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**SIXTH DIVISION
DECEMBER 16, 2011**

No. 1-10-0853

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, Illinois.
)	
)	07 CR 4544
v.)	
)	Honorable
)	William Timothy O'Brien,
ALI SALEH,)	Judge Presiding.
)	
Defendant-Appellant.)	

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 **HELD:** When the defendant struck Schmitt with keys in his open hand that was sufficient to convict the defendant beyond a reasonable doubt of aggravated battery by knowingly causing great bodily harm and permanent disfigurement to Schmitt.

¶ 2 Following a bench trial, defendant Ali Saleh, age 52, was convicted of two counts of aggravated battery under 720 ILCS 5/12-4(a) (West 2006) for knowingly causing great bodily harm and permanent disfigurement to Robert Schmitt, age 33. After hearing aggravation and mitigation, the defendant was sentenced to 30 months of felony probation, an anger management evaluation and treatment and assessed \$630 in fines and fees. On appeal, the defendant contends

that the State failed to prove beyond a reasonable doubt that the defendant knew his act of slapping Schmitt with an open hand was “practically certain” to result in great bodily harm or permanent disfigurement.

¶ 3 BACKGROUND

¶ 4 Defendant was indicted on three counts of aggravated battery stemming from his involvement in an altercation with three passengers in his taxi cab that occurred on December 17, 2006. On January 15, 2010, the defendant was found guilty on count one of knowingly causing great bodily harm and count two of knowingly causing permanent disfigurement (720 ILCS 5/12-4(a) (West 2006)), but not guilty on count three of aggravated battery with a deadly weapon. (720 ILCS 5/12-4(b)(1) (West 2006)). Accordingly, the present appeal is only concerned with the defendant’s conviction on counts one and two.

¶ 5 At trial, Schmitt testified for the State that he was the passenger who became involved in an altercation with the defendant in front of 1622 West Belmont in Chicago shortly after midnight on December 17, 2006. Schmitt, a high school history teacher, testified that his little sister, Katie Schmitt¹, visited him in Chicago on December 16, 2006, to celebrate her twenty-first birthday. Schmitt, Katie, and Schmitt’s then-fiancé Carrie Gilson left his apartment on North Leavitt around 8:00 p.m. and went to Trace, a restaurant-bar on Clark Street in Chicago’s Lakeview neighborhood. Schmitt testified that while at Trace, he consumed one gin and tonic, Gilson consumed one vodka and soda, and Katie consumed more than one beer.

¶ 6 They remained at Trace for 45 minutes to an hour before walking to Casey Moran’s, a restaurant-bar located half a block south of Trace on Clark Street. At Casey Moran’s, Schmitt

¹ Katie Schmitt will hereafter be referred to as Katie to avoid confusion between Robert Schmitt and Katie Schmitt.

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consumed another gin and tonic, Gilson consumed another vodka and soda, and Katie consumed two beers. They remained at Casey Moran's for approximately 45 minutes to an hour before exiting to walk to Merkle's, a Clark Street restaurant-bar located a block south of Addison Street.

¶ 7 At Merkle's, Schmitt consumed two beers, Gilson consumed one beer, and Katie consumed two more beers. At this point in the evening, it was approximately two-and-a-half hours since they left Schmitt's apartment and Schmitt had testified to consuming a total of four alcoholic beverages. While at Merkle's, they also shared an order of nachos and each ate a sandwich and fries, and when they had finished their meal, Gilson decided that it was time to take Katie back to their apartment, because Katie had consumed too much alcohol.

¶ 8 They exited Merkle's shortly after midnight on December 17, 2006, and hailed a yellow taxi cab that was heading southbound on Clark Street outside of Merkle's. Schmitt testified that he sat behind the passenger front seat, Gilson sat behind the driver, and Katie sat between them. Schmitt testified that he asked the driver to take them to 3053 North Leavitt and the driver proceeded to drive south on Clark Street before turning west on Belmont Avenue.

¶ 9 Schmitt testified that as the taxi approached the intersection of Ashland and Belmont Avenue, Katie began to complain that she felt ill and Schmitt responded by telling her that she would be all right because they were close to his apartment. However, as the taxi crossed Ashland Avenue, Katie insisted that the taxi pull over because she was going to vomit immediately. Schmitt testified that he asked the driver to pull over and the driver parked the taxi in front of an establishment called The Bungalow at 1622 West Belmont Avenue without saying a word.

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¶ 10 Schmitt testified that when the taxi stopped, he opened the back passenger door and exited the vehicle and Katie moved across the back seat so that she could lean her body outside of the taxi to vomit. Schmitt testified that Katie did not vomit inside the taxi and although she remained seated in the vehicle, her legs, arms, and head were leaning outside. Schmitt testified that as he stood outside the back passenger door tending to Katie, he heard the driver speak to Gilson, who had remained inside the vehicle, in a heated tone but could not discern what was said. Schmitt testified that Katie then completely exited the taxi to continue vomiting on the sidewalk and he remained next to Katie as she relocated approximately six feet away from the vehicle.

¶ 11 Schmitt testified that he then heard Gilson and the driver arguing and Gilson yelled, “He hit me, he hit me.” Schmitt testified that he observed Gilson standing outside of the driver’s side holding her face and the driver was standing about a foot from Gilson, facing her. Schmitt testified that he ran ten feet to arrive where Gilson and the driver were standing and pushed the driver’s chest with his open palms facing outward to move the driver away from Gilson. Schmitt testified that when pushed, the driver backed up toward the taxi door, turned, and slapped Schmitt across the left side of his face with his right hand. Schmitt testified that he did not observe any weapon in the driver’s hand and noticed that the driver’s palm was open.

¶ 12 Schmitt testified that both Gilson and Katie then started screaming when they observed blood pouring down his face. At this time, Schmitt observed the defendant re-enter his taxi and drive west on Belmont Avenue. Schmitt testified that the slap left a 3 to 3.5-inch long open wound that caused him to lose a significant amount of blood at a fast pace. Gilson promptly called 911 and the police and paramedics arrived shortly thereafter. The ambulance took Schmitt to Illinois Masonic Hospital, where he received 38 stitches on the right side of his face.

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Schmitt testified that the wound caused a permanent 3-inch long scar above his jawbone and that the defendant was the driver who caused that wound and scar.

¶ 13 Gilson testified for the State that she was a passenger in the defendant's taxi with Schmitt and Katie when the altercation occurred. Gilson testified that when Schmitt exited the taxi to tend to Katie as she vomited, Gilson remained inside the vehicle with the defendant. Gilson testified that the defendant then began shouting in both English and a foreign language for Gilson to leave his taxi and after Gilson asked the driver to "calm down," the defendant continued shouting in an escalating tone using profanity. Gilson further testified that while the defendant continued shouting, Schmitt was on the sidewalk with Katie approximately ten feet from the vehicle.

¶ 14 Gilson testified that she began opening the back driver's side door to exit the taxi when she started to fear for her safety. The defendant simultaneously began to exit the taxi from the front driver's side door. Gilson testified that she was standing approximately a foot from the defendant outside of the vehicle when the defendant punched her in her right jaw with his closed fist. Gilson testified that she immediately screamed and Schmitt responded by running between Gilson and defendant and pushed the defendant from her.

¶ 15 Gilson testified that the defendant then recoiled, reached back with his right arm and slapped Schmitt on the left side of his face. Gilson testified that Schmitt appeared to be in shock after being slapped and the defendant quickly re-entered his taxi and drove away. Gilson testified, "Rob's [Schmitt's] face was gaping open and blood was just coming out rapidly. It was dropping on his clothes. And he didn't, I don't think, realized what happened because he was looking at his hands, puzzled." Gilson testified that she did not observe a weapon in the defendant's hand when he delivered the blow.

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¶ 16 Gilson testified that she quickly called 911 and provided the dispatcher with the defendant's taxi number and physical description. After the police and ambulance arrived at the scene, Gilson accompanied Schmitt and Katie to Illinois Masonic Hospital to receive x-rays and examination for the injury to her jaw. Gilson testified that after receiving treatment, she left Illinois Masonic Hospital with Officer Martin Walsh and went to the 19th District police station at Belmont and Western Avenue to identify a suspect in custody and while there, identified the defendant as the driver who slapped Schmitt and punched her.

¶ 17 Officer Martin Walsh testified for the State that he has been a Chicago police officer for ten years and on December 17, 2006, he was assigned to the 19th District at Belmont and Western Avenue. Officer Walsh was in uniform and working in a marked police vehicle when he received a call from dispatch that the victims of a "person with a knife" were located at 1622 West Belmont Avenue. Officer Walsh testified that when he approached the 1600 block of West Belmont, he saw Schmitt, Gilson, and Katie standing on the street.

¶ 18 Officer Walsh testified that he observed Schmitt holding his face and bleeding profusely from a gash on his cheek that appeared 3 inches long and Gilson appeared to be injured with redness and swelling to the right side of her cheek and a swollen lip. Officer Walsh testified that Gilson did not appear to be under the influence of alcohol when she provided him with the defendant's taxi number and description. Officer Walsh provided the dispatcher with the description of the defendant as a "male, Middle Eastern, Arab, dark skin, approximately 45 to 50, salt-and-pepper hair, height and weight of about 5-4, 150 pounds."

¶ 19 Officer Walsh testified that he stayed at the scene until an ambulance arrived and followed the ambulance to the Illinois Masonic Hospital. Officer Walsh testified that while at

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the hospital, he received a communication that a suspect was in custody and took Gilson with him to the 19th District where she identified the defendant as the offender.

¶ 20 Sergeant William Brannigan testified for the State that he has been a police officer for 15-and-a-half years and a sergeant with the Chicago police department for four years.

Sergeant Brannigan testified that on December 17, 2006, he was assigned to the 19th District when he received a flash message between 12:15 a.m. to 12:30 a.m. that a victim had been stabbed during a dispute with the driver of Yellow Cab number 4670. Sergeant Brannigan testified that when he fielded the flash message, he was in a marked police vehicle traveling west on Belmont Avenue and as he approached the intersection of California Avenue, he observed a taxi with the number 4670 traveling eastbound on Belmont. Sergeant Brannigan testified that he called for backup because “at that point, we know a stabbing or cutting that occurred before that.”

¶ 21 Sergeant Brannigan testified that he followed the taxi for approximately three blocks before observing the vehicle pull into the 19th District police station’s parking lot and park in a parking space. At trial, Sergeant Brannigan identified the taxi driver as the defendant. Sergeant Brannigan observed the defendant exit the taxi without being told to and asked the defendant whether he had been involved in a dispute on Belmont Avenue. When the defendant answered affirmatively, Sergeant Brannigan took him into custody and handed him over to police officers in the interview room. Sergeant Brannigan testified that when he subsequently searched the taxi, he did not observe or smell any vomit nor did he find a weapon.

¶ 22 Detective Michael McDonough testified for the State that he has been a Chicago police officer for 20 years and a detective since 1998. Detective McDonough testified that on February 8, 2007, he was a detective with the 19th District when his sergeant informed him that the

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defendant's case was in misdemeanor court and that the Assistant State's Attorney wanted to upgrade the defendant's charge to a felony. Detective McDonough testified that he went with Detective Gillespie downstairs to misdemeanor court and waited in the hallway outside of the courtroom for the defendant to exit. When Detective McDonough observed the defendant enter the hallway, he stopped the defendant and informed him that the police needed to continue their investigation with him upstairs.

¶ 23 Detective McDonough testified that when placed in the interview room, the defendant chose not to waive his constitutional rights and left the interview room only to return voluntarily approximately 20 minutes later by knocking on the interview room door. Detective McDonough testified that he again advised the defendant of his constitutional rights and then the defendant chose not to waive his rights. Detective McDonough testified that the defendant said that when he stopped the taxi because Katie was sick, Schmitt and Gilson became enraged and screamed "No, take us home." Detective McDonough testified that the defendant said: "The male individual came out and took—tried to fight with him, at which time he hit him with his right hand, very slightly on the face." As an explanation for how Schmitt's face was cut, Detective McDonough testified that the defendant said he probably had his keys in his hand when he struck Schmitt. Detective McDonough opined, "The wound to Mr. Schmitt's face, in my opinion, would be a razor blade, or box cut, or something along those lines."

¶ 24 Following Detective McDonough's testimony, the State rested and the defense motioned for a directed finding, arguing that the State had not proved beyond a reasonable doubt that the defendant was not acting in self-defense when he struck Schmitt. The trial judge denied the motion and the defense called the defendant to testify in his own behalf.

¶ 25 The defendant testified that he has been driving a taxi for approximately 30 years and on December 16, 2006, Schmitt, Gilson, and Katie hailed his taxi around 11:30 p.m. to 11:40 p.m. as he was driving south on Clark Street. The defendant testified that shortly after he turned right on Belmont Avenue, he observed that Katie appeared sick and said he wanted to pull the taxi over, but Schmitt and Gilson insisted that he continue driving toward their destination. The defendant testified that because he then observed Katie put her hand to her mouth and vomit into her hand, he pulled the taxi to a stop at the corner of Belmont and Ashland Avenue. The defendant testified that when he parked the taxi, he asked Schmitt to make sure Katie finished vomiting outside and observed Schmitt step outside of the taxi as Katie continued vomiting on the taxi's doorstep. The defendant testified that he then asked Schmitt to take Katie to the sidewalk.

¶ 26 The defendant further testified that at that time, he told Gilson, who remained seated in the taxi behind the driver's seat, that if they had allowed him to stop earlier, Katie would not have vomited inside of his taxi. The defendant testified that Gilson then began calling him insulting names and saying, "Shut up, go back to your country. You don't know how to speak English." The defendant testified that he asked Gilson to leave his taxi, but Gilson still wanted the defendant to take them home once Katie finished vomiting. The defendant testified that when he told Gilson that he refused to drive them any further, she continued calling him insulting names and using profanity. The defendant testified that because Gilson did not appear to want to leave the taxi, he exited the vehicle, opened Gilson's door, and said, "Please get out of the cab."

¶ 27 The defendant testified that as Gilson exited the taxi, she tried to punch him in the mouth with a closed fist, but he blocked the punch by grabbing her hand. The defendant testified that

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Gilson then screamed, “He hit me, he hit me” and Schmitt ran from the sidewalk to speak with Gilson. The defendant testified that he told Schmitt that he did not hit Gilson and Gilson hit him instead. The defendant testified that he then turned around to walk back toward his taxi and Schmitt punched him with a closed fist on the back of his head while saying, “You’re a fucking terrorist.” The defendant testified that the blow caused him to hit his teeth on the top of the vehicle hard enough to loosen his tooth.

¶ 28 The defendant testified that Schmitt and Gilson then began simultaneously attacking him by Gilson grabbing his hair and scratching his face and neck while Schmitt punched and jabbed his knee against the defendant’s stomach multiple times. The defendant testified, “Then I strike Robert [Schmitt] on his face with my keys in my hand,” and stated that he had seven to nine keys attached to a key ring in his hand when he struck Schmitt. The defendant testified that he then re-entered his taxi, drove west on Belmont Avenue, and called 911 to report the incident. The defendant testified that he then pulled into the 19th District police station, observed two or three police officers standing in the parking lot, and told the officers about the incident before they arrested him.

¶ 29 The defendant further testified that on February 8, 2007, he told Detective McDonough that Gilson had called him insulting names and scratched his throat; however, he did not tell Detective McDonough that Gilson or Schmitt hit him or that he hurt his teeth during the altercation.

¶ 30 The defense then rested and the State called Officer Kevin Finnegan, who testified that he had been a Chicago police officer for 14 years and was assigned to the booking process at the 19th District on December 17, 2006. Officer Finnegan’s duties included processing prisoners by fingerprinting, photographing, and questioning them. Officer Finnegan testified that he

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processed the defendant on December 17, 2006, and did not observe any injuries or scratches on the defendant. Officer Finnegan further testified that the defendant did not tell him that he had injuries or that he had been punched, scratched, or had loose teeth.

¶ 31 On January 15, 2010, the trial court found the defendant guilty on count one of knowingly causing great bodily harm to Schmitt and count two of knowingly causing permanent disfigurement to Schmitt (720 ILCS 5/12-4(a) (West 2006)). The trial court found the defendant not guilty on count three of aggravated battery with a deadly weapon (720 ILCS 5/12-4(b)(1) (West 2006)), because no weapon was recovered upon the defendant's arrest. The trial court further found that the evidence supported Schmitt and Gilson's version of events and the defendant's self-defense claim was not credible.

¶ 32 The defendant subsequently filed a posttrial Motion for A New Trial, which was denied on February 18, 2010. The defendant was sentenced to 30 months of felony probation with mandatory anger management evaluation and treatment and assessed \$630 in fines and fees. The defendant filed a timely appeal, requesting the defendant's conviction be reversed and the sentence vacated.

¶ 33 ANALYSIS

¶ 34 On appeal, the defendant contends that the trial court erred in finding the defendant possessed the requisite intent to satisfy a conviction under 720 ILCS 5/12-4(a) (West 2006), because the State did not prove beyond a reasonable doubt that the defendant knew slapping Schmitt with an open palm would cause great bodily harm or disfigurement.

¶ 35 The relevant inquiry when reviewing the sufficiency of the evidence to support a criminal conviction 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

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reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The conviction must not be reversed unless the evidence is so improbable or unsatisfactory that it establishes a reasonable doubt of the defendant’s guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 36 Aggravated battery occurs when: “A person who, in committing a battery, intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement.” 720 ILCS 5/12-4(a) (West 2006). To have acted knowingly, the defendant must have been consciously aware that his conduct was practically certain to cause great bodily harm or disfigurement. *People v. Vazquez*, 315 Ill. App. 3d 1131, 1133 (2000). “Intent can be inferred from the surrounding circumstances, the offender’s words, the weapon used, and the force of the blow.” *People v. Conley*, 187 Ill. App. 3d 234, 242 (1989). One is presumed to intend the natural and probable consequences of one’s deliberate acts. *People v. Graves*, 107 Ill. App. 3d 449, 454 (1982).

¶ 37 The defendant contends that because the trial court acquitted him of aggravated battery with a deadly weapon (720 ILCS 5/12-4(b)(1) (West 2006)), it had to further acquit him of all aggravated battery counts because it found insufficient evidence that the defendant struck Schmitt with a “sharp object.” The defendant contends that the evidence only supports that the defendant slapped Schmitt with an open hand, and the State did not prove beyond a reasonable doubt that the defendant was practically certain the single slap would cause Schmitt great bodily harm or disfigurement.

¶ 38 However, in *People v. Doran*, we heard inconsistent testimony as to whether the victim was struck with a nightstick and found that even if evidentiary inconsistencies undermine the theory that the defendant “committed aggravated battery with a deadly weapon, they do not

undermine the theories that defendant caused greatly bodily harm or permanent disfigurement.” 256 Ill. App. 3d 131, 136 (1993). Therefore, an acquittal for aggravated battery with a deadly weapon does not require acquittal on all additional aggravated battery counts when there remains evidence of great bodily harm or permanent disfigurement. *Doran*, 256 Ill. App. 3d at 136.

¶ 39 Moreover, the case at bar is analogous to *People v. Farrell* in demonstrating how a single blow can warrant an aggravated battery conviction showing that the defendant intended to inflict aggravated damage. *Farrell*, 89 Ill. App. 3d 262 (1st Dist. 1980). In *Farrell*, the offender punched the victim once in the face, causing the victim to suffer a bone fracture and permanent scarring. *Farrell*, 89 Ill. App. 3d at 265. We found that because the offender chose to punch the victim in one of the most sensitive areas of the body, the offender knew that aggravated damage was practically certain to result. *Farrell*, 89 Ill. App. 3d at 265. Similarly, although the defendant only struck Schmitt once with an open hand, the intent to cause Schmitt great bodily harm or permanent disfigurement can be inferred from the defendant’s choice to aim his blow for Schmitt’s face, one of the most sensitive areas of the body with a key ring in his hand. *Farrell*, 89 Ill. App. 3d at 265.

¶ 40 Furthermore, the defendant’s conduct may be considered more severe than *Farrell*’s single blow, because the defendant had the keys in his hand. *Farrell*, 89 Ill. App. 3d at 265. In *People v. Fountain*, we found that the offender acted with the requisite intent to sustain an aggravated battery conviction when he stuck the victim once across the face with a beer bottle. *Fountain*, 179 Ill. App. 3d 986, 998 (1989). The defendant’s keys are analogous to the beer bottle in *Fountain*, because an offender would be consciously aware that striking a victim, even once, with either object across the face would be practically certain to cause severe and permanent scarring and bodily harm. *Fountain*, 179 Ill. App. 3d at 998.

¶ 41 The circumstances surrounding evidence of the defendant's words and conduct further bolsters the finding that the defendant acted knowingly with the intent to cause Schmitt great bodily harm and permanent disfigurement. *Conley*, 187 Ill. App. 3d at 242. We found in *Macklin v. Commonwealth Life & Acc. Co.* that "the words uttered by the assailant, the weapon used and the force of his blow ordinarily indicate the quality of his intention." *Macklin*, 121 Ill. App. 2d 119, 126-27 (1970).

¶ 42 The testimony offered at trial discusses these relevant circumstances in relation to the defendant's conduct. Specifically, Gilson testified that the defendant became enraged when he believed Katie had vomited inside his taxi and screamed at Gilson using profanity. Gilson exited the taxi because the defendant's escalating tone caused her to fear for her safety. Gilson further testified that the defendant punched her in the mouth and when Schmitt attempted to push the defendant away to protect Gilson, the defendant recoiled, reached his arm back, and struck Schmitt before quickly driving away from the scene. Schmitt testified that the open hand slap with the keys was severe enough to require 38 stitches and cause a permanent 3-inch long disfiguring scar. Moreover, the defendant testified that his keys were in his hand when he delivered the blow.

¶ 43 Based on *Macklin's* reasoning, the aforementioned testimony supports the inference that the defendant possessed the requisite intent. The defendant's screaming rant and prior blow to Gilson suggests he was enraged while the damaging force of his blow and utilization of the keys suggests he sought to inflict an aggravated injury. *Macklin*, 121 Ill. App. 2d at 126-7.

¶ 44 For the foregoing reasons, the trial court did not err in finding that there was sufficient evidence to prove beyond a reasonable doubt that the defendant was consciously aware that his

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single open-face blow with keys in his hand was practically certain to cause great bodily harm and permanent disfigurement to Schmitt.

¶ 45 CONCLUSION

¶ 46 The evidence illustrated that the defendant possessed the requisite intent to sustain his aggravated battery conviction insofar as the defendant knowingly caused Schmitt's great bodily harm and permanent disfigurement by slapping Schmitt across the face with keys in his hand. Accordingly, the defendant's conviction under 720 ILCS 5/12-4(a) (West 2006) is affirmed.

¶ 47 Affirmed.