2018 IL App (1st) 150216-U

No. 1-15-0216

Order filed February 15, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 8299
	)	
JUAN NUNEZ-GUILLEN,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery resulting in great bodily harm to a child and finding of guilt for aggravated domestic battery affirmed over his contention that the evidence was insufficient to show the victim suffered great bodily harm. Defendant's sentences for aggravated domestic battery and aggravated battery resulting in bodily harm to a child are vacated as the convictions violate the one-act, one-crime rule. We order the mittimus corrected to reflect one count of aggravated battery resulting in great bodily harm to a child.

¶ 2 Following a bench trial, defendant Juan Nunez-Guillen was convicted of aggravated battery resulting in great bodily harm to a child under the age of 13 (720 ILCS 5/12-3.05(b)(1)

(West 2012)), aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)), and aggravated battery resulting in bodily harm to a child under the age of 13 (720 ILCS 5/12-3.05(b)(2) (West 2012)). The trial court sentenced defendant to concurrent sentences of eight years', seven years', and five years' imprisonment, respectively.

¶ 3 On appeal, defendant contends that (1) the evidence was insufficient to prove great bodily harm for his convictions for aggravated battery resulting in great bodily harm to a child and aggravated domestic battery; (2) his convictions for aggravated domestic battery and aggravated battery resulting in bodily harm to a child violate the one-act, one-crime rule; and (3) his mittimus incorrectly lists a conviction for aggravated battery of a child causing permanent disability rather than aggravated battery resulting in great bodily harm to a child. For the following reasons, we (1) affirm defendant's convictions for aggravated battery resulting in great bodily harm to a child and aggravated domestic battery, (2) vacate the sentences on defendant's convictions for aggravated domestic battery and aggravated battery to a child resulting in bodily harm, and (3) order defendant's mittimus corrected.

¶ 4 Defendant was charged with aggravated battery resulting in great bodily harm to a child under the age of 13 (count 1), aggravated domestic battery resulting in great bodily harm to a household member (count 3), and aggravated battery resulting in bodily harm to a child under the age of 13 (count 5). The charges stemmed from an incident in which defendant burned his live-in girlfriend's son, L.H, with a hot spoon.[1]

¶ 5 At trial, A.H., L.H.'s brother, testified that he was seven years old and in second grade at the time of the incident. A.H. lived with his aunt, L.H., and his two sisters, A.S. and E.S. Prior to

[1] We refer to the victim and his minor brother and sisters, as the parties do, by their initials.

living with his aunt, he lived in Chicago with his siblings, his mother, and defendant, whom he referred to as "dad."

¶ 6 When A.H. was six years old, he observed L.H. steal candy from a store and told defendant when they arrived home. As punishment, defendant held a spoon over the flame on their stove and then held the hot spoon on L.H.'s hand. A.H. indicated that defendant held the spoon on the webbed part of L.H.'s hand between his thumb and first finger. After being burned, L.H. cried and went to his mother.

¶ 7 On cross-examination, A.H. testified that, on the day of the incident, he was in the kitchen with defendant, L.H., his mother, and his sisters.

¶ 8 The victim, L.H., testified that he was nine years old at the time of trial and was living with his aunt, A.H., and his two sisters. Prior to living with his aunt, L.H. lived with his siblings and his parents. He testified that his hand was burned when defendant, whom he called "dad," was cooking. L.H. stated he was running near defendant and that defendant picked up a spoon, "and put it like kind of backwards and like then it touched [his] hand and then it started to like boil." L.H.'s hand looked like it was boiling because it had little bumps on it. The burn hurt and felt as though someone bit him. L.H. cried as a result of the burn. He visited a doctor a few days later. The State introduced into evidence three photographs depicting L.H. and his injury on the day he visited the doctor. L.H.'s mother, brother, and sisters were all in the kitchen on the day he was burned.

¶ 9 L.H. testified that he stole candy from a store and defendant yelled at him. However, L.H. could not recall whether that happened prior to being burned.

¶ 10 On cross-examination, L.H. testified that he did not know if defendant burned his hand because he stole candy. He stated that defendant touched him with the hot spoon accidentally.

¶ 11 E.S., L.H.'s sister, testified that she was six years old and in kindergarten at the time of trial. She was living in Joliet, but she lived in Chicago previously with her parents, brothers, and sister. She identified defendant as her father. When she was four years old and living in Chicago, she was in the kitchen with defendant and her mother, brothers, and sister. E.S. witnessed defendant take a spoon, hold it over the flame on the stove, and burn L.H.'s hand. Defendant was not cooking at the time, and L.H. was not in trouble at the time.

¶ 12 Terrance McKitterick testified that he is an evidence technician for the Chicago Police Department. On March 4, 2013, he received an assignment to go to Stroger Hospital. At the hospital, McKitterick met with L.H. to photograph injuries to his left hand. McKitterick identified the three photographs he took: an overall picture of L.H., a photographic identification of L.H., and an injury to L.H.'s left hand. The court admitted the photographs into evidence.

¶ 13 The parties stipulated that, if called, Valerie McKee would testify that on March 4, 2013, she was a counselor at Plamondon Elementary School in Chicago. She observed L.H. at school with what appeared to be a healing burn on his hand. McKee interviewed L.H. and his then-six-year-old brother, A.H. Following the interviews, McKee called the Department of Children and Family Services hotline to make a report regarding the burn. The parties further stipulated that in March 2013, defendant was 38 years old.

¶ 14 Defendant did not testify or present any evidence. Following arguments, the court extensively reiterated the evidence presented. The court found that the children's testimony was credible. With respect to L.H.'s testimony, the court stated:

"When asked the specific questions by defense counsel, the word 'accident' came out, and there appeared to be some denial as to what took place. The court is not giving great weight to that. This is a stressful situation. [L.H.] was the person that was actually harmed, in this court's assessment, by the defendant. He, in this court's assessment, has mixed loyalties based upon what happened. There might be some sense of guilt by him as to what happened to him."

¶ 15 The court further noted that the photograph of L.H.'s injury "clearly indicate[d]" that it was not accidental. The court found defendant guilty of all three counts. In finding defendant guilty, the court stated:

"With respect to great bodily harm, the court has to assess the instrument to exact the punishment, or the abuse in this case, on the young child. While this particular injury to the hand may have been vicious, but not of huge consequence concerning great bodily harm had it been done to an adult, when you [look] at the scalping [*sic*] and the area of the burn that surrounds the scalping [*sic*], this is a large percentage of this young baby's hand at the time that the punishment or abuse was exacted upon him.

The court observed now when he held his hand up the mark appears to have disappeared. But the test is not how the mark has disappeared a year or so after the incident, the analysis should be how the hand looked, how the hand felt. The young man testified as to how his hand felt after the burn. He described it as being boiled. He used other words to describe the pain that his hand felt at the time that his mother's boyfriend decided that he was going to apparently teach him a lesson."

¶ 16 Defendant moved the court for a new trial or to reconsider its findings. Defense counsel orally argued that counts 1 and 5 should merge, and the State agreed. Without ruling on whether the counts would merge or defendant's motion, the trial court asked the parties about defendant's presentence investigation report and factors in aggravation and mitigation. Following the parties' arguments in aggravation and mitigation and defendant's allocutory statement, the court sentenced defendant to concurrent sentences of eight years' imprisonment with three years of mandatory supervised release (MSR) on count 1, seven years' imprisonment with 2 years of MSR on count 3, and five years' imprisonment with one year of MSR on count 5. This appeal followed.

¶ 17 On appeal, defendant first argues that the evidence was insufficient to sustain his convictions for count 1, aggravated battery resulting in great bodily harm to a child under the age of 13, and count 3, aggravated domestic battery resulting in great bodily harm to a household member, because the State failed to prove beyond a reasonable doubt that L.H. suffered great bodily harm. While defendant concedes that the evidence established bodily harm, he argues that the State failed to show that L.H.'s injury was "anything more than the equivalent of an abrasion or laceration." He does not challenge the proof to establish his guilt of battery or any other elements of aggravated battery of a child or aggravated domestic battery.

¶ 18 On a challenge to the sufficiency of the evidence, we inquire " '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 omitted.) *People v. Davison,* 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison,* 233 Ill. 2d

at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is within the province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Id.* at 228. We 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 (2010).

¶ 19 Section 12-3.05(b)(1) provides that "[a] person who is at least 18 years of age commits aggravated battery when, in committing a battery, he or she knowingly and without legal justification by any means causes *** great bodily harm *** to any child under the age of 13 years." 720 ILCS 5/12-3.05(b)(1) (West 2012). Section 12-3.3(a) provides that "[a] person who, in committing a domestic battery, knowingly causes great bodily harm *** commits aggravated domestic battery." 720 ILCS 5/12-3.3(a) (West 2012). There is no precise legal definition for "great bodily harm" (*People v. Doran*, 256 Ill. App. 3d 131, 136 (1993)), but it requires an injury greater and more serious than a simple battery (*People v. Figures*, 216 Ill. App. 3d 398, 401 (1991)), which is defined as "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions." *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Whether an injury rises to the level of great bodily harm is a question for the trier of fact. *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 12. In making that determination, "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).

¶ 20 Viewed in the light most favorable to the prosecution, we find that the evidence presented was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant caused seven-year-old L.H. to suffer great bodily harm. The evidence at trial established that defendant held a spoon over a flame on the stove and then held the hot spoon on L.H.'s hand. A.H. and L.H. testified that L.H. cried after being burned. L.H. further testified that his skin looked like it was "boiling" and had bumps, and that the burn hurt and felt like he had been bitten. There were no photographs taken immediately after the incident, but the trial court viewed a photograph of L.H.'s injury taken a few days after the incident, which depicted L.H.'s hand scabbing and healing from the burn. While defendant asserts that this testimony was insufficient to show L.H.'s injury was anything more than a laceration, the trial court, as trier of fact, found otherwise, noting that the injury took up a substantial portion of L.H.'s hand. See *Cisneros*, 2013 IL App (3d) 110851, ¶ 12 (it is for trier of fact to determine whether victim's injuries rise to level of great bodily harm). We have reviewed the photograph and agree.

¶ 21 In light of the testimonial and photographic evidence presented at trial, we cannot find that the evidence was "so improbable or unsatisfactory that it create[d] a reasonable doubt" that defendant caused L.H. to suffer great bodily harm. See *Givens*, 237 Ill. 2d at 334.

¶ 22 Defendant maintains that there was no evidence regarding the degree of L.H.'s burn or any other medical testimony concerning treatment or how long the injury lasted and therefore, the evidence does not support a finding of great bodily harm. However, lack of medical testimony does not preclude the trial court from finding that an injury constitutes great bodily harm. See *Cisneros*, 2013 IL App (3d) 110851, ¶ 21; *People v. Jordan*, 102 Ill. App. 3d 1136 (1981) (finding of great bodily harm is not dependent on hospitalization of victim or even that

victim received medical attention); *People v. Matthews*, 126 Ill. App. 3d 710, 715 (1984) (finding great bodily harm where victim, who was struck on head and arms, only received bruise on head and did not require medical attention); *People v. Olmos*, 67 Ill. App. 3d 281, 289-90 (1978) (three or four welts on victim's back and cut eye were sufficient to constitute great bodily harm, though victim did not receive medical attention and testified the welts were "not real bad"); *People v. Dennis*, 5 Ill. App. 3d 708, 713 (1972) (finding that medical testimony is not needed to find "great bodily harm"). Nor is permanent disfigurement required to sustain a finding of great bodily harm. *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688, ¶ 13. Thus, the fact that no evidence was presented regarding L.H.'s treatment, and that L.H.'s injury was not visible at the time of trial, does not compel a different result. The evidence of great bodily harm was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated battery and aggravated domestic battery.

¶ 23 Defendant next contends that his convictions for count 3, aggravated domestic battery resulting in great bodily harm to a household member, and count 5, aggravated battery resulting in bodily harm to a child, violate the one-act, one-crime rule because they are based on the same physical act as his conviction for count 1, aggravated battery based on causing great bodily harm to a child. The State concedes that all three of defendant's convictions are based on the same physical act and cannot stand under the one-act, one-crime rule.

¶ 24 The one-act, one-crime doctrine prohibits multiple convictions which arise from the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). When evaluating whether a conviction violates the one-act, one-crime rule, we must determine (1) whether the defendant committed multiple acts and (2) if so, whether any of the

charges are lesser-included offenses. *King*, 66 Ill. 2d at 566; *People v. Rodriguez,* 169 Ill. 2d 183, 186 (1996). We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Csaszar*, 375 Ill. App. 3d 929, 943 (2007).

¶ 25 Here, it is undisputed that all three of defendant's convictions are based on the same physical act—namely, that defendant burned L.H.'s hand with a spoon that he heated over the stove. We agree with the parties that, because defendant did not commit multiple acts, the convictions on counts 3 and 5 violate the one-act, one-crime rule. See *Rodriguez,* 169 Ill. 2d at 186. Thus, counts 3 and 5 should have been merged into count 1 by the trial court. Accordingly, we vacate the sentences associated with counts 3 and 5 and order the clerk of the circuit court of Cook County to correct defendant's mittimus to reflect only a conviction for count 1.

¶ 26 Finally, defendant contends, and the State concedes, that while the statutory citation listed on his mittimus for count 1 is correct, it incorrectly lists his conviction as aggravated battery to a child under the age of 13 based on causing permanent disability. The parties agree, and the record reflects, that defendant was instead convicted of aggravated battery based on causing great bodily harm to a child under the age of 13. Therefore, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the circuit court to correct defendant's mittimus to reflect his conviction for aggravated battery based on causing great bodily harm to a child under the age of 13. See *People v. Johnson,* 385 Ill. App. 3d 585, 609 (2008) (reviewing court can correct a mittimus at any time).

¶ 27 Based on the foregoing, we affirm the judgment of the circuit court of Cook County, but we vacate defendant's sentences on counts 3 and 5, and order the clerk of the circuit court to

correct defendant's mittimus to reflect one count of aggravated battery based on causing great bodily harm to a child under the age of 13.

¶ 28 Affirmed in part; vacated in part; mittimus corrected.