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2013 IL App (3d) 110920-U

Order filed September 9, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-11-0920
v.)	Circuit No. 11-CF-503
)	
BURTON K. HOOD,)	Honorable
)	Walter D. Braud,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Wright and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* There was sufficient evidence to find defendant guilty beyond a reasonable doubt of aggravated battery where the State proved that defendant caused the victim's permanent disability and had the requisite mental state for the offense.
- ¶ 2 Following a jury trial, defendant, Burton K. Hood, was found guilty of two counts of aggravated battery. 720 ILCS 5/12-4(a), (b)(8) (West 2010). He was sentenced to two concurrent terms of 10 years' imprisonment. Defendant appeals one of his aggravated battery convictions, arguing that the State failed to prove beyond a reasonable doubt that: (1) his act of

kicking the victim, as charged in the information, caused the resulting permanent disability; and
(2) he had the requisite criminal intent for the offense. We affirm.

¶ 3

FACTS

¶ 4 On June 2, 2011, defendant was charged by information with three counts of aggravated battery for an altercation he had with the Arnold family on May 24, 2011. Count I alleged that defendant, in committing a battery, knowingly caused permanent disability to Mario Arnold when he repeatedly kicked Mario about the head and body. 720 ILCS 5/12-4(a) (West 2010). Counts II and III alleged that defendant knowingly caused bodily harm, on a public way, to Christina Arnold, Mario's mother, and Pennie Arnold, Mario's sister, when he struck the victims in the face with his fist. 720 ILCS 5/12-4(b)(8) (West 2010).

¶ 5 On September 26, 2011, the cause proceeded to a jury trial. The evidence at trial indicated that defendant, who lived in the same apartment complex as Christina, found Mario's lost cellular telephone. Defendant was in contact with Christina in order to return the telephone in exchange for money.

¶ 6 Christina testified that on May 24, 2011, she met the man that had Mario's telephone, later identified as defendant, outside of her apartment complex. Defendant took the telephone out of his pocket, showed Christina the back of the telephone and then held it in the air. Christina asked to see the color of the telephone to identify it as her son's, but defendant told her he wanted the money. Defendant then punched Christina in the face. Christina believes she blacked out. The next thing Christina recalled was Pennie and Mario lying on the ground and Mario was screaming that he was paralyzed. As Christina helped Pennie get up, defendant kicked Mario two or three times in the upper part of his body and told him to "get up and talk

like a man."

¶ 7 Pennie testified that she exited the apartment building and saw defendant fighting with Christina and Mario in the street. Defendant hit Christina a couple of times. Pennie attempted to break up the fight, and defendant punched her in the face. Pennie stated that she did not hit defendant. Pennie did not see defendant hit Mario, but saw him kick Mario two or three times while Mario was lying on the ground on his back. Defendant looked angry, like he was trying to kill Mario.

¶ 8 Ariele Almanza testified that she was sitting outside the apartment complex when the altercation occurred. When defendant came outside to return the telephone, he held it in the air where Christina could not see it. When Christina went to get a closer look at it, defendant punched her in the face. Mario was approximately 20 feet down the street when he ran toward defendant and punched him in the face. Defendant punched Mario approximately 10 times in the face with Mario punching him back. Christina was trying to stop defendant from fighting Mario and punched defendant. As defendant and Mario were fighting, Pennie came outside and tried to break up the fight. When Pennie got in between defendant and Mario, she got punched in the face. After defendant knocked Mario to the ground, defendant kicked him twice.

¶ 9 Police officer Mark Hanna responded to the disturbance at the apartment complex. Christina stated that she attempted to grab the telephone when defendant struck her in the face. At that point, Mario intervened. Defendant punched Mario once in the head, which caused him to fall to the pavement. Defendant then kicked Mario once in the chest.

¶ 10 Detective Eli Soliz testified that he interviewed defendant following his arrest. The DVD of the interview was played in open court. In the interview, defendant told Soliz that he spoke

with Christina about Mario's telephone and told her he would appreciate compensation for returning the telephone. Christina offered defendant \$20. Defendant went outside to return the telephone. Christina asked if he had the telephone, and defendant asked for the \$20. As defendant was taking the telephone out of his pocket, Mario came from the side of him and grabbed the telephone. Then Christina grabbed defendant. Defendant punched Christina, but stated he was defending himself. Mario charged at defendant. Defendant punched Mario with full force in the face, and he fell instantly to the ground. When Pennie intervened, defendant punched her once. Defendant stated that he was a boxer, but only extended his fist and did not use full force when he hit Christina and Pennie. After being questioned about kicking Mario, defendant stated that he kicked him once. Defendant admitted kicking Mario out of anger because he felt Mario was wrong for grabbing him. Defendant attempted several times to kick Mario in the ribs, but Christina attempted to stop him, and he ended up kicking Mario in the head. Defendant admitted he was not acting in self-defense when he kicked Mario.

¶ 11 Mario testified that when he was returning to the apartment complex after getting something out of his vehicle, he saw defendant talking to Christina. Mario saw that defendant had his telephone, so he grabbed it from his hand. At some point, defendant hit Christina and Pennie. Mario stated that he did not hit defendant. Defendant punched Mario and knocked him unconscious. Mario fell, and his head hit the ground. Mario could not move. Then defendant kicked him three to four times all over his body. His body moved three or four feet from the kick.

¶ 12 The State then played the evidence deposition of Dr. Jeffrey Klopfenstein, who performed two surgeries on Mario after he was taken to the hospital following the altercation. Klopfenstein

confirmed that Mario's injury resulted in complete paralysis of his lower extremities, and he will never walk again. Mario had a spinal cord injury in the form of a cervical spine fracture in his neck that was compressing his spinal cord. This resulted in significant neurological deficits. Mario's spinal cord injury was very severe, because he had no motor or sensory function in his legs.

¶ 13 Klopfenstein was unable to determine exactly what blow caused Mario's injury.

Klopfenstein opined that it would take a significantly forceful blow to cause the type of fracture Mario had because the type of fracture is usually caused by car accidents or major falls.

Klopfenstein further opined that a standard punch in the face or a single blow would be extremely unlikely to cause this type of injury. However, it would depend on whether Mario fell and whether he struck his head when he landed or fell from a height when punched.

Klopfenstein opined that repeated blows in the same exact spot may exacerbate the degree of fracture caused. Klopfenstein concluded that if Mario's injury was caused by an assault, the degree of trauma inflicted in the assault was significant.

¶ 14 Defendant moved for a directed verdict, which the trial court denied. Thereafter, the jury received instructions on the use of force in defense of a person as well the use of force by an aggressor. The jury returned verdicts of guilty for aggravated battery to Mario (count I) and Christina (count II), but not guilty for aggravated battery to Pennie (count III).

¶ 15 On November 22, 2011, defendant filed a motion for a new trial and for judgment notwithstanding the verdict. Defendant argued that the State failed to prove that he knowingly caused permanent disability to Mario, claiming Klopfenstein indicated that the injury was unlikely to have been caused by a punch or a kick. On December 12, 2011, the trial court denied

defendant's motion. The court then sentenced defendant to two concurrent terms of 10 years' imprisonment. Defendant appeals his conviction for aggravated battery to Mario (count I).

¶ 16

ANALYSIS

¶ 17 On appeal, defendant presents two challenges to the sufficiency of the evidence sustaining his conviction for aggravated battery to Mario. Defendant argues that the State failed to prove beyond a reasonable doubt that: (1) his act of kicking Mario about the head and body, as charged in the information, caused the resulting permanent disability; and (2) he acted with knowledge that his conduct was practically certain to result in permanent disability.

¶ 18 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011); *People v. Collins*, 106 Ill. 2d 237 (1985). This standard applies regardless of whether the evidence is direct or circumstantial. *People v. Maggette*, 195 Ill. 2d 336 (2001). The trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). We will not set aside a defendant's conviction unless the evidence was so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 19 To sustain a conviction for aggravated battery in this case, the State was required to prove beyond a reasonable doubt that in committing a battery, defendant knowingly caused permanent disability to Mario. See 720 ILCS 5/12-4(a) (West 2010).

¶ 20

I. Factual Causation

¶ 21 Defendant first argues that the State failed to prove beyond a reasonable doubt every element as charged in the information, namely that his act of kicking Mario about the head and body caused the resulting permanent disability. Specifically, defendant claims that Klopfenstein's testimony supports the conclusion that Mario became paralyzed when he hit his head after being knocked out from defendant's punch, and thus defendant's subsequent kick was not the cause of the injury.

¶ 22 The State contends, however, that defendant's challenge to the proof of the precise manner in which the offense was charged raises a variance issue between the charging instrument and the evidence that resulted in his conviction. For a variance between the charging instrument and the proof at trial to be fatal, the difference must be material and of such character as to mislead defendant in making his defense or expose him to double jeopardy. *Maggette*, 195 Ill. 2d 336; *People v. Lattimore*, 2011 IL App (1st) 093238.

¶ 23 In the instant case, the information alleged that defendant, in committing a battery, knowingly caused permanent disability to Mario by repeatedly kicking Mario about the head and body. Although the State must prove the essential elements of the charging instrument, a crime such as aggravated battery can be committed by several acts; therefore, the manner by which defendant committed the offense is not essential. See *Lattimore*, 2011 IL App (1st) 093238; *People v. Givens*, 135 Ill. App. 3d 810 (1985) (stating that the State is not required to plead evidentiary details). There is also no indication from the record that defendant was misled by the information or surprised by the State's evidence. Furthermore, the information and record are sufficient to bar future prosecution for the same offense. As such, we conclude that any variance between the information and the proof at trial was neither material nor prejudicial to defendant.

See *Lattimore*, 2011 IL App (1st) 093238.

¶ 24 Having determined that there was no fatal variance, defendant's sufficiency of the evidence argument must fail. The evidence, viewed in the light most favorable to the State, indicated that defendant punched Mario in the face, knocking him unconscious and causing Mario to immediately fall to the ground and hit his head. Defendant does not dispute that he punched Mario or that the punch caused Mario to fall and hit his head, thereby causing his permanent disability.

¶ 25 Furthermore, even looking solely at defendant's act of kicking Mario, we find the evidence sufficient to support his conviction. Defendant claims that Klopfenstein's testimony proved that Mario became paralyzed when his head hit the pavement. However, Klopfenstein actually testified that he was unable to determine exactly what caused Mario's injury.

Nevertheless, Klopfenstein opined that Mario's fracture could have been caused by a significantly forceful blow or repeated blows in the same spot, which may have exacerbated the degree of fracture caused. In drawing reasonable inferences from this evidence, the jury could infer that defendant caused Mario's paralysis when he kicked him in the head after having been knocked out from defendant's punch. Even if Mario fractured his neck when he fell, it was reasonable to infer that defendant exacerbated the injury by kicking him in the head, thereby causing his permanent disability. That is, a reasonable jury could believe that a kick to the head of someone semiconscious and lying on the ground either broke the victim's neck or exacerbated the spinal cord injury if the victim's neck was fractured by the fall.

¶ 26 Therefore, viewing the evidence in the light most favorable to the State, we find that a rational juror could have found beyond a reasonable doubt that defendant caused Mario's

permanent disability.

¶ 27

II. Mental State

¶ 28 Defendant next argues the State failed to prove beyond a reasonable doubt that he knowingly caused permanent disability to Mario when he punched and kicked him.

¶ 29 To be convicted of aggravated battery, the evidence must show beyond a reasonable doubt that defendant intentionally or knowingly caused permanent disability. 720 ILCS 5/12-4(a) (West 2010). Defendant in this case was charged with having acted knowingly. A person acts knowingly when he is consciously aware that his conduct is practically certain to cause the result proscribed by the offense. 720 ILCS 5/4-5(b) (West 2010). It is not necessary that the State prove that defendant intended the specific consequences that occurred. *People v. Isunza*, 396 Ill. App. 3d 127 (2009).

¶ 30 Knowledge can be inferred from the surrounding facts of the case (*People v. Schmidt*, 392 Ill. App. 3d 689 (2009)) because a defendant is presumed to intend the probable consequences of his acts (*People v. Conley*, 187 Ill. App. 3d 234 (1989)). Whether defendant had the requisite intent for the offense is a question for the trier of fact and will not be disturbed on review unless a reasonable doubt exists as to defendant's guilt. *Maggette*, 195 Ill. 2d 336.

¶ 31 Based on the circumstances of this offense, the jury could reasonably infer that defendant was consciously aware that his conduct was practically certain to cause some type of permanent disability to Mario. After being knocked unconscious by defendant's punch, Mario fell to the pavement and hit his head. Out of anger, defendant then kicked Mario several times about his body, and admitted to kicking him in the head. Thus, not only did defendant punch Mario with such force that he immediately fell to the ground, but he also forcefully kicked him in the head

while Mario was defenseless. A person of any intelligence would know that under these circumstances, battering someone about the sensitive areas of the brain and the spinal cord was likely to result in some sort of permanent disability. Bottom line: The act of kicking a defenseless person in the head is sufficient to establish the *mens rea* requirement of the statute. Thus, we hold that the jury could reasonably infer defendant's criminal intent from the evidence. Accordingly, we find that the evidence presented at trial was not so improbable or unsatisfactory that it leaves any doubt of defendant's guilt. See *Beauchamp*, 241 Ill. 2d 1.

¶ 32

CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 34 Affirmed.