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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kendall County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-165, 14-CM-474
)	
TASHA TRETTENERO,)	Honorable
)	Timothy J. McCann,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of aggravated battery of a peace officer; even if defendant’s actions were in response to the pain that was inflicted by the police officers, they were nonetheless voluntary. Affirmed.

¶ 2 Defendant, Tasha Trettenero, appeals her conviction for aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2014)). She contends that the evidence was insufficient to establish that she intentionally kicked the officer. She argues that, because her leg movements were an “involuntary response to actions taken by the police,” she lacked the requisite mental state to sustain her conviction. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was arrested following a traffic stop on the night of July 7, 2014. She was charged by indictment with aggravated battery of a peace officer (Class 2 felony) and criminal damage to government property (Class 4 felony). She was also charged with two misdemeanors: resisting a peace officer (Class A misdemeanor) and driving under the influence (Class A misdemeanor). In addition, she was charged with four petty traffic violations: operating an uninsured motor vehicle, failing to signal, and two counts of speeding. The State later entered a *nolle prosequi* on the charge of driving under the influence. Defendant waived her right to a jury trial and the parties proceeded to a bench trial on the remaining charges.

¶ 5 The State's first witness was Kendall County Deputy Sheriff Bryan Harl. He testified that he was operating an unmarked squad car when he observed the driver of another car commit several traffic violations. The driver made a series of abrupt lane changes without using a turn signal and repeatedly accelerated to approximately 60 miles per hour, at one point nearly colliding with another vehicle and at another point speeding through a construction zone. Harl testified that he gauged the driver's speed by "pacing" the car as he followed it. He eventually activated the lights on his unmarked squad car to initiate the traffic stop.

¶ 6 Harl testified that he approached the driver, whom he identified as defendant. He described her as being angry and vulgar. She demanded to know why she was stopped and she adamantly denied committing any traffic violations. Harl testified that he suspected she was "under the influence of something" based on her erratic driving. After defendant provided her driver's license, Harl took it back to his squad car and called for backup.

¶ 7 Harl testified that deputy Robert Lechowicz arrived a short time later. Harl again approached defendant's car on the driver's side as Lechowicz approached on passenger's side.

Harl observed that defendant was on her cell phone. When he asked her to hang up her phone and step out of the car, she became vulgar and “verbally assaultive.” Harl testified that he asked defendant numerous times to exit the vehicle, but defendant repeatedly stated that she would not. Harl decided to forcefully remove defendant from her car. He opened the driver’s side door and attempted to grab defendant’s arm, which defendant pulled back away from him. He then performed a “straight arm take down,” pulling defendant out of the car by her arm and shoulder. The deputies attempted to handcuff defendant “as quickly and efficiently” as possible. They wrestled defendant down to the ground, but she continued to resist. With Lechowicz’s assistance, Harl was able to handcuff both of her hands. Defendant continued to be vulgar and “extraordinarily verbally abusive.”

¶ 8 Harl testified that, despite Lechowicz kneeling on defendant’s legs and feet, she continually tried to turn and kick. At one point, Harl saw defendant deliver what he described as “calculated blows, and directly toward Deputy Lechowicz’s lower abdomen and thigh area.” Eventually the deputies had “enough manpower on scene to where we could put basically one person on each of her extremities, in order to physically place her in the rear of the [squad car].”

¶ 9 At the conclusion of Harl’s testimony on direct-examination, the video from Lechowicz’s squad car was played for the court. Because the driver’s side of defendant’s car is obstructed by Harl’s unmarked squad car, the majority of the incident was captured only on audio.

¶ 10 As Harl approaches the car, he is heard asking defendant to hang up her phone. When defendant asks why this is necessary, Harl immediately orders her to “hang up the phone and get out of the car,” to which defendant responds, “I’m not getting out of the car.” Harl quickly retorts, “I promise that you are.” Defendant snaps back, “I promise that I’m not.” Harl then asks, “[a]re you going to get out of the car? Or am I going to have to drag you out of the car?”

Approximately 20 seconds after Harl asks defendant to hang up her phone, defendant is heard shouting, “[w]hat are you doing? Do not touch me like that! Let go of me! Hey, let go! Are you... are you kidding me! Get off me! What are you doing?” A deputy yells at defendant to “stop kicking!” She responds, “[d]on’t fucking attack me like that!” The deputy yells, “you are resisting!” Defendant shouts back, “I’m not resisting—you attacked me!” During the next several minutes, defendant continues to argue with the deputies about why she was ordered out of the car. She repeatedly accuses them of attacking her, calls them vulgarities, and screams for them to get off of her. At one point, Lechowicz threatens to hit defendant in the leg. Defendant tells him to go ahead and “hit a girl!” She screams about being attacked and accuses the deputies of hurting her. A deputy repeatedly tells defendant to “stop kicking us!” Defendant shouts back, “[d]on’t attack me then!” The deputy yells at her, “[n]o one is going to touch you if you stop kicking us!” Defendant says, “[y]ou know why? Because you pulled me out of the car and attacked me you piece of shit.” Defendant begins crying and a deputy asks her if she will walk like a “lady” if they let her up. Minutes later, more officers arrive at the scene and help carry defendant to a squad car.

¶ 11 On cross-examination, Harl admitted that he never gave defendant a reason for why he was ordering her out of her car until she was already on the ground. He explained that he viewed her as a safety threat, because he suspected that she was under the influence of drugs or alcohol. He denied that he pulled defendant’s hair to get her out of the car. He also denied that he pushed defendant’s face into the ground, but he did remember seeing Lechowicz extend his baton and strike her. When pressed for a more detailed explanation, Harl testified that he observed Lochowicz “using a more than reasonable amount of force to subdue an individual who was extraordinarily combative at the time.”

¶ 12 Harl next identified a series of pictures depicting defendant's injuries from the arrest. Defendant had injuries on her face, shoulders, arms, legs, and feet. Harl admitted that defendant was on either on her stomach or her side the entire time that she was on the ground, although she repeatedly attempted to roll over on her back. Harl explained that, at one point, defendant was able to kick Lechowicz off of her legs, which prompted Lechowicz to deliver additional baton strikes.

¶ 13 The State's next witness was Lechowicz. He testified that all three participants were on the ground "almost immediately" after defendant was forcibly removed from the car. Harl was near defendant's head and shoulder area, while Lechowicz was trying to control her legs and feet. Lechowicz testified that he was kneeling on defendant "with all [his] weight on top of her legs to keep them from thrashing around or kicking." However, defendant was able to kick him off of her legs and propel him backward. With her feet at a 45-degree angle toward Lechowicz, she began "actively kicking her legs out." She retracted them toward her body and "punched them out" again, hitting Lechowicz in the upper thigh while calling him "multiple different colorful terms." After Lechowicz was able to regain control of defendant, Harl placed her into handcuffs. Lechowicz testified that, "as soon as the left handcuff went on, she kicked me off of her legs again, and I was in the exact same position I was in moments before with her on her back, legs pointed up at [a] 45-degree angle." After defendant kicked Lechowicz several times in the upper thigh and stomach area, he deployed his baton and gave her a verbal warning. At this point, defendant kicked Lechowicz "square in the stomach." Lechowicz struck defendant with is baton and regained control of her legs, but defendant "pulled her heel free" and delivered "heel strikes" to his knee area. Lechowicz then struck defendant again with is baton. He then placed defendant in a "figure four leg lock," explaining that he "used to wrestle in high school."

He held defendant in that position until the other officers arrived and helped place her in a squad car. Lechowicz denied seeing Harl pull defendant's hair when he removed her from her car.

¶ 14 Ryan Hourselt testified on behalf of defendant. He explained that he was driving home on the night in question when he approached the scene of the traffic stop. As he passed by, he "saw one of the officers grab a girl out of the car by her hair and [throw] her to the ground." Hourselt described the officer's use of force as "excessive."

¶ 15 Defendant testified that she had an encounter with the police a few weeks before the night in question. Although charges were initially filed, they were later dropped. Nonetheless, the encounter made defendant "anxious" and "scared" when Harl pulled her over. Defendant denied committing any traffic violations. She testified that, after Harl asked her a few questions and returned to his squad car, she took the opportunity to call her mother and ask for advice. When Harl returned, he ordered her to get off the phone and out of her car. Defendant explained that she refused, because Harl "didn't express to [her] in any way why [she] needed to get out of the car." Moments later, she felt a "sharp jerk in [her] hair" and she was pulled out of her car. Harl then slammed her face into the ground. He continued to push down on her face while telling her to stop resisting. Defendant denied that she was resisting and maintained that she was in constant pain throughout the entire ordeal. She was also having difficulties breathing due to the pressure that was being applied to her back.

¶ 16 Defendant denied that she ever rolled over and kicked Lechowicz. She explained that, because she was face down the entire time, "[t]here was no chance for [her] to even kick anyone." She claimed that, after Lechowicz delivered three baton strikes in rapid succession, she started crying and "gave up." After defendant identified several pictures depicting her injuries from the arrest, the following colloquy took place:

“Q. [Defense Counsel]: Now, at one point in the video the officers are arguing with you and talking to you, and you say, I kicked you because you attacked me. Do you recall saying that?”

A. [Defendant]: Yes.

Q. [Defense Counsel]: Why did you say that to the deputies?

A. [Defendant]: I said that because that’s what initially he said, heat of the moment type thing. I didn’t intend at all to kick the officer. It was just what he said, so I repeated it. You know, heat of the moment type thing.

Q. [Defense Counsel]: So did he say to you, you kicked me, and you said, I kicked you because you attacked me?

A. [Defendant]: Yes.

* * *

Q. [Defense Counsel]: Can you explain the context of that statement so that the Court understands?

A. [Defendant]: I didn’t intend to kick [the] officers at all. There was no way that I could kick them. Both of their body weights were on top of me. I was face down. I couldn’t even see them. He said that, so I just said in return, I kicked you because that’s what he said, because you were attacking me. I wasn’t admitting, oh, I kicked you.”

¶ 17 The trial court found that the evidence was sufficient to convict defendant of aggravated battery of a peace officer (Class 2 felony) and resisting a peace officer (Class A misdemeanor).¹

¹ Defendant was acquitted on the charges of criminal damage to property (Class 4 felony), failing to use a turn signal, and speeding, but the trial court continued its ruling on the charge of operating an uninsured motor vehicle. That ruling does not appear in the record.

The court reasoned that, even accepting defendant's argument that Harl should have handled the traffic stop differently, defendant had no right to disobey his lawful order to get out of her car. The court also observed that, "[a]t no time on the audio does the defendant deny kicking the officers." The court agreed with defendant that the photographs of her injuries depict significant bruising. "While it is true that these injuries may have been avoided," the court stated, "these photographs do not indicate that it was impossible for defendant to have kicked Deputy Lechowicz." The court concluded that, "when considering the evidence which was admitted during the trial, the State has established beyond a reasonable doubt that defendant knowingly made physical contact of an insulting nature with Deputy Lechowicz when she kicked him in the abdomen and thigh area, knowing that he was a peace officer engaged in his official duties."

¶ 18 The trial court sentenced defendant to 90 days in jail and 36 months' probation. Defendant timely appeals.

¶ 19

II. ANALYSIS

¶ 20 Defendant does not challenge her conviction for resisting a peace officer. She contends only that she was not proved guilty beyond a reasonable doubt of aggravated battery. She argues that the evidence was insufficient to establish that she knowingly or intentionally kicked Lechowicz, maintaining that any contact with Lechowicz occurred as an "involuntary response to having her face slammed into the pavement without warning."

¶ 21 When a defendant challenges the sufficiency of the evidence, it is not the function of this court to retry her. *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (following *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Rather, " 'the relevant question is 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 in original.)

Collins, 106 Ill. 2d at 261 (quoting *Jackson*, 443 U.S. at 319). We will not substitute our judgment for that of the fact finder on questions regarding the weight to be given a witness's testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and the reasonable inferences to be drawn from the testimony. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). We will not reverse a conviction unless the evidence is "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill. 2d at 261.

¶ 22 As charged here, a person commits aggravated battery by committing battery against a person she knows to be a peace officer performing his official duties. 720 ILCS 5/12-3.05(d)(4) (West 2014). Battery is knowingly causing bodily harm to, or making physical contact of an insulting or provoking nature with, another person. 720 ILCS 5/12-3(a) (West 2014). "The State must prove, as an essential element of battery, that defendant's conduct was knowing or intentional." *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 42.

¶ 23 Here, defendant notes the "fundamental principle that a person is not criminally responsible for an involuntary act." *People v. Grant*, 71 Ill. 2d 551, 558 (1978). She points to the pictures of her injuries, asserting that it is "not hard to understand why she flailed about." She argues that any contact with the deputies resulted from her involuntary movements, which, she argues, were caused by the deputies when they "manhandled" her. Defendant compares her actions in this case to those of the defendants in *People v. Martino*, 2012 IL App (2d) 101244, and *People v. Jackson*, 2017 IL App (1st) 142879.

¶ 24 In *Martino*, the police were called to an apartment building in response to an altercation between the defendant and his wife. The officers arrived to find the defendant in a stairwell, on top of his wife who was crying and asking for help. When the defendant refused several orders to get away from his wife, the officers began moving up the stairs toward the defendant. *Martino*, 2012 IL App (2d) 101244, ¶ 5. When the defendant indicated that he wanted to fight the officers, they tased him causing him to fall backward on top of his wife, breaking her arm. *Id.* ¶¶ 5-6. The trial court found the defendant guilty of multiple charges, including aggravated domestic battery. *Id.* ¶ 12. In reversing that conviction, this court held in pertinent part:

“Given the circumstances of this case, we cannot conclude that the State proved beyond a reasonable doubt that defendant’s voluntary act resulted in [his wife’s] broken arm. Specifically, although the evidence revealed that defendant defied the police and that, because of this defiance, the police tased him, the evidence also established that the tasing of defendant rendered defendant incapable of controlling his muscles. [Citation.] Because defendant was incapable of controlling his muscles, his act of falling on [his wife] and breaking her arm was an involuntary act for which he cannot be held accountable. [Citation.] Accordingly, we determine that defendant was not proved guilty beyond a reasonable doubt of aggravated domestic battery.” *Id.* ¶ 15.

¶ 25 In *Jackson*, the defendant called 911 from his apartment building and requested an ambulance. The paramedics arrived to find the defendant acting nervous and irrational, as though he was suffering from a psychological disorder, so they called for police assistance. *Jackson*, 2017 IL App (1st) 142879, ¶¶ 10-11. The police officers arrived and tried to calm the defendant, but the defendant resisted, trying to punch, kick, and bite them as they attempted to hold him down. One officer tased the defendant approximately 10 times. *Id.* ¶ 13. A jury found

the defendant guilty of battery and resisting a peace officer. *Id.* ¶ 19. However, the appellate court reversed the defendant’s convictions, holding that the evidence was insufficient to establish that the defendant acted knowingly during the incident. *Id.* ¶ 26. The court opined that the prosecution had been a “waste of time and money,” and that prosecutors should “receive training to enable them to distinguish between those responsible for their actions and those, like [the defendant], whose vulnerable or abnormal mental state causes them to act in uncooperative or confused ways.” *Id.* ¶ 4.

¶ 26 Defendant argues that the reasoning in *Martino* and *Jackson* applies here. She maintains that, similar to the defendant in *Martino*, her leg movements were an “involuntary response to actions taken by the police.” Likening this case to *Jackson*, defendant posits that, “perhaps this whole incident could have been avoided if Harl had been trained more in persuasion and less inclined to use physical force.” We agree with defendant that the deputies could have handled this case differently, but her reliance on *Martino* and *Jackson* is misplaced.

¶ 27 Unlike the defendant in *Martino*, who was tased, there is nothing in this case to establish that defendant lost control of her muscles. The State correctly observes that there is “absolutely no medical evidence which would require a similar result” to *Martino*. We have no doubt that defendant experienced a significant amount of pain during the encounter, but she has presented no basis for us to conclude that her pain rendered her movements involuntary. Furthermore, the audio from Lechowicz’s squad car supports the trial court’s finding that defendant intentionally kicked the officers. The deputies repeatedly ordered defendant to stop kicking them, to which defendant explained that she had only kicked them because they attacked her first. Defendant’s explanation for her comments—that she was simply parroting the deputies’ statements back at them—is unavailing.

¶ 28 In *Jackson*, the appellate court found it problematic that the officers were not trained on how to de-escalate the situation. The court noted that, by tasing the defendant, the officers did nothing to assist the paramedics in assessing the defendant's health. *Jackson*, 2017 IL App (1st) 142879, ¶ 3. Defendant argues that the same criticism applies to the deputies in this case, and that the deputies' actions "did nothing to advance their objective of investigating a possible traffic offense." Defendant questions Harl's testimony that he suspected she was "under the influence of something," noting his admission that he never said anything about driving under the influence until he had already wrestled her out of her car and down to the ground.

¶ 29 Even assuming *arguendo* that Harl's sole purpose for initiating the traffic stop was to investigate possible traffic offenses, the issue of whether the deputies' subsequent actions advanced the objective of the stop is separate and apart from whether defendant acted knowingly. In *Jackson*, even though the paramedics were in uniform and driving an ambulance, the defendant repeatedly told them that they were not paramedics. *Id.* ¶ 26. Here, defendant pulled over for Harl and gave him her license, then had the presence of mind to call her mother and ask for advice. Because there nothing to show that defendant was acting irrationally or suffering from a psychological disorder, *Jackson* has no application here.

¶ 30 Defendant attempts to discredit Lechowicz's testimony that she was able to roll over on her back and kick him with her legs at a 45-degree angle. She notes Harl's testimony that she was on either on her stomach or her side the entire time that she was on the ground. However, viewing the evidence in the light most favorable to the prosecution, a rational tier of fact could have reconciled this contradiction and found the essential elements of the crime beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Collins*, 106 Ill. 2d at 261. Harl also testified that defendant repeatedly attempted to roll over on her back and that she was able to kick Lechowicz

off of her legs. This is consistent with the deputies repeated orders, heard on the audio from Lechowicz's squad car, that defendant stop kicking them. Because the evidence is not "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt," we will not reverse defendant's conviction. *Collins*, 106 Ill. 2d at 261.

III. CONCLUSION

¶ 31 For the reasons stated, we affirm defendant's conviction for aggravated battery of a police officer.

¶ 32 Affirmed.