

SIXTH DIVISION
September 21, 2012

No. 1-11-0053

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 09 CR 15549
)	
JONATHAN GUTIERREZ,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Garcia concurred in the judgment.

ORDER

¶ 1 *Held:* State presented sufficient evidence to prove that defendant had specific intent to kill for purposes of attempted first degree murder where he struck the 15-year-old victim in the head seven times with a metal baseball bat.

¶ 2 Following a bench trial, defendant Jonathan Gutierrez was found guilty of attempted first degree murder, armed robbery, aggravated domestic battery and aggravated battery. The court imposed a sentence totaling 16 years in prison. On appeal, defendant contends that his attempted murder conviction should be reversed because the State failed to prove his specific intent to kill.

He also correctly contends that his mittimus should be corrected to reflect one conviction for attempted murder. We correct defendant's mittimus and affirm in all other respects.

¶ 3 On August 2, 2009, 17-year-old defendant struck 15-year-old Crystal Rodriguez, his ex-girlfriend, in the head seven times with a metal bat after Crystal had been intentionally lured to the preplanned attack by 15-year-old Hannah Jimenez, defendant's current girlfriend, to the playground of the Gallisto Language Academy in Chicago. Photographs taken shortly after the beating were admitted at trial and showed open wounds on Crystal's scalp and blood covering her hair, head and parts of her neck. By stipulation, an attending physician would testify that Crystal sustained trauma to her head, including two lacerations, which were 10 and 4 centimeters in length, and which combined required 4 staples and 10 stitches.

¶ 4 The testimony of Crystal and Hannah revealed that Crystal, who believed Hannah was her friend, did not know that Hannah had been dating defendant for about a month and had been "keeping tabs" on Crystal because defendant believed that she had been "bad mouthing" him and he wanted her to stop. Hannah did not like Crystal and wanted to please defendant. About 4 p.m. on August 2, 2009, Crystal visited Hannah at her house until Hannah suggested that they walk to a nearby school playground, which was a pretext to get Crystal to the playground so that defendant could attack her there. About five minutes after they arrived, defendant approached them carrying a metal baseball bat and spoke briefly to Hannah. Crystal heard him say he was going to play baseball with a person named Frankie.

¶ 5 Defendant returned a few minutes later, around 5 p.m., approached Crystal from behind and struck her in the head with the baseball bat. He struck her once again, whereupon Crystal turned and saw defendant. Defendant struck Crystal a third time, and she fell to the ground, bleeding "pretty badly," with blood covering her shirt. Crystal lost her glasses and dropped her cell phone, and the phone broke apart. Crystal picked up the phone and attempted to put it back

together, but defendant took the phone from her hand and told her she would not be calling anybody. He asked if she had been talking badly about him. She replied that she had not. As Crystal was still crouched over on the ground, Hannah, who had moved about 20 feet away from Crystal and defendant while the first blows were being delivered, returned, and asked defendant to return Crystal's phone and to stop the beating. Defendant refused, saying "I can't trust her." Crystal then stood and attempted to walk away, at which point defendant delivered four additional blows from the bat to Crystal's head. Hannah again asked defendant to return Crystal's phone, kissed defendant and said "baby, that's enough. She's bleeding." Defendant then stopped and returned the phone to Crystal, telling Crystal that he would kill her and her family if she told anyone. At no point during the attack did defendant hit Crystal anywhere except the head with the bat.

¶ 6 On direct examination, Crystal stated that defendant told her that he would kill her as he hit her during the first grouping of blows, but on cross-examination she stated that defendant issued this threat during the second group of blows. Hannah testified on redirect examination that she only heard defendant threaten to kill Crystal after he had concluded hitting her and had returned her phone to her.

¶ 7 After returning Crystal's phone, defendant then left the playground. Crystal walked out of the park and called the police and her mother. Blood was dripping down her body and had practically covered her shirt and pants. Crystal did not lose consciousness at any point during or after the attack and at the time of trial had returned to high school.

¶ 8 A Chicago police officer testified that, after being dispatched to the scene, he observed that Crystal had sustained injuries to her head that he "would classify as serious."

¶ 9 In its ruling, the court noted that:

"the evidence to commit the offense of murder***can be inferred by the circumstances of seven blows to the head of Crystal Crystal,***splitting it open, the skin, causing just voluminous blood as demonstrated by [an admitted photograph], the victim having been taken to Trinity Hospital and then transferred to Comer Hospital for medical attention from these blows to her head."

The court additionally noted that defendant's physical conduct demonstrated his intent to kill Crystal, and found him guilty of attempted first degree murder, armed robbery, two counts of aggravated domestic battery, and four counts of aggravated battery. At the sentencing hearing and after making a finding of severe bodily harm, the court sentenced defendant to 10 years' imprisonment for the attempted first degree murder conviction to run consecutively to a 6-year sentence for the armed robbery conviction. The court also noted that the aggravated domestic battery and aggravated battery convictions merged into the attempted murder conviction.

¶ 10 On appeal, defendant contends that the State failed to prove he possessed the specific intent to murder Crystal. In support, defendant argues the evidence showed he had a clear opportunity to kill Crystal, yet stopped short after beating her with the baseball bat, then returned her cell phone to her and allowed her to call an ambulance. He also argues that his statements during and after the beating show only an intent to learn whether Crystal had been speaking badly of him and force her to stop. He finally argues that Crystal's "relatively minor" injuries are further proof that he lacked specific intent. We disagree.

¶ 11 The relevant inquiry in reviewing the sufficiency of 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. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). We will not reverse a conviction unless the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of defendant's guilt. *People v. Williams*, 165 Ill. 2d. 51, 54-55 (1995).

¶ 12 A person commits the offense of attempted first degree murder when, acting with the specific intent to kill, he completes an act which constitutes a substantial step towards the commission of murder. 720 ILCS 5/8-4 (West 2008); 720 ILCS 5/9-1(West 2008). Defendant on appeal does not contest that the State proved his commission of a substantial step, but only contends that it failed to prove that he possessed the specific intent to kill Crystal.

¶ 13 Specific intent to kill may be inferred from the character or nature of the assault, the accompanying circumstances and the use of a deadly weapon. *People v. Medrano*, 271 Ill. App. 3d 97, 103 (1995). The deadly weapon used need not be of the "traditional" type, such as a knife or gun; the use of a defendant's bare hands to administer a beating can support a finding of specific intent to kill where death may be the natural consequence of a defendant's willful actions. See *People v. Scott*, 271 Ill. App. 3d. 307, 311 (1994). Moreover, whether or not a victim's injuries sustained from a beating are in actuality life-threatening is irrelevant to defendant's state of mind, if defendant had no way of knowing the actual severity at the time. *Id.*

¶ 14 Abandonment is not a defense to attempt, and allowing a victim to escape once intent has been formed does not automatically exculpate a defendant. *People v. Parker*, 311 Ill. App. 3d 80, 90 (1999). However, a defendant's conduct after the attempt is complete can be among the circumstances considered to determine whether specific intent to kill existed at the time a substantial step was taken. See *People v. Mitchell*, 105 Ill. 2d. 1, 9-10 (1984).

¶ 15 We find the nature and character of this attack, along with the accompanying circumstances and weapon used by defendant could lead a rational trier of fact to conclude that

defendant specifically intended to kill Crystal. Defendant hit Crystal in the head a total of seven times with a metal baseball bat during two distinct phases of beatings after defendant's girlfriend lured Crystal to the playground as a part of a plan to stop Crystal from talking badly about defendant.

¶ 16 At some point during the beating, defendant told Crystal that he would kill her. Hannah testified that she did not hear this specific threat, though it is reasonable to infer that she may not have, given that she was located 20 feet away from the action during part of the beating.

¶ 17 Although Crystal was conscious and able to stand after defendant finally ceased the beating at the urging of Hannah, wounds from Crystal's head were bleeding to the extent that blood was nearly covering her shirt and pants. Observing Crystal's clear need of medical attention, defendant merely returned the phone he had taken from her during the beating and left the scene, having no way of knowing whether Crystal would ultimately survive. A police officer who arrived at the scene noted that Crystal's wounds were "serious," and photos introduced at trial confirmed that blood covered Crystal's scalp, head and neck after the beating. She received emergency medical attention and required both stitches and staples to close the wounds to her head.

¶ 18 The trial court found that defendant's physical conduct and the facts surrounding the attack demonstrated his intent to kill Crystal. Based on the circumstances, we cannot say that the evidence was so improbable or unsatisfactory that no rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 19 Defendant next contends, and the State rightly agrees, that his mittimus should be corrected because it improperly includes reference to convictions which the court merged.

¶ 20 When offenses merge, the sentence should be imposed on the more serious offense, and the less serious offenses should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009).

1-11-0053

¶ 21 Accordingly, we correct defendant's mittimus to reflect a conviction for attempted first degree murder and a conviction for armed robbery, with respective sentences of 10 and 6 years, to be served consecutively. The judgment of the trial court is otherwise affirmed.

¶ 22 Affirmed; mittimus corrected.