THIRD DIVISION
May 25, 2011

No. 1-09-2351

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MATTHEW SNIPES, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Illinois. No. 08 CR 13423 Honorable Carol A. Kipperman, Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.

Justices Neville and Steele concurred in the judgment.

ORDER

HELD: Where evidence showed defendant was over 18 years of age and held hot lamp on three-year-old victim's arm for an extended period to teach him not to touch the lamp, the State proved defendant guilty beyond a reasonable doubt of aggravated battery of a child.

HELD: Where defendant's presentence investigation report contained claims that trial counsel did not explain that lesser offenses would merge, that defendant did not understand he was going to trial but thought he was still in plea negotiations, and that trial counsel failed to raise his drug habit to explain his state of mind, the trial court did not error in failing to undertake a *Krankel* inquiry where defendant had private counsel and failed to raise these issues in either written or oral motion during posttrial proceedings.

HELD: While trial court properly merged offenses of aggravated battery of a child and aggravated domestic battery, both charges arise from the same act and under the one-act,

one-crime rule, the *mittimus* improperly lists both convictions and must be corrected to reflect a single conviction for the greater offense, aggravated battery of a child.

Following a bench trial, defendant, Matthew Snipes, was convicted of one count of aggravated battery of a child (720 ILCS 5/12-4.3 (West 2008)) and one count of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2008)). The convictions were merged into the first count aggravated battery of a child and defendant was sentenced to the statutory minimum of six years' imprisonment. Defendant now appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt because it did not prove that he intended or knew that he would cause great bodily harm. Defendant also argues that the trial court erred in failing to inquire into defendant's claim indicated in his presentence investigation report that he received ineffective assistance of counsel. Finally, defendant argues, and the State concedes, that the *mittimus* must be corrected to remove the listed conviction for aggravated domestic battery under the one-act, one-crime rule. For the following reasons, we affirm defendant's conviction for aggravated battery of a child and vacate the conviction for aggravated domestic battery and order the *mittimus* be corrected.

I. BACKGROUND

Defendant was charged in a three-count indictment with aggravated battery of a child, aggravated domestic battery, and aggravated battery in connection to a June 7, 2008, incident in which he allegedly caused great bodily harm to three-year-old Milan N. The matter proceeded to a bench trial and defendant was found guilty of aggravated battery of a child and aggravated domestic battery. The trial court merged the convictions and sentenced defendant to six years' imprisonment.

At trial, evidence presented showed that at the time of the incident, defendant was living

in a garden apartment on North Austin Avenue in Oak Park, Illinois, across the street from West Suburban Hospital. Defendant shared the apartment with his mother Maxine Snipes, his sister Yoninah (Ninah) Snipes, his girlfriend Clariss Hernandez, and Hernandez's two children, three-year-old Milan N. and three-month-old Caleb Snipes. Caleb is defendant and Hernandez's son together and Milan is Hernandez's son with another man.

On June 7, 2008, Clariss went to work at around 1:00 p.m., leaving the children in Ninah's care. Milan was in good health at that time and did not have any unusual bruising or marks. Ninah testified that Milan was a typical "rowdy three-year-old" and would often bump into things while running around playing and often had bruises on his body. On the day in question, Milan had a scratch on his face from one of the cats and a bump on his head.

At around 3:00 p.m. on June 7, 2008, Maxine and defendant returned to the apartment. Soon thereafter, Maxine and Ninah left the apartment, leaving defendant to watch Milan and Caleb. Defendant, who was unemployed at the time was regularly left in charge of the children. Defendant decided to rewire his computer and he set up a clamped light positioned under the desk so that he could see the wiring. While he was working on the wiring, Milan who was only wearing a diaper, played under the desk with the wires and swatted at the light. Defendant told Milan to stop several times and moved him away because the light could get "really hot" and he was going to hurt himself.

Milan continued to play with the lamp, once saying "ha" when he swatted the light. Defendant testified that "ha" meant hot. Defendant told Milan that he was correct, that the light was hot and he should not touch it. When Milan again swatted at the light, defendant decided to teach him that it was hot and touched it to Milan's inner arm for a couple of seconds. Milan tried to pull away, but defendant kept the lamp touching his arm to teach him that it could burn him.

Defendant did not know that Milan was burned by his action, but Milan did not touch the lamp again.

Defendant returned to working on the wires when he noticed a few minutes later that Milan had soiled his diaper. Defendant testified that Milan's diaper was particularly messy so he put him into the bath with the water up to Milan's chest level to clean him off. Defendant left Milan alone in the bath for 10 to 15 minutes and when he returned to the bathroom, he found Milan unresponsive with his face in the water. Defendant removed Milan out of the tub and tried to resuscitate him by blowing into his mouth and pushing on his chest. Milan's stomach was bloated, but he regained consciousness and vomited food and water.

Defendant cleaned up Milan and dressed him. Milan walked around the apartment a little and defendant asked him questions to make sure that he was fine and then put some cartoons on the television. Approximately five minutes later, Clariss returned home and defendant told her that Milan had been throwing up. Defendant brought Milan to Clariss at the front door and Milan was unable to stand on his own. Milan had a grey complexion, his lips were blue and he wheezed and made sounds like gurgling noises when Clariss picked him up. Clariss tried to call her mother, who was a nurse, but could not reach her so she took Milan to the emergency room at West Suburban Hospital.

Milan was taken to a bed in the emergency room where it was discovered that he had second-degree burns on the inside of his left arm, his left hand and on his chin. He also presented with numerous bruises on his pelvic, back, chest, abdomen, knee and shin regions. Milan's stomach was pumped and he was stabilized before being transferred to Children's Memorial Hospital (Children's). Milan remained and was treated in the intensive care unit at Children's for approximately a week. While the burn on his hand could have been accidental and

the knee and shin bruises were not suspicious, Milan's treating physician, Dr. Jusino-Maranto, contacted the Oak Park police because of her suspicions of child abuse based on the number and placement of burns and bruises he presented with and her experience with similar patients.

Dr. Jusino-Maranto explained to the general treatment of second-degree burns on a child. She stated that children typically scream due to the pain from such burns and they are given pain medication prior to cleaning of the burn, removal of hanging skin and application of topical creams. While these wounds are more significant and painful than superficial wounds and pain caused by the wounds often lingers for some time, they typical do not require admission.

In response to Dr. Jusino-Maranto's report, Detective Shatonya Harris of the Oak Park police investigated the incident. Harris and her partner found defendant and, after reading him his *Miranda* rights, interviewed him. Defendant admitted to leaving Milan alone in the bath and returning after 10 to 15 minutes later to find Milan slumped over in the bath. Defendant told the detectives that he then revived Milan. In a second interview, defendant volunteered that he would tell the detectives "about the lamp."

Defendant stated that Milan was playing around the lamp and knew that it was hot by saying "ha." Defendant stated that he touched the lamp to Milan's arm to show him that it was hot and held it on his arm for three seconds. Defendant was arrested and charged with aggravated battery to a child, aggravated domestic battery, and aggravated battery.

After the parties rested, the trial court reserved judgment to consider the relevant case law. On July 31, 2009, the trial court presented the results of its own independent research on the issue of knowing and intentionally causing great bodily harm, in particular to children. The trial court concluded that defendant acted knowingly in causing great bodily harm to Milan. Therefore it found him guilty of aggravated battery to a child and aggravated domestic battery,

but not guilty of aggravated battery. The court merged the first two counts.

Defendant filed a motion to reconsider, arguing that the State failed to prove him guilty beyond a reasonable doubt and that he was not able to confront his accuser. That motion was denied and defendant was sentenced. The trial court considered the PSI and arguments in aggravation and mitigation. The trial court did not mention the statements by defendant in the PSI that trial counsel failed to explain to him that lesser offenses would merge and that he would have pled guilty had he known that. In addition, the PSI contained claims by defendant that he did not know the case was proceeding to trial and that he thought trial counsel should have raised the issue of his bad drug problem. Trial counsel argued the issue of defendant's drug problem in mitigation, but did not mention these other issues. Defendant spoke and only apologized for failing as a father and a man and injuring Milan. The trial court sentenced defendant to six years' imprisonment and this appeal followed.

II. ANALYSIS

A. Proof Beyond a Reasonable Doubt

Defendant first asserts that the State failed to prove him guilty beyond a reasonable doubt of aggravated battery of a child and that conviction must be reversed or, alternatively, reduced to the lesser-included offense of reckless conduct. Due process requires proof beyond a reasonable doubt of every necessary fact to find a defendant guilty of a crime. *In re Winship*, 397 U.S. 358, 364 (1970). In assessing the sufficiency of the evidence to sustain a verdict on appeal we must view the evidence in the light most favorable to the prosecution to determine if *"any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Bush*, 214 Ill. 2d 318, 326 (2005), citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979);

People v. Collins, 106 Ill. 2d 237, 261 (1985). This means that we must allow all reasonable inferences from the record in the favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

Defendant notes that a person is guilty of aggravated battery of a child when he is over 18 years of age and intentionally or knowingly without legal justification, by any means, causes great bodily harm to any child under 13 years of age. 720 ILCS 5/12-4.3 (West 2008). Defendant asserts that the State failed to prove beyond a reasonable doubt the requisite mental state and that great bodily harm was caused. Defendant notes that a person acts knowingly when he is consciously aware that his conduct is practically certain to cause the result while negligence involves the failure to be aware that such results will occur. *People v. Herr*, 87 Ill. App. 3d 819, 821 (1980).

In *Herr*, this court affirmed the defendant's conviction for aggravated battery for punishing her child for wetting his pants by placing the child in steaming water. Despite his crying and kicking, the defendant held the child in the water for 15 minutes, causing second degree burns on his buttocks and bruising to his legs. *Id.* at 820-21. This court found it "not unreasonable to infer from these facts that defendant specifically intended to inflict pain" and "was consciously aware that serious injury was practically certain to be caused by her conduct." *Id.* at 822. Defendant argues that, unlike *Herr*, defendant explained that he "absolutely" did not intend to burn Milan and simply tried to teach him not to touch the hot lamp. Furthermore, unlike the situation in *Herr*, Milan did not cry or kick and defendant did not know any burns resulted from his actions. Defendant also claims that burns are not always noticeable at the time of presentation and he did not see any burns on Milan.

Defendant also distinguishes *People v. Renteria*, 232 Ill. App. 3d 409 (1992) for support. In *Renteria*, the defendant left an infant boy on a bed while he got a bottle. He became angry when he returned to find the child had fallen off the bed and stopped breathing. The defendant inflicted grave injuries on a child by violently shaking him. When he was done, he immediately checked the child's vital signs and then wrapped the child in a blanket and took him to the hospital. *Id.* at 411-14. He argued that he the State failed to prove beyond a reasonable doubt that he was consciously aware of the harm that would occur. However, this court affirmed the conviction for aggravated battery to a child, based partly on a finding that defendant's actions in checking the child immediately and taking him to the hospital indicated his awareness of his actions. *Id.* at 417.

Defendant argues that, to the contrary, in this case, Milan continued to play after the incident with the lamp. Only after discovering Milan in the bath, not after the lamp incident, did defendant check Milan's vitals and revive him. Therefore, defendant argues that these cases support his claim that the State failed to prove knowledge and intent. Defendant concludes that his actions were, at worst, reckless.

Defendant also argues that the State failed to prove that there was great bodily harm. He claims that the evidence showed that Milan did not scream and yell or kick when the lamp was touched to his forearm as Dr. Jusina-Maranto testified would typically occur. Further, Milan continued to run around and play after the incident. Defendant also notes that defendant did not notice any burns at the time of the incident. Defendant cites to clinical text to argue that second degree burns often change over time and seemingly minor superficial burns can appear deeper in time. See, *Roberts: Clinical Procedures in Emergency Medicine*, Ch. 38 - Burn Care

Procedures, Wound Evaluation (5th ed. 2009).

The State argues that, viewing the evidence in a light favorable to the prosecution, this court must affirm defendant's conviction. We agree with the State. Defendant acknowledged that he knew the lamp was hot, that Milan knew the lamp was hot and expressed that to defendant, but defendant still purposely touched the hot lamp to Milan's arm allegedly to teach Milan not to play with it. Defendant's claim of lack of knowledge falls flat here.

It defies logic to argue that he did not know that Milan was likely to get burned by the lamp when he also argues that he was trying to teach Milan that the lamp was hot and could hurt him. Viewing the evidence in a light most favorable to the prosecution, a trier of fact could certainly conclude that defendant was consciously aware that holding a hot lamp to Milan's skin would cause serious harm. As in *Herr*, based on the evidence, including the severity and number of burns, it is not unreasonable to conclude that defendant intended to harm Milan. While defendant testified that he "absolutely" did not intend this outcome, it is not an unreasonable conclusion based on the facts. Furthermore, the trial court had the benefit of observing the witnesses and assessing credibility. Additionally, Dr. Jusino-Martino testified regarding the pain and severity of second-degree burns, in particular those suffered by Milan. Defendant's citation to medical text does not overcome this testimony, especially considering this information was not presented at trial. Defendant's conviction for aggravated battery to a child is affirmed.

B. *Krankel* Inquiry

Next, defendant argues that the trial court was required to make an inquiry to determine whether new counsel was warranted based on comments made by defendant and reported in his presentence investigation report (PSI). Defendant informed the probation officer who prepared

the PSI that trial counsel did not explain that lesser offenses would merge. Defendant claimed that, if he had known this, he would have pled guilty. Defendant also stated the he did not understand the case was going to trial when it did, but believed they were still undergoing plea negotiations with the State. Finally, defendant notes that he informed the probation officer that he had a bad drug problem and thought counsel should have mentioned this at trial to explain his state of mind. Defendant argues that this information contained within the PSI constitutes a *pro se* claim of ineffective assistance of counsel, albeit via an "unorthodox medium."

Defendant asserts that a trial court presented with such allegations of ineffective assistance of counsel during posttrial proceedings is required to make a preliminary inquiry to determine if appointment of new posttrial counsel is necessary. *People v. Krankel*, 102 Ill. 2d 181, 189 (1984); *People v. Moore*, 207 Ill. 2d 68, 78-79 (2003). Defendant argues that the trial court must determine whether the underlying facts support such a claim and whether appointment of new counsel is necessary to avoid a conflict of interest. *People v. Bull*, 185 Ill. 2d 179, 210 (1998). The question of whether the trial court was required to conduct a *Krankel* inquiry is a question of law to be reviewed *de novo*. *Moore*, 207 Ill. 2d at 75.

Defendant points to cases that hold that no explicit pleading requirements are necessary to trigger a *Krankel* inquiry and that a written motion is unnecessary. *Id.* at 78-79; *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992). Defendant notes that the trial court has a duty to review and consider the PSI and it is presumed the court did so in this case. He concludes that his three allegations are clearly set out in the PSI and these triggered the trial court's duty to conduct a preliminary agreement.

We disagree. The State argues that defendant's failure to explicitly raise this issue with

either a written or an oral motion is fatal as the obligation to conduct a *Krankel* inquiry has not been extended to a situation such as this. *People v. Harris*, 352 Ill. App. 3d 63, 72 (2004). The State also argues that because defendant hired private counsel to represent him, the trial court need not conduct a *Krankel* inquiry. *People v. Pecoraro*, 144 Ill. 2d 1, 14-15 (1991).

First, as defendant points out, Justice Burke recently noted that there remains a split among districts of this court as to the reach and application of *Pecoraro*. *People v. Taylor*, 237 Ill. 2d 68, 78 (2010), Burke, J., concurring. However, we need not reach that argument because defendant's claim fails to overcome the State's first argument. Because it disposed of the appeal on the substance of the defendant's statements made to the trial court during sentencing, the *Taylor* court failed to reach the interpretation of *Pecoraro*. *Id.* at 77. The defendant did not specifically claim ineffective assistance of counsel, but made an "implicit claim" in his "rambling" oral statement by asserting that he did not understand what penalties he faced and what plea offer was tendered. *Id.* at 73, 77. Our supreme court rejected the defendant's claim that the trial court erred in failing to conduct a *Krankel* inquiry. The *Taylor* court found that there was nothing specifically pointing to a complaint about the attorney's performance and "[i]f defendant's statement in the case at bar were deemed sufficient to require a *Krankel* inquiry, few statements would be insufficient." *Id.* at 77.

Like *Taylor*, defendant simply made statements that he did not know specifics regarding the effect of the charges against him, plea negotiations, and sentencing. Unlike the defendant in *Taylor*, defendant did not raise this issue orally to the trial court. Defendant did not make this argument but simply apologized for his failure as a man and a father.

Moreover, as the State argues, this case is close to on point with *Harris*, where this court

rejected the defendant's claim that his PSI contained statements sufficient to implicitly raise an argument of ineffective assistance of counsel and required a *Krankel* inquiry. *Harris*, 352 Ill. App. 3d at 72. The *Harris* court concluded that with only the statement provided in the PSI, the defendant's failure to present a written motion or, when given the opportunity, to orally address the issue, there was insufficient support to raise a claim of ineffective assistance of counsel. We agree that these cases control here and defendant's claim fails.

C. One Act, One Crime

Finally, defendant argues and the State concedes that his conviction for aggravated domestic battery must be vacated based on the one-act, one-crime rule because it rested on the same act as his conviction for aggravated battery of a child. *People v. Crespo*, 203 Ill. 2d 335 (2001). Under the one-act, one-crime rule, a defendant may be convicted for only one crime resulting from a single act. *People v. Dresher*, 364 Ill. App. 3d 847, 863 (2006). Accordingly, pursuant to Illinois Supreme Court Rule 615(b), we vacate the less serious conviction of aggravated domestic battery and the mittimus shall be corrected to reflect one conviction of aggravated battery of a child.

III. CONCLUSION

For the foregoing reasons, we affirm defendant's conviction for aggravated battery of a child and order the mittimus be corrected to reflect that we have vacated the aggravated domestic battery conviction.

Affirmed in part; vacated in part.