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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 C3 30306
)	
CHRISTOPHER WYNTER,)	Honorable
)	Thomas P. Fecarotta, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice LAMPKIN concurred in the judgment.

ORDER

¶ 1 **Held:** The State proved defendant guilty beyond a reasonable doubt of aggravated battery.

¶ 2 Following a bench trial, defendant Christopher Wynter was found guilty of aggravated battery based on the victim's status as a peace officer, and sentenced to 24 months of felony probation. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt in light of the differences between the testimony of the arresting officers and his "independent" witness. We affirm.

¶ 3 At trial, Streamwood police officer Joshua Mailey testified that on March 29, 2010, he was investigating a battery and searching for a suspect named Joel Wynter, defendant's brother. Mailey was in full police uniform and driving a marked squad car. Mailey was familiar with the Wynter brothers from prior official interactions with them, and testified that they were similar in appearance. Mailey saw defendant enter defendant's residence on Clubtree Drive. However, at that time, he did not know which brother he had seen. Mailey radioed a fellow officer, Officer Laura Siedleski, and told her that he had seen one of the Wynter brothers.

¶ 4 The next time Mailey saw defendant, he was standing on the sidewalk talking to Officer Siedleski. Mailey approached them and heard Siedleski ask defendant for identification. Defendant refused, turned, and asked Mailey what he wanted. Mailey asked defendant if he had identification. Defendant responded that he did, but when Mailey asked to see the identification, defendant told him "hell no." Mailey explained why he wanted to see defendant's identification, but defendant responded "[Y]ou don't got shit. I'm going home," and began walking toward his residence. As defendant passed Mailey, Mailey stuck his arm out and defendant bumped him "chest to chest." The bump pushed Mailey off the sidewalk onto the grass, and Mailey told defendant he was under arrest. Mailey attempted to grab defendant's arm and a struggle ensued. During the struggle they fell to the sidewalk. Officer Siedleski came to Mailey's assistance and placed handcuffs on defendant. During the struggle Mailey fell to his knees, and incurred scrapes and bruises to his knees, elbows and hands. Mailey sought medical attention, and was treated and released.

¶ 5 Defendant moved for a directed finding, and the trial court denied the motion.

¶ 6 Defendant presented the testimony of his neighbor, Jiovanna Bardesi. Bardesi testified that on March 29, 2010, she was coming home from a shopping trip with her husband and children. When she arrived home, she saw a police car partially blocking the parking space where her truck was parked and blocking the parking spaces assigned to defendant's residence. Defendant was talking to a female police officer. Bardesi could not hear their conversation because the windows on her vehicle were up. Within a minute, a male officer pulled up in a second car and walked toward defendant. Bardesi and her husband took their children out of their car and into their residence. Inside, they took the children past a staircase that blocked their view of the outside. Bardesi waited approximately 30 or 60 seconds and then moved to a window to see what was happening. When she looked out the window, the male officer had defendant "leaned" toward her truck. Defendant's hands were behind his back, but Bardesi could not tell whether he was wearing handcuffs. Shortly thereafter two additional officers arrived in a police truck and defendant was taken away.

¶ 7 Defendant testified that he currently lived at the residence on Clubtree Drive but on March 29, 2010, he was staying with his girlfriend "down the street." He received a phone call from a friend and was told that the police were knocking on the door at the Clubtree Drive address. Defendant went there to investigate. When he arrived, he saw Officers Mailey and Siedleski outside. Defendant spoke to his father inside the residence and then left and began walking toward a friend's house. As he was walking, Siedleski stopped him and asked whether he was

Joel Wynter. Defendant replied that he was Joel's older brother. Siedleski said nothing more, and defendant began walking back to his residence to speak with his father. As he was walking, Mailey "popped" out of his vehicle, stopped defendant, and asked for identification. Defendant told Mailey that his identification was in his pocket, and Mailey replied that defendant was under arrest. Mailey then pushed defendant and said "battery to an officer." Defendant and Mailey ended up on the ground with Mailey on top of defendant. Mailey began punching defendant and then struck him with a night stick. In response to a question by the court, defendant acknowledged that he should have produced his identification when Mailey asked for it.

¶ 8 Officer Laura Siedleski testified for the State in rebuttal. Siedleski testified that on March 29, 2010, she was conducting an investigation and encountered defendant near his residence. Defendant matched the description of the suspect Siedleski sought. Siedleski asked if defendant was Joel Wynter, and defendant replied that Joel was his brother. When Siedleski asked defendant's name he did not respond. Defendant did not tell Siedleski that he had identification in his pocket. While Siedleski was speaking with defendant, Officer Mailey arrived.

¶ 9 Siedleski further testified that Mailey asked defendant for identification, and defendant refused to provide it. Defendant began walking toward his residence. As he did, he passed Mailey and appeared to intentionally run into him. Mailey told defendant he was under arrest. Defendant "resisted" and began struggling with Mailey. They fell to the ground and continued to struggle. Siedleski saw Mailey "trying to gain control" of defendant, but was not sure whether he struck him with his fist or an open hand, and was not sure whether Mailey used his nightstick to

strike defendant. Siedleski handcuffed defendant while he lay on the ground next to Mailey.

¶ 10 Following argument, the trial court found defendant guilty. In making its finding, the trial court observed that it did not believe Bardesi was lying. The court noted, however, that Bardesi testified that she was not watching for a period of 30 to 60 seconds and that the incident only lasted 30 to 60 seconds, and found that Bardesi's testimony did not contradict Officer Mailey's account of the arrest.

¶ 11 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt "in light of the differences between the testimony of Mailey, Bardesi and Siedleski."

Defendant argues that that no rational trier of fact could have simultaneously found Bardesi's testimony credible and accepted Mailey's account of the struggle. Defendant further argues that Mailey's testimony was contradicted by Siedleski's and that the trial court improperly found Mailey credible merely because of his status as a police officer. We reject all of these arguments.

¶ 12 When a defendant challenges the sufficiency of the evidence, the test is whether after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Sams*, 2013 IL App (1st) 121431 ¶ 9, citing *Jackson v. Virginia*, 433 U.S. 307, 318-19 (1979). We must carefully examine the evidence, while giving deference to the trier of fact who saw and heard the witnesses. *Id.*, citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 13 Defendant argues that the trial court's ruling is irrational because it found Bardesi credible yet failed to recognize that her testimony contradicted Mailey's. This argument simply

misconstrues the trial court's ruling. The trial court found, in essence, that Bardesi credibly testified that she was not a witness to the key moments of Mailey's encounter with defendant. Our review of the testimony gives us no basis to challenge the trial court's conclusion. Bardesi simply did not see the full encounter between Mailey and defendant and was in no position to provide any testimony about who bumped whom or who initiated the struggle. Ultimately, we are left with defendant's testimony which described an unprovoked attack by a police officer, and Mailey and Siedleski's very different testimony which described defendant as uncooperative and resisting arrest. The trial court accepted the police officers' testimony over that of defendant and we cannot say that it did so in error.

¶ 14 Defendant argues that the trial court improperly found Mailey credible merely because he was a police officer. Although, the trial court certainly found that Mailey was a police officer and found that he was credible, there is no indication in the record that the trial court found Mailey credible *because* he was a police officer. Defendant cites no comment by the trial court to support this conjecture, and our own review of the record reveals nothing which could support such a conclusion.

¶ 15 Defendant also appears to contend that the trial court erred when it found him guilty because the injuries Mailey suffered were not caused by defendant but instead incurred accidentally while Mailey was struggling with defendant. This contention appears to be based on two arguments. First, defendant cites *People v. Fuller*, 159 Ill. App. 3d 441, 444-45 (1987) and *People v. Veile*, 109 Ill. App. 3d 847, 850-51 (1982), and argues that "if the record establishes that

it is inconceivable that Mailey could have suffered the alleged injuries as charged the State fails to meet its burden of proof." In his reply brief, defendant argues that he could not have caused the scrapes or bruises that Mailey suffered. Defendant cites no case law to support this reformulated argument regarding cause. We reject both arguments.

¶ 16 With regard to defendant's first argument, we note initially that we have reviewed the cited cases and have found nothing in the cited language that remotely supports the conclusion that the injuries suffered by Mailey support a guilty finding only if they occurred exactly as described in the charging instrument. Rather, both *Fuller* and *Veile* stand for the proposition that there must be some evidence of actual bodily harm. Here, Mailey's testimony that he was scraped and bruised was unequivocal and sufficient to support a finding of bodily harm. See *People v. Jenkins*, 190 Ill. App. 3d 115, 130 (1989), citing *People v. Mays*, 91 Ill. 2d 251, 256 (1982).

¶ 17 Defendant's argument seems to be a claim that there was a variance between the charging instrument and that facts adduced at trial. The State need only prove the essential elements of the charging instrument. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 67. "If the essential elements of an offense are properly charged but the *manner* in which the offense is committed is incorrectly alleged, the error is one of form." (Emphasis in original.) *Id.* Here, defendant was charged with battery based on striking Mailey in the chest, but the evidence at trial indicated that defendant actually caused Mailey's injuries when they struggled on the sidewalk while defendant was resisting arrest. We find that this variance is not fatal; it was neither material nor would allowing the conviction to stand expose defendant to double jeopardy. See *Id.* at ¶¶ 70-72.

¶ 18 Defendant's second argument appears to be a rephrasing of his unconvincing fatal variance argument, however to the extent that it raises an issue of proximate cause, we will address it briefly. Generally, in the criminal context proximate cause is satisfied if it is foreseeable that the harm charged could occur as a result of defendant's conduct; it is not necessary that the extent of the injury or the exact way in which it occurs be foreseeable. *People v. Johnson*, 392 Ill. App. 3d 127, 131, citing *Hooper v. County of Cook*, 366 Ill. App. 3d 1, 7 (2006). Here, it was clearly foreseeable that if defendant struggled with Mailey on a concrete sidewalk during his arrest that Mailey might suffer bruises and scrapes. Accordingly, we reject defendant's arguments related to the "cause" of Mailey's injuries.

¶ 19 Therefore, we find that a rational trier of fact could have found the elements of aggravated battery beyond a reasonable doubt, and we affirm defendant's conviction.

¶ 20 Affirmed.