2014 IL App (2d) 120560-U
No. 2-12-0560
Order filed January 13, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSE A. PINEDA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-CF-987 Honorable Timothy Q. Sheldon, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: A rational trier of fact could find that defendant intended to kick one police officer and spit on another based on the circumstances surrounding the incidents, including defendant's aggressive behavior, his comments toward the officers, and from the actions themselves.

¶ 2 Defendant, Jose A. Pineda, appeals his convictions of aggravated battery (720 ILCS 5/12-3(a)(2) (West 2010); 720 ILCS 5/12-4(b)(18) (West 2010)). On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he "knowingly" made contact of an insulting or provoking nature with two police officers. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant, Jose Pineda, was charged with two counts of aggravated battery (720 ILCS 5/12-3(a)(2) (West 2010); 720 ILCS 5/12-4(b)(18) (West 2010))[1]. Count 1 alleged that defendant hit Officer Jason Woolsey and Count 2 alleged that defendant spat on Officer Marco Gomez. The cause proceeded to a bench trial on May 14, 2011.

¶ 5 At trial, Woolsey testified that he was dispatched to a house for a general disturbance call, and when he entered the house, he heard a heated verbal altercation and saw defendant in the bathroom, "looming over" a woman, "aggressively pointing" and "shouting" at her. Officer Bliss arrived just after Woolsey, and Woolsey persuaded defendant to come out of the bathroom and into the hallway. Then Officer Gomez arrived and went to talk to the woman who, at that point, was in the kitchen.

¶ 6 At some point during their conversation, defendant became "very hostile [and] very agitated," and told Woolsey "to get the fuck out of [his] house." In the interest of officer safety, Woolsey decided to handcuff defendant. Woolsey "backed [defendant] up against the wall," and told him to turn around and put his hands behind his back. Defendant "tensed his muscles" when Woolsey attempted to handcuff him, and both Woolsey and Bliss took the defendant to the ground. All three officers gave defendant verbal commands to put his hands behind his back, but he continued to resist being handcuffed. Defendant "began to thrash about, kicking his legs [and] thrashing his arms" and kicked Woolsey three times on his shin. After some time[2], and

[1] The defendant was also charged with one count of domestic battery and one count of resisting a police officer. The State *nol-prossed* both of these charges.

[2] The time from when defendant was taken to the floor and to when he allowed the officers to handcuff him was approximately 60-90 seconds.

some "stunning blows" from the officers' batons, the defendant relented and allowed the officers to handcuff him. Defendant was using profanity throughout the ordeal, telling the officers they had "fucked up" and called them "nigger."

¶ 7 Officer David Bliss testified to relatively the same sequence of events, but he added that, when defendant was on the ground and Bliss was attempting to control defendant's arms, Bliss saw the defendant spit on Gomez. The saliva came from defendant's mouth and hit Gomez in the chest.

¶ 8 Officer Marco Gomez also testified to the same events as described by Woolsey and Bliss, adding that defendant was lying on his stomach when he did a "mule kick" backwards, in Woolsey's direction. In addition, Gomez stated that the defendant "spit right in [Gomez's] direction, and [Gomez] got spit on [his] vest," which was "a spray" containing saliva, and not mucus. However, defendant then made a sound "like when you try to bring mucus out" and Gomez put his knee on defendant's head to keep him from spitting again.

¶ 9 The trial court found defendant guilty on both charges of aggravated battery. Defendant filed a motion to reconsider the verdict or grant a new trial, which the trial court heard and denied on January 18, 2012. Defendant was sentenced to two concurrent prisoner terms of three years. Defendant timely appeals.

¶ 10 II. ANALYSIS

¶ 11 Defendant contends the State failed to prove him guilty beyond a reasonable doubt on both charges of aggravated battery (720 ILCS 5/12-3(a)(2) (West 2010); 720 ILCS 5/12-4(b)(18) (West 2010)), as the evidence was insufficient to prove that he "knowingly" made contact of an insulting or provoking nature with the officers.

¶ 12 When a defendant challenges the sufficiency of the evidence in a criminal case, it is not the function of a reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, the proper standard of review 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." (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When viewing the evidence, the reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or credibility of witnesses. *People v. Phelps*, 211 Ill. 2d 1, 7 (2004). Where the evidence is so unsatisfactory as to justify a reasonable doubt of the defendant's guilt, the reviewing court may reverse a conviction. *People v. Ehlert*, 211 Ill. 2d 192, 139 (2004).

¶ 13 Defendant argues that, even if there was sufficient evidence that he kicked Woolsey or spat on Gomez, the State failed to prove beyond a reasonable doubt that he "knowingly" did so. A person acts knowingly "when he or she is consciously aware that [the result of his or her conduct, described by the statute defining the offense] is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2010); *People v. Melton*, 282 Ill. App. 3d 408, 417 (1996).

¶ 14 Whether a defendant acted knowingly may be inferred from circumstantial evidence. *People v. Schmidt*, 392 Ill. App. 3d 689, 702 (2009). For example, intent may be inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009).

¶ 15 Defendant's conduct throughout the ordeal indicates that he was angry, as he told the officers "to get the fuck out of [his] house" and called them "nigger." The finder of fact could reasonably infer intent from expressions of anger, made immediately prior to both the kicking and the spitting. *Id.* Further, the act of the kick itself is evidence of intent or knowledge. *Id.*

Gomez testified that defendant was lying on his stomach when he did a "mule kick" backwards in Woolsey's direction. A finder of fact could reasonably infer from a mule kick that the resulting battery was intentional rather than inadvertent.[3] *Id.* Likewise, a finder of fact could reasonably infer intent from defendant's act of spitting on Gomez while enraged with the officers who were holding him down, plus his attempt to bring mucus into his mouth, presumably to spit again, per the testimony of Gomez.

¶ 16 As a rational trier of fact could find that defendant intended to kick Woolsey and spit on Gomez, we affirm defendant's convictions.[4]

¶ 17 III. CONCLUSION

[3] Notably, it is enough that defendant intended to kick any of the officers to find that defendant had the requisite intent to kick Woolsey, as "under the doctrine of transferred intent, one who does an unlawful act is liable for the natural and probable consequences of such act." *People v. Dorn*, 378 Ill. App. 3d 693, 698 (2008) (finding that even if the defendant had only intended to commit a battery against another inmate, he was liable for the unintended consequence of instead striking a correctional officer).

[4] Defendant also notes that there was some inconsistency in the three officers' testimony. For example, the testimony was inconsistent regarding whether defendant made aggressive movements before being pushed against the wall, whether he was pushed against the wall once or twice, and how exactly defendant was taken to the floor. However, as defendant acknowledges, any inconsistencies in the evidence are to be resolved by the trier of fact, and, given this deferential standard of review, he "cannot argue that the discrepancies in the different accounts of the incident mean that the evidence was insufficient to support these convictions."

¶ 18 For the reasons stated, we affirm defendant's convictions of aggravated battery.

¶ 19 Affirmed.