

No. 1-14-3818

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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. 12 CR 8509
)	
DONALD CONWELL,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court's ruling did not fall short of a finding that the evidence established defendant's guilt of aggravated battery to a peace officer beyond a reasonable doubt. Judgment affirmed.

¶ 2 Following a bench trial, defendant Donald Conwell was convicted of aggravated battery to a peace officer (720 ILCS 5/12-3.05(D)(4) (West 2012)) and sentenced to seven years' imprisonment. On appeal, defendant contends that the trial court applied an incorrect legal

standard as its ruling fell short of a finding that the evidence established his guilt beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged, in relevant part, with knowingly and without legal justification causing bodily harm to Sergeant William Baker on March 12, 2012, by pushing and kicking him about the body when he knew Sergeant Baker was a peace officer, *i.e.*, a Cook County Department of Corrections Officer, and while Sergeant Baker was performing his official duties.

¶ 4 At trial, Sergeant Baker testified that he was employed by the Cook County Sheriff's Department. On March 12, 2012, he was a correctional officer in the Cook County Department of Corrections. At that time, he was assigned to Cermak Hospital, which was the hospital portion of the jail and housed the "mental health patients." At 2 p.m., Sergeant Baker was ordered to the third floor of the hospital to move a detainee, defendant, from one cell to another. When Sergeant Baker arrived at defendant's cell, Officers Perez, Tiscareno and Jefferson were present. Defendant was in a wheelchair by the open doorway to his cell. Sergeant Baker told defendant he was there to move him to a different cell. Defendant said he was not moving, swore and threatened to flood his cell. Defendant then rolled to the back of the cell in his wheelchair, removed one of the footrests from the wheelchair and placed it on the stool to his left. Sergeant Baker went into the cell and removed the footrest so that it could not be used as a weapon. He put it in the nurse's station.

¶ 5 Sergeant Baker then reentered the cell with Officer Tiscareno. The officers approached defendant, who then attempted to punch Officer Tiscareno in the face. Sergeant Baker grabbed defendant's right wrist and moved it to break the punch. Officer Tiscareno grabbed defendant's left arm. Defendant then stood up on his own and, with both of the officers holding him, all three

fell to the floor. Sergeant Baker was surprised when defendant stood up on his own and could not believe it.

¶ 6 While still on the ground, Sergeant Baker held onto defendant's right arm and while he tried to reach across defendants' body to secure defendant's left arm, defendant kicked him in the head several times with the "back of his feet." Sergeant Baker explained that defendant was flat on the ground and bent his knees, making a backward kicking motion to kick Sergeant Baker in the head with his heel. Sergeant Baker eventually gained control of defendant and handcuffed him.

¶ 7 Sergeant Baker further testified that the policy with cell extractions was to have a supervisor on site and the extraction videotaped. Neither occurred. Sergeant Baker suffered a swollen face and bruises on his arm as a result of the incident.

¶ 8 Officer Jose Tiscareno testified that, when defendant refused to be moved from his cell, Officer Tiscareno called Lieutenant Germany, who confirmed that defendant had to be moved. Defendant removed the leg rest from his wheelchair and slammed it on a stool. Sergeant Baker removed the leg rest from the cell. The officers then approached defendant, who clenched his fist and turned toward Officer Tiscareno, but Sergeant Baker caught his hand. Defendant then stood up, which caught the officers off guard because he was in a wheelchair, and the three fell to the ground. As they fell, Officer Tiscareno hit his head on the wall and jammed his fingers. He saw defendant kick Sergeant Baker in the head with his feet. Officer Jefferson gave Sergeant Baker handcuffs, and Sergeant Baker handcuffed defendant.

¶ 9 Officer Jefferson testified for the defense that Sergeant Baker handed her the leg rest and she put it in the nurse's station. She did not witness the struggle on the floor but did at some point hand Sergeant Baker her handcuffs.

¶ 10 The parties stipulated that on August 25, 2010, Dr. Barry Daughtry ordered a magnetic resonance imaging (MRI) of defendant's cervical spine. The MRI revealed that defendant had syringomyelia, which is a disorder in which a cyst forms within the spinal cord. This cyst, called a syrinx, expands and elongates over time, destroying a portion of the spinal cord from its center and expanding outward. As a syrinx widens, it compresses and injures nerve fibers that carry information from the brain to the extremities. Damage to the spinal cord often leads to progressive weakness in the arms and legs, stiffness in the back, shoulders, arms or legs, and chronic, severe pain.

¶ 11 The parties further stipulated that on October 25, 2010, Dr. Daughtry referred defendant to the occupational therapy and rehabilitation center of Metro South Medical Center. Physical therapist Peter Schied evaluated defendant and found that his bilateral hands were flexed at his "MC joint" with his fingers extended. Schied further found that defendant tended to use the pincer grip with his thumb for grasp and was unable to flex his fingers at the time of evaluation. Schied would testify that defendant had some motor activity in his lower extremity and "did have movement at his ankle." Defendant was able to stand up with minimum contact assistance, and could stand for a maximum of 30 seconds. The parties also stipulated that there was "no diagnosis of paralysis to any limbs on [defendant's] body."

¶ 12 During the State's rebuttal closing argument, it argued that it had proved beyond a reasonable doubt that, through defendant's actions, he battered Sergeant Baker and caused him

bodily harm and Sergeant Baker and Officer Tiscareno were unimpeached in the way the incident happened. The court responded, "[b]ut aren't they to a certain extent impeached by the stipulation which sets forth some limitations on [defendant's] mobility?" The court stated that the medical stipulation called into question whether defendant could have done all of the things that the officers said he did and asked the State to respond. The State replied that there was nothing in the stipulation indicating that defendant's disease was degenerative but, rather, that it causes some limitations. It pointed out that the stipulation stated there was no paralysis to any of defendant's limbs.

¶ 13 The court then asked the State to address the part of the stipulation that indicated that the disease was a disorder in which the cyst expands and elongates over time, destroying a portion of the spinal cord, which leads to progressive weakness in the arms and legs. The court stated that this suggested that the disease was progressive, and presumably would have become worse as time went on, not better. The State responded that there was nothing in the stipulation indicating that, as the disease becomes progressively worse, defendant "falls into a paralysis." The State further noted that there was nothing in the stipulation regarding how severe the pain was, or how limited defendant's ability to walk was other than the fact that he could stand for only 30 seconds. The State also stated that defendant was diagnosed with the disease a year and a half prior to the incident in the case, and the stipulation did not impeach the officers' testimony. The State noted that even though defendant was in a wheelchair, he was capable of the actions testified to by the officers.

¶ 14 The trial court subsequently found defendant guilty of aggravated battery to a peace officer. It found the testimony that defendant kicked Sergeant Baker was unrebutted, and "though

the medical stipulation suggests that it would be difficult for the defendant to do that, based on the officer's description of what happened, I do believe that the defendant could, perhaps, kick his legs."

¶ 15 Defendant filed a motion for a new trial, arguing that the medical stipulation made it doubtful that the incident occurred in the way described by the officers. At the proceeding on the motion, defense counsel argued that there was a diminished use of defendant's limbs to the point that all four limbs were affected, and that he did not have full motor use of his limbs.

¶ 16 The trial court denied defendant's motion, noting that it found defendant guilty because of the kicking motion toward Sergeant Baker's head. The court stated, "I believe that finding is supported by the evidence."

¶ 17 On appeal, defendant contends that the court's ruling fell short of a finding that the evidence established his guilt of aggravated battery to a peace officer beyond a reasonable doubt. In particular, he contends that the following statement by the court showed that it doubted defendant was guilty beyond a reasonable doubt of kicking Sergeant Baker: "though the medical stipulation suggests that it would be difficult for defendant to do that, based on the officer's description of what happened, I do believe that defendant could, perhaps, kick his legs." Defendant contends that the court's belief that "perhaps" defendant was capable of kicking the officer was not a finding that the State's evidence overcame a reasonable doubt of defendant's guilt.

¶ 18 As an initial matter, the parties disagree on the standard of review. Defendant contends that his claim is a due process claim subject to *de novo* review. He maintains that the court violated his due process rights by failing to find him guilty beyond a reasonable doubt where the

court expressed doubts about the State's evidence. Defendant asserts he does not challenge the State's evidence, but rather the court's use of an improper legal standard, an issue we review *de novo*. See *People v. Campos*, 349 Ill. App. 3d 172, 176 (2004). The State contends that when defendant challenges the sufficiency of the evidence, as here, the relevant inquiry is 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 crime beyond a reasonable doubt.

¶ 19 We agree with the State that defendant is challenging the sufficiency of the evidence to sustain his conviction. See *In re Vuk R.*, 2013 IL App (1st) 132506, ¶¶6-9 (the court's comments in sentencing that both the State's and defense witnesses "lied" on the stand, and the crime did not happen as they testified established that the court was not convinced by the State's evidence and the State therefore failed to sustain its burden to prove the essential elements of the offense beyond a reasonable doubt); see also *People v. Moczarney*, 65 Ill. App. 3d 410, 414-16 (1978) (defendant's claim on appeal that trial court doubted defendant's guilt analyzed for sufficiency of evidence). The standard of review is thus whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). For the reasons that follow, we find that a rational trier of fact could find defendant guilty of aggravated battery to a peace officer beyond a reasonable doubt.

¶ 20 As relevant here, the State needed to establish that defendant, in committing a battery, knowingly and without legal justification caused bodily harm to Sergeant Baker by kicking him

about the body and defendant knew that Sergeant Baker was a peace officer, *i.e.*, a Cook County Department of Corrections officer, performing his official duties. 720 ILCS 5/12-3.05(d)(4) (West 2012)). Defendant contends that the trial court doubted that he kicked Sergeant Baker, as shown by the court's statement that, "though the medical stipulation suggests that it would be difficult for the defendant to do that, based on the officer's description of what happened, I do believe that the defendant could, *perhaps*, kick his legs." He also points to the discussion between the State and the trial court during the State's rebuttal argument as evidence that the trial court was dissatisfied with the State's evidence against him. During that discussion, the court asked the State to explain how defendant kicked the officer when the stipulation presumably indicated that his disease was progressive. The stipulation provided, in relevant part, that damage to the spinal cord often leads to progressive weakness in the arms and legs, stiffness in the back, shoulders, arms or legs, and chronic, severe pain.

¶ 21 We find that the court's comments do not reflect any doubt that defendant was guilty of kicking the officer in the head. In its discussion with and questioning of the State, the court merely asked for an explanation regarding how defendant could kick the officer if the disease was progressive. The State explained there was nothing in the stipulation indicating that, as the disease progressively worsened, defendant "falls into a paralysis" and the stipulation provided that defendant had mobility in his lower extremities and could stand for 30 seconds. The State further noted that there was nothing in the stipulation regarding how severe defendant's pain was, and that the stipulation specifically provided there was no paralysis to any of defendant's limbs. Following this discussion, the court found defendant guilty on the basis that the testimony regarding the kicking was "unrebutted." Given this finding, the necessary inference is that the

State satisfactorily addressed the court's concerns about defendant's physical capabilities as reflected in the stipulation.

¶ 22 Read in context with its finding that the testimony regarding the kicking was unrebutted, the court's comment that defendant could "perhaps" kick his legs reflects that it determined to its satisfaction that, despite the stipulated evidence, defendant was indeed capable of kicking Sergeant Baker. The court made it clear that it had no doubts regarding the sufficiency of the evidence during the hearing on the post-trial motions when it reiterated that it found defendant guilty because of the kicking motion toward Sergeant Baker's head, and stated, "I believe that finding is supported by the evidence." *People v. Virella*, 256 Ill. App. 3d 635, 638-39 (1993) (in deciding whether court misapplied the law, our review of the record extends to the hearing on post-trial motions). In other words, the court found officers Baker and Tiscareno's testimony that defendant kicked Sergeant Baker in the head was not rebutted by the stipulation and defendant was, therefore, guilty of aggravated battery of Sergeant Baker beyond a reasonable doubt.

Accordingly, the court's ruling was not that it doubted defendant's guilt, but rather, that it was convinced of defendant's guilt beyond a reasonable doubt. *Moczarney*, 65 Ill. App. 3d at 415.

¶ 23 In so finding, we are unpersuaded by defendant's reliance on *People v. Warren*, 40 Ill. App. 3d 1008 (1976). In *Warren*, the defendant was convicted of possession of marijuana even though the court made multiple statements that revealed its doubt as to the State's case. The court indicated, *inter alia*, that it was "disturb[e]d" by the State's case and found its account as to how the marijuana was discovered during the course of the traffic stop, *i.e.*, in an open bag in plain view between the defendant's legs on the floor of the car, to be a "fantastic" story. *Id.* at 1009-11. In reversing the conviction, this court concluded:

"while it is evident that the trial judge disbelieved defendant's testimony, it is equally clear from the judge's comments that he found it difficult to believe the police officer's testimony * * * Under circumstances where the trial court, after hearing the evidence, indicates *continuous doubt* as to defendant's guilt, we have no other recourse but to hold that defendant was not proved guilty beyond a reasonable doubt." (Emphasis added.) *Id.* at 1011.

¶ 24 Unlike in *Warren*, the court here neither expressed its general dissatisfaction with the State's case nor overtly expressed its doubt as to the credibility of the witnesses. In fact, the court found testimony regarding the kicking was unrebutted and that this finding was supported by the evidence presented at trial. Accordingly, unlike in *Warren*, there is no evidence that the court had any doubt regarding the sufficiency of the evidence, let alone continuous doubt. Given the court's comments, it is clear that it found defendant guilty beyond a reasonable doubt and did not apply the wrong legal standard. Further, the court's findings are supported by the evidence at trial given the officers' testimony that defendant kicked Sergeant Baker in the head, Sergeant Baker's testimony that he was injured, and the stipulation that there was no diagnoses of paralysis in any of defendant's limbs.

¶ 25 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.