

No. 1-14-0577

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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. 10 CR 1960
)	
BRYAN BROWN,)	Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for aggravated battery by strangulation with a dangerous instrument.
- ¶ 2 Following a jury trial, defendant Bryan Brown was convicted of two counts of aggravated battery by strangulation predicated on separate Class 1 enhancements. The court merged the counts and sentenced defendant to 12 years' imprisonment and two years of mandatory supervised release on the count based on the "dangerous instrument" enhancement. On appeal, defendant contends that the State did not prove beyond a reasonable doubt that the audio cable he

used to strangle the victim, Natasha Johnson, was a "dangerous instrument." Accordingly, he asserts that his conviction should be reduced to the Class 2 version of the offense and merged with his remaining Class 1 aggravated battery conviction. For the following reasons, we affirm.

¶ 3 Defendant's convictions arose from the January 9, 2010, strangling of the victim in Chicago. Defendant was charged with one count each of attempted first-degree murder and aggravated unlawful restraint, and five counts of aggravated battery. As relevant to this appeal, count 2 charged that defendant committed aggravated battery in that he knowingly caused great bodily harm by strangulation (720 ILCS 5/12-4(d-6)(e)(5)(B) (West 2010))¹, and count 3 charged aggravated battery by strangulation using or attempting to use a "dangerous instrument, to wit: a cord" (720 ILCS 5/12-4(d-6)(e)(5)(A) (West 2010)).

¶ 4 At trial, the victim testified that in the early morning hours on the day in question, she was walking in the area of 53rd Street when defendant approached her in his vehicle. She agreed to provide oral sex in exchange for \$20 and entered his car on the passenger's side. After defendant parked the car in a nearby lot at 53rd Street and Calumet Avenue, he gave the victim \$20. As she put the money in her pocket, defendant "rushed" her and tied a cord around her throat. She felt defendant strangle her and felt the cord around her throat. She could not breathe and pulled the door handle trying to get out of the car. The door opened slightly and she recalled screaming, but then "everything turned blank." She came to in an emergency room with an intubation tube in her throat, three skull fractures, and a broken jaw, which required a surgical

¹ Renumbered as 720 ILCS 5/12-3.05 by Pub. Act 96-1551 (eff. July 1, 2011) (renumbering 720 ILCS 5/12-4 (West 2010)).

implant. While she was at the hospital, the police showed her photographs and she identified defendant as her attacker.

¶ 5 On cross-examination, the victim testified that she could not recall anything that started the altercation. She did not take anything from defendant, argue, or struggle with him when he had the cord around her neck. She did not strike or grab defendant.

¶ 6 Chicago police officer Quinton Hanks testified that at around 3 a.m. on the day in question, he responded to multiple calls of a domestic battery in progress in the vicinity of 5309 South Calumet Avenue. While the officer was near the scene in a marked police vehicle, defendant approached him stating that he locked his keys in his car. At defendant's car, the officer observed speckles of blood in the snow by the front passenger's side tire and legs sticking out from underneath the car. Defendant then fled. The officer communicated via police radio that an offender was running southbound on Calumet. The victim was gasping but not responsive or alert.

¶ 7 Chicago police sergeant Kirkland Crossley testified that he heard radio communications regarding the ongoing pursuit of an offender and apprehended defendant south-east of 53rd Street. The Sergeant then relocated to the scene of the attack where he observed drops of blood and the victim lying on the ground partially underneath the car. She gasped for air, her face was bloody and bruised, and the paramedics removed a cord from around her neck.

¶ 8 Dr. Amy Knotrick, an emergency room physician, testified that she treated the victim shortly after 4 a.m. on the day in question. The victim could not communicate when she arrived and her mouth and left ear were bleeding. The paramedics reported she had suffered agonal respirations - struggled breathing usually accompanied by gasping or gurgling - and her

breathing improved when they removed a cord from her throat. Dr. Knotrick intubated the victim with a breathing tube and subsequent examinations revealed subarachnoid hemorrhaging - bleeding between layers of the brain - and a broken jaw. The victim's injuries were life threatening and consistent with strangulation and being punched or stomped in the face and head.

¶ 9 Chicago police detective John Murray testified that at around 5:25 a.m. on the day in question, he advised defendant of his *Miranda* rights before interviewing him at the police station. Defendant recounted the events of that morning, including that he wrapped an audio cable around the victim's neck and then started choking her. After a struggle, she fell out of the vehicle and defendant choked her with the cord and his hands. Detective Murray went to the hospital to interview the victim, but found her unconscious with scratches on her neck, bruises on her face, and a red line under her neck.

¶ 10 Assistant State's Attorney Michael O'Malley testified that he advised defendant of his *Miranda* rights and interviewed him later that morning. Defendant signed a written summary of his account of the events that was substantially similar to the prior verbal statement he gave Detective Murray. Photos of the victim and the black cable he used were attached as exhibits and the statement reflects that defendant "choked the [victim] with" the cord depicted in the exhibit.

¶ 11 Detective William Marley testified that he showed the victim a six-person photo array at the hospital on January 10, 2010, and she identified the photo of defendant as her attacker.

¶ 12 It was stipulated, in relevant part, that a black cord was submitted for DNA analysis in a sealed condition; that DNA profiles recovered from both ends revealed one male and one major female contributor; that defendant was excluded from the male DNA profile; and that a proper chain of custody was maintained over the evidence at all times. The parties further stipulated that

when Michael Hague, a Chicago Fire Department paramedic, attended to Natasha Johnson at the scene, she was unresponsive in the snow next to an automobile and "had blood coming from her mouth, and an electrical cord wrapped around her neck."

¶ 13 The State rested and defendant moved for a directed verdict, which the court denied.

¶ 14 Defendant testified that on the day in question, he and the victim argued in his car when he refused to pay \$20 for oral sex and the victim picked up his wallet. When he grabbed her arm, she struck him in the face and then grabbed his neck. Defendant picked up a cord that was hanging from his CD player and tried "to use it to choke her back in return." He fumbled with the cord but "really couldn't get a grip." They choked each other with their hands inside and outside of the vehicle. As defendant's vision blurred, he "noticed her eyes started to roll back a little bit, and she let got [*sic*] of [his] neck." He thought this was a ruse to catch him off guard, "So [he] held for a few seconds, a few moments longer just to make sure she wasn't just faking." He could hear her breathing "kind of funny" and then kicked and punched her in the face one time each.

¶ 15 At the close of evidence and argument, the jury found defendant guilty of aggravated battery by strangulation in that he knowingly caused great bodily harm, and aggravated battery by strangulation using or attempting to use a dangerous instrument. The court merged the counts and sentenced defendant to 12 years' imprisonment and two years of mandatory supervised release on the count based on the "dangerous instrument" Class 1 enhancement. Defendant filed a motion for a new trial and a motion to reconsider sentence. The court denied both motions.

¶ 16 On appeal, defendant contends that the State did not prove beyond a reasonable doubt that the common audio cable he used to strangle the victim was a "dangerous instrument."

Although the term is not defined in the statute at issue, defendant argues that what constitutes a

"dangerous instrument" is limited to overtly dangerous items. Based on dictionary definitions and the itemized lists of "dangerous or deadly weapon[s] or instruments" and "dangerous weapon[s] or instrument[s]" in the unlawful use of a weapon (UW) and the armed violence statutes (see 720 ILCS 5/24-1(a)(2) (West 2010); (720 ILCS 5/33A-1(c)(2) (West 2010)), defendant maintains that the form of the audio cord "is not deliberately weaponized" like the items listed in the two statutes. He thus concludes that the common audio cable falls outside the intended scope of the term "dangerous instrument." As a result, he asserts that his conviction based on the "dangerous instrument" Class 1 enhancement should be reduced to the Class 2 version of the offense.

¶ 17 As an initial matter, we address the standard of review. Citing *People v. Swartwout*, 311 Ill. App. 3d 250, 259 (2000), defendant contends *de novo* review of his claim is appropriate because the facts are undisputed and it involves statutory construction. We disagree, viewing defendant's argument as a challenge to the sufficiency of the evidence to prove an element of the offense. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005). In such cases, the relevant inquiry is whether, after viewing 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. Woods*, 214 Ill. 2d 455, 470 (2005). The jury determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences therefrom, and resolves any conflicts in the evidence. *People v. Gary*, 2016 IL App (1st) 134012, ¶ 51. We may not overturn a conviction based on insufficient evidence unless the proof is so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 18 To sustain defendant's conviction for aggravated battery, the State was required to prove beyond a reasonable doubt that, in committing a battery, defendant strangled another individual. 720 ILCS 5/12-4(d-6) (West 2010). To prove the class 1 version of the offense, the State was further required to establish that defendant "used or attempted to use a dangerous instrument while committing the offense." 720 ILCS 5/12-4(d-6)(e)(5)(A) (West 2010).

¶ 19 As noted by the parties, "dangerous instrument" is not defined within the context of section 12-4 (720 ILCS 5/12-4 *et seq.* (West 2010)), and our research has revealed no cases defining the term in the context of the aggravated battery statute. However, in other contexts, our supreme court "has defined a 'dangerous weapon' as 'an instrument that is used or may be used for the purpose of offense or defense and capable of producing death.'" *People v. McBride*, 2012 IL App (1st) 100375 ¶ 40 (quoting *People v. Dwyer*, 324 Ill. 363, 364 (1927)). Thus, in our view, a "weapon" is a subset or narrower class of "instrument" and therefore, we may look to the definition of a "dangerous weapon" to determine whether the State met its burden in the instant case.

¶ 20 In analyzing whether an object constitutes a "dangerous weapon," Illinois courts have defined three categories of dangerous objects: (1) objects that are dangerous *per se*, such as loaded guns; (2) objects that are not necessarily dangerous, but were actually used in a dangerous manner during the offense; and (3) objects that are not necessarily dangerous, but may become dangerous when used in a dangerous manner. *McBride*, 2012 IL App (1st) 100375 ¶ 42; see also *People v. Ross*, 229 Ill. 2d 255, 275 (2008) (recognizing appellate court cases' use of the three categories). Here, the State argues that the audio cord falls "squarely" into the third category.

"Whether an object is sufficiently susceptible to use in a manner likely to cause serious injury is generally a question of fact." *Ross*, 229 Ill. 2d at 275.

¶ 21 In the instant case, the jury heard the victim's testimony that defendant wrapped the cord around her neck and that she could not breathe when she felt him strangle her. Her testimony was supported by Detective Murray, who observed a red line under her neck following the attack, and by Dr. Knotrick, who intubated the victim with a breathing tube and testified that her injuries were consistent with strangulation. Defendant testified that he grabbed a cord, which was hanging from his CD player, and tried "to use it to choke [the victim] back in return." Furthermore, defendant's signed statement reflects that "he choked the [victim] with" a cord depicted in an exhibit, which he also signed.

¶ 22 The jury had the opportunity to weigh the victim's testimony and the supporting evidence against defendant's claim, at trial, that he wrapped the cord around her neck but could "not get a grip." When weighing the evidence, the jury was not required to disregard inferences that flow from the evidence. *People v. Bull*, 185 Ill. 2d 179, 205 (1998). Rather, the jury could conclude that defendant actually used the cord in a dangerous manner to strangle the victim. We decline defendant's invitation to overrule the jury on this matter. See *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (when reviewing evidence, a court may not substitute its judgment for that of the trier of fact). Accordingly, the evidence was not so improbable or unreasonable that no trier of fact could find he used a dangerous instrument beyond a reasonable doubt.

¶ 23 As noted above, defendant maintains that absent a definition of "dangerous instrument" in the instant statute or in the common law, other statutes should guide our analysis. Defendant argues that an audio cord cannot be a "dangerous instrument" because its form is not

"deliberately weaponized" like the dangerous instruments listed in the UUW (720 ILCS 5/24-1(a)(2) (West 2010)) and armed violence (720 ILCS 5/33A-1(c)(2) (West 2010)) statutes. We disagree.

¶ 24 A defendant is guilty of UUW if he "Carries or possesses with intent to use the same unlawfully against another, a dagger, dirk, billy, dangerous knife, razor, stiletto, broken bottle or other piece of glass, stun gun or taser or any other dangerous or deadly weapon or instrument of like character." 720 ILCS 5/24-1(a)(2) (West 2010). The armed violence statute divides dangerous weapons into three categories, the second of which is relevant here. 720 ILCS 5/33A-1(c) (West 2010). "A Category II weapon is any other rifle, shotgun, spring gun, other firearm, stun gun or taser as defined in paragraph (a) of Section 24-1 of this Code, knife with a blade of at least 3 inches in length, dagger, dirk, switchblade knife, stiletto, axe, hatchet, or other deadly or dangerous weapon or instrument of like character." 720 ILCS 5/33A-1(c)(2) (West 2010).

¶ 25 We agree with the State that to limit the definition of "dangerous instrument," as used in the statutory subsection elevating aggravated battery by strangulation to a Class 1 felony, to only those objects explicitly itemized and "deliberately weaponized" in the UUW and armed violence statutes would be an absurd and unjust result because a victim is unlikely to be strangled with any of the enumerated items. See *McBride*, 2012 IL App (1st) 100375 ¶ 23 (In statutory construction "we must assume the legislature did not intend to create an absurd or unjust result."). Moreover, while defendant implies that only an item that is "deliberately weaponized" should be considered to be a "dangerous instrument," he does not identify any particular items that could be used to strangle a victim that would qualify under such a limitation. Defendant's argument fails.

¶ 26 Finally, we are mindful of defendant's claim that the dictionary definitions of the words "dangerous" and "instrument" do not support the conclusion that the legislature intended a common audio cable to be considered a dangerous instrument. Citing Merriam-Webster, defendant defines "dangerous" as "able or likely to inflict injury or harm," and "instrument" as an "implement; *especially*: one designed for precision work." Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/dangerous> (last visited Aug. 9, 2016); Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/instrument> (last visited Aug. 9, 2016). We fail to see how these definitions limit an instrument's *capacity* to be used in a manner *likely* to cause serious injury, regardless of its intended purpose. See *People v. Skelton*, 83 Ill. 2d 58, 66 (1980).

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

¶ 28 Affirmed.