury's responsibility of assessing witness credibility, weighing evidence, resolving conflicts in the evidence, drawing reasonable inferences from the evidence, and making those determinations are entitled to great deference). We conclude Carlton's testimony alone was sufficient for the jury to find defendant guilty beyond a reasonable doubt.

¶ 28 B. Probation Fee

¶ 29 Defendant next contends the circuit clerk erred in assessing defendant's $600 probation fee in a lump sum, rather than in monthly installments. Section 5-6-3 of the Unified Code of Corrections (730 ILCS 5/5-6-3(i) (West 2014)) allows the trial court to assess a fee, usually $25 per month, for costs associated with supervision of probation or community service. Defendant does not dispute the amount. He only requests that it be classified as a monthly fee of $25 for the 24-month probation term, rather than a $600 lump sum assessment.

¶ 30 The statute provides:

> "The court shall impose upon an offender sentenced to probation after January 1, 1989 or to conditional discharge after January 1, 1992 or to community service under the supervision of a probation or court services department after January 1, 2004, as a condition of such probation or conditional discharge or supervised community service, a fee of $50 *for each month* of probation or conditional discharge supervision or supervised community service ordered by the court, unless after determining the inability of the person sentenced to probation or conditional discharge or supervised community service to pay the fee, the court

assesses a lesser fee. *** The fee shall be imposed only upon an offender who is actively supervised by the probation and court services department. The fee shall be collected by the clerk of the circuit court. The clerk of the circuit court shall pay all monies collected from this fee to the county treasurer for deposit in the probation and court services fund under Section 15.1 of the Probation and Probation Officers Act.

A circuit court may not impose a probation fee under this subsection (i) in excess of $25 per month unless the circuit court has adopted, by administrative order issued by the chief judge, a standard probation fee guide determining an offender's ability to pay [off] the amount collected as a probation fee, up to $5 of that fee collected per month may be used to provide services to crime victims and their families.

The Court may only waive probation fees based on an offender's ability to pay. The probation department may re-evaluate an offender's ability to pay every 6 months, and, with the approval of the Director of Court Services or the Chief Probation Officer, adjust the monthly fee amount. An offender *may* elect to pay probation fees due in a lump sum." (Emphases added.) 730 ILCS 5/5-6-3(i) (West 2012).

¶ 31 The plain statutory language does not require the probation fee be assessed in monthly installments, only that it be calculated using the number of months the defendant is ordered to be on probation. As the last sentence of the statutory language indicates, the "offender may elect to pay probation fees due in a lump sum." 730 ILCS 5/5-6-3(i) (West 2012). However, the statute does not require or forbid the fee be assessed *only* in monthly installments.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.