2015 IL App (3d) 130765

Order filed August 12, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal Nos. 3-13-0765 and 3-13-0766
v.	)	Circuit Nos. 11-CF-429 and 13-CF-196
	)	
ANDREW P. VERVYNCK,	)	Honorable
	)	Richard A. Zimmer,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Carter and Holdridge concurred in the judgment.

ORDER

Held: The evidence at trial was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated battery. The evidence was insufficient to prove defendant guilty beyond a reasonable doubt of obstructing a peace officer.

¶ 1 Defendant, Andrew P. Vervynck, appeals his convictions for aggravated battery and obstructing a peace officer, arguing that the evidence at trial was insufficient to prove either charge. We find that the evidence was sufficient to prove defendant guilty beyond a reasonable

doubt of aggravated battery. The evidence was insufficient, however, to prove defendant guilty beyond a reasonable doubt of obstructing a peace officer.

¶ 2 FACTS

¶ 3 On July 10, 2013, defendant was charged by information with aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)) (count 1) and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)) (count 2). Count 1 alleged that defendant committed the offense of aggravated battery in that he knowingly made contact of an insulting and provoking nature with police officer Matt DeClercq by hitting DeClercq in the arm and chest with his left hand knowing DeClercq to be a peace officer engaged in the official execution of his duties. Count 2 alleged that defendant obstructed DeClercq in investigating a battery in that defendant refused to stop and hang up his cell phone when DeClercq directed him to.

¶ 4 In addition, the State filed a petition to revoke probation in a prior criminal case from 2011 (the 2011 case), alleging that defendant violated the conditions of his probation in that case by: (1) committing the offenses of aggravated battery and resisting a peace officer; (2) failing to pay $25 per month toward probation fees; and (3) failing to obtain a mental health evaluation.

¶ 5 At defendant's bench trial, the State called police officer DeClercq as a witness. DeClercq testified that one evening while he was on duty, he was dispatched to the scene of a fight during which defendant allegedly put his hands on Sheri Swearingen. On the evening of the incident, DeClercq was wearing his police uniform and driving a marked squad car. When DeClercq arrived at the location, he saw defendant walking down the street and he attempted to make contact with defendant. Defendant was talking on his cell phone. DeClercq asked defendant to stop walking and hang up his cell phone so that DeClercq could talk to him. Defendant continued walking, did not stop, and did not hang up his cell phone. DeClercq

attempted to gain control of defendant by grabbing his left arm. Defendant pulled away from DeClercq and swung his left arm toward DeClercq, striking DeClercq in the arm and chest. DeClercq was not injured by the blow. The assistant State's Attorney asked DeClercq if he was placing defendant under arrest at the time he walked up to him. DeClercq replied that the officers just wanted to talk to him about the incident with Sheri Swearingen that had occurred earlier.

¶ 6 Two other officers were also on the scene. A video recording of the incident was captured from their squad car. After defendant struck DeClercq, all three officers forced defendant to the ground and placed defendant in handcuffs. Defendant did not strike any of the officers as they were forcing him to the ground. DeClercq opined that the video recording from the other officers' squad car accurately captured the events leading to defendant's battery charge.

¶ 7 The squad car video recording was introduced into evidence and played for the court. The trial court watched the video recording several times, one of which was in slow motion.

¶ 8 The video recording showed defendant walking down the street. DeClercq approached defendant, and defendant continued walking. DeClercq reached out and touched defendant's left arm. Defendant pulled his body away from DeClercq and raised his left arm toward DeClercq, making a swiping motion. In doing so, defendant made contact with DeClercq's arm. Then, DeClercq and the other two officers forced defendant to the ground. Approximately 15 seconds passed from the time that DeClercq began approaching defendant until the time that defendant was on the ground.

¶ 9 The court found defendant guilty of both counts. The court reasoned that the State proved defendant guilty of obstructing a peace officer because the defendant did not stop when the officer asked him to. The court also found defendant guilty of aggravated battery. The court

noted that it did not appear on the video recording that defendant threw a punch at DeClercq. Initially, the court believed defendant was raising his arm as someone would do if they were telling someone to stay away from them or not to come closer. The more the court watched the video recording; however, it appeared that defendant was trying to make contact with the officer.

¶ 10 Also, the trial court found that defendant violated his probation in the 2011 case based on the commission of the offenses of aggravated battery and resisting a peace officer.

¶ 11 Defendant was sentenced to three years' imprisonment in the department of corrections (DOC) for aggravated battery and 364 days' incarceration in the county jail for obstructing a peace officer, to be served concurrently. In the 2011 case, defendant was sentenced to three years' imprisonment in the DOC, to be served concurrently with his aggravated battery and obstructing a peace officer sentences. In addition, defendant was ordered to pay restitution in the amounts of (1) $18,568 to Stanley and Elizabeth Vervynck, and (2) $200 to Perry Swearingen, as was part of the original plea agreement in the 2011 case.

¶ 12 ANALYSIS

¶ 13 I. Aggravated Battery

¶ 14 On appeal, defendant argues that the evidence at trial was insufficient to prove him guilty beyond a reasonable doubt of aggravated battery because the video recording showed that defendant made only incidental, accidental contact with DeClercq that was not insulting or provoking under the circumstances. Because we find the evidence was sufficient for a reasonable trier of fact to find that defendant knowingly made physical contact of an insulting or provoking nature with DeClercq, we affirm.

¶ 15 When presented with a challenge to the sufficiency of the evidence, we consider whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of

fact could have found the essential elements of the offense charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). We will not overturn the fact finder's verdict unless the verdict is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 16 To sustain the charge of aggravated battery, the State was required to prove that defendant knowingly made physical contact of an insulting or provoking nature with DeClercq when he knew DeClercq to be a peace officer performing his official duties. 720 ILCS 5/12-3(a), 3.05(d)(4) (West 2012). Accidental contact is not battery. *People v. Phillips*, 392 Ill. App. 3d 243, 258 (2009). Thus, the State was required to prove that defendant acted knowingly, that is, that defendant was " 'consciously aware that his conduct [was] of such nature' that it [was] 'practically certain' to cause the result proscribed by the offense." *Id.* (quoting 720 ILCS 5/4-5 (West 2004)). Defendant's intent may be inferred from his conduct surrounding the act and not from the act itself. *Id.* at 259.

¶ 17 We find that the evidence presented at trial in this case was sufficient for a reasonable trier of fact to find defendant guilty beyond a reasonable doubt of aggravated battery. The trial evidence established that, at the time of the incident, DeClercq arrived at the scene in a marked squad car, was wearing his police uniform, and was investigating the alleged battery of Sheri Swearingen. DeClercq testified that he approached defendant and attempted to talk to him about the battery, but defendant refused to hang up his cell phone and talk to DeClercq. DeClercq grabbed defendant's left arm, and defendant pulled his left arm away and swung his left arm at DeClercq, striking DeClercq in the arm and chest. Although the incident transpired quickly on the video recording, the video shows defendant raising his arm toward DeClercq and making

contact with DeClercq's arm. Based on this evidence, it was reasonable for the trial court to find that the elements of aggravated battery had been proven beyond a reasonable doubt.

¶ 18 We reject defendant's contention that the video recording shows defendant making only accidental or incidental contact with DeClercq as he walked away. Defendant did not merely incidentally touch DeClercq as he pulled his arm away. Rather, the video recording shows defendant reacting to DeClercq by quickly raising his arm in DeClercq's direction and making contact with him. It was reasonable for the trial court to find that, in making such a motion, defendant knowingly made contact with DeClercq and that the contact was of an insulting or provoking nature.

¶ 19 II. Obstructing a Peace Officer

¶ 20 Next, defendant argues that the evidence at trial was insufficient to prove him guilty beyond a reasonable doubt of obstructing a peace officer.

¶ 21 In order to sustain the charge of obstructing a peace officer, the State was required to prove that: (1) defendant knew DeClercq to be a peace officer; (2) DeClercq was performing an authorized act in his official capacity; and (3) defendant knowingly obstructed DeClercq. 720 ILCS 5/31-1(a) (West 2012). See also *People v. Baskerville*, 2012 IL 111056, ¶ 32. "Obstructing" includes physical conduct that literally creates an obstacle, as well as conduct which has the effect of impeding or hindering progress. *Id.* ¶ 19. In determining whether a defendant's action obstructed an authorized act of a peace officer acting in his official capacity, we consider whether the defendant's conduct actually hindered or impeded the peace officer's authorized act. *Id.* ¶ 35.

¶ 22 We find that the evidence at trial was insufficient to prove that defendant knowingly obstructed DeClercq by refusing to hang up his cell phone and talk to DeClercq. When

DeClercq was asked at trial if he was placing defendant under arrest at the time he walked up to him, DeClercq replied that he just wanted to talk to defendant about the incident he was investigating. While an officer may approach an individual in a public place and ask him investigatory questions, the individual ordinarily need not answer the questions, and may go on his way. *People v. Hilgenberg*, 223 Ill. App. 3d 286, 293 (1991). As defendant was not required to respond to DeClercq's questions, we do not find that defendant's failure to stop and hang up his cell phone hindered or impeded DeClercq's investigation. *Id.* at 289 ("Mere refusal to answer a police officer, in the absence of a physical act, may be deemed tantamount to argument which is not a violation of the [obstructing a peace officer] statute.")

¶ 23 We recognize that police officers have the right to perform brief, investigatory detentions of civilians where the officer has a reasonable, articulable suspicion of criminal activity. *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). However, defendant was not charged with resisting an investigative stop, but with obstructing the investigation of the battery of Sheri Swearingen by refusing to stop and hang up his cell phone. As defendant was not required to answer the officer's questions, his refusal to stop and hang up his cell phone could not have impeded the investigation.

¶ 24 III. $200 Restitution

¶ 25 The parties concede that the trial court erred in ordering defendant to pay $200 in restitution to Perry Swearingen after revoking his probation in the 2011 case because the criminal damage to property charge on which the $200 restitution order was based did not lead to a conviction. See *People v. Moore*, 2013 IL App (3d) 110474. We accept the parties' concession and vacate the $200 restitution order to Perry Swearingen.

¶ 26 CONCLUSION

¶ 27 We affirm defendant's aggravated battery, reverse defendant's conviction for obstructing a peace officer, and vacate the restitution order requiring defendant to pay $200 to Perry Swearingen.

¶ 28 Affirmed in part, reversed in part, and vacated in part.