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2013 IL App (3d) 120962-U

Order filed December 3, 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 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0962
v.)	Circuit No. 11-CF-2199
)	
EUGENE GUENARD,)	Honorable
)	Amy Bertani-Tomczak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* In a case in which the defendant was convicted of two counts of aggravated battery to a child under 13 years of age, the appellate court held that the evidence was sufficient to find the defendant guilty beyond a reasonable doubt.

¶ 2 The defendant, Eugene Guenard, was convicted of two counts of aggravated battery (720 ILCS 5/12-3.05(b)(2) (West 2010)) and was sentenced to concurrent five-year prison terms. On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

FACTS

¶ 3

¶ 4 On December 1, 2011, the defendant was charged by indictment with two counts of aggravated battery to a child under 13 years of age (720 ILCS 5/12-3.05(b)(2) (West 2010)). The indictment alleged in count I that the defendant struck Jacob Morita, a minor born on April 9, 2008, in the groin, and in count II that he "pulled and rubbed the ears" of Jacob.

¶ 5 The circuit court held a bench trial in June 2012. Patrick Morita testified that he was Jacob's father. Patrick and his wife, Tiffany, separated in January 2011. They had two sons together, Jacob and Jeremy (ages three and seven, respectively), who stayed with Patrick every weekend and one day during the week.

¶ 6 On September 25, 2011, Patrick dropped off his two sons with Tiffany. The defendant was Tiffany's paramour and was living with her at the time. Patrick testified that he gave Jacob a bath earlier that day and did not notice any injuries to Jacob's groin area. He also stated that Jacob had no ear injuries at the time, although Jacob did have bruising on his forehead and on his hip due to recent falls.

¶ 7 The next time Patrick saw Jacob was on Wednesday morning, September 28, 2011, when he met Jacob and Tiffany at an urgent care facility. Tiffany had called Patrick the night before and told him that Jacob had fallen in the bathtub and hurt his groin area. Patrick stated that Jacob did not have any bruising on his ears on that Wednesday morning, and he denied on cross-examination that he told the police differently. After leaving the urgent care facility, Patrick went back to work.

¶ 8 Patrick next saw Jacob shortly after 4 p.m. on Wednesday, September 28, 2011, when he picked up his sons from Tiffany. Patrick noticed that Jacob's ears were very red, that he had a

cracked lower lip, and that he had bruising on his cheeks. Jacob was also complaining about pain in his ears and groin area. Patrick stated that Jacob had some skin missing from his ears. He took Jacob to an urgent care facility that evening. The staff at that facility arranged for Jacob to be transported to a hospital via ambulance.

¶ 9 On cross-examination, Patrick stated that Tiffany had another son, Mason, who was 14 years old and who was at Tiffany's residence on Wednesday, September 28, 2011. He also stated that Jacob usually would not play football with Mason and Jeremy.

¶ 10 Vernard Reed testified that he was a detective with the Will County Sheriff's Department and that he interviewed the defendant on October 18, 2011, but the interview was not recorded at the defendant's request. The defendant told Reed that he had been drinking alcohol and using heroin between September 25 and 27, 2011. He also told Reed that he had been wrestling with Jacob on a hardwood floor for about 15 to 20 minutes sometime during the time Jacob was staying with Tiffany, but he could not completely recall what occurred during that time due to his alcohol and drug use. He did tell Reed that he may have kneed Jacob in the groin while wrestling with him and that Jacob's ears may have been injured due to the hardwood floor and due to the fact that they were wrestling roughly.

¶ 11 Reed also testified that he spoke with Patrick on September 29, 2011, who told Reed that he noticed injuries to Jacob's ears on the morning of Wednesday, September 28, 2011.

¶ 12 Dr. Kelly Liker testified as an expert on pediatric medicine and child abuse pediatrics. Dr. Liker examined Jacob on September 29, 2011. Jacob had the following injuries: (1) facial bruising consisting of several circular bruises to the center of his forehead, bruising to the centers of both cheeks, and bruising to the nose area; (2) a linear scratch between his chin and neck; (3)

bruising and excoriating to his ears, which extended to his scalp; (4) bilateral bruising to his buttocks, as well as some non-pattern bruising and a couple of parallel linear marks on his lower left gluteal muscle; (5) genital injuries, including multiple area of bruising to the base of the penis, to the head of the penis, and to the lower pelvic area; (6) abdominal bruising, including small circular bruises to the naval area; and (7) a small circular bruise on his inner thigh. With regard to the ear injuries, Dr. Liker testified that both ears had significant redness on the majority of their upper portions that extended into the back of the head, as well as some excoriated areas that were raw or denuded of skin. Pictures of Jacob's injuries were taken on September 29 and 30, 2011, and these pictures were admitted into evidence.

¶ 13 Based on the constellation of Jacob's injuries, Dr. Liker opined that the injuries were the result of inflicted injury or physical abuse. She also opined that the injuries could not have been sustained through wrestling on a hardwood floor. She stated that her opinion was based in part on the location of some of the injuries, including the cheeks, abdomen, buttocks, and inner thigh, as those were areas that were soft and that children do not usually bruise. She was also concerned with the bruises that were circular or oval in appearance, as those could have been caused by fingers or thumbs, and with the parallel linear bruises, which were indicative of a pattern injury.

¶ 14 Dr. Liker stated that she talked to Jacob, but did not interview him because three-year-olds are typically unreliable in the interview process. She was not able to ask him about who or what caused his injuries. She did admit that a report from Silver Cross Hospital did state that Jacob told staff there that the bruising to his face and scratches were caused by his seven-year-old brother and that he said no when asked if anyone else hurt him. However, she also opined that an

adult-sized person caused Jacob's injuries.

¶ 15 On July 3, 2012, the circuit court issued its decision. In finding the defendant guilty on both counts, the court emphasized the doctor's opinion that the victim's injuries could not have been sustained while wrestling with the defendant. On October 15, 2012, the court sentenced the defendant to concurrent five-year prison terms. The defendant appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt. The defendant claims that the evidence showed only a possibility that the defendant committed the charged crimes.

¶ 18 In relevant part, pursuant to section 12-3.05(b)(2) of the Criminal Code of 1961 (720 ILCS 5/12-3.05(b)(2) (West 2010)), an individual commits aggravated battery when, in committing a battery, he or she knowingly causes bodily harm to a child under 13 years of age. When a defendant challenges the sufficiency of the evidence to convict, we view the evidence in the light most favorable to the State and assess whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the reviewing court's function to retry the defendant. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). "[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Further, we will not overturn the defendant's conviction unless the evidence is " 'unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt.' " *Jackson*, 232 Ill. 2d at 281 (quoting *People v.*

Campbell, 146 Ill. 2d 363, 375 (1992)).

¶ 19 Our review of the record in this case reveals that the evidence presented was sufficient to prove the defendant guilty of the charged offenses beyond a reasonable doubt. The evidence indicated that Jacob sustained nearly all of his injuries while at Tiffany's residence, where the defendant, who was using heroin and alcohol, was staying. The State's expert, Dr. Liker, testified to the injuries sustained by Jacob. She opined that the injuries were caused by an adult-sized person and as a result of inflicted injury or physical abuse. She also opined that the injuries could not have been sustained by wrestling on a hardwood floor, despite that being the defendant's version of what happened to Jacob. The circuit court's ruling indicated that it found Dr. Liker credible, and we find no reason to disturb that credibility finding. See, e.g., *People v. Ross*, 229 Ill. 2d 255, 272 (2008) (holding that witness credibility is a matter for the trier of fact to resolve). Viewing all of the evidence presented in this case in the light most favorable to the State, we hold that a rational trier of fact could indeed have found the essential elements of aggravated battery proven beyond a reasonable doubt. See *Collins*, 106 Ill. 2d at 261.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.