

No. 1-12-2259

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 3668
)	
ANTHONY CARTER,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence was sufficient to prove defendant acted knowingly or intentionally; affirmed.

¶ 2 Following a bench trial, defendant Anthony Carter was convicted of the aggravated battery of Nicholas Kelly and the battery of Manuel Ibarra and sentenced to concurrent terms of two years' probation and 160 hours of community service. On appeal, defendant challenges his battery conviction, contending that the evidence failed to show that he intentionally or knowingly injured the victim. We affirm.

¶ 3 The record reveals that defendant was charged with multiple counts of aggravated battery following an incident during the early morning hours of January 24, 2010 at the Sky Box gentlemen's club located at 167th and Halsted in Harvey. Defendant was alleged to have harmed two of the club's employees, Kelly and Ibarra.

¶ 4 At trial, Kelly testified that he was a security officer for the club and that defendant was part of a group that was among the club's approximately 300 patrons on January 24. When Kelly left the building to smoke a cigarette, he observed defendant and someone else from his party engage in a verbal altercation with another group of customers. After defendant's acquaintance took a swing at the other group, Kelly and other security officers told defendant and his acquaintance they could not come back in the club. In response, defendant and his acquaintance became belligerent and irate and accused Kelly of holding other members of their group hostage inside the club. Kelly allowed defendant to go inside and retrieve the other members of his party. When defendant came back outside, he kept trying to re-enter, but Kelly told him "it's over, everyone was coming to the front door to get their coats," which meant that patrons could not leave instantly. After women who were part of defendant's group came outside and tried to start a fight with the security officers, the security officers went inside the club, leaving defendant and his party outside.

¶ 5 Kelly and other club employees, including Ibarra, stood in the front area of the club. On the side was a window that looked onto a driveway and was tinted such that people on the outside could not see in, but people inside could see out. Additionally, the front doors had diamond-shaped glass. Kelly observed a woman repeatedly open the door and scream profanities at the employees, leading him to lock the door. Defendant then pulled on the door

very hard, and when it would not open, kicked it, which left a dent. Subsequently, defendant walked around to his car, picked up a "[boulder]-size brick," and threw it overhand into the window, hitting Ibarra and shattering the window. During Kelly's testimony, the State introduced footage from the club's surveillance video. In relevant part, the video showed defendant exit a car that had pulled up to the front area, approach and struggle with the front door to the club, and then walk around to the side of the club, pick up an object, and throw it overhand into the side of the building.

¶ 6 After the brick was thrown, Kelly went outside, where defendant was getting into his car. To stop defendant from leaving before the police arrived, Kelly reached into the car to take defendant's keys out of the ignition. Defendant grabbed Kelly and began attacking him. Ultimately, Kelly was stabbed in the ribs, arms, stomach, and back.

¶ 7 Manuel Ibarra, one of the club's managers, testified that just after 1 a.m. on January 24, he went to the front area of the club to see what was going on. When Ibarra turned, a rock came through the window and hit him. After he was hit, Ibarra ran to the bathroom to wash his face because glass had gotten in his eyes. Using pictures taken of him after the incident, Ibarra described his injuries, stating that he had marks on his face, chest, arm, hands, and stomach. Also using pictures, Ibarra identified the window that was broken and the rock that was used.

¶ 8 Ultimately, the court found defendant guilty one count of aggravated battery for the altercation with Kelly and one count of battery for the brick that hit Ibarra. Defendant was not guilty of aggravated battery towards Ibarra, as was initially charged, because although the State proved there was bodily harm to Ibarra, "the issue of great bodily harm is in question."

Following a sentencing hearing, defendant was sentenced to concurrent terms of two years' probation and 160 hours of community service.

¶ 9 On appeal, defendant only challenges his battery conviction. Defendant asserts that the evidence established that people standing on the outside of the club were unable to see inside the side window. Defendant argues that as a result, there was no proof that defendant knew Ibarra was standing by the window when he threw the brick, and therefore the State did not prove beyond a reasonable doubt that defendant knowingly or intentionally caused harm to Ibarra or anyone else. Defendant contends that, at best, his conduct was reckless.

¶ 10 As a preliminary matter, defendant asserts that our review should be *de novo* because the facts are not in dispute. We disagree. In arguing that he did not have the requisite mental state, defendant challenges inferences that the trial court drew from the evidence, which presents disputed questions of fact that make this matter inappropriate for *de novo* review. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶¶ 35-36 (declining *de novo* review where the defendant argued his behavior was more reckless than knowing); *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010) (declining *de novo* review where the defendant claimed the evidence failed to establish he acted knowingly).

¶ 11 The proper standard of review for defendant's challenge to the sufficiency of the evidence 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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not our function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Rather, in a bench trial, it is for the trial judge, sitting as

the trier of fact, to determine the credibility of witnesses, weigh and draw reasonable inferences from the evidence, and resolve any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 12 A person commits battery if he intentionally or knowingly without legal justification and by any means causes bodily harm to an individual. 720 ILCS 5/12-3(a) (West 2010). Defendant contends he acted recklessly, rather than intentionally or knowingly. The relevant terms—intentionally, knowingly, and recklessly—are defined by statute. A person acts intentionally to accomplish a result when his conscious objective or purpose is to accomplish that result. 720 ILCS 5/4-4 (West 2010). A person acts knowingly when he is consciously aware that a result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2010). Finally, a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will follow. 720 ILCS 5/4-6 (West 2010). A defendant's mental state may be inferred from circumstantial evidence. *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011). For example, intent may be inferred from the defendant's conduct surrounding the act and from the act itself. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009). Determining whether a defendant acted with the requisite state of mind is for the trier of fact, and when the facts in the case give rise to more than one inference, we will not substitute our judgment for that of the trier of fact unless that judgment was inherently implausible or unreasonable. *People v. Marcotte*, 337 Ill. App. 3d 798, 804 (2003).

¶ 13 Here, the evidence was sufficient to find that defendant intentionally or knowingly caused harm to Ibarra. Kelly testified that after defendant and his friend had an altercation with another party and were told to leave, defendant was belligerent and irate. Further, according to Kelly and corroborated by the video, defendant subsequently pulled and kicked the door hard enough to leave a dent. Defendant then went to the side of the building, picked up a brick, and threw it into the window, where it hit Ibarra. Even though defendant could not have seen inside the side window, he would have been aware that someone would almost certainly be hit by the brick he threw. He had previously been inside the club, which contained 300 people who were in the process of leaving. Based on defendant's angry behavior and the act of throwing a brick into a crowded building, a rational trier of fact could find that defendant acted intentionally or knowingly. See *Phillips*, 392 Ill. App. 3d at 259 (trier of fact could reasonably infer that the defendant acted intentionally or knowingly from the defendant's expressions of anger made immediately prior to the battery and from the act of punching the victim with a closed fist).

¶ 14 Moreover, it was not necessary for defendant to intend the consequence of hitting Ibarra specifically. See *Lattimore*, 2011 IL App (1st) 093238, ¶ 44. A person acting with a wrongful intent is responsible for an unintended wrong that occurs as a natural and probable consequence of his actions. *Id.* Whether defendant sought to damage the club or targeted a different employee, he is still responsible for injuring Ibarra, who happened to be the person standing by the window. See *People v. Isunza*, 396 Ill. App. 3d 127, 132-33 (2009) (though defendant contended he only intended to damage a car window when he struck it with a baseball bat, he was responsible for the resulting injury to a passenger because the injury was a natural and probable consequence of his actions). Accordingly, the evidence was sufficient to find that

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defendant intentionally or knowingly caused harm to Ibarra, and we reject defendant's claim that his conduct was merely reckless.

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

¶ 16 Affirmed.