

No. 1-12-1120

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 18623
	)	
GARY DANIEL,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Neville and Justice Pierce concurred in the judgment.

**ORDER**

*Held:* Defendant's conviction of aggravated battery affirmed over claim of insufficient evidence.

¶ 1 Following a bench trial, defendant, Gary Daniel,<sup>1</sup> was convicted of aggravated battery

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<sup>1</sup> The parties use "Daniels" as defendant's last name in their briefs. A review of the record reveals that the correct surname appears to be "Daniel."

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(720 ILCS 5/12-4(a) (West 2010)) and sentenced to two years of intensive probation. On appeal, Daniel challenges the sufficiency of the evidence to sustain his conviction.

¶ 2 The incident giving rise to the charges in this case took place in the early morning hours of July 13, 2009, outside two residences in the 10800 block of South Homan Avenue in Chicago. The victim, Tara O'Connor, testified that prior to the incident, she and her then-boyfriend, Kenneth McIntyre, had been drinking at a bar for several hours, but were not drunk when they left the bar. McIntyre drove them from the bar to his home, and parked in his driveway. As O'Connor exited the vehicle, she saw Daniel, McIntyre's next-door neighbor, sitting on a patio chair outside his home with two other individuals, a man and a woman. O'Connor had not had any previous interactions with Daniel, but was aware that there were bad feelings between him and McIntyre.

¶ 3 As O'Connor and McIntyre exited their vehicle and began to walk inside his home, O'Connor heard Daniel yell profanities, and call McIntyre "a pussy [or] something along those lines[,] and her "a whore." They did not respond or approach Daniel, and went inside McIntyre's home.

¶ 4 A short time later, O'Connor decided to go back outside. She thought that she could talk to Daniel without McIntyre and make peace between them. She felt safe in doing so because there were two other people with Daniel. As she approached the picket fence which separated the two properties, she observed Daniel sitting with his back to her. She called out to him and asked him to "turn around and shake [her] hand." Daniel remained seated and told her to "[s]hut the hell up[.]"

¶ 5 As she was speaking to Daniel, the woman with Daniel told him to shake O'Connor's

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hand. The woman, later identified as Kelly Evans, then approached the fence and the two women engaged in a brief and cordial conversation about how O'Connor wished to end the "drama [that had] been going on for a while[.]"

¶ 6 During that conversation, O'Connor "blacked out[.]" and woke up lying on her back on the pavement of McIntyre's driveway. She heard someone calling 911, and observed blood on her face and her shirt. Evans and McIntyre attended to her before the ambulance arrived and took her to the hospital. O'Connor suffered a broken orbital bone, a broken nose, a deviated septum, nerve damage and drooping in her left eye as a result of the incident.

¶ 7 Kenneth McIntyre testified that on the evening of July 12, 2009, he and O'Connor had been drinking at a bar, where he consumed less than six beers over several hours, and that he was not drunk or intoxicated when he left the bar. After driving home with O'Connor, McIntyre parked his car in the driveway, exited the vehicle, and saw Daniel sitting in a chair on his front patio with two other individuals. He did not know the man, but recognized the woman as Kelly Evans. As he and O'Connor were walking into his house, Daniel made "rude comments." He did not hear exactly what he said, and chose to ignore him and told O'Connor to do the same.

¶ 8 About a minute later, however, O'Connor decided to go back outside. McIntyre stood behind his screen door and watched O'Connor as she attempted to talk to Daniel, who was seated in a chair approximately 10 feet away with his back to her. McIntyre observed Daniel ignore O'Connor's attempt to shake his hand, then call her "a whore" and "a slut." This prompted McIntyre to come out of his house and stand on the lawn.

¶ 9 McIntyre then saw O'Connor and Evans engage in a calm and civil conversation, but he could not hear what was said. During that conversation, McIntyre saw Daniel "jump[], stand up,

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spin around, take two strides towards the fence, lean[] into it and punch[] [O'Connor] in the face \*\*\* with a closed fist." O'Connor "made a squeaking gasp and fell straight back unconscious."

¶ 10 McIntyre testified that he was in shock and repeatedly asked Daniel what he did. Daniel then swung at McIntyre, but McIntyre was able to dodge the punch and Daniel's fist only "clipped" his nose. McIntyre called police, and an ambulance arrived to take O'Connor to the hospital.

¶ 11 Kelly Evans testified for the defense and her version of events was markedly different than McIntyre's and O'Connor's. Evans attended a barbeque at Daniel's house on the evening of July 12, 2009, and did not drink any alcoholic beverages. She stayed into the early morning hours of July 13, 2009, and about 1:30 a.m., she saw McIntyre, with a female passenger, turn his car into his driveway. Evans was familiar with McIntyre from a previous event at Daniel's home, but she did not know the female passenger. She testified that McIntyre "missed the driveway" and drove over the curb and onto the grass. She then observed that McIntyre was stumbling and "kind of fell out of the car," and concluded that he had been drinking. She also noted that the woman "was leaning against him to get up the stairs."

¶ 12 Evans yelled to McIntyre that it had been a long time since they had seen each other and asked him "aren't you going to say hi to me?" McIntyre did not respond and walked into the house. According to Evans, the woman stayed on the porch and began to yell expletives at her, calling her a "fat bitch[,] " and saying that "you and your husband cause nothing but trouble[.]" It became clear to Evans that the woman mistook her for Daniel's wife.

¶ 13 According to Evans, Daniel got up from his seat, turned around, and asked McIntyre, who had come back outside, to take O'Connor into the house because she was making a scene and

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neighbors were starting to look out of their windows. At this point, both McIntyre and O'Connor were standing close to the fence, and McIntyre began yelling at Daniel and calling his wife and children names. Daniel told McIntyre that he was "in no position to talk right now[,] and asked him to "please go into the house[.]" McIntyre then swung at Daniel, who ducked, stood up, and swung back at McIntyre. As Daniel did so, McIntyre grabbed O'Connor by the back of her shirt with both hands, and pulled her in front of him so that she got "the brunt of the blow." O'Connor then fell to the ground, and Evans ran over to help until paramedics arrived.

¶ 14 At the close of evidence and argument, the trial court found Daniel guilty of aggravated battery. In doing so, the court noted the relative size of the parties, observing that Daniel appeared to be significantly larger and stronger than McIntyre. The trial judge did not believe it would be physically possible for McIntyre to grab O'Connor and pull her in front of him in the short period of time between McIntyre's first swing and Daniel's responsive punch. The court specifically stated that it did not "find the defense version of how this takes place as credible." It concluded that McIntyre and O'Connor testified consistently, and that their testimony "adds up with the physical situation and the facts."

¶ 15 On appeal, Daniel challenges the sufficiency of the evidence to sustain his conviction. It is undisputed that Daniel struck O'Connor and that she sustained great bodily harm as a result. Daniel's appeal challenges only the sufficiency of the State's proof that he acted with the requisite intent or knowledge. Daniel contends the record establishes that he was intending to punch McIntyre after he had been attacked by him and, therefore, he did not intend to strike O'Connor.

¶ 16 In reviewing the sufficiency of the evidence in a criminal case, our inquiry is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable

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doubt. *People v. Martin*, 2011 IL 109102, ¶ 15. In making this determination, we view the evidence in the light most favorable to the prosecution and allow all reasonable inferences from that evidence to be drawn in its favor. *Id.* It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the facts presented. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). This court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). For the reasons that follow, we do not find this to be such a case.

¶ 17 To prove Daniel guilty of aggravated battery in this case, the State was required to prove that he knowingly or intentionally caused great bodily harm to O'Connor by striking her about the head. 720 ILCS 5/12-4(a)(1) (West 2010).

¶ 18 Viewing the evidence in the light most favorable to the prosecution, the record shows that Daniel was hostile toward McIntyre prior to July 13, 2009 and that on that night he insulted McIntyre and O'Connor after they arrived at McIntyre's home. O'Connor later approached Daniel in an effort to make peace between the two men, and thereafter engaged in a cordial conversation with Evans. While so engaged, Daniel got up from his chair, quickly approached the fence, and punched O'Connor in the face. As a result, O'Connor sustained a broken orbital bone, a broken nose, a deviated septum, nerve damage and a drooping eye. Based on this evidence, the trial court could reasonably infer that Daniel acted with the requisite mental state. *People v. Moore*, 358 Ill. App. 3d 683, 688 (2005).

¶ 19 Daniel asserts that the trial court erred in accepting the testimony of O'Connor and

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McIntyre over that of Evans, which he claims was more logical. He argues that it does not make sense that he "with neither provocation nor motivation, attacked a woman who he knew nothing about and met only a short while before attacking her." He further contends that it is illogical to believe that "despite sitting peacefully and ignoring the alleged victim for a period of time, \*\*\* [he] rushed to Tara O'Connor and struck her across the face."

¶ 20 Daniel's argument on this point would require us to completely ignore the evidence in the record that Daniel directed hostile remarks to McIntyre and O'Connor from the time they returned to McIntyre's home that evening and up until the point he struck O'Connor. According to McIntyre and O'Connor, Daniel referred to O'Connor as a "slut" and a "whore." Given this evidence, which the trial court was entitled to weigh and accept, it is entirely probable that Daniel would react as he did even though he did not know O'Connor.

¶ 21 In reaching that conclusion, we have considered *People v. Peterson*, 273 Ill. App. 3d 412 (1995), cited by Daniel, and find it to be factually inapposite. In *Peterson*, two defendants were convicted of aggravated battery with a firearm after they began shooting at one another in a public place, injuring a bystander. On appeal, this court reversed their convictions for that offense, finding that the State failed to prove either defendant guilty where there was insufficient evidence to prove who shot the victim, and the doctrines of accountability and transferred intent were inapplicable. *Peterson*, 273 Ill. App. 3d at 421-22. Here, by contrast, there is one defendant, it is uncontested that he delivered the punch that caused injury to O'Connor, and the trial court rejected Daniel's assertion that he was reacting to McIntyre's swing at him and did not intend to hit O'Connor. Thus, Daniel's reliance on *Peterson* is misplaced.

¶ 22 Daniel's further arguments challenge the credibility determinations made by the trial

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court. He first maintains that Evans' testimony was more "logical[,] " even though the court explicitly found her version of events incredible. If, as Evans testified, McIntyre was so intoxicated that he "fell out of" his car and was unsteady on his feet, it unlikely that in the split-second between McIntyre's missed swing and Daniel's return punch, McIntyre could have reflexively grabbed O'Connor by the shirt and pulled her in front of him in time to absorb Daniel's blow. In contrast, the trial court found the accounts provided by the State's witnesses consistent with the "physical situation and the facts[,] " and we perceive no basis to disturb these findings. *People v. Berland*, 74 Ill. 2d 286, 306 (1978).

¶ 23 Daniel further contends that the trial court erred in finding the testimony of the State's witnesses credible because they were biased, they were "too drunk to remember what happened[,] " and they gave inconsistent testimony as to how long O'Connor remained in the house before coming back outside. If McIntyre was biased against Daniel because of their running dispute and if O'Connor was biased against Daniel because he struck and seriously injured her, those facts were obvious to the trial judge and we must assume he took those factors into account. The record also shows that the court was aware of the time the incident took place and that McIntyre and O'Connor had been drinking at a bar for several hours prior to the encounter with Daniel. Although evidence that a witness was drinking near the time of an event is relevant and probative of the witness' sensory capacity (*People v. Di Maso*, 100 Ill. App. 3d 338, 343 (1981)), the fact that a witness had been drinking alcohol, or was drunk, does not preclude the trier of fact from finding the witness credible (*Bradford*, 194 Ill. App. 3d at 1046-47).

¶ 24 Both witnesses were able to recall the events at issue, and the trial court found their

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testimony consistent, specifically noting that Evans' testimony corroborated their testimony in many respects. Additionally, the discrepancy as to whether O'Connor came back outside within 1 minute or 5-10 minutes, does not undermine the credibility of the State's witnesses regarding the elements of the offense (*Berland*, 74 Ill. 2d at 306), nor does it raise a reasonable doubt regarding Daniel's guilt (*People v. Reed*, 80 Ill. App. 3d 771, 780 (1980)).

¶ 25 Daniel finally asserts that the record establishes that the trial court was confused about the evidence presented. In support of this contention, Daniel cites two instances in which the trial court accurately recited the facts in announcing its decision, but mistakenly referred to Daniel as "Kenny" instead of "Gary" or "defendant." The record shows, however, that counsel corrected the trial judge who then acknowledged the mistake and clarified that he was referring to Daniel and not McIntyre. In reviewing the court's ruling in its entirety, it is clear that the court correctly understood the facts of the case and was not confused about the evidence presented.

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.