

2018 IL App (1st) 151780-U

No. 1-15-1780

Order filed February 2, 2018

Fifth Division

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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 13844
)	
WILLIE HUBBARD,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not apply a lesser standard in convicting defendant of involuntary manslaughter; rather, the court's remarks reflected its determination that defendant's acts were likely to cause death or great bodily harm. Moreover, the evidence was sufficient to show that defendant acted recklessly.

¶ 2 Following a bench trial, defendant Willie Hubbard was convicted of involuntary manslaughter and was sentenced to four years and six months in prison. Defendant's conviction arose from an outdoor altercation in which he punched Edward Scott in the head, causing Scott

to fall and fatally impale his eye on a metal fence post. On appeal, defendant contends his conviction should be reversed because the trial court cited an incorrect legal standard in stating his actions were “likely to cause bodily harm or great bodily harm,” as opposed to the involuntary manslaughter statute’s culpable mental state of finding that he knew his actions were likely to cause death or great bodily harm. Defendant also asserts the evidence was not sufficient to support his conviction, asserting that due to the unusual manner of Scott’s death, the trial court could not have found he consciously disregarded a risk of death or great bodily harm by punching Scott a single time.

¶ 3 Defendant was charged with two counts of first-degree murder in connection with Scott’s death. Count 1 alleged that defendant intentionally or knowingly, and without lawful justification, struck Scott with his fist, causing Scott to fall and resulting in his death. Count 2 alleged that defendant, without lawful justification, struck Scott with his fist, causing Scott to fall and resulting in his death, knowing that act created a strong probability of death or great bodily harm.

¶ 4 At trial, Carmelita Scott testified Scott was her uncle. At the time of these events, Carmelita and Scott lived with his mother, Catherine Harris, at their home on South Greenwood in Chicago. On June 16, 2013, their next-door neighbors were having a barbeque. Carmelita and Scott were sitting on their front porch. Scott had been drinking that day.

¶ 5 Scott went next door to the party, where he started to swear and create a disturbance. Carmelita and Harris tried to persuade Scott to leave the party. Harris threw a bucket of water in Scott’s face to get him to calm down. Carmelita saw defendant strike Scott in the face with a closed fist.

¶ 6 Ruby Johnson testified she attended the party given by Scott's neighbors in their front yard. Johnson was seated at a table near a fence that enclosed the front yard; others at the table were neighbor Mary Black, her daughter and her granddaughter. Scott appeared intoxicated and was standing on his front porch "hollering across the fence" to people on the Blacks' front porch, though Johnson could not hear what Scott said.

¶ 7 Scott walked to the Blacks' porch, through a gate to the sidewalk, down the sidewalk, and entered the gate that enclosed the Blacks' yard. Scott was staggering and fell down at one point. Scott approached the table and called Black's daughter a "bitch." Rodney Black and another person told Scott to leave. Johnson testified that they "got him as far as the fence" and Scott was standing near the fence in front of his yard.

¶ 8 Defendant then approached Scott. Johnson, who did not know defendant or Scott, was still sitting at the table inside the fence. Johnson did not see what direction defendant came from but said defendant approached "like he was sneaking with his hand balled up." Defendant struck Scott with "his fist balled up" but Johnson did not know if defendant hit Scott in the head or face. Johnson identified a photograph of the Blacks' yard and the fence. Johnson testified defendant "was right up on" Scott when he struck Scott. After being struck, Scott fell and his eye came into contact with a metal fence post. Scott fell to the sidewalk.

¶ 9 James Griggs, a friend of defendant, testified he could not remember if he went to the party along with defendant or recall the events surrounding Scott's death. After Griggs said he did not recall testifying in front of a grand jury, the parties stipulated that Assistant State's Attorney Natosha Cuyler-Sherman would testify that on June 17, 2013, she took a statement from Griggs. Griggs' statement, which was entered into evidence, was consistent with Johnson's

account, in that Griggs stated that defendant “came out of nowhere” and punched Scott with “a closed fist to the right side” of Scott’s face. Griggs stated he did not want to identify defendant because Griggs “grew up in that neighborhood” and was “worried that someone [could] come after him and his family.”

¶ 10 Viada Talbert, defendant’s girlfriend, testified that after defendant contacted her at 8 p.m. that night, she picked him up in a restaurant parking lot. Defendant got into her car and was upset and not talking. They went to Talbert’s house, where defendant began crying and praying and said he had punched a man and “his eye [came] out of his face.”

¶ 11 Defendant told Talbert he ran away after striking Scott. Defendant did not know Scott and said Scott had been “messaging with some women and some kids” and defendant then “came off the porch and hit him.” Talbert took defendant to his mother’s house. On cross-examination, Talbert stated defendant was remorseful and they discussed going to the police.

¶ 12 Chicago police detective William Sullivan testified that an investigative alert was issued for defendant. Defendant turned himself in to police on June 26, 2013, and was interviewed by Sullivan and another detective. While being interviewed, defendant said he did not intend for Scott to die and expressed sadness at his death. A video of defendant’s statement was admitted into evidence and portions were played for the court.

¶ 13 A video depicting the front yards involved in this case was played for the court. A three-foot length of the iron rod that had been removed from the fence was entered into evidence. Sullivan testified defendant was 6 feet tall and weighed approximately 170 pounds.

¶ 14 The parties stipulated that Dr. Ariel Goldschmidt, a deputy Cook County medical examiner, was qualified to testify as an expert in forensic pathology. Dr. Goldschmidt would

testify that he performed an autopsy on Scott's body on June 17, 2013. Scott was 5 feet 7 inches tall and weighed 232 pounds. Scott's injuries included an eight-inch laceration to the brain. Dr. Goldschmidt would testify that his opinion, to a reasonable degree of medical and scientific certainty, was that Scott died due to craniocerebral injuries due to impalement on a fence post.

¶ 15 Following that testimony, defense counsel moved for a directed finding, arguing that defendant's intent to kill could not be presumed from a blow with a bare fist. The State responded that sufficient evidence was presented that defendant acted intentionally. The court denied the motion, and the defense rested without presenting evidence.

¶ 16 The trial court found defendant guilty of involuntary manslaughter as a lesser-included charge of first degree murder. The court found that defendant intended to punch Scott but did not intend to kill him.

¶ 17 The court further stated:

“It was an unlawful act. The punching [of] the victim was likely to cause bodily harm or great bodily harm to him, and when you punch an individual on a sidewalk with a fence nearby, you disregard the risk that he would fall and hit himself and hurt himself, if not kill himself.”

¶ 18 The trial court denied defendant's motion to reconsider its ruling and motion for a new trial. Defendant was sentenced to four years and six months in prison.

¶ 19 On appeal, defendant first contends his conviction should be reversed because the trial court expressly found that his actions were less severe than the legal standard necessary to constitute involuntary manslaughter. He argues in its ruling, the court equivocated in its determination that defendant committed the act with the requisite mental state.

¶ 20 Involuntary manslaughter involves a less culpable mental state than first-degree murder. *People v. DiVincenzo*, 183 Ill. 2d 239, 249 (1998). Involuntary manslaughter occurs when defendant performs an act that unintentionally causes the death of another. 720 ILCS 5/9-3(a) (West 2012). The State also must prove that: (1) the defendant’s act was likely to cause death or great bodily harm; and (2) that the act was performed recklessly. *Id.* The latter two elements are at issue in this appeal.

¶ 21 Pointing to the trial court’s remark that his act of punching Scott “was likely to cause bodily harm or great bodily harm,” defendant argues the court believed his actions did not rise to the required level of culpability. He asserts that the court’s statement of the legal standard reflected that it found defendant’s actions were likely to cause either mere bodily harm or great bodily harm, as opposed to either death or great bodily harm, as the statute requires.

¶ 22 The trial court, as the trier of fact here, is presumed to know the law and apply it properly; that presumption is rebutted only when the record “contains strong affirmative evidence to the contrary.” *People v. Howery*, 178 Ill. 2d 1, 32 (1997); *People v. Chatman*, 2016 IL App (1st) 152395, ¶ 65. The trial court is not required to state for the record the standard of proof that it has employed. *People v. Weston*, 271 Ill. App. 3d 604, 615 (1995); *People v. Hoots*, 228 Ill. App. 3d 42, 53 (1992). In determining the sufficiency of the judgment, the entire record will be searched to support the judgment. *Hoots*, 228 Ill. App. 3d at 53.

¶ 23 The record does not rebut the presumption that the trial court applied the correct standard of finding defendant’s act was likely to cause death or great bodily harm. In finding defendant guilty of involuntary manslaughter, a lesser-included offense of the charged crime of first-degree murder, the court first found that defendant intended to punch Scott but did not intend to kill

him. In finding defendant committed involuntary manslaughter, the court phrased the standard as “bodily harm or great bodily harm.”

¶ 24 However, we do not find the court’s isolated comment to display confusion as to the standard to be applied in this case. After that remark, the court found defendant’s act of punching Scott on a sidewalk near a fence demonstrated his disregard of the risk of death or great bodily harm. The court stated that by punching Scott in those surroundings, Scott disregarded the risk that Scott “would fall and hit himself and hurt himself, if not kill himself.” Even though the court described the standard differently than it is phrased in the statute, the court’s subsequent findings demonstrate its consideration of whether defendant performed an act likely to cause death or great bodily harm. Therefore, reading the court’s statements as a whole, we cannot conclude that the court applied an incorrect legal standard.

¶ 25 Defendant argues this case is comparable to *People v. Warren*, 40 Ill. App. 3d 1008 (1976), in which the trial court found the defendant guilty of possessing marijuana. A police officer testified that he observed defendant sitting in the back seat of a vehicle with an open bag of marijuana at his feet; the defendant testified he was being given a ride to a bus stop. *Id.* at 1009. After closing arguments, a discussion took place on the record between the court, the police officer and the prosecutor as to the credibility of the witnesses. *Id.* at 1009-1011. In reversing the conviction based on insufficient evidence, this court noted the trial court’s remarks “demonstrat[ed] his general dissatisfaction with the State’s evidence” as well as the trial court’s “continuous doubts” as to the defendant’s guilt. *Id.* at 1011. However, we find *Warren* to be inapposite because the court’s remarks here did not reflect uncertainty as to its verdict and the court did not express doubts as to the legal effect of defendant’s act.

¶ 26 Defendant next contends the evidence was insufficient to support his conviction. Again, defendant challenges the sufficiency of proof that his act was (1) likely to cause death or great bodily harm; and (2) was performed recklessly. 720 ILCS 5/9-3(a) (West 2012).

¶ 27 Pointing to the manner of Scott's death, defendant argues his single blow to Scott was not likely to cause death or great bodily harm. He asserts his punch "was not delivered with unusual force" and that Scott's death was an improbable and unforeseen result. He also argues no evidence was presented that Scott suffered any injuries simply as a result of the punch, apart from the injury caused by the fence picket. Furthermore, defendant argues no rational trier of fact could have found his act was reckless, *i.e.*, that by punching Scott once, he consciously disregarded a risk of death or great bodily harm.

¶ 28 A person acts recklessly when he "consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result would follow * * * and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in this situation." 720 ILCS 5/4-6 (West 2012). Reckless conduct occurs when a person "is aware that his conduct might result in death or great bodily harm, although that result is not substantially certain to occur" and where he consciously disregards that risk. *People v. DiVincenzo*, 183 Ill. 2d 239, 249-50 (1998) (citing 1 W. LaFave & A. Scott, *Substantive Criminal Law* § 3.7(f), at 336-37 (1986), and 1 T. Decker, *Illinois Criminal Law* 82 (1996)); *People v. Cook*, 2014 IL App (1st) 113079, ¶ 34; *People v. Hulitt*, 361 Ill. App. 3d 634, 639 (2005).

¶ 29 Striking a victim with a single punch that results in the victim's death has been deemed reckless behavior sufficient to sustain an involuntary manslaughter conviction. *People v. Lengyel*, 2015 IL App (1st) 131022, ¶ 64; *People v. Gresham*, 76 Ill. App. 3d 1003, 1007 (1979);

People v. Parr, 35 Ill. App. 3d 539, 542-43 (1976). In *Parr*, a witness testified that the defendant struck the victim once “causing [the victim] to close his eyes and fall to the concrete,” though the defendant testified that he did not hit the victim and the victim instead fell backwards and hit his head. *Id.* at 541.

¶ 30 On appeal, this court rejected the defendant’s contentions that his act of punching the victim was not likely to cause death and was not performed recklessly, finding the jury could conclude that the defendant’s actions displayed a conscious disregard of a substantial and unjustifiable risk. *Id.* at 542. This court stated in *Parr*:

“It is within [the] realm of common experience for an actor to realize that the effect of a blow with a fist is *likely* to be far greater than the effect of the initial impact on the recipient. Indeed, frequently the objective in such confrontations is knocking down the opponent. Consequently, where an individual sees fit to strike another individual with his fists, and as a direct consequence of such blow, the recipient falls, strikes his head, and dies, we see no justification for reducing the degree of criminal liability from involuntary manslaughter to some lesser offense.”

[Italics in original.] *Id.*

¶ 31 In the instant case, defendant struck Scott in the head with a closed fist while both men stood on a sidewalk near a metal fence. Scott’s subsequent fall onto the fence was a direct result of defendant’s act of striking him. A defendant’s criminal intent and mental state can seldom be proved by direct evidence; rather “it may be inferred by the trier of fact from acts committed and circumstances in evidence,” as well as the nature of the victim’s injuries. *People v. Baum*, 219 Ill. App. 3d 199, 201 (1991); see also *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011). The

trial judge, as the trier of fact, could conclude that defendant consciously disregarded the risk of great bodily harm to Scott by striking him in those surroundings, even if the result of his action was not substantially certain to occur. See *DiVincenzo*, 183 Ill. 2d at 249.

¶ 32 Even though defendant argues no evidence was presented that he “was aware the fence was there,” the existence of the fence in plain sight was demonstrated through the photographs admitted at trial and the fence also was described by witnesses. Thus, the trial court could ascribe to defendant the knowledge that the fence was nearby when defendant punched Scott.

¶ 33 Furthermore, an involuntary manslaughter conviction does not require that defendant, or anyone else, could have predicted the manner in which the victim would die. In a case where the defendant struck his wife with his fists, causing her to fall into a wall and later die of a cerebral injury due to blunt trauma, this court convicted the defendant of involuntary manslaughter, *People v. Cates*, 111 Ill. App. 3d 681, 689-90 (1982). The court found the key inquiry as to recklessness was whether the defendant’s act deviated from the standard of care that a reasonable person would exercise, as determined by the trier of fact. *Id.* (finding that the defendant’s subjective beliefs that his acts were justified and that he did not think the victim would fall were “of little importance”).

¶ 34 In conclusion, the trial court found that defendant’s actions were likely to cause death or great bodily harm to Scott. Moreover, the evidence was sufficient for the trial court to find that defendant consciously regarded a risk of death or great bodily harm in punching Scott in the head near a fence. For all of those reasons, defendant’s conviction for involuntary manslaughter is affirmed.

¶ 35 Accordingly, the judgment of the trial court is affirmed.

No. 1-15-1780

¶ 36 Affirmed.