

2018 IL App (1st) 161658-U
No. 1-16-1658
Order filed September 28, 2018

Third 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. 14 CR 22231
)	
TRAVIS JOHNSON,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD-SMITH delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's conviction for aggravated battery to a peace officer over his contention that the evidence was insufficient to establish that he acted knowingly.

¶ 2 Following a bench trial, defendant Travis Johnson was convicted of aggravated battery to a peace officer (720 ILCS 12-3.05(d)(4)(i) (West 2014)) and possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) and sentenced to concurrent terms of six years' and two years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove

that he knowingly committed a battery against a peace officer. For the following reasons, we affirm.

¶ 3 Defendant was charged with three counts of aggravated battery of a peace officer and one count of possession of a controlled substance stemming from events that occurred on October 22, 2014. At trial, Dolton police detective David Graham testified that, on October 22, 2014, he was working with his partner Damone Griffin. Graham was in plainclothes but wore a bulletproof, tactical vest that had “police” in “large, six-inch letters” on it, as well as his Dolton police badge and name. At around 2 p.m., the officers were in a police vehicle near an address on East Sibley Boulevard in Dolton, Illinois because they received several complaints about narcotics sales taking place in front of a liquor store. Graham and Griffin used binoculars to conduct surveillance from their vehicle. They observed a pickup truck parked near the front of the liquor store, which was approximately 20 yards away. A man in an orange safety vest walked to the driver’s side of the pickup truck and exchanged money for an unknown item.

¶ 4 After the man walked away, Graham and Griffin approached the pickup truck and announced their office. There were two people inside the truck. Graham smelled burnt cannabis when he approached the vehicle. The passenger, who was known to the officers at the time, said, “ ‘We are not doing anything. We were just smoking weed.’ ” Graham observed a lit “cigarette blunt” in the ash tray. He identified defendant in court as the driver of the vehicle.

¶ 5 Defendant told Graham that his name was Henry Bentley and gave his date of birth. The officers ran that name and the passenger’s name through the “LEADS” system, and both men had warrants for their arrests. The officers instructed the men to exit the truck, and Graham

found a small yellow pill on defendant's person. The pill appeared to be Alprazolam, more commonly known as Xanax. Graham recovered the pill and later inventoried it.

¶ 6 The officers transported defendant to the police station to book him on the charge of possession of a controlled substance. During booking, Graham was alone in the room with defendant. Although there was a video camera in the room, the camera did not have audio capabilities. He entered defendant's information into the computer and was still under the impression that defendant's name was Henry Bentley. After receiving defendant's information, Graham took defendant's mug shot. He instructed defendant to stand with his back against the wall and then had him turn to the left to take a profile photograph.

¶ 7 Defendant was not compliant with Graham's command to turn to the left. Defendant moved around and the camera was unable to focus. Defendant complained that the room was cold, and Graham told him that he would get him a blanket when the booking process was complete. Defendant was angry and aggressive toward Graham. He continued to disobey Graham's commands, and refused to walk to Graham to be fingerprinted. He began "screaming, yelling and being very, very disruptive." Graham then approached defendant and instructed him to turn around and place his hands on the wall, but defendant refused.

¶ 8 The State introduced into evidence the video recording of the booking room and published it to the court. Graham narrated the video recording, which took place at approximately 8:50 p.m. and has no audio. The video shows most of the booking room, although part of the room is off-camera. Graham and defendant enter the room. An officer, whom Graham identified as Dolton police officer John Frazier, is visible standing in the hallway near the door of the booking room. Graham is seen giving defendant instructions and entering his information

into a computer. Defendant is standing against the wall of the room while Graham was on the computer and taking defendant's mug shot. At one point, defendant turns to the left and the men appear to be speaking back and forth. Graham explained that defendant became noncompliant at that point. Graham motions with his finger for defendant to walk toward him, but defendant refuses. As Graham approaches defendant, defendant reaches out and the men engage in a physical altercation. Defendant is not handcuffed and pushes Graham. When Graham attempts to restrain defendant, defendant resists. Graham aims a kick toward defendant. Defendant continues to resist and pushes Graham across the room toward the wall.

¶ 9 Officer Frazier enters the room and attempts to grab defendant and pull him off Graham. Defendant is still holding onto Graham's shirt and the three entangled men swing around. As they turn, Frazier has an arm around defendant's neck and pulls him while defendant pulls Graham, swinging him into the cement wall of the booking room. The video shows Graham being pushed backward towards the wall and his head hitting the wall. A third officer, Devries, enters the room to help restrain defendant. After Graham hit his head, all four men are on the floor of the booking room. The three officers eventually restrain defendant.

¶ 10 Graham testified about the physical altercation and described his resulting injuries. His head hit the wall of the booking room. His neck and shoulder blade hit an iron bar on the wall. He sustained a "severe concussion" and suffers from "severe pain" in his C4 lumbar. Graham was still getting injections and receiving treatment for the pain in his back at the time of trial. Paramedics checked him out immediately after the incident to decontaminate him because defendant had spit on him. He did not go to the hospital that night because he was not in pain at

that time. Graham finished defendant's report and his shift that night. He was driven to the hospital the following day.

¶ 11 On cross-examination, Graham acknowledged that he attempted to kick defendant after defendant lunged at him and refused to comply. Graham hit the wall twice, once when defendant pushed him into the wall and again when he hit his head.

¶ 12 Officer Frazier testified that he was a patrolman for the Dolton police department and was in the booking area when the incident between Graham and defendant occurred. Frazier heard their conversation. Graham was calm and gave commands, while defendant was "somewhat confrontational." Frazier noticed that the conversation was becoming more "heated" so he went to the gun lockup to secure his weapon. He was away for approximately "ten, twenty seconds" and when he returned, there was a commotion inside the room and defendant was grabbing Graham. Frazier entered the room and tackled defendant to get him off Graham. He was eventually able to wrestle defendant to the floor and Officer Devries handcuffed defendant.

¶ 13 The parties stipulated that, if called, Pamela Wilson would testify that she is a forensic scientist employed by the Illinois State Police Division of Forensic Services. She is an expert in the field of forensic chemistry. She received an inventory in this case, which contained one broken tablet. In her opinion, to a reasonable degree of scientific certainty, the tablet was Alprazolam, and weighed .3 grams.

¶ 14 Following arguments, the court found defendant guilty of three counts aggravated battery of a peace officer and one count of possession of a controlled substance. With respect to the aggravated battery count, the court described the video as being "quite vivid" concerning the physical altercation between defendant and Graham. The court noted that defendant continually

pushed Graham and resisted, which forced all three officers to attempt to subdue him, and that the video clearly showed Graham's head hitting the wall. The court relied "particularly on the video," which "sp[oke] for itself" and revealed that defendant was the aggressor "from the very beginning."

¶ 15 The court thereafter denied defendant's motion for a new trial. It merged the three aggravated battery counts and sentenced defendant to concurrent terms of six years' imprisonment for aggravated battery and two years' imprisonment for possession of a controlled substance.

¶ 16 On appeal, defendant does not challenge the sufficiency of his possession of a controlled substance conviction. Instead, he argues only that the evidence was insufficient to sustain his conviction for aggravated battery of a peace officer. Specifically, defendant contends that the evidence established that Officer Frazier's conduct led to Officer Graham's head hitting the wall, and, therefore, the evidence could not support a finding that defendant knowingly committed a battery against Graham. He asserts his conviction should be reduced to resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)) and remanded for resentencing.

¶ 17 When reviewing 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)). 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).

¶ 18 Although a “trial court’s findings based on testimonial evidence are entitled to great deference,” its findings based on nontestimonial evidence, such as surveillance videos admitted into evidence, are not entitled to any deference. *People v. Dixon*, 2015 IL App (1st) 133303, ¶ 20. 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 To prove aggravated battery, the State must first establish that the defendant committed a battery. 720 ILCS 5/12-3.05(d) (West 2014). As charged here, a defendant “commits battery if he *** knowingly without legal justification by any means *** causes bodily harm to an individual.” 720 ILCS 5/12-3(a)(1) (West 2014). The State may enhance battery to aggravated battery if it establishes that the defendant knew that the victim was a peace officer while the victim was performing his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2014).

¶ 20 Defendant does not contend that he did not know Detective Graham was a peace officer engaged in his official duties at the time of the incident. He concedes he resisted Graham’s commands and his resistance proximately caused Graham’s injuries, because Officer Frazier would not have intervened but for defendant’s resistance. Defendant argues only that the State failed to prove he had the requisite mental state, specifically that the evidence was insufficient to show he knowingly pushed Graham’s head into the wall where it was Frazier’s intervention in the altercation that led to Graham’s head injury.

¶ 21 A person acts knowingly “when he *** is consciously aware that that result is practically certain to be caused by his conduct.” 720 ILCS 5/4-5(b) (West 2014). Where a defendant denies the requisite mental state, the State may prove defendant’s intent through circumstantial evidence. *People v. Begay*, 377 Ill. App. 3d 417, 421 (2007); *People v. Barnes*, 364 Ill. App. 3d 888, 896 (2006). Intent may be inferred “(1) from the defendant’s conduct surrounding the act and (2) from the act itself.” *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009) (citing *Begay*, 377 Ill. App. 3d at 421-22 (finding intent could be inferred from the defendant’s conduct immediately prior to the battery)); *Barnes*, 364 Ill. App. 3d at 896 (noting the defendant’s intent could be inferred from the nature of the act itself).

¶ 22 In this case, defendant’s surrounding conduct and the act itself demonstrates defendant knowingly committed a battery against Graham. Defendant’s conduct was noncompliant and aggressive. Both Graham and Frazier testified that defendant refused to follow commands and his demeanor was loud and combative. Frazier testified that the conversation between the two men in the booking room was getting “heated,” although Graham remained calm. Critically, the testimonial and video evidence demonstrates defendant pushed Graham several times and became physically aggressive toward the detective, which included holding onto him even after Frazier attempted to intervene. Having viewed the video, we find it undeniable that defendant was consciously aware that his conduct in attacking Graham would result in injury where the altercation took place in a small, concrete room, he backed Graham up toward a wall, other officers were required to intervene, and he refused to obey commands. In light of such evidence, we find that the trier of fact could reasonably infer from defendant’s conduct that he acted knowingly in these circumstances. Although defendant claims he did not knowingly push

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Graham's head into the wall, the evidence revealed that he knowingly engaged in a physical altercation with the detective, continued to attack Graham, and did not release him, thereby causing Graham's head and back injuries. Accordingly, we cannot say that the evidence "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.