

2015 IL App (2d) 131047-U
No. 2-13-1047
Order filed October 23, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2683
)	
SEDRICK BALLARD,)	Honorable
)	T. Clint Hull,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of aggravated battery, specifically that defendant inflicted “great bodily harm”: from three hard, bruising blows to the genitals, the victim suffered extraordinary acute pain, persistent secondary pain, swelling, bruising, a laceration, and urethral bleeding; thus, the trial court could find that the victim suffered more than simple “bodily harm.”

¶ 2 Defendant, Sedrick Ballard, appeals from his conviction of Class X aggravated battery (a person over 18 knowingly causing great bodily harm to a child under 13) (720 ILCS 5/12-3.05(b)(1) (West 2012)). He asserts that the evidence was insufficient to support a finding of great bodily harm to the victim and that the court, in finding against him, improperly focused on

the precautionary measures and diagnostic testing to which the victim was subjected. We hold that the evidence of harm was sufficient to support the court's finding, and we therefore affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged by indictment with three child-abuse offenses. As amended, the indictment included the count upon which the conviction at issue is based and two counts of Class 3 aggravated battery (knowingly causing great bodily harm to a child under 13 (720 ILCS 5/12-3.05(b)(2) (West 2012)) and knowingly causing great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2012))). All three counts related to a single incident on November 28, 2011, in which D.H. received multiple blows.

¶ 5 Defendant had a bench trial. The sole contested matter was whether D.H.'s injuries amounted to great bodily harm. D.H., then six years old, was the State's first witness. He testified that, some uncertain time before, defendant had hit him with a closed fist in the genital area.

¶ 6 D.H.'s mother, Teanna H., testified that D.H. was born on September 8, 2006, and was the oldest of her three children. Defendant was the father of the younger two and had been living with Teanna for about three months.

¶ 7 On November 28, 2011, D.H. was healthy in the morning when he got up. Teanna left the house to take her week-old child to a doctor's appointment. D.H. and the middle child stayed in the apartment with defendant.

¶ 8 When Teanna returned, she noticed that D.H. was walking strangely. She asked him to show her what was wrong, and he showed her his "private area." His penis was swollen to two or three times its normal size. When she tried to find out what happened, both defendant and D.H. told Teanna that D.H. had run into the corner of a chest.

¶ 9 Teanna had her mother come over and drive her and D.H. to the hospital. When Teanna got to the hospital, she noticed some bleeding in D.H.'s genital area.

¶ 10 D.H. was transferred by ambulance to Children's Memorial Hospital in Chicago. D.H. was in the hospital for a week; it was another three or so days after he was discharged before the swelling was fully gone. After he was discharged, he took Tylenol for pain control. He also had a single follow-up doctor's appointment. D.H. never seemed to be in much pain and mostly seemed to be in good spirits.

¶ 11 Patricia Ann Shafer, a nurse in the Sherman Hospital emergency department, to which Teanna initially took D.H., saw D.H. at about 8 p.m. on November 28, 2011. She observed bruising in his groin area and to his penis. At about 10 p.m., she observed a small amount of blood "oozing" from the tip of his penis. She arranged the transport to Children's Hospital; she understood that the reason for the transfer was to allow D.H. to be treated by a pediatric urologist who specialized in trauma.

¶ 12 Iesha Bryant, D.H.'s cousin, testified that she had been to the apartment sometime on November 28, 2011, but could not remember exactly when. Usually when she saw D.H., he ran up to her. However, when she came into the apartment that day, D.H. stayed sitting on the couch.

¶ 13 Timothy Bosshart, who, among other duties, was an investigator with the Children's Advocacy Center of Kane County, conducted a forensic interview of D.H. on December 5, 2011. Bosshart testified that D.H. had explained in words and gestures that defendant had hit him three times in the genital area with a closed fist. During the interview, D.H. appeared to be in good spirits and not in pain.

¶ 14 Brian Gorkowski, a detective with the Elgin police, testified that he had been assigned to the investigation of D.H.'s injury as suspected child abuse. He spoke to defendant at Children's Memorial Hospital. Defendant agreed to go with Gorkowski to be present during a search of the apartment. When the search was completed, Gorkowski took defendant to an interview room at the police department and gave him the *Miranda* warnings. Defendant initially stated that D.H. had injured himself by running into a chest. Defendant saw D.H. crying, saw the injury, wiped away the blood, and changed D.H.'s underwear. Gorkowski resumed the interview later, asking for the truth. Defendant said that he and D.H. had been play-wrestling in the bedroom. D.H. had kicked defendant in the testicles, and defendant had responded by punching D.H.'s testicles two or three times with his closed fist.

¶ 15 Melinda Gronen testified that she was the lead social worker of the protective services team at what was then Children's Memorial Hospital. She spoke to defendant when D.H., Teanna, and defendant were all at the hospital. Defendant told Gronen that D.H. had injured himself by running into a piece of furniture, resulting in swelling, bruising, and bleeding in D.H.'s genital area. Defendant said that D.H. had cried for 15 to 20 minutes after the injury. He gave D.H. some Motrin, and D.H. seemed "fine" while his mother remained away.

¶ 16 Amanda Fingarson, a doctor at Children's Memorial Hospital, testified that she was a specialist in child-abuse pediatrics and had examined D.H. on a request for consultation. The State introduced D.H.'s medical records through Fingarson's testimony. At the time of his hospitalization, D.H. was 5 years old, 52 inches tall, and about 42 pounds. Fingarson noted relatively diffuse trauma to D.H.'s genital area—that is, trauma distinct from what the corner of a piece of furniture would cause. The genitals themselves showed "deep reddish-purple bruising and swelling." Some swelling might have been present in the area around D.H.'s genitals and

lower pelvis. His penis had a cut “on the dorsal surface” that was just under a centimeter long and that was not visible on photographs. This likely resulted from the tissue breaking under the force of a blow rather than from a cut or scratch. Also noted on examination were bruising, petechiae, and ecchymosis on his upper body and petechiae and bruising on his thigh.

¶ 17 Fingarson stated that D.H.’s genital injury would have caused immediate pain. She expected that the swelling had gone down in days and that the bruising had faded in a few weeks. She stated that D.H.’s injury was the most severe male genital injury on which she had consulted.

¶ 18 While hospitalized, D.H. had had a pelvic X ray and two ultrasounds of the testicles. The ultrasound was repeated to check that the injury to the testicles was not progressing unfavorably. These did not reveal any injury beyond what was visible. A urine test showed the presence of some red blood cells, but D.H.’s urine was not visibly bloody.

¶ 19 Fingarson described a number of complications that could have arisen given the nature of the trauma. These included torsion of a testicle (which could necessitate the testicle’s removal) and transection of the urethra. No such complications were present or emerged in D.H.’s case.

¶ 20 The State rested after Fingarson’s testimony.

¶ 21 The medical photographs in evidence supported the witnesses’ testimony. Several show what is clearly significant swelling and reddening of D.H.’s penis and scrotum. They also show diffuse bruises and petechiae on D.H.’s lower body, focused around his groin. The bruises do not stand out dramatically against D.H.’s medium-brown skin, so it is not easy to judge their extent from the photographs alone. The bruising and petechiae elsewhere on D.H.’s body that Fingarson described are also visible in the photographs.

¶ 22 Defendant moved for a directed finding as to the first count, asserting that the State had failed to prove that D.H. had suffered great bodily harm. He argued that, although the case was a “bad” one due to the particularly unpleasant nature of defendant’s attack, the injuries—bruising and a laceration—were characteristic of what precedent treats as bodily harm, but not great bodily harm.

¶ 23 The State argued that the seriousness of the injury was shown by the decision to transport D.H. to Children’s Memorial Hospital and the decision to call in specialists. It further argued that, in addition to the bruises and the laceration, the court should take into account D.H.’s pain.

¶ 24 The court ruled that enough evidence existed to go forward on all three counts. Defendant then rested without presenting evidence.

¶ 25 On April 12, 2013, the court issued a written ruling, which it also read into the record. It ruled that the observation of swelling, bruising, and blood in D.H.’s groin area was sufficient to support a finding of bodily harm. On the issue of great bodily harm, the court took note of D.H.’s crying after the blows, his pain on urination the first day, his altered walking, the bleeding from the cut, and the administration of over-the-counter pain relievers to D.H. It then restated the medical testimony in detail. It then stated:

“The adage of a ‘picture is worth a thousand words’ applies to People’s Exhibit 31 [(depicting D.H.’s groin area)]. People’s Exhibit #31 demonstrates the redness and swelling of the penis and scrotum as well as the petechiae all around the groin and inner thigh area. The nature and extent of the injury to both the groin and scrotum is evident in the picture.

Although it is accurate that D.H. was discharged on December 1st 2011 without any follow-up treatment and care necessary, the facts proved that because of the injuries

suffered by D.H., medical specialist [*sic*] were concerned about potential problems manifesting themselves because of injuries suffered. *** [T]he medical staff could have discharged D.H. after examining him on November 28th. They did not. *** During his four-day stay, D.H. was seen by [doctors] who specialize in dermatology, pediatric trauma surgeon, and by an [*sic*] urologist. Testicular ultrasounds and radiology studies were done.

These precautions were all taken to make sure D.H. did not suffer from any **additional** harm caused by the initial trauma to his body. The extent of the injury D.H. suffered as a result of the beating required the doctors to hold him, to examine him, and to be cautious in their treatment of him.”

The court found that D.H.’s injuries amounted to great bodily harm. It therefore found defendant guilty on all counts.

¶ 26 Defendant filed a *pro se* motion asserting that defense counsel had been ineffective. The court held a hearing on that motion, and defense counsel explained that he had decided that the sole issue he would contest was whether the injury amounted to great bodily harm. The court denied the motion.

¶ 27 Defendant filed a posttrial motion asserting that the evidence had been insufficient to support the court’s finding of great bodily harm. The court noted that it had reviewed its statement on finding defendant guilty and stated in clarification, “[A]lthough I do discuss the fact that [D.H.] was hospitalized for four days, *** based on the testimony ***, the injuries that were shown, and based upon the exhibits ***, that the Court found great bodily harm based upon the actual injuries received, and not based upon the four days of hospitalization.” The court therefore denied the posttrial motion.

¶ 28 At the sentencing hearing, the court noted that the 85% truth-in-sentencing requirement applied to count I, the great-bodily-harm count, and that the other counts would merge into that one. It sentenced defendant to eight years' imprisonment. Defendant moved to reconsider the sentence, the court denied the motion, and defendant immediately filed a notice of appeal.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant again asserts that the evidence was insufficient to support the finding of great bodily harm. He argues first that the court erred when it focused on precautionary measures and diagnostic testing in finding great bodily harm. He argues next that the court's focus caused it to reach a clearly wrong result, in that the evidence, viewed properly, is inconsistent with the finding of great bodily harm.

¶ 31 The issue here is the sufficiency of the evidence, so the standard of review is the familiar one from *People v. Collins*, 106 Ill. 2d 237, 261 (1985):

“When presented with a challenge to the sufficiency of the evidence, it is not the function of [the reviewing] court to retry the defendant. *** [Rather,] ‘the relevant question 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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

It is the role of the trier of fact, and not our role, to judge the credibility of the witnesses and to decide the proper weight of all testimony; this court will not substitute its judgment for that of the trier of fact on issues of fact, including the reasonable inferences to be drawn from the evidence. *Village of Bull Valley v. Winterpacht*, 2012 IL App (2d) 101192, ¶ 12.

¶ 32 Whether a particular injury constitutes great bodily harm is an issue of fact. *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688 ¶¶ 14-15; see also *People v. Crespo*, 203 Ill. 2d 335, 344 (2003) (“It has been held that what constitutes ‘great bodily harm’ to support a charge of aggravated battery is a question of fact to be determined by the finder of fact.”). “Although the term great bodily harm is not susceptible of a precise legal definition, it requires an injury of a greater and more serious character than [the bodily harm needed to sustain a conviction of] ordinary battery.” (Emphasis omitted.) *People v. Mimes*, 2011 IL App (1st) 082747, ¶ 29. The phrase “bodily harm” also lacks a precise definition, but sufficient injury can be demonstrated through proof of “some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent.” *People v. Mays*, 91 Ill. 2d 251, 256 (1982).

¶ 33 The specific treatment the victim of a battery *happens to receive* is not a proper measure of whether an injury amounts to great bodily harm. The court should be concerned only with the extent of the actual injury. Treatment that was medically proper might, however, be relevant; for instance, the recommendation for stitches is relevant to the extent of a laceration. See *In re J.A.*, 336 Ill. App. 3d 814, 818 (2003) (a victim’s refusal of recommended treatment is not relevant; the recommendation is a measure of the actual injury, whereas the refusal is not). By the same reasoning, medical attention that served only to rule out diagnoses or that retrospectively proved to have been purely precautionary is not relevant, as it is not indicative of the extent of the injury.

¶ 34 Given the evidence here, a reasonable trier of fact could fairly conclude that, as an issue of fact, D.H.’s injuries constituted great bodily harm. The court’s proper primary focus on D.H.’s pain and the persistent injuries provided clearly sufficient support for that finding. The court’s secondary focus on diagnostic and precautionary measures does not change this result.

¶ 35 The lay and medical evidence clearly supported the conclusion that D.H. suffered at least three hard blows to the groin area.¹ We can apply common experience to conclude that D.H. suffered extraordinary acute pain from the blows. See *People v. Durham*, 312 Ill. App. 3d 413, 419 (2000) (“the trier of fact may infer injury based upon circumstantial evidence in light of common experience”). That alone is likely enough to support the court’s finding here. See *People v. Hayes*, 15 Ill. App. 3d 851, 860 (1973) (mere kick to police officer’s “groin area” sufficient to support finding of great bodily harm). However, the evidence also clearly showed that D.H. suffered persistent pain, swelling, and bruising. Furthermore, the force of defendant’s blows was sufficient on its own to cause a laceration by tissue tearing; that is, the external laceration to D.H.’s penis was the result of the blunt trauma and was not merely a cut or a scratch. Yet even beyond that, the blows were sufficient to cause bleeding from D.H.’s urethra. Although simple bruising and laceration might sustain a finding of no more than bodily harm, the injuries here were clearly qualitatively more severe than simple bruising and laceration, and they amply supported a finding of great bodily harm.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm defendant’s conviction. As part of our judgment, we grant the State’s request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 38 Affirmed.

¹ In reaching this conclusion, we give no weight to Fingarson’s statement that this was the most severe male genital injury on which she had consulted. As defendant suggests, the State failed to ask the questions about her experience that would have given the statement a meaningful frame of reference.