2017 IL App (1st) 150603-U

No. 1-15-0603

Order filed July 19, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 8718
	)	
WILLIE MARTIN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery based on great bodily harm and findings of guilt for aggravated battery based on permanent disfigurement and aggravated battery with use of a deadly weapon affirmed over defendant's contention that the State failed to prove him guilty beyond a reasonable doubt. Defendant's finding of guilt for aggravated battery on a public way reversed because the State failed to prove the aggravating factor beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Willie Martin was found guilty of four counts of aggravated battery based on (1) great bodily harm, (2) permanent disfigurement, (3) a public

way, and (4) use of a deadly weapon. 720 ILCS 5/12-4(a), (b)(8), and (b)(1) (West 2010) (recodified at 720 ILCS 5/12-3.05(a)(1), (c), and (f)(1)). The trial court merged all of the counts into the count based on great bodily harm, and sentenced defendant to five years' imprisonment. On appeal, defendant contends that his aggravated battery conviction should be reduced to battery because the State failed to prove the aggravating factors of each guilty finding beyond a reasonable doubt. Because defendant served his entire five-year sentence, he asks this court only to correct his mittimus to reflect a conviction for simple battery, a Class A misdemeanor. For the following reasons, we affirm in part and reverse in part.

¶ 3 Defendant was charged with one count of attempted murder, two counts of armed violence, aggravated battery based on great bodily harm, aggravated battery based on permanent disfigurement, aggravated battery based on committing battery on a public way, and aggravated battery based on use of a deadly weapon. The charges stemmed from an altercation in which defendant stabbed the victim, David Clippard.

¶ 4 At trial, Clippard testified that he has a daughter with Nina Kittinger, whom he dated in 2002. Clippard's relationship with Kittinger ended in 2003, but they stayed in contact. On July 27, 2011, Kittinger called Clippard to ask him to accompany her somewhere, and he complied. The following day, Kittinger again called Clippard. He told her that he was at Mandrake Park. Shortly thereafter, defendant arrived at the park, although Clippard did not tell him that he was there.

¶ 5 At that time, defendant was in a relationship with Kittinger. Clippard had known defendant for approximately four to five years. Clippard did not have any issues with defendant prior to July 28, 2011. Upon arrival at the park, defendant accused Clippard of having an affair

with Kittinger, which Clippard did not deny. Clippard and defendant got into a physical altercation, and defendant stabbed Clippard once in the chest. Clippard lifted his shirt to show the court the site of his injury. The court stated, "The witness has lifted up his shirt, and I see his bare chest and under his -- on the right side under his nipple is a wound." Clippard described the knife as being four to five inches and having a "curve."

¶ 6 After being stabbed, Clippard went to his sister Sonia Clippard's house nearby. When he arrived at his sister's house, Clippard called an ambulance and was transported to Stroger Hospital. He received 10 or 11 stitches at the hospital and met with detectives. At the hospital, Clippard identified defendant in a photographic array. He did not hear from the police again until almost three years later, in May 2014, when defendant was arrested.

¶ 7 On cross-examination, Clippard testified that he dated Kittinger for approximately two years. The day before the incident, Kittinger told Clippard about a domestic incident involving her and defendant. Clippard was unaware that Kittinger and defendant were married at that time. He did not have any contact with Kittinger during the three-year interval between the incident and being re-contacted by the police.

¶ 8 Sonia Clippard testified that on July 28, 2011, she was living at 2867 South Cottage Grove with her husband. At approximately 1:30 p.m., her brother, Clippard, came to her house and told her that he had been stabbed. Clippard waited on Sonia's couch and she called the paramedics. The police and paramedics arrived and transported Clippard to the hospital in an ambulance. Although Sonia did not observe Clippard's injury, she noticed that he was out of breath.

¶ 9 Detective Patricia Walsh of the Chicago Police Department testified that she investigated Clippard's aggravated battery. On July 28, 2011, Walsh met with Clippard at Stroger Hospital and prepared a photographic array and lineup advisory form. Clippard identified defendant in the photo array. Walsh ran a "rap sheet" on defendant and learned that he also went by "Willie Taylor." Walsh attempted to locate defendant at his last known address, but was unable to find him. She spoke with defendant's father and the following day spoke with his mother at a different address. Walsh was still unable to locate defendant, so an investigative alert was issued. She learned that defendant was located in May 2014, and his case was reassigned to another detective.

¶ 10 On cross-examination, Walsh acknowledged that Clippard informed her that he was in a physical altercation with defendant prior to the stabbing. Clippard told Walsh that defendant had produced a "pocketknife." Walsh further acknowledged that she had a telephone call on July 29, 2011 with a person who identified as "Willie Taylor." However, she did not have any other contact with defendant until he was arrested.

¶ 11 On redirect, Walsh testified that she learned the incident took place in a park. Walsh went to the park to locate the crime scene and video surveillance from City of Chicago "pods." She found a park bench where the battery was alleged to have occurred. Walsh attempted to call defendant during the course of the investigation. He requested a meeting with her because Walsh visited his family's home. However, defendant did not show up for the meeting.

¶ 12 The parties stipulated that Officer Munizzi of Chicago police department, if called would testify that he was working with the fugitive apprehension unit and received an assignment with

respect to defendant. Based on an investigative alert, defendant was arrested on May 1, 2014 at 6654 South Maryland Avenue in Chicago.

¶ 13 Defendant did not testify or present evidence. Following arguments, the court found defendant not guilty of attempted murder and armed violence but guilty of all four counts of aggravated battery. In finding defendant guilty, the court stated, "I do believe that this tussle -- And it's not clear who started the tussle from the record. But [defendant] escalated things. He brought a knife to a fist fight and did cause great bodily harm." The court merged the aggravated battery guilty findings into count 4, aggravated battery resulting in great bodily harm. Defendant moved for a new trial, arguing that the evidence was insufficient. The court denied defendant's motion and sentenced him to five years' imprisonment. This appeal followed.

¶ 14 On appeal, defendant contends that the State failed to prove each of the aggravating factors associated with his aggravated battery convictions; namely, that the evidence was insufficient to prove that in committing a battery, defendant (1) caused great bodily harm, (2) caused permanent disfigurement, (3) was on a public way, and (4) used a deadly weapon.

¶ 15 On a challenge to the sufficiency of the evidence, we inquire " '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 omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the

evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 16 It is well established that "[t]he testimony of a single witness, if it is positive and the witness credible, is sufficient to sustain a conviction." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Further, it is within the province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 17 To prove aggravated battery, the State must first establish that the defendant committed a battery. 720 ILCS 5/12-4 (West 2010). A defendant commits battery if he "knowingly without legal justification by any means (1) causes harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2010). A defendant commits an aggravated battery when the commission of the battery is coupled with one of several enumerated aggravating factors. 720 ILCS 5/12-4(a) to (d) (West 2010) (recodified at 720 ILCS 5/12-3.05(a) to (g)).

¶ 18 Here, defendant does not dispute that the State proved battery beyond a reasonable doubt. Rather, defendant contends that the State failed to prove the aggravating factors of each of the four aggravated battery guilty findings.

¶ 19 We turn first to defendant's contention that the evidence was insufficient to prove he caused great bodily harm because the State presented no evidence regarding the severity of Clippard's injury or whether Clippard was in pain or discomfort. The State responds that it proved great bodily harm where Clippard testified he called an ambulance and was transported to the hospital where he received 10 to 11 stitches and Sonia testified he was out of breath. Further,

the State argues that, contrary to defendant's assertion, there is no requirement that it present evidence regarding Clippard's pain or the depth of his wound.

¶ 20 A person commits aggravated battery when he, in committing a battery, intentionally or knowingly causes great bodily harm. 720 ILCS 5/12-4(a) (West 2010). There is no precise legal definition for "great bodily harm," (*People v. Doran*, 256 Ill. App. 3d 131, 136 (1993)) but it requires an injury greater and more serious than a simple battery, (*People v. Figures*, 216 Ill. App. 3d 398, 401 (1991)) which is defined as "some sort of physical pain or damage to the body, like lacerations, bruises, or abrasions." *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Whether an injury rises to the level of great bodily harm is a question for the trier of fact. *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 12. In making that determination, "the relevant question for the trier of fact to answer is not what the victim did or did not do to treat the injury but what injuries the victim in fact received." *People v. Edwards*, 304 Ill. App. 3d 250, 254 (1999).

¶ 21 Here, although we acknowledge that there was no testimony concerning whether Clippard bled or the depth of his injury, we find that the evidence presented was sufficient for a rational trier of fact to conclude that Clippard's injury was greater than simple battery. See *Figures*, 216 Ill. App. 3d at 401. The evidence at trial established that defendant stabbed Clippard in the chest with a four to five inch curved knife, and as a result, Clippard sought medical treatment, was transported to the hospital by ambulance, and required 10 to 11 stitches to treat his injury. The evidence further established that Clippard's wound was still visible three years after the stabbing.

¶ 22 Defendant relies on *In re J.A.*, 336 Ill. App. 3d 814 (2003) to support his contention that the State failed to prove great bodily harm. In *In re J.A.*, the defendant was convicted of

aggravated battery resulting in great bodily harm after stabbing the victim in the back during a fight. 336 Ill. App. 3d at 815. The victim felt his shoulder being punctured but did not know the depth of the wound. *Id.* He described the stabbing as feeling like a pinch. *Id.* Although the victim was advised to get stitches, he refused and received pain pills. *Id.* At trial, no evidence was presented regarding the nature or extent of the injury. *Id.* at 818. Additionally, there was no evidence offered depicting the wound, either photographically in or open court. *Id.* On appeal, the defendant challenged the conviction, arguing that the State failed to prove great bodily harm. *Id.* at 815. This court reduced the defendant's adjudication of delinquency to battery, concluding that "[p]roof of great bodily harm to sustain a conviction for aggravated battery requires more than evidence of a single stab wound of indeterminate size, which felt like a pinch and for which an indeterminate number of stitches were advised by someone unnamed." *Id.* at 818-19.

¶ 23 While we note that *In re J.A.* is analogous in certain respects, *e.g.*, a single stab wound with limited evidence regarding the extent and nature of the injury, we find it distinguishable from the instant case. Here, the trial court, as trier of fact, was given an opportunity to view the wound, which was still visible three years later, in open court prior to making a determination that Clippard suffered great bodily harm. Additionally, unlike the victim in *In re J.A.*, Clippard testified to receiving 10 or 11 stitches as a result of being stabbed rather than testifying that he was advised to get an "indeterminate number of stitches" by an unknown person. Accordingly, after viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have concluded beyond a reasonable doubt that the State proved great bodily harm.

¶ 24 Before we address defendant's remaining contentions, we note that the State points out that although defendant was found guilty of all four counts of aggravated battery, the trial court merged three of the counts into the great bodily harm conviction. Nevertheless, the State addresses each aggravated battery conviction despite the merger. It is well established that generally, when a sentence is not imposed on a finding of guilt, the judgment of guilty cannot be appealed because it is not a final judgment. *People v. Dixon*, 91 Ill. 2d 346, 352 (1982); see also *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *In re T.G.*, 285 Ill. App. 3d 838, 845 (1996). However, existing precedent on whether a reviewing court may address a defendant's challenge to merged, unsentenced convictions varies significantly. In some cases, Illinois courts have declined to address merged, unsentenced guilty findings, citing the lack of a final, appealable order. See *e.g.*, *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *People v. Sandefur*, 378 Ill. App. 3d 133, 142 (2007); *People v. Gwinn*, 366 Ill. App. 3d 501, 521 (2006). In other cases, the Illinois Supreme Court has indicated that the absence of a sentence is not necessarily a jurisdictional defect that "preclude[s] action" by a reviewing court. See *Dixon* 91 Ill. 2d at 352 (citing *People v. Lilly*, 56 Ill. 2d 492 (1974) and *People v. Scott*, 69 Ill. 2d 85 (1977)). Thus, Illinois courts have carved out an exception to the rule that a reviewing court may not entertain an appeal from a conviction without a sentence. See *Dixon*, 91 Ill. 2d at 352-54; see also *In re T.G.*, 285 Ill. 2d at 845-46; *People v. Burrage*, 269 Ill. App. 3d 67, 72 (1994). The exception provides that, where, as here, a defendant has properly appealed the final judgment of another offense, the reviewing court may also review an appealed conviction of an offense for which no sentence was imposed. See *Lilly*, 56 Ill. 2d at 496; *In re T.G.*, 285 Ill. 2d at 845-46; *Burrage*, 269 Ill. App. 3d at 72; C.f. *People v. Neely*, 2013 IL App (1st) 120043, ¶ 14 (acknowledging the exception but narrowly construing it to provide for review of a merged, unsentenced guilty finding only where the

sentenced count has been reversed and vacated). Because the facts of this case fall within the exception, we will review each of defendant's contentions regarding the sufficiency of the evidence in turn.

¶ 25 Defendant next argues that the State failed to prove permanent disfigurement because there was no testimony to show that Clippard's injury was permanent and the court classified the injury as a "wound," rather than a "scar." The State counters that it proved permanent disfigurement beyond a reasonable doubt where Clippard had a permanent scar on his chest that was visible to the trial court three years after the stabbing.

¶ 26 A defendant commits aggravated battery when, in committing a battery, intentionally or knowingly causes permanent disfigurement. 720 ILCS 5/12-4(a) (West 2010). Disfigurement is defined as that which "impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner." *People v. Woods*, 173 Ill. App. 3d 244, 249 (1988) (quoting Black's Law Dictionary 420 (5th ed. 1979)).

¶ 27 Here, the evidence sufficiently supports the trial court's finding that defendant's stabbing caused permanent disfigurement to Clippard. As previously noted, Clippard testified that he was stabbed once in the chest, and required 10 to 11 stitches. He was transported to the hospital by ambulance, and at trial, approximately three years later, the injury on Clippard's chest was still visible. Viewing the evidence in the light most favorable to the State, a rational trier of fact could conclude that defendant caused Clippard to suffer permanent disfigurement. In so finding, we reject defendant's contention that permanent disfigurement was not established where the trial court characterized the injury as a "wound" rather than a "scar." Based on the record as a whole,

we find that the trial court was merely noting on the record that it observed Clippard's injury in open court, and we note that the fact that the injury was still visible three years after the incident was sufficient to show permanent disfigurement. See, *e.g.*, *People v. Newton,* 7 Ill. App. 3d 445, 447 (1972) (a rational trier of fact could conclude that the victim suffered permanent disfigurement where the victim went to a doctor's office to receive six stitches for a wound in his head, and at trial five months later, he indicated that the wound left a small scar which was covered by hair).

¶ 28 Next, defendant asserts that the evidence was insufficient to show that the battery occurred on public property. He argues that although Clippard testified he was at Mandrake Park, the State failed to present evidence that showed the park was open to the public or owned and operated by the City of Chicago. The State argues that it proved the public property element beyond a reasonable doubt where the testimony established Clippard was stabbed at "Mandrake Park;" there was no evidence that special permission was required for Clippard, defendant or Walsh to visit the park; and Walsh checked City of Chicago "pods" for surveillance of the stabbing. Thus, the State contends that the facts of the case allowed the trial court to infer that the park was open to the public.

¶ 29 A person commits aggravated battery when, in committing a battery, he or the person battered is on or about a public way or public property. 720 ILCS 5/12-4(b)(8) (West 2010). "[T]he courts [ ] have broad discretion in determining whether a person committed a battery 'on or about a public way.' " *People v. Lowe,* 202 Ill. App. 3d 648, 654 (1990). "An exact location is not necessary to find that a person committed a battery on or about a public way." *Id.* at 658.

¶ 30 Here, we find that the State failed to prove beyond a reasonable doubt that "Mandrake Park" is public. At trial, nothing established whether the park was government-owned or open to the public. See *e.g.*, *People v. Ojeda*, 397 Ill. App. 3d 285, 286-87 (2009) (finding a high school public property where the evidence at trial established that taxes were used to maintain the school and it was accessible to the public for at least some purposes); see also *People v. Kamp*, 131 Ill. App. 3d 989, 993 (1985) (finding that a drainage ditch that abutted a park was "on or about" a public way where evidence established that the park was accessible to the public in light of testimony regarding children playing at the park and being open to the public each day until closing hours). Clippard testified that defendant showed up to the park uninvited and argued with him about Kittinger. Walsh testified that she went to the park in the course of her investigation to observe the crime scene and to determine whether any City of Chicago surveillance pods captured the crime. While the trial court had broad discretion in determining whether the battery occurred on a public way, (*Lowe*, 202 Ill. App. 3d at 654) the court made no factual findings concerning whether the park was public, and the record is devoid of any evidence on this essential element of aggravated battery. Accordingly, we cannot conclude that a rational trier of fact could have found beyond a reasonable doubt that the park was a public way. Because the State failed to establish an element of aggravated battery, we reverse the trial court's guilty finding on this issue and reduce the finding to simple battery.

¶ 31 Finally, defendant contends that the evidence failed to prove beyond a reasonable doubt that the knife used was a deadly weapon. He alleges that Clippard told Walsh that he was stabbed with a pocketknife, and there was no evidence regarding how sharp the blade was or whether it was capable of causing death. The State counters that the evidence was sufficient to show the

knife defendant used was a deadly weapon where Clippard testified the knife was four to five inches long and defendant used it in a deadly manner when he stabbed Clippard in the chest.

¶ 32 A person commits aggravated battery when, in committing a battery, he uses a deadly weapon other than by the discharge of a firearm. 720 ILCS 5/12-4(b)(1) (West 2010). A deadly weapon is an instrument that is capable of producing death (*People v. Blanks*, 361 Ill. App. 3d 400, 411 (2005)) or great bodily injury (*People v. Stanley*, 369 Ill. App. 3d 441, 445 (2006)). An instrument that is not considered *per se* deadly may become a deadly weapon depending on the manner in which it is used. *Blanks*, 361 Ill. App. 3d at 411. "When the character of the weapon is doubtful or the question depends on the manner of its use, it is a question for fact finder to determine from a description of the weapon, the manner of its use, and the circumstances of the case." *Id.* at 411-12.

¶ 33 Here, the testimonial evidence established that defendant went uninvited to Clippard's location, engaged in a physical altercation with him, and subsequently stabbed Clippard in the chest with a knife. The character of the weapon, however, was unclear given the varying testimony regarding the knife's size. Clippard testified that the knife was four to five inches long, and Walsh testified that Clippard informed her that the knife was a pocketknife. Thus, it was for the trial court, sitting as trier of fact, to determine whether the knife was used as a deadly weapon. See *Blanks*, 361 Ill. App. 3d at 411. Given the circumstances surrounding the stabbing, and the location of Clippard's injury, we cannot say that the evidence is so unreasonable, improbable, or unsatisfactory as to create reasonable doubt of defendant's guilt. See *Givens*, 237 Ill. 2d at 334. Accordingly, we find that the evidence presented was sufficient for a rational trier

of fact to conclude that defendant used the knife in a deadly manner. See *Davison*, 233 Ill. 2d at 43.

¶ 34 Based on the foregoing, we affirm the judgment of the circuit court of Cook County with respect to defendant's conviction for aggravated battery based on great bodily harm and the findings of guilt for aggravated battery based on permanent disfigurement and aggravated battery with use of a deadly weapon. However, we reverse the judgment of the circuit court regarding the finding of guilt for aggravated battery on a public way and reduce the finding to simple battery. Because the trial court merged defendant's finding of guilt for aggravated battery on a public way into his conviction for aggravated battery resulting in great bodily harm and imposed only one sentence, we need not remand with further directions.

¶ 35 Affirmed in part and reversed in part.