

No. 1-12-3257

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 9458
)	
ANTHONY MISTER,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Evidence was sufficient to find defendant guilty of aggravated battery. Court erred in entering two convictions for aggravated battery where separate physical acts were not charged. Erroneously-assessed fee vacated.
- ¶ 2 Following a bench trial, defendant Anthony Mister was convicted of two counts of aggravated battery and sentenced as a Class X offender to concurrent prison terms of 10 years with fines and fees. On appeal, defendant contends that the evidence was insufficient to find him

guilty beyond a reasonable doubt. He also contends that his two convictions are for the same physical act so that one must be vacated. Lastly, he contends that one of his fees was erroneous.

¶ 3 Defendant was charged with two counts of aggravated battery, both allegedly committed on or about April 14, 2012, against county correctional officer Carl Price while he was performing his official duties. While both counts alleged that defendant "kicked Officer Carl Price about the body," one count alleged that this caused bodily harm while the other alleged that this constituted physical contact of an insulting or provoking nature.

¶ 4 At trial in September 2012, Officer Carl Price testified that he has been a correctional officer at the county jail since November 2010. He was in uniform and on duty at the jail at about 8:10 p.m. on the day in question; specifically, in a usually-locked office overlooking a "dayroom" that at the time contained 48 inmates, all at least 30 years old. While Officer Price was talking to an inmate and the office door was open, defendant (another inmate) approached and asked Officer Price to change the channel on the dayroom television. Officer Price told defendant to wait a moment, but defendant "seemed to lose patience" and asked again. When Officer Price said that he would change the channel when he was finished talking, defendant hit the office door with his hand and slammed it shut. However, the incident report and an interview of Officer Price did not reflect that defendant slammed the door. On cross-examination, Officer Price denied using profanity or threatening defendant. Officer Price called for a supervisor, and two sergeants came. Sergeant Mitchell ordered Officer Price and several other officers to enter the dayroom, by which time defendant was "irate" and cursing.

¶ 5 Sergeant Mitchell ordered the inmates in the dayroom to go to their cells and told defendant to come to her. About 15 of the inmates went to their cells almost immediately.

When defendant refused to come over, Sergeant Mitchell ordered Officer Price to handcuff defendant. Defendant complied with the handcuffing, but as the other inmates "were getting riled up" and Officer Price was leading defendant from the dayroom (without assistance because other officers were busy with the other inmates, who were not going to their cells), he unsuccessfully tried to head-butt Officer Price. In avoiding the head-butt, Officer Price momentarily lost his balance, then struggled to bring defendant to the floor. As he did so, defendant struck his head on a metal bench. Defendant then "kicked me in the knee and then he did a second kick to the groin area which stunned me." As Officer Price was stunned by the latter blow, Officer Brandon Norise took control of defendant and then both officers led defendant away. Officer Price later sought medical treatment for his soft-tissue injuries and bleeding of his groin, and was still being treated at the time of trial. However, Officer Price missed no time from work due to the injury and did not make a worker's compensation claim.

¶ 6 Officer Brandon Norise testified that he and other correctional officers reported to Sergeant Mitchell, who ordered them to move the inmates in the dayroom to their cells. Once they entered the dayroom, Sergeant Mitchell ordered defendant to come to her rather than go to his cell. Defendant made a dismissive gesture, and Sergeant Mitchell ordered that defendant be handcuffed. When Officer Price went to handcuff defendant, defendant tried to head-butt him, and they struggled as Officer Price led defendant out of the room. Defendant fell, then became "combative and kicking." Defendant kicked Officer Price in the groin and Officer Price doubled over, so Officer Norise subdued defendant, then he and Officer Price led defendant away. Officer Norise did not observe Officer Price hit, kick, or otherwise strike defendant, nor use

profanity towards him. While Officer Norise did not observe Officer Price "smash [defendant's head] into a bench or onto the concrete," Officer Price took defendant to the floor near benches.

¶ 7 At the end of the State's case, defendant made an unsuccessful motion for a directed finding, without argument by the parties or any findings by the court.

¶ 8 The court viewed a video of defendant made after the incident, then stated on the record that it "observe[d] injuries to the defendant."

¶ 9 Dr. Bruce Smith, an inmate in the dayroom at the time in question along with 47 other inmates, testified that he and defendant were watching television when Officer Price ran up to defendant and yelled at him that he "better learn to shut your fucking mouth." Dr. Smith did not observe defendant go to the office or speak with Officer Price before that. When defendant replied that "I'm a grown man" so Officer Price should not speak to him that way, Officer Price replied by threatening physical violence against defendant. Officer Price then went to the office and called for support. When other officers arrived and ordered the inmates to their cells, there was no commotion and "everyone got up and went to their doors," including defendant and Dr. Smith. Dr. Smith did not hear Sergeant Mitchell call defendant to her nor defendant gesture towards her. Officer Price handcuffed defendant as he stood by his cell, without resistance by defendant, then slammed defendant's head into the wall and struck him on the head with another set of handcuffs. Officer Price then dragged defendant back to the dayroom, where he struck his head on a bench as he was being led away. Officers Price and Norise removed defendant from the dayroom. Dr. Smith did not observe defendant kick or attempt to head-butt anyone, nor did he observe Officer Price doubled over. While Dr. Smith's interview did not reflect that Officer

Price ran into the dayroom and cursed at defendant, he testified that he so complained in a letter to the Sheriff.

¶ 10 Gino Musso, another inmate in the dayroom at the time in question, testified he and defendant were watching television when Officer Price came up to defendant and said "Because of you, I'm scarring the deck," which Musso explained means suspending a jail privilege for all inmates in that area. (Musso had not observed defendant go to the office, nor strike or slam the office door.) When defendant replied that Officer Price should not speak to him that way, Officer Price replied by threatening physical violence against defendant. Defendant replied that Officer Price could "put your hands on me, but I ain't going to stand and take it." Officer Price then went to the office and called for support. The inmates all went to their cells before other officers arrived. Musso did not hear a sergeant call defendant over to her. Officers Price and Norise went to remove an inmate, but the sergeant told them not to. They then went to defendant and Officer Price handcuffed him without resistance. Officer Price insulted defendant, and when defendant replied, he slammed defendant's face into the cell door. As Officers Price and Norise led defendant away, Officer Price struck him on the head with handcuffs, then they dragged him away. Musso did not observe Officer Price being kicked or doubling over, nor observe defendant try to head-butt him.

¶ 11 Officer Price testified in rebuttal that he did not threaten defendant with violence, nor threaten to "scar the deck." He denied being near defendant's cell, denied slamming his head into the wall or striking him with handcuffs, and denied having more than one set of handcuffs. Officer Price reiterated that inmates in the dayroom were yelling and refusing to go to their cells.

¶ 12 Following closing argument, the court found defendant guilty as charged. The court found that there were discrepancies between the accounts of Dr. Smith and Musso, that it was unlikely that Officer Price would call for support to have more "witnesses to his misconduct so they can watch him attack and brutalize" defendant, and that defendant's "knot on his head" was not severe. The court expressly found the officers' testimony to be credible.

¶ 13 Defendant filed a posttrial motion arguing insufficiency of the evidence in relevant part. Following argument, the motion was denied without further findings.

¶ 14 During arguments in aggravation and mitigation during sentencing, the State argued that defendant "became belligerent and struggled with the officer and ended up kicking the officer in the groin," with no mention of the kick to the knee, and "ask[ed] for an appropriate sentence." The court sentenced defendant as a mandatory Class X offender to 10 years' imprisonment with fines and fees. The mittimus reflects concurrent sentences of 10 years in prison on two counts of aggravated battery. Defendant's motion to reconsider his sentence was denied, and this appeal followed.

¶ 15 On appeal, defendant first contends that the evidence was insufficient to find him guilty of aggravated battery.

¶ 16 A person commits aggravated battery when, "in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be [a] correctional institution employee *** performing his or her official duties." 720 ILCS 5/12-3.05(d)(4)(i) (West 2012). A person commits battery when "he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2012).

¶ 17 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. *People v. Brown*, 2013 IL 114196, ¶ 48. Because it is the role of the trier of fact to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trier of fact on issues involving the weight of evidence or witness credibility. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 18 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no reasonable finder of fact would find defendant guilty of aggravated battery. There were discrepancies in the testimony of both State and defense witnesses, and both arguably had incentive to give an exculpatory or self-serving account. The officers, and Officer Price in particular, were concealing their own misconduct according to the defense theory. Conversely, the inmates gave an account that had them all going to their cells without disorder or delay – even before officers arrived, according to Musso. When faced with such indisputably

contradictory accounts as from the State and defense witnesses, the trial court's role as weigher of evidence and credibility is paramount, and one we will not interfere with on a "cold" record.

¶ 19 Defendant also contends that one of his two convictions must be vacated because they are based on the same physical act, while the State responds that the convictions were based on two separate acts. However, while there was trial evidence of two kicks, the charging instrument made no distinction between kicks, nor did the State argue at sentencing for two convictions, so this case falls squarely under *People v. Crespo*, 203 Ill. 2d 335 (2001).

¶ 20 The State argues that *Crespo* does not apply because the charging instrument indeed distinguished the kicks: one caused bodily harm and the other was contact of an insulting or provoking nature. We reject this argument for two reasons. One is that the State did not make that argument, or even mention the kick to the knee, at sentencing so that the State is apportioning the kicks for the first time on appeal as *Crespo* condemns. The other is that the State cites no case where the act was described the same in counts of the charging instrument but different acts were found based on bodily harm and insulting or provoking contact. This does not surprise us. We applied *Crespo* and vacated a redundant count under similar circumstances in *People v. Curtis*, 367 Ill. App. 3d 143, 147-48 (2006). Moreover, while an act is an overt or outward manifestation that will support a different offense (*Crespo*, 203 Ill. 2d at 342), bodily harm or insulting or provoking nature are not parts of the outward *act* of a defendant at all but the inward *reaction* to the act by the victim. The act is the cause, while bodily harm or insulting or provoking contact is the effect. Accordingly, under *Crespo*, one of defendant's two convictions for aggravated battery must be vacated.

¶ 21 Lastly, defendant contends, and the State agrees, that one of his fees was erroneously assessed and must be vacated. The parties are correct: defendant was assessed a \$5 electronic citation fee (705 ILCS 105/27.3e (West 2010)) that does not apply to felonies.

¶ 22 Accordingly, we vacate defendant's conviction under count 2 and his \$5 electronic citation fee. Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the clerk of the circuit court is directed to correct the mittimus and the order assessing fines and fees to reflect said vacatures. The judgment of the circuit court is otherwise affirmed.

¶ 23 Affirmed in part and vacated in part.