2018 IL App (1st) 151346-U

No. 1-15-1346

Order filed February 13, 2018

Sixth 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. 11 CR 16268
	)	
JERMAINE BROOKS,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm defendant's conviction for aggravated battery of a peace officer where corrections officers testified credibly. We correct the mittimus to reflect defendant's conviction on count II of the charged offense.

¶ 2 Following a jury trial, defendant Jermaine Brooks was convicted of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4)(i) (West 2010)) and sentenced to eight years' imprisonment. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt. We affirm as modified.

¶ 3 Defendant was charged with aggravated battery for making physical contact of an insulting or provoking nature with Nicholas White by striking White about the body, knowing White to be a peace officer performing his official duties. At trial, Cook County Sheriff correctional officer Nicholas White testified that, on September 7, 2011, he was on duty at the Cook County Department of Corrections (CCDOC). White was wearing a blue uniform with a badge, his name plate, and identifying patches on the arm. That day, he was assigned to supervise Tier AD. Dinner was served between 5:00 - 5:30 p.m. Around 7:30 p.m., White saw defendant speaking with Officer Sevilla in the hallway. Defendant stated that he had not received his religious diet tray for dinner. White told defendant he would call down to the kitchen and instructed defendant to return to the dayroom.

¶ 4 White called the kitchen and was informed that defendant should have received a religious diet tray. However, the kitchen had been closed for two hours and there were no dinner trays available. White relayed this information to his sergeant. An officer then went to get a lunch tray, which usually consisted of four pieces of bread, two pieces of meat, either chips or cookies, and a juice, and brought it to White. White asked defendant to step into the hallway so he could explain the situation, which was that the kitchen was closed and the best they could do was to provide him with a lunch tray. Officers Sevilla and Nyberg were also in the hallway and Officer McCray was working in an area nearby.

¶ 5 Once White handed defendant the tray, defendant threw it into the window ledge and stated "that's not what [I'm] supposed to get." White explained that he could not provide defendant with "something [they] [did not] have" and the best he could give him was a lunch tray for his meal. Defendant "became pretty aggravated" and said he did not want it. Defendant

then said "this is what I think of your dinner tray," grabbed the tray, "crumpled" it up, and threw it at Nyberg. It hit Nyberg just "below the waist on the thigh."

¶ 6 White immediately shoved defendant away from Nyberg and ordered him to "cuff up," which means "put your hands behind your back for handcuffing." Defendant "took a fighting stance," with his hands up in front of his chest like he was "ready to box." White repeatedly told defendant to cuff up, but defendant refused and made lunges towards the officers. Defendant punched White in the face with a closed first "twice, maybe three times." Defendant "continued to throw swings" and White tried to defend himself by throwing "pressurized strikes" to defendant's midsection. White also attempted to hit defendant in the head and to take him down with a stun gun. White fell to the ground, and defendant began walking backwards down the hallway. He picked up a chair and threw it at the officers.

¶ 7 During the "physical altercation," defendant had somehow obtained White's key ring. He opened up a "cut-down tool" on the keys and walked toward the officers stating he "was going to kill" them. White described the tool as "like a knife" with a "hook to it like a candy cane" and "the whole inside of it is all a sharpened blade" used to cut down a person hanging from "a string." Someone called for an "all available," which means an officer is in distress and needs all available help. As backup officers were coming down the hallway, White threw the chair toward defendant to distract him, "gave him a bear hug," and "immediately ran up and hit his hand and knocked the cut-down tool and keys out of his hands." Defendant was detained and taken to dispensary. White sustained injuries from the altercation including bleeding from his face, a bloody nose, a throbbing head, a swollen cheek, and a hurt hand.

¶ 8 White identified and marked a series of photographs depicting the hallway in which the incident occurred. The photographs and a cut-down tool were entered into evidence and

published to the jury. White also testified that there were cameras in the building. He believed there were cameras in every dayroom. He identified a video recording depicting part of the incident, stating it captured him "maybe right after [he] fell" and began pursuing defendant. The video was published to the jury. On the video, a man can be seen walking backwards into a hallway with officers attempting to detain him. A chair is thrown and the man is then detained by a group of officers.

¶ 9 On cross-examination, White testified that he did not confirm that defendant's religious diet restricted him from eating meat. He stated that the first portion of the incident is not depicted in the video because it occurred "around the corner." White "put [his] hands on [defendant] first" because defendant had "assaulted [his] fellow officer first."

¶ 10 White completed an incident report summarizing the incident as part of CCDOC procedure. In the report, he did not mention that defendant punched him in the face, nor that he lost his footing during his struggle with defendant and fell to the ground. He did note in the report that defendant "pick[ed] up a chair, made threats, and threw chair towards RO and officers." White went to see a Cermak "nurse, doctor" for his injuries, although the injuries were not documented with photographs. He did not include his injuries in his incident report.

¶ 11 On re-direct examination, White testified that he did document in his report "that detainee then attacked RO by coming towards him and swinging his fist and hitting him."

¶ 12 Cook County Sheriff correctional officer Kia McCray testified that, on September 7, 2011, at approximately 7:30 to 7:40 p.m., she was working on a "lower pod" with Officers Nyberg, Sevilla, and White. She was updating her log books while the other officers were standing in the hallway, about 10 to 15 steps away from her, but she could not see them. McCray heard "a loud commotion towards the end of the hall," so she walked out into the hallway. She

saw defendant "throwing the lunch bag at Nyberg." Defendant refused to be cuffed, got into a "fighting stance," and started "swinging towards Officer White." Defendant made contact with White with "multiple swings" for "about six seconds," and McCray "mainly remember[ed]" defendant hitting White in the face. McCray radioed for all available help.

¶ 13 Defendant and White "tumbled to the ground, and [defendant] got up and ran and got a chair." He raised the chair and "was like pretending like he was going to throw it," lunging multiple times at the officers. Defendant put down the chair, "unflipped the cut-down tool," and started waving it towards White, saying "I'm going to kill you motherfuckers now." Multiple officers then detained defendant.

¶ 14 On cross-examination, McCray testified that she saw defendant swing "multiple" times and could only remember the "first strike" actually hitting White in the face. She did not see White "shove" defendant. McCray stated that White had "red marks and a little bit of blood kind of drip down into his beard." McCray stated she prepared a "use of force report" but did not include anything about having seen visible injuries to White. She explained a use of force report is not an incident report and only applies to use of force that she used. Reporting visible injuries to other officers is "not required" in that report. McCray did not tell the investigator she spoke with that she saw any visible injuries to White because the investigator only asked her if defendant "struck" White. The State rested.

¶ 15 Cook County Sheriff investigator Joe Dugandzic testified that, on September 12, 2011, he was assigned to investigate the incident at issue. He testified that White told him that defendant "began swinging towards the staff members," but White did not tell him he was punched multiple times by defendant. White did not tell Dugandzic that he fell to the ground during the physical altercation. He told Dugandzic that defendant "picked up a chair and began threatening

staff members," but did not tell him that defendant actually threw the chair at him personally. White did not tell Dugandzic that he had a bloody nose or swollen face as a result of the incident.

¶ 16 Dugandzic testified that McCray told him defendant threw a sandwich at the officers, refused to be handcuffed, and took a combative stance towards them. McCray never stated she saw defendant punch White or that she saw White with any visible injuries. Both officers told Dugandzic that there was a struggle that involved defendant and White.

¶ 17 Cook County Sheriff correctional officer Scott Bratlien testified that, on September 7, 2011, he was a superintendent of Division 10. Bratlien explained there is a "general order" or a policy in place at the CCDOC to keep a "fixed camera logbook" for all fixed cameras in the jail. Within 24 hours of an incident, a superintendent must review the video footage and mark that he viewed it in the logbook. Bratlien could not locate a logbook for the incident at issue. He acknowledged that there was a partial recording of the incident and there should have been a logbook corresponding to it.

¶ 18 Cook County Sheriff correctional officer Carl Powell testified that, on September 7, 2011, he was assigned to the superintendant's office in Division 11 of the CCDOC. He was responsible for gathering facts on "major incidents" that happened within the division and creating a weekly report summarizing those incidents. Based on information he received, he knew White was injured in the face during the incident with defendant. However, Powell's report on the incident stated that defendant hit White, and that no injuries were reported by the officers.

¶ 19 Dr. Sunita Williamson, a doctor at Cermak Hospital, testified that she saw White 15 minutes after the altercation for a complaint of pain to his right hand. She did not document a bloody nose or facial swelling. A nurse at Cermak Hospital testified that defendant was admitted and released the next day with a diagnosis of chest pain and blunt head trauma.

¶ 20 The jury returned a verdict finding defendant guilty of aggravated battery of a peace officer. The court denied defendant's amended motion for judgment of acquittal and motion for a new trial and sentenced him to eight years' imprisonment. This appeal followed.

¶ 21 On appeal, defendant contends the State failed to establish his guilt beyond a reasonable doubt because the testimony of Officers White and McCray was not credible and was impeached by subsequent reports and statements to investigators.

¶ 22 On a challenge to the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on issues pertaining to conflicts in testimony, the credibility of witnesses, or the weight of the evidence. *Id.* To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). Additionally, the trier of fact is not required to disregard inferences that normally flow from the evidence or to seek out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed if the evidence is so improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 23 To prove defendant guilty of aggravated battery of a peace officer as charged, the State had to demonstrate that he committed a battery, other than by the discharge of a firearm, by making physical contact of an insulting or provoking nature with White by striking him about the

body, and knowing that White was a corrections officer performing his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2010); 720 ILCS 5/12-3(a) (West 2010).[1]

¶ 24 Defendant challenges only the sufficiency of the evidence establishing that he struck White. He concedes that "a punch would be considered of an insulting and/or provoking nature." As defendant points out, evidence that he struck White was provided by White and McCray's eyewitness testimony. The positive testimony of even one single credible witness is sufficient to sustain a conviction. *Siguenza-Brito*, 235 Ill. 2d at 228

¶ 25 Defendant contends that White and McCray's testimonies are incredible because "despite there being 12 cameras in the area of Cook County Jail where this incident began, there was no video recording of the crucial moments of the incident in question." Defendant further maintains that because White's injuries were not documented by photographs, not observed by medical staff 15 minutes after the incident, and not included in subsequent reports and interviews, there is a lack of corroboration of and "serious doubt" regarding the officers' version of events. However, physical evidence connecting a defendant to a crime or corroborating testimony is not required to establish guilt where, as here, the officers' testimony that they saw defendant punch White during the scuffle was sufficient to prove guilt beyond a reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 26 Defendant urges us to reverse his conviction because the officers' testimony was impeached by the subsequent reports and the investigator's testimony, which did not include a report of White's injuries. He maintains that White and McCray's failure to tell Investigator Dugandzic that defendant hit White is "contrary to human experience" and illustrates that their

[1] Defendant was initially charged with two counts of aggravated battery to a peace officer. The State *nolle prossed* count I prior to trial, and the jury instructions correspond to count II. Defendant's mittimus indicates he was convicted of count I. We presume this to be a typographical error.

testimony was so improbable as to create a reasonable doubt of guilt. But Dugandzic testified that both White and McCray told him there was a struggle that involved defendant and White, which necessarily would involve physical contact. Further, McCray testified she did not tell Dugandzic that she saw physical injuries on White because he only asked her whether defendant struck White.

¶ 27 With regard to Powell and McCray's failure to document White's injuries in their reports, Powell testified that he included the fact that defendant struck White in his report, and, although he knew about the injuries, he did not include them in his report, which was a summary of the incident. McCray testified that she did not have to include anything about having seen visible injuries to White in her report because a "use of force report" only applies to use of force that she used, thus White's injuries were not included in her report. Accordingly, Powell and McCray explained why the information regarding White's injuries was missing from their reports.

¶ 28 All of the inconsistencies defendant raises here were brought out in the evidence and fully argued to the jury in closing by defense counsel. It was for the jury as the trier of fact to resolve the contradictions or inconsistencies in the testimony of the witnesses. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). The jury was tasked with determining the credibility of the witnesses and the weight of their testimony, and its credibility determinations are given great deference. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). It saw a partial video of the incident and heard White explain that the first portion of the incident was not depicted because it occurred "around the corner."

¶ 29 After considering all of the challenges to the evidence defendant raises, the jury found proof beyond a reasonable doubt that defendant was guilty of aggravated battery, *i.e.*, that

defendant struck White. Given the jury's guilty finding, it necessarily credited the officers' testimony. We cannot hold that the jury's findings were so unreasonable or unsatisfactory that we must reverse. See *People v. Jones*, 86 Ill. App. 3d 1013, 1017 (1980) ("the trier of fact may believe part of a witness's testimony without believing all of it.")

¶ 30 Accordingly, we affirm defendant's conviction for aggravated battery of a peace officer. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967)), we modify the mittimus to reflect that the defendant was convicted on count II, rather than count I, of the charges. See *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) (holding that remand is unnecessary because the court may directly order the clerk to correct the mittimus); see also *People v. Morgan*, 112 Ill. 2d 111, 149 (1986) ("Pursuant to Supreme Court Rule 615 [citation], we reduce defendant's sentence for rape to 30 years [citation], and his aggravated-kidnaping sentence to the maximum of 15 years [citation], without remand to the trial court."); *People v. Arna*, 168 Ill. 2d 107, 113 (1995) ("Because the order imposing concurrent terms was void, the appellate court had the authority to correct it at any time ***."), *abrogated in part on other grounds*, *People v. Castleberry*, 2015 IL 116916, ¶ 19; *People v. Brown*, 255 Ill. App. 3d 425, 439 (1993) (directing that, "pursuant to Supreme Court Rule 615(b)(1) *** the mittimus be corrected").

¶ 31 Affirmed as modified.