2019 IL App (1st) 161843-U

No. 1-16-1843

Order filed September 23, 2019

First 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. 14 CR 18458
	)	
CHRISTOPHER BROWN,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Griffin and Justice Hyman concur in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of aggravated domestic battery is affirmed where the trial court properly refused to instruct the jury on the lesser-included offense of domestic battery, because no evidence at trial showed that the victim suffered only bodily harm as opposed to great bodily harm.

¶ 2 Following a jury trial, defendant Christopher Brown was convicted of aggravated domestic battery and sentenced to seventy-eight months of imprisonment. On appeal, defendant argues that the trial court erred by denying his request to instruct the jury on the lesser-included

offense of domestic battery, where the evidence supported a finding that the victim's injuries did not constitute great bodily harm. We affirm.

¶ 3 Defendant was charged by information with two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)), four counts of aggravated battery (720 ILCS 5/12-3.05(a)(1), (f)(1) (West 2014)), and one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2014)), arising from an incident in Chicago on September 7, 2014. The State proceeded on one count of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)), and nol-prossed the remaining counts. Defendant asserted the affirmative defense of self-defense. We set forth only the evidence at trial relevant to the issue on appeal.

¶ 4 S.H. testified that she began dating defendant in June 2014. At that time, she lived with a friend in an apartment on the 1200 block of South Kildare Avenue, and her bedroom was "one big room" in the "attic part" of the unit. The bedroom contained two-by-four wooden boards from a maintenance project, as well as a backpack and some 40-pound weights that belonged to defendant. On September 6, 2014, S.H. finished work around 10 p.m. and returned home. While S.H. was walking her dog, defendant's aunt dropped off defendant, who appeared to have been drinking and seemed sad. S.H. went upstairs to her bedroom with her dog and locked the door, but defendant remained outside the room.

¶ 5 Defendant banged on the bedroom door, ran "his body into the door to break the lock," and said he wanted to talk. Eventually, S.H. opened the door and told him to calm down. She noticed a crack in the middle of the door and returned to her bed. Defendant sat at the foot of the bed, asked S.H. why she "didn't ask him how he was doing," and said "a lot of stuff" about his children and a friend who had been injured. S.H. was falling asleep, and defendant woke her and

said, "bitch, you are not listening to me." S.H. called defendant's aunt. Then, defendant hung up the phone and pulled S.H. off the bed by her hair, ripping out some of her braids. Defendant banged the back of S.H.'s head against the wall, called her a "stupid bitch," spit in her face, and threw her dog across the room. He then stopped and helped S.H. get up but refused to leave, and S.H. opened the bedroom door to let him out. Defendant threw a stool at S.H., blocked the bedroom doorway, and punched her in the mouth. S.H. fell on the ground, and defendant grabbed a 40-pound weight and hit her body and the left side of her face multiple times. S.H. lost consciousness and woke up with her head in defendant's lap.

¶ 6 Defendant cried, apologized, and told S.H. not to look in the mirror. S.H. looked in the mirror and realized she lost vision in her left eye. Then, defendant picked up a two-by-four board and said, "I'm sorry, [S.H.] but this is the only way." S.H. asked defendant if he was going to kill her, and he said, "[Y]eah." S.H. heard "loud banging" on the apartment door, and defendant swung the board at S.H., who stopped the board with her arm. Defendant then asked S.H. if she called the police, smashed the phone against the wall, and walked with S.H. to the kitchen to get her water. S.H. tried to exit through the back door, and defendant touched her face, causing her pain. S.H. screamed, her roommate appeared, and as defendant got S.H. ice, she ran out the front door to a nearby house to see her aunt, Tamika Barton. S.H.'s other aunt was also present and took photographs of S.H.'s injuries, and the police arrived. Barton then drove S.H. to Northwestern Hospital, where she received stitches above and under her eye. Her vision returned after a week.

¶ 7 S.H. confirmed that a series of photographs admitted into evidence depicted her injuries, and were taken at her aunt's house, the hospital, "the domestic violence place," and a school.

These photographs depicted injuries to S.H.'s eye, the seven stitches to close the cut above her eye and the three stitches to close the cut below her eye, scratches on her nose and lip, and swelling on her lip. S.H. also confirmed that a photograph depicted the 40-pound weight that defendant used to hit her. Additionally, S.H. stated that other exhibits, also admitted into evidence, depicted defendant's Facebook profile picture, in which he held a 40-pound dumbbell, as well as multiple Facebook messages defendant sent to S.H., in which defendant apologized, asked S.H. if she was okay, and asked her to call him.

¶ 8 On cross-examination, S.H. stated that defendant banged her head against the wall about eight times, and she confirmed that she never previously stated that defendant threw her dog across the room. She also confirmed that she did not mention in a previous statement that she asked defendant if he was going to kill her, and that defendant replied, "yeah."

¶ 9 Joel Timm, a nurse at Northwestern Hospital, testified that he saw S.H. in the emergency room on September 7, 2014. S.H. was placed in the second most severe category of treatment needs for having "potential[ly] life threatening injuries based on the area and the severity." During the initial interview and evaluation, Timm observed S.H. had "significant bruising," swelling on the left side of her face, and a laceration above her left eye. S.H. told Timm that "her boyfriend hit her with a 40-pound dumbbell," she fell unconscious, and when she woke up and tried to leave, her boyfriend "hit her head into the wall repeatedly." Timm testified that a series of photographs admitted into evidence accurately depicted S.H.'s injuries upon admission to the hospital, which included a laceration under her eye, swelling on her lips and face, and "[r]eal significant bruising" across her forehead. Timm also noted that S.H.'s eye was "so swollen, she couldn't open it." As to the photograph of S.H. in the hospital, Timm testified that S.H. was

wearing a cervical collar and was connected to a heart monitor and what Timm thought was an IV. Timm confirmed that S.H.'s injuries were consistent with her account of how they were caused. On cross-examination, Timm confirmed that S.H. had no broken bones or "immediate life threatening brain injury," but testified that she received ten stitches to close the lacerations around her eye.

¶ 10 Barton, S.H.'s aunt, testified that on September 7, 2014, she lived with her mother "[a] little less than a mile" from S.H.'s apartment. At about 1:30 a.m., she was sleeping on the couch when S.H. banged on the door. Barton's mother opened the door, and S.H. "ran in the house" with her dog, crying, with no shoes and "blood all over her face." Barton testified, "I guess [S.H.] had a gash on her face" and blood "was coming out a lot." Barton also saw blood "from [S.H.'s] head" on S.H.'s dog and clothing. S.H. stated that defendant caused her injuries. The police arrived in response to Barton's call. About five minutes later, Barton's older sister arrived, took pictures of S.H., and drove her to Northwestern Hospital.

¶ 11 Chicago police officer Vincent Francone testified that at about 1:30 a.m., he and his partner, Officer Andy Olson, responded to a call and met with Barton and S.H., who had "swelling about her face" and "a one-inch laceration above her left eye." S.H. told Francone that defendant "struck her with a 40-pound dumbbell," "struck her about the face with his hands and fist[s]," and caused the swelling and laceration on her face.

¶ 12 The State rested, and the trial court denied defendant's motion for directed verdict.

¶ 13 Defendant testified that on September 6, 2014, he was living with his girlfriend, S.H., on the 1200 block of South Kildare, and he had another girlfriend named Vivian Swopes. At about 11 p.m., his aunt drove him home, and he entered the building with S.H.. Defendant entered

S.H.'s bedroom and asked if she wanted something to eat. S.H. was upset because defendant did not answer his phone, and defendant left to get food. When defendant returned, S.H. was still in her bedroom, and she asked defendant about "the girl Vivian." Defendant packed up his belongings, S.H. threw a bag, and defendant "snatched the bag." S.H. told defendant that he "hurt her hand," and hit him. S.H.'s dog then bit defendant, and defendant "kicked at" the dog. S.H. told defendant not to hit her dog, and hit defendant's shoulder and face. Defendant blocked S.H.'s hands and pushed her. She hit him in the head with a stool, and he hit the side of her face with his left hand, which had a "nice size[d] ring" on it. Defendant grabbed a towel and tried to stop S.H.'s bleeding. She told him to get away and said that he was going to jail. Defendant went outside and called Swopes, who picked him up.

¶ 14 On cross-examination, defendant confirmed that there were two-by-four boards in S.H.'s bedroom. Additionally, defendant stated that S.H. threw a phone at him when he left her bedroom, and in the kitchen, S.H. tried to retrieve a knife. According to defendant, he left S.H.'s apartment because S.H. "kept on trying to hit me and stab me and hit me with a [car jack] pole." Defendant testified that S.H. had a cut on her left eyebrow, but he denied seeing any other injuries while in the kitchen. Defendant denied sending the Facebook messages entered into evidence.

¶ 15 Vivian Swopes testified that on September 7, 2014, at approximately 1 a.m., she picked up defendant, who was her boyfriend, from the 1200 block of Kildare. Defendant approached Swopes's car, and S.H. was on the sidewalk yelling defendant's name. Defendant's "face was a little swollen," and he had scratches on his arm, a knot on top of his head, and "a lot of bruises

on him." On cross-examination, Swopes stated she did not see S.H. with the injuries depicted in the photographs.

¶ 16 The defense rested, and the parties discussed jury instructions. Defense counsel asserted that the jury should be instructed as to the lesser-included offense of domestic battery, because whether S.H.'s injuries constituted bodily harm or great bodily harm is a question for the jury to decide. The State responded that the evidence clearly showed great bodily harm, as S.H. was knocked unconscious, her injuries were not superficial and required several stitches, and a nurse diagnosed them as life-threatening. The State also asserted that the court has discretion to determine whether the evidence supports a finding of bodily harm for purposes of domestic battery.

¶ 17 The trial court declined to instruct the jury on domestic battery, finding that "when the proof of great bodily harm and of disfigurement is undisputed, as is the case here, the evidence can be taken to indicate aggravated battery or nothing." The court reasoned that it was "uncontradicted" that S.H. "had ten stitches for two separate lacerations" surrounding her eye, "numerous contusions or extensive bruising" on her forehead, "extensive swelling" on her face, and her eye was swollen shut. Accordingly, the court found there was no factual dispute as to the degree of S.H.'s injuries, and an instruction for domestic battery was "not warranted."

¶ 18 During closing arguments, defense counsel argued that S.H.'s injuries did not match her testimony that she was hit in the mouth twice and that her head was hit against a wall. According to defense counsel, if defendant had hit S.H. in the face with the weight, there would have been broken bones, and the charges against defendant would be "murder or attempted murder." Additionally, defense counsel asserted that there were no photographs of the bruising on her

sides, or corroborating evidence of her claim that she lost vision in one eye. The State argued that S.H.'s testimony was consistent with the testimony of Timm, a medical professional, and that S.H. was "dazed" and "bloody" after being struck with a 40-pound weight.

¶ 19 The jury found defendant guilty of aggravated domestic battery. The trial court denied defendant's motion for a new trial, which argued in relevant part that the trial court erred in refusing defendant's request to instruct the jury on the lesser-included offense of domestic battery. Following a hearing, the trial court sentenced defendant to seventy eight months imprisonment.

¶ 20 On appeal, defendant argues that the trial court erred in denying an instruction on the lesser-included offense of domestic battery, since the jury could have rationally concluded that S.H.'s injuries qualified as bodily harm, and not great bodily harm. In response, the State contends that the trial court did not abuse its discretion in declining to give the lesser-included offense instructions, because no rational jury would have convicted defendant of domestic battery and acquitted him of aggravated domestic battery.

¶ 21 Instructions on a lesser-included offense provide the jury with a " 'third option.' " *People v. Lee*, 2015 IL App (1st) 132059, ¶ 66. Namely, "[i]f the jury is not certain that the State has proved the charged offense but believes that a defendant is 'guilty of something,' the jury might convict the defendant of the lesser offense rather than convict or acquit the defendant of the greater offense." *Id.* "A defendant is entitled to a lesser-included offense instruction only if the evidence at trial is such that a jury could rationally find the defendant guilty of the lesser offense, yet acquit him of the greater." *People v. Medina*, 221 Ill. 2d 394, 405 (2006). This standard "must be met before a right to have the jury instructed on a lesser-included offense arises." *Id.* In

determining whether defendant had a right to have the jury instructed on a lesser-included offense, we must make two separate inquiries: (1) "whether the charging instrument describes the lesser offense," and (2) if the charging instrument described the lesser offense, whether "evidence adduced at trial *** rationally support[ed] the conviction on the lesser offense." (Internal quotation marks omitted.) *People v. Ceja*, 204 Ill. 2d 332, 360 (2003).

¶ 22 Under the first step, we look to the charging instrument to determine whether it includes "a broad foundation or main outline of the lesser-included offense." (Internal quotation marks omitted.) *People v. Davis*, 213 Ill. 2d 459, 476 (2004). The indictment does not need to expressly state all elements of the lesser offense "as long as any missing element can be reasonably inferred from the indictment allegations." (Internal quotation marks omitted.) *People v. Kennebrew*, 2013 IL 113998, ¶ 30. "Whether a charged offense encompasses an included offense is a question of law that we review *de novo*." *People v. Patel*, 366 Ill. App. 3d 255, 275 (2006).

¶ 23 Section 12-3.3(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.3(a) (West 2014)) provides that "[a] person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery." Section 12-3.2(a) of the Code (720 ILCS 5/12-3.2(a) (West Supp. 2013)) provides that a person commits domestic battery when "he or she knowingly without legal justification by any means *** [c]auses bodily harm to any family or household member," or "[m]akes physical contact of an insulting or provoking nature with any family or household member." The phrase "[f]amily or household members" includes "persons who have or have had a dating or engagement relationship." 720 ILCS 5/12-0.1 (West 2014).

¶ 24 Here, the charging instrument stated that on or about September 7, 2014, defendant:

> "intentionally or knowingly caused great bodily harm to [S.H.], to wit: struck [S.H.] about the body with an object, and [S.H.] was a family or household member as defined in (3) of section 112 A-3 of the Code of Criminal Procedures of 1963, to wit: Christopher Brown and [S.H.] had a dating relationship ***."

These allegations state that defendant knowingly caused bodily harm to S.H., and that defendant was in a dating relationship with S.H.. Therefore, the charging instrument includes "a broad foundation or main outline" of the offense of domestic battery. (Internal quotation marks omitted.) *Davis*, 213 Ill. 2d at 476.

¶ 25 We must now determine whether evidence adduced at trial rationally supported a conviction of domestic battery. Our standard for this inquiry is "whether there is *some evidence* in the record that, if believed by the jury, will reduce the crime charged to a lesser offense, not whether there is *some credible* evidence." (Emphasis in original.) *People v. McDonald*, 2016 IL 118882, ¶ 25. We "will not reweigh the evidence in determining whether an instruction was proper on a certain theory." (Internal quotation marks omitted.) *Id.* ¶ 38. "[W]hen the trial court, after reviewing all the evidence, determines that there is insufficient evidence to justify the giving of a jury instruction, the proper standard of review of that decision is abuse of discretion." *Id.* ¶ 42.

¶ 26 We find *People v. Virgil*, 19 Ill. App. 3d 744 (1974), and *People v. Krone*, 98 Ill. App. 3d 619 (1981), to be instructive. While these cases predate *McDonald*, neither conflict with the standards set forth in *McDonald*.

¶ 27 In *Virgil*, the defendant cut the complainant's throat, and the complainant "bled profusely," her clothes were stained with blood, and she required stitches. *Virgil*, 19 Ill. App. 3d

at 746, 748. The defendant was convicted of aggravated battery, but argued on appeal that the trial court erred by refusing to submit an instruction for the lesser-included offense of battery. *Id.* at 745. The reviewing court noted "that it is generally a question for the trier of fact" whether an offense caused great bodily harm and thus warranted a finding of aggravated battery, and not simple battery. *Id.* at 747. Nonetheless, the court observed that "it does not follow *** that, in every trial for aggravated battery by virtue of causing great bodily harm, it is essential for the court to instruct the jury on the elements and issues of simple battery." *Id.* The court concluded that "[t]he inevitable result of this evidence beyond [a] reasonable doubt is that the victim suffered great bodily harm." *Id.* at 748. Therefore, the reviewing court concluded that the trial court did not err in refusing to instruct the jury on the lesser-included offense of battery. *Id.* at 748-49.

¶ 28 Similarly, in *Krone*, the defendant struck the complainant several times, and medical evidence showed the complainant suffered "a gross deformity of the nose," a lacerated toe, and loss of consciousness. *Krone*, 98 Ill. App. 3d at 621. The defendant was convicted of aggravated battery, but argued the trial court erred in not instructing the jury on simple battery. *Id.* at 621-22. The reviewing court held that "[w]here the evidence undisputedly satisfies the elements which distinguish aggravated battery from simple battery, no simple battery instruction is required to be given." *Id.* at 623. Because "the proof of great bodily harm and of disfigurement is undisputed," the court ruled that "the evidence can be taken to indicate aggravated battery or nothing." *Id.* at 623. While the defendant disputed the seriousness of the complainant's injury, the court found that "no one denied" that the victim's nose was fractured, that his face was "grossly disfigured,"

or that there was profuse bleeding. *Id.* Therefore, the reviewing court found that the trial court did not err in refusing to instruct the jury on simple battery. *Id.* at 624.

¶ 29 Here, the evidence at trial established that S.H. suffered great bodily harm. S.H.'s testimony showed that, among other things, defendant pulled her hair extensions out, punched her in the mouth, and hit her in the face causing a laceration that required ten stitches, and he struck S.H.' body with a 40-pound weight multiple times. As a result, S.H. testified that she lost consciousness and woke up to find she had lost her vision in her left eye. S.H.'s aunt testified to seeing a "gash on her face" with blood "coming out a lot." Timm, a nurse who treated S.H., testified that S.H. was designated as having "potential[ly] life threatening injuries." S.H.'s injuries required ten stitches around her eye, and Timm testified that she wore a cervical collar and was connected to a heart monitor and possibly an IV while receiving treatment. The State entered photographs into evidence depicting S.H.'s injuries and corroborating S.H.' testimony.

¶ 30 Defendant argues that the trial court should have instructed the jury on domestic battery because a rational jury could have found S.H.'s injuries only constituted bodily harm. Defendant relies on *In re Vuk R.*, 2013 IL App (1st) 132506, where the respondent was convicted of aggravated battery and, on appeal, challenged the sufficiency of the evidence showing the victim suffered great bodily harm. We found the state failed to prove the elements of aggravated battery by first finding that at sentencing the trial court stated that "[A]s far as I am concerned on both the government's case and the defense case, every one of those witnesses lied[.]" and that "the evidence of physical injuries to this victim *** certainly did not occur the way any of these witnesses testified to." (*Id.* ¶ 6). Additionally, we noted that the State presented no evidence "regarding any pain suffered by the victim ***, the details of the victim's treatment for his

injuries[,] or how long after the incident he suffered the effects of those injuries." *Id.* ¶¶ 2, 9. Accordingly, we ruled that the State did not prove beyond a reasonable doubt that the victim sustained great bodily harm for purposes of aggravated battery. *Id.* ¶¶ 8-9.

¶ 31 Here, in contrast to *In re Vuk R.*, defendant does not challenge whether the evidence was sufficient to show S.H. suffered great bodily injury for purposes of proving aggravated domestic battery or that the testimony supporting the offense was incredible or insufficient. Rather, he argues that because there was some evidence S.H. suffered only bodily harm the jury should have been instructed on the lesser offense of f domestic battery. As noted, the State presented substantial evidence of S.H.' injuries that was corroborated by photographic exhibits and medical testimony. Defendant primarily relied on a theory that he acted in self-defense and he did not dispute S.H.'s testimony that she suffered an injury near her eye that required ten stitches, that her injury drew blood, that she lost consciousness and that she lost sight in her eye for one week. Defendant even admitted that he struck S.H. in the face with his left hand while wearing a "nice size[d] ring" on it. During closing arguments, defense counsel disputed S.H.'s account of how defendant hit her, and questioned whether S.H. suffered certain other injuries. Nonetheless, the jury heard the nature and extent of the injuries inflicted on S.H. by the defendant, the severity of which was corroborated by attending hospital personnel, photographic exhibits, and testimony from members of her family and, as the trial court noted, there was no dispute that S.H. suffered a laceration to her eye, and that the injury required multiple stitches. The undisputed evidence at trial could have been taken "to indicate aggravated battery or nothing." *Krone*, 98 Ill. App. 3d at 623; see also *People v. Slabon*, 2018 IL App (1st) 150149, ¶ 43. Accordingly, the evidence did not rationally support a conviction of the lesser offense of domestic battery (*Ceja*, 204 Ill. 2d at

360), and the trial court did not abuse its discretion by refusing to instruct the jury on the lesser-included offense.

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 33 Affirmed.