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2016 IL App (3d) 140308-U

Order filed July 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TORLANDO D. McDONALD, Defendant-Appellant.	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois. Appeal No. 3-14-0308 Circuit No. 13-CF-1124 Honorable Kevin Lyons, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved the defendant guilty of harassing a witness beyond a reasonable doubt. We affirm the trial court's ruling.

¶ 2 In March 2014, a Peoria County jury convicted defendant, Torlando McDonald, of two counts of harassing a witness (720 ILCS 5/32-4a(a)(2) (West 2012)), aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), and mob action (720 ILCS 5/25-1(a)(1) (West 2012)). The trial court sentenced him to concurrent prison terms of 14 years, 5 years, and 3 years, respectively.

Defendant appeals, arguing the State failed to prove him guilty of harassing a witness beyond a reasonable doubt. We affirm.

¶ 3 BACKGROUND

¶ 4 In December 2013, the State charged the defendant with harassing a witness, aggravated battery, and mob action. The charges stem from a physical altercation involving the defendant, Akeem Ross, and Reginald Anderson. They were all incarcerated at the time. In November 2013, while they were all being transported to court, defendant and Ross battered Anderson. Shortly before the incident, defendant and Ross made derogatory remarks about Anderson. Anderson believed their comments were in reference to the fact that he had recently testified for the State against another inmate, Tony Harris. Shortly after Anderson heard the comments, the defendant choked him from behind while Ross punched him in the face.

¶ 5 In March 2014, defendant went to trial without Ross, who was later tried separately and convicted. (An appellate court may take judicial notice of government records published on a Web site. *People v. Mitchell*, 403 Ill. App. 3d 707,709 (2010).) The parties stipulated that Anderson testified for the State in Tony Harris's attempted murder trial sometime between November 18, 2013, and November 20, 2013, and that Harris was found guilty.

¶ 6 Anderson testified that he was an inmate in the Peoria County jail in 2013, at times housed in the same pod as the defendant. He said he never had any problems with the defendant before their altercation. Anderson stated that defendant sat directly behind him on the bus, two rows back, while Ross sat directly across the aisle from him. Anderson heard Ross say "trick ass nigger" and someone else he could not identify say "that nigger snitched" from the vicinity of the defendant's seat. Anderson elaborated that these phrases are commonly understood to mean that

person is a “tattletale” and such a label has negative consequences. Anderson saw Ross speaking to the defendant after he heard the comments shouted at him.

¶ 7 Anderson said that moments later, the defendant put his handcuffs over his (Anderson’s) head, pulled the cuffs back against his throat, and held him against the back of the seat while Ross punched him in the face. Once a prison guard noticed the commotion and ordered them to stop, the defendant let him go. Anderson had cuts and scrapes on his neck from the handcuffs and a fractured cheek from Ross’s punch.

¶ 8 A Peoria County corrections officer, Traig Cheney, testified that he was driving the bus the day Anderson was battered. He said there was no video camera on the bus, but there was a video monitor and a large rearview mirror at the front of the bus for the guards to monitor the prisoners. There were approximately 23 prisoners on the bus when Anderson was battered. He heard Anderson scream, looked at the rearview mirror, and saw Ross punching Anderson while standing. Cheney did not overhear any prisoner discussions before Anderson screamed. The parties stipulated that, if called, another Peoria County correctional officer would testify that he saw and heard the same things Cheney did before he ordered the prisoners to stop.

¶ 9 Aharon Bouchez testified that he was a prisoner on the bus with defendant on the day in question. He saw Ross and defendant speaking to each other shortly before the incident, but could not hear what they were saying. Bouchez saw the defendant choke Anderson with his handcuffs and Ross batter Anderson. He did not know Anderson or the defendant and had not had any contact with them either before or after the incident.

¶ 10 Defendant testified on his own behalf. He confirmed that he and Anderson had been housed in the same pod at times prior to this incident and that they never had any problems with each other before the bus ride. Defendant denied knowing who Harris was or ever meeting him.

While he heard a "scuffle" on the bus, he never threatened or battered Anderson. He did not hear anyone else threaten Anderson. Otherwise, he corroborated Anderson's testimony in all other respects. The defendant also stated that he had testified for the State in a 2007 murder case.

¶ 11 In closing arguments, the prosecutor argued that defendant striking and choking Anderson was witness harassment. The prosecutor urged the jury to conclude that there was no motive for the attack aside from Anderson's testimony in the Harris case, which made him a "snitch" in the defendant's eyes.

¶ 12 The jury found defendant guilty on all counts—including two counts of harassing a witness. The trial court sentenced the defendant to 14 years for one count of harassing a witness, 5 years for aggravated battery, and 3 years for mob action.

¶ 13 Defendant appeals his convictions for harassing a witness.

¶ 14 ANALYSIS

¶ 15 It is undisputed that the defendant battered the victim. On appeal, defendant asserts the State did not prove that he specifically intended to harass Anderson because he was a witness and, therefore, did not prove him guilty of harassing a witness beyond a reasonable doubt. Defendant further argues the evidence at trial showed—at most—that he knew Anderson was a "snitch" and this alone is insufficient to prove him guilty beyond a reasonable doubt of harassing a witness. We disagree.

¶ 16 We apply the *Collins* standard when reviewing the sufficiency of the evidence presented at trial. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). As such, the defendant bears a heavy burden. We will only overturn a conviction in such cases if, after viewing the evidence in a light favorable to the prosecution, we conclude that no rational trier of fact could have found the essential elements of the crime. *Id.*

¶ 17 In this case, defendant argues that while battering the victim can be a form of harassment, there was no additional proof submitted at trial that he was harassing Anderson in retaliation for his testimony in the Harris trial. Defendant concedes that Anderson testified in the Harris case, but asserts there was no evidence the defendant knew Harris or that defendant knew Anderson testified at Harris's trial. Thus, he argues, no rational trier of fact could have found him guilty of harassing a witness.

¶ 18 The State argues the evidence overwhelmingly supported defendant's guilt of harassing a witness. The State asserts that not proving that the defendant had any interest in the Harris case or knew Harris is irrelevant, and the jury made a reasonable inference it was entitled to make. The State further argues that given the evidence presented at trial, the jury's verdict was not so unreasonable or improper as to raise a reasonable doubt of the defendant's guilt.

¶ 19 Under section 5/32-4a(a)(2) of the Criminal Code it is a felony for anyone to convey a threat of damage to a witness because that witness' did or will testify in a court proceeding. 720 ILCS 5/32-4a(a)(2) (West 2012). The defendant's "[i]ntent may be inferred from the surrounding circumstances. [Citations.]" *People v. Berg*, 224 Ill. App. 3d 859, 862 (1991). The jury is entitled to make a reasonable inference. Knowledge is rarely proven directly and may be inferred from the surrounding circumstances. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002); *Berg*, 224 Ill. App. 3d at 862. The testimony of a single credible witness is sufficient to sustain a conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 20 At trial, the parties stipulated that Anderson testified in the Harris case and that Harris was convicted two days before the incident. Anderson testified that while being transported, he was battered by Ross and the defendant shortly before hearing people (Ross specifically) make remarks implying they were not happy with him for cooperating with the State. Another inmate,

Bouchez, with no interest in the case, corroborated Anderson's testimony, minus hearing defendant and Ross make derogatory remarks. Considering the evidence at trial, in a light most favorable to the prosecution, a rational trier of fact could have found the defendant guilty of harassing a witness under these circumstances. Thus, we affirm the trial court's conviction.

¶ 21 Defendant further asserts that the most the State proved at trial was that the defendant battered Anderson because he thought he was a "snitch." Defendant claims that by definition a snitch has nothing to do with testifying at trial, rather a snitch involves actions more akin to that of a confidential informant. Thus, the State failed to prove an essential element of the offense and failed to prove him guilty of harassing a witness beyond a reasonable doubt. He claims it is unreasonable to infer that someone with no interest in a case and no connection to a case would specifically intend to harass another person for testifying as a witness in that case. In response, the State asserts that the inmates on the bus knew that the term "snitch" also encompassed those who testified for the State against other inmates, not just those that tell on other inmates in another capacity. We agree with the State.

¶ 22 Defendant's reliance on the semantics of the word snitch is unpersuasive. Both defendant and the victim testified that they coexisted peacefully in the Peoria County jail until two days after Tony Harris's trial concluded. It was entirely reasonable for the jury to infer that both the derogatory comments and physical attack resulted from defendant's disdain for the fact that the victim testified for the State in the Harris trial.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.