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2018 IL App (3d) 150262-U

Order filed September 21, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0262
)	Circuit No. 13-CF-2563
HARRY F. O'NEAL,)	Honorable
Defendant-Appellant.)	David Martin Carlson, Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Schmidt dissented.

ORDER

- ¶ 1 *Held:* The evidence was insufficient to sustain defendant's conviction for aggravated battery of a peace officer where the officer's testimony conflicted with a videotape of the incident.
- ¶ 2 Defendant Harry O'Neal was pulled over for an unilluminated back license plate, and after a second officer arrived at the scene, an altercation ensued. He was arrested and charged with aggravated battery of each officer. Following a bench trial, he was found not guilty of one

count but guilty on the second count and sentenced as a Class X felon to a six-year term of imprisonment. He appealed. We reverse, finding the evidence insufficient to sustain O’Neal’s conviction.

¶ 3

FACTS

¶ 4

Defendant Harry O’Neal was pulled over by Rockdale patrol officer Robert Baikie for an unilluminated back license plate. Baikie approached the passenger side of the car, which remained in gear, and asked O’Neal for his license and registration. After moving to the driver’s side door, Baikie received O’Neal’s documents and went back to his squad to run them through the computer. Baikie had previously radioed for help and Will County sheriff’s deputy James Reilly responded. Baikie remained in his squad and Reilly went to speak to O’Neal, who was still in the driver’s seat with the car running and in gear. O’Neal refused to roll his window all the way down or to put his vehicle in park, despite Reilly’s requests. Reilly reached in O’Neal’s car, then broke the window with his flashlight, and put his head and shoulders into the car. A further altercation took place, which Baikie then joined. Baikie opened the car door and Reilly and O’Neal tumbled out. They scuffled on the ground until O’Neal fled on foot. He later turned himself in to the Joliet police department and was transferred to the Rockdale police department. O’Neal was charged by indictment with two counts of aggravated battery. Count I alleged O’Neal battered Baikie and count II alleged he battered Reilly. The counts both stated that O’Neal “knowingly made physical contact of an insulting or provoking nature” with the officers.

¶ 5

A bench trial took place. Baikie testified. He saw O’Neal when they were at opposite directions at an intersection with a stop sign. When O’Neal turned right, Baikie noticed O’Neal’s license plate was not lit and executed a stop. O’Neal did not stop initially but pulled into an alley before stopping. Baikie activated his body camera and went to the passenger side of O’Neal’s

car. He used the passenger side because the vehicle was not in park. He asked O’Neal to put the car in park, roll down his window and provide his driver’s license and registration. O’Neal was agitated, argumentative and uncooperative. A heated exchange took place between Baikie and O’Neal, but eventually O’Neal provided the documents to Baikie.

¶ 6 Baikie returned to his car with O’Neal’s documents and turned off his body camera. After Reilly arrived and went to talk to O’Neal, Baikie next heard the engine of O’Neal’s car roar and saw lots of exhaust. He noticed Reilly was struggling with O’Neal, radioed for help and ran to O’Neal’s vehicle. He saw “basically [an] exchange of fists,” “you know, strikes.” Baikie opened the car door and pulled O’Neal out. He described that “just fists were going, arms were moving, everybody was moving.” He knew O’Neal hit him because he “seen it,” explaining that O’Neal was the only one in the car and he was struck from inside the car. O’Neal elbowed him in the face and broke his glasses. He could not tell if O’Neal was making contact with Reilly. Once they were outside the car, Reilly was on the ground, O’Neal was on top of Reilly punching him while Reilly was hitting O’Neal with his flashlight.

¶ 7 After viewing the video, Baikie admitted that the open trunk of O’Neal’s car blocked the view from the dashcam video. On cross-examination, Baikie specified that O’Neal struck him in the face. He did not know if O’Neal used an open or closed fist. O’Neal’s arms could have been described as flailing. He could not say O’Neal acted intentionally. When called for the defense, Baikie stated he could not recall a broken radio or damaged steering column in O’Neal’s car.

¶ 8 James Reilly testified. He was a Will County sheriff’s deputy and responded to Baikie’s call for backup. He was wearing his police uniform and driving a marked squad car. Baikie told him O’Neal was uncooperative so he went to talk to him. He noticed O’Neal’s eyes were red and glossy and his speech was very slurred “or even slow in nature.” The vehicle was in drive and

O'Neal had his foot on the gas pedal. There was no radio in the dashboard, just wires hanging out, and the steering column appeared to have been tampered with, leading him to suspect the vehicle was stolen. O'Neal only unrolled his window a few inches when asked, moved his hands around and was dismissive. O'Neal ignored his multiple requests to place the vehicle in park. O'Neal's demeanor changed from the encounter "going well" to agitation. At that point, Reilly reached into O'Neal's vehicle and put it in park. He had his head and shoulders in the car; the window was about halfway down. O'Neal put his hand on top of Reilly's hand on the stick shift and revved the engine. O'Neal tried to put the car in drive so Reilly smashed the window with his flashlight in order to use both hands to shift the car into park. He hit O'Neal, who hit him in the head and chest area with closed fists. When Baikie came back to O'Neal's car, Reilly and O'Neal tumbled out. Reilly was hitting O'Neal on his back. He believed that O'Neal struck him with multiple strikes on the top of his head and shoulders and chest area. On cross-examination, Reilly admitted he did not inform O'Neal he would be reaching into his vehicle. He did not receive any medical treatment and suffered no bruises or marks from the incident.

¶ 9 O'Neal testified on his own behalf. He bought his vehicle new in 1994 and there had not been any modification to the radio or steering column. He was on the phone getting directions from a contractor when he and Baikie met at the intersection. He was upset and yelling at the contractor. He gave Baikie his driver's license and insurance card. The passenger window did not work. All the doors unlocked once the car was put into park. Because he was in an unfamiliar area surrounded by things and people he did not know, he was hesitant to unlock the doors. When Reilly first approached him, he did not know Reilly was a cop. He told him to fuck off. There was no reason to pull him over. Reilly told him if he did not roll the window all the way down, he would break the window, which he did. Reilly hit him in the mouth with the flashlight.

He raised his arms to ward off Reilly's blows. He did not intentionally strike Reilly. He received medical treatment for head and face lacerations after the incident.

¶ 10 On rebuttal, Reilly denied O'Neal's version of events and Baikie stated he did not see cuts or bruises on O'Neal after his arrest.

¶ 11 The trial court found O'Neal not guilty of count I, battery against Baikie, but guilty of count II, battery against Reilly. It stated there was no legal defense to resisting the police and that people must comply with even unlawful orders from an officer. It noted that the steering column and radio discrepancies were red herrings. The court found O'Neal not credible when he said he did not know Reilly was a police officer since Reilly was in uniform. It found Reilly credible based on his consistent testimony. The court described the reason for the stop as suspect and considered that a bad attitude does not constitute a felony but was persuaded by the video and Reilly's credibility.

¶ 12 O'Neal moved for a new trial, which the court heard and denied. In denying the motion, the court stated:

“I guess what it really comes down to, Mr. O'Neal, is that video. It is that few seconds on the video. Whether I have concerns or questions about Deputy Riley's [*sic*] testimony as to what he saw *** it comes down to that. If I recall correctly, a couple of seconds of whether there is, I use the term scuffle for lack of a better way to describe it, but it is that brief interaction that you and Deputy Riley [*sic*] had when he reached in the car. Because of the nature of the offense I don't believe there is any sort of self[-]defense or nothing that I can say that I can – could use legally to justify actions as it relates to this, Mr. O'Neal. So with that, based upon what the court reviewed on the video itself *** I will deny the motion for a new trial at this time.”

¶ 13 The trial court sentenced O'Neal to a six-year term of imprisonment. He appealed.

¶ 14 ANALYSIS

¶ 15 The issue on appeal is whether the State proved O'Neal guilty beyond a reasonable doubt of aggravated battery to a peace officer. O'Neal argues that the State did not prove O'Neal knowingly made physical contact of an insulting or provoking nature with Reilly. He maintains any contact was incidental and insufficient to sustain his conviction.

¶ 16 The inquiry when a defendant challenges the sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Where the evidence is insufficient to establish a defendant's guilt beyond a reasonable doubt, his conviction must be reversed. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). It is not the function of the reviewing court to retry a defendant in a challenge to the sufficiency of the evidence. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

¶ 17 To sustain the conviction for aggravated battery of Reilly, the State was required to prove that O'Neal knowingly made physical contact of an insulting or provoking nature with Reilly, a peace officer, performing his official duties. *People v. Pena*, 2014 IL App (1st) 120586, ¶ 19. A person commits battery when, knowingly and without legal justification by any means, he makes physical contact of an insulting or provoking nature with a person. 720 ILCS 5/12-3(a) (West 2016). A person commits aggravated battery when, while committing a battery, he knows the person being battered is a peace officer. 720 ILCS 5/12-3.05(d)(4)(West 2016). A person acts knowingly when he is "consciously aware" that his conduct is "practically certain" to cause the unlawful result. 720 ILCS 5/4-5(b) (West 2016). Intent may be proven by circumstantial

evidence and by the “defendant’s conduct surrounding the act and from the act itself.” *People v. Ford*, 2015 IL App (3d) 130810, ¶38.

¶ 18 The trial court found that this case was close but that the testimony of the Will County sheriff’s deputy, Reilly, was not “inconsistent” with the squad dashcam video. The court stated the video showed Reilly approach O’Neal’s car in full uniform and carrying a flashlight in his right hand, as he testified. The court also said the video showed exhaust fumes coming out of O’Neal’s car and the brake lights going off, which the court considered indicated that O’Neal would have driven off if Reilly had not put the car in park. The trial court found “it’s the consistency in the testimony of Deputy Reilly that makes a difference in this Court’s opinion as to what happened.” The court stated that it based its decision on Reilly’s testimony that O’Neal “struck him about the chest and about the head” which was “there on the video.”

¶ 19 According to Reilly, he reached into O’Neal’s car to put the car in park, then shattered the window so he could get a better position to reach in. In response his actions, Reilly said O’Neal then battered him in the head and chest as he leaned into the car. After the men tumbled from the car, Reilly said O’Neal straddled him and punched him. The trial court found Reilly’s testimonial consistency to be determinative in finding that O’Neal struck Reilly about the chest and head in the initial moments following Reilly’s breaking of the car window. The trial court further indicated this was shown on the video. However, the portion of the video of the physical encounter that took place between Reilly and O’Neal while O’Neal was inside the car does not show O’Neal striking Reilly.

¶ 20 As the trial court noted, the most relevant portions of the video begin when Reilly approaches O’Neal’s vehicle and the recording timestamp is at 10:29. Reilly begins conversing with O’Neal and Reilly can be seen holding his flashlight in his left hand. He also uses his right

hand to scratch his head at 10:53. At timestamp 10:54, he switches the flashlight from his left hand to his right hand. His entire head is always visible outside of the driver's side window until he breaks the driver's side window at timestamp 11:30. From 11:30 to 11:35, the video shows Reilly's flashlight make five left-to-right strikes and O'Neal's head and shoulder area make five simultaneous left-to-right sways that correspond exactly with the flashlight movement. This is the encounter referenced by the trial court in finding O'Neal guilty of the offense. The video does not show O'Neal striking Reilly and therefore cannot sustain a finding of guilt for the offense of aggravated battery.

¶ 21 Reilly testified that O'Neal continued to hit him after the trunk lid popped open. Because the trunk lid obstructed the video camera, the trial court was entitled to make a credibility determination between the version of events offered by Reilly and O'Neal. The trial court's credibility determination is to be given great weight and we will not reverse it unless the evidence does not support it. *People v. Glover*, 2017 IL App (4th) 160586, ¶ 28 (court's credibility findings are afforded deference and will not be disturbed by a reviewing court unless against the manifest weight of the evidence). A review of the video demonstrates that while Reilly's testimony may have been consistent, it was also largely inaccurate. In denying O'Neal's motion for a new trial, the trial court relied on the video but it does not support either Reilly's testimony or the court's findings. We need not defer to the trial court when the video disproves the testimonial evidence. *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶ 38 (no deference is required when documentary evidence refutes witness testimony).

¶ 22 From the beginning of Reilly's encounter with O'Neal as shown at timestamp 10:29 on the video, Reilly's version of the encounter does not match the video. While Reilly testified that he put the car in park before breaking the car window, his testimony was:

“Q. Okay. And were you able to – describe for me how much, if any part of your body, was inside the vehicle when you reached in to put it into park?”

A. I would say I had to reach in putting my head and maybe about to the point of my shoulders would have been past the driver's side window inside the vehicle.

Q. Okay. Based on the – and how far down at this point was the window?

A. Again, just not quite half way, but a little bit up from half way.

Q. And were you able to reach in and put the car in park?

A. I was.”

¶ 23 The video shows that Reilly's head remains outside of the vehicle until he uses his flashlight to break the window. Reilly's account of a first attempt to put the car in park did not occur as he testified. Additionally, Reilly testified that even though he knew Baikie had O'Neal's license and registration, he needed O'Neal to put the car in park so he could investigate whether the car was stolen since the radio was removed and the steering column had been damaged. Reilly testified this type of damage indicated to him that the vehicle may have been stolen. This video also documents that this testimony was inaccurate as O'Neal's radio is seen several times and is lighted. Baikie testified he could not recall such damage to O'Neal's vehicle. Although the trial court says this inaccuracy in Reilly's testimony is a red herring, Reilly used this inaccuracy as a basis for his physical altercation with O'Neal, and as such it impacts his credibility. In other words, weight cannot be given to testimony that has been proven to be false.

¶ 24 The video also shows O'Neal's parking lights are momentarily engaged at timestamp 11:35, but then do not come on again until 11:45 when the car door opens and O'Neal comes out of the vehicle. The video clearly shows that Reilly did not put the vehicle in park and then struggle with O'Neal to keep it in park before breaking the window. The video clearly shows that

O'Neal did not make the right-to-left motion necessary for him to strike Reilly. The video shows him moving left to right in response to the strikes from Reilly's flashlight but the video does not show any right-to-left movements from O'Neal that would be necessary for O'Neal to strike Reilly. While the video demonstrates the inaccuracies in Reilly's version of events, it likewise shows that O'Neal's testimony was consistent with the recording of the encounter. We find that the evidence presented did not prove O'Neal guilty of aggravated battery and to the extent the trial court's findings relied on Reilly's testimony, we find the video refutes Reilly's testimony. As such, the trial court's findings are against the manifest weight of the evidence.

¶ 25 Although the trial court did not base its finding of guilt on the portion of the encounter that occurred after O'Neal was outside of the car, the video clearly shows that O'Neal did not make any affirmative contact with Reilly and was only trying to get away from the officer and for that reason that encounter is not sufficient to find the defendant guilty. Because the State failed to provide sufficient evidence that O'Neal intentionally made contact with O'Reilly of an insulting or provoking nature, we reverse his conviction for aggravated battery.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

¶ 28 Reversed.

¶ 29 JUSTICE SCHMIDT, dissenting:

¶ 30 I respectfully dissent. The majority essentially reweighs the evidence in this case and finds it insufficient to support defendant's conviction because Deputy Reilly's account of what transpired inside the vehicle did not match the actions observed on the video. Specifically, the majority states "the video does not show any right-to-left movements from O'Neal that would be necessary for O'Neal to strike Reilly." *Supra* ¶ 24. Even if the video fails to corroborate Reilly's

version of the incident, the totality of the evidence, when viewed in the light most favorable to the State, supports defendant's conviction for aggravated battery of a peace officer.

¶ 31 The record shows that defendant was agitated and angry from the moment Officer Baikie initiated the traffic stop. He refused to comply with multiple requests to put his car into park, 12 requests from Baikie alone as observed on the video and "numerous" requests from Reilly. At trial, defendant admitted that he told Reilly to "fuck off" when asked to roll down his window. While the video of the altercation inside the vehicle is not clear as it is obscured by both by the car's tinted windows and later by the trunk, it clearly shows a scuffle between defendant and Reilly that ended only after Baikie helped pull defendant from the vehicle. At that point, Reilly ended up on his back on the ground while defendant hovered above him, escaped his grasp and ran away. In my opinion, the evidence clearly demonstrates that defendant provoked the altercation and that he had multiple opportunities during the incident to batter Reilly. That no clear blow can be seen in the video does not clearly establish that Reilly's testimony is false. Because I believe the evidence presented is sufficient for a rational trier of fact to find defendant guilty of aggravated battery of a peace officer, I would affirm the judgment of the circuit court of Will County.