2017 IL App (1st) 143523-U

FIRST DIVISION
May 8, 2017

No. 1-14-3523

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CR 7696
	)	
BYRON WILLIS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: The State was not required to prove defendant knew his victim was 60 years of age or older on three of the four aggravated battery counts challenged by defendant. The only count that did require proof of knowledge of the victim's age was merged into another count and no sentence was imposed on that count. Therefore that count is not before us on appeal.

¶ 2 Following a bench trial, defendant Byron Willis was convicted of the aggravated battery of William Rollins, along with various counts of the aggravated domestic battery of Monique

Allen, and unlawful use of a weapon by a felon (UUWF). On appeal, Mr. Willis contends that the State failed to prove his guilt on four of the aggravated battery counts pertaining to Mr. Rollins because, under each of those counts, the State was required to prove that he knew Mr. Rollins was 60 years of age or older at the time of the offense and did not present such proof. We affirm Mr. Willis's conviction for the aggravated battery of Mr. Rollins with respect to count 10, which was the only one of those four counts on which Mr. Willis received a sentence. However, the trial court's findings of guilt on the remaining counts of aggravated battery were merged into its finding of guilt as to count 10 and, as such, Mr. Willis was not sentenced on those counts. Accordingly, we lack jurisdiction to consider whether the State proved Mr. Willis's guilt under any of those counts on which there is no final judgment.

¶ 3 BACKGROUND

¶ 4 Mr. Willis was charged with 27 total counts, including 6 counts of aggravated battery as to William Rollins. Counts 10, 11, and 12 charged Mr. Willis with the aggravated battery of Mr. Rollins under section 12-3.05(a)(4) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.05(a)(4) (West 2012)). Count 20 charged Mr. Willis with the aggravated battery of Mr. Rollins under section 12-3.05(d)(1) of the Code (720 ILCS 5/12-3.05(d)(1) (West 2012)). Counts 23 and 24 charged Mr. Willis with the aggravated battery of Mr. Rollins under section 12-3.05(f)(1) of the Code (720 ILCS 5/12-3.05(f)(1) (West 2012)).

¶ 5 At trial, Monique Allen testified that, in 2013, she rented a room in Mr. Rollins's apartment at 5141 West End Avenue in Chicago. She had known Mr. Willis for two or three years and they were in a dating relationship. Mr. Willis stayed with her at Mr. Rollins's apartment "maybe every other night."

¶ 6 At about 6 p.m. on March 16, 2013, Ms. Allen and Mr. Rollins were in the apartment.

Ms. Allen received a phone call from Mr. Willis, the two argued, and Mr. Willis hung up on Ms. Allen. About an hour later, Ms. Allen and Mr. Rollins were sitting on the couch when Mr. Willis kicked the apartment's back door open. Mr. Rollins left the room, and Ms. Allen remained in the living room.

¶ 7 Mr. Willis picked up a frying pan as he walked through the kitchen and struck Ms. Allen in the face and the back of the head. Mr. Rollins returned to the living room and asked Mr. Willis why he was attacking Ms. Allen. Ms. Allen went into her bedroom, locked the door and called 911; she said she could hear Mr. Willis and Mr. Rollins fighting in the apartment. Mr. Willis kicked in the bedroom door, threw Ms. Allen against the wall and hit her in the head with a cooler. Ms. Allen ran to the kitchen, and Mr. Willis grabbed her by the hair and "threw [her] into the kitchen window." Ms. Allen was dizzy and remained on the floor for 20 to 30 minutes. Mr. Willis returned with a knife and stabbed her in the left buttock.

¶ 8 Ms. Allen testified that Mr. Willis did not have a key to the apartment or pay rent to her or Mr. Rollins and that he did not keep any possessions at the apartment. Mr. Willis began to stay with her at Mr. Rollins's apartment at the end of February, about two weeks before the events that occurred on the evening of March 16, 2013.

¶ 9 Mr. Rollins testified he was born on January 14, 1947, making him 66 years old at the time of the offense. He described Ms. Allen as "a friend of mine through my family members," and said she rented a room from him because she lost her job. Mr. Rollins had known Mr. Willis for about a month before the incident on March 16, 2013. Mr. Willis spent "some nights" at the apartment but did not have a key.

¶ 10 Mr. Rollins testified that he heard Mr. Willis enter the apartment and heard Ms. Allen screaming. After Ms. Allen went into her bedroom, Mr. Rollins and Mr. Willis grappled

momentarily, and Mr. Rollins went downstairs to call the police. Mr. Willis followed Mr. Rollins and stabbed him in the side with a knife. Mr. Rollins testified that, at the time of these events, he walked with a cane due to severe arthritis in his left knee.

¶ 11 Chicago police officer Rodrigo Espinoza testified that he responded to a call for assistance from Mr. Rollins's building and corroborated the victims' injuries. Mr. Willis was arrested four days later.

¶ 12 The parties stipulated that on February 9, 2013, Mr. Willis reported his address to his parole officer as Mr. Rollins's apartment.

¶ 13 In the defense case, Mr. Willis testified that, as of March 16, 2013, Ms. Allen had lived at Mr. Rollins's apartment for 1½ months, and he had known Mr. Rollins for that length of time. He testified that he gave his parole officer the address of Mr. Rollins's apartment as his own address. On the day in question, Mr. Willis stated that he and Ms. Allen argued on the phone. When he arrived at the apartment, Ms. Allen came at him with a knife, and he struck Ms. Allen with a pot and a cooler in self-defense. As Mr. Willis left the apartment, he stabbed Mr. Rollins after Mr. Rollins swung a pry bar at him. Mr. Willis testified that he did not know Mr. Rollins was 60 years of age or older.

¶ 14 The trial court found the testimony of Ms. Allen and Mr. Rollins to be "credible and compelling beyond a reasonable doubt." The court found Mr. Willis guilty of all six counts of aggravated battery as to Mr. Rollins (counts 10, 11, 12, 20, 23, and 24), stating, in part: "As to Counts 10, 11 and 12, aggravated battery of a victim over 60 years old, there's not a question in my mind that the Government has clearly proven that beyond a reasonable doubt." The court ordered all six aggravated battery convictions regarding Mr. Rollins to be merged into Count 10. The court also found Mr. Willis guilty of aggravated domestic battery of Ms. Allen and UUWF.

The court found Mr. Willis not guilty of home invasion, attempted murder, and the aggravated domestic battery of Mr. Rollins.

¶ 15 The trial court determined that Mr. Willis was subject to mandatory Class X sentencing on count 10 due to his criminal background. The court sentenced Mr. Willis to 14 years in prison on count 10 for the aggravated battery of Mr. Rollins and to 6-year terms for the aggravated domestic battery of Ms. Allen and UUWF, with all sentences to be served concurrently.

¶ 16 JURISDICTION

¶ 17 Mr. Willis filed a timely notice of appeal on the same day he was sentenced, October 10, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 18 ANALYSIS

¶ 19 On appeal, Mr. Willis contends that the findings of guilt on counts 10, 11, 12 and 20 for aggravated battery as to Mr. Rollins should be reversed because the provisions of the aggravated battery statute underlying each of those counts required proof of his knowledge that Mr. Rollins was 60 years of age or older. He argues the State did not present sufficient proof that he knew Mr. Rollins's age so as to support the aggravated form of the offense.

¶ 20 Count 10, 11, 12, and 20 were all brought under section 12-3.05 of the Code (720 ILCS 5/12-3.05 (West 2012)) (the aggravated battery statute), which establishes the various forms of the offense of aggravated battery. Counts 10, 11, and 12 were brought under subsection (a) of the aggravated battery statute, titled "Offense based on injury," and specifically subsection (a)(4), which provides that: "A person commits aggravated battery when, in committing a battery other

than by the discharge of a firearm, he knowingly does any of the following: *** causes great bodily harm or permanent disability or disfigurement to an individual 60 years of age or older." 720 ILCS 5/12-3.05(a)(4) (West 2012). Pursuant to that subsection, those three counts charged Mr. Willis with knowingly causing great bodily harm (Count 10), permanent disability (Count 11), and permanent disfigurement (Count 12) to Mr. Rollins, a person 60 years of age or older.

¶ 21 Count 20 was brought under subsection (d) of the aggravated battery statute, titled "Offense based on status of victim," and specifically subsection (d)(1), which provides that: "A person commits aggravated battery when, in committing a battery other than by the discharge of a firearm, he or she knows the individual battered to be any of the following: (1) a person 60 years of age or older." 720 ILCS 5/12-3.05(d)(1) (West 2012).

¶ 22 Mr. Willis argues that under both of those subsections of the aggravated battery statute the State was required to prove that he knew that Mr. Rollins was 60 years of age or older at the time of the offense. The State responds that, with respect to counts 10, 11, and 12, subsection (a)(4) does not include the defendant's knowledge of the victim's age as an element. The State however agrees that, with respect to count 20, subsection (d)(1) did require it to prove Mr. Willis's knowledge of the victim's age, but contends that knowledge was established at trial by circumstantial evidence. We consider Mr. Willis's arguments with respect to each subsection of the aggravated battery statute in turn.

¶ 23 A. Subsection (a)(4) of the Aggravated Battery Statute

¶ 24 The parties' disagreement as to the elements of the offense of aggravated battery under subsection (a)(4) presents an issue of statutory interpretation, which this court reviews *de novo*. See *People v. Tolbert*, 2016 IL 117846, ¶ 12. The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the most reliable indicator of that intent is

the language of the statute, given its plain and ordinary meaning. *People v. Johnson*, 2017 IL 120310, ¶ 15. When analyzing statutory language, we consider the statute in its entirety and remain mindful of the subject addressed by the statute, as well as the legislature's apparent objective in enacting the statute. *People v. Douglas*, 381 Ill. App. 3d 1067, 1070 (2008) (citing *People v. Cordell*, 223 Ill. 2d 380, 389 (2006)).

¶ 25 Subsection (a) of the aggravated battery statute generally provides that a person commits aggravated battery when he or she knowingly commits one of an enumerated series of acts (see 720 ILCS 5/12-3.05(a)(1)-(5) (West 2012)) and, as we noted above, one of those enumerated acts is described as follows: "Causes great bodily harm or permanent disability or disfigurement to an individual 60 years of age or older" (720 ILCS 5/12-3.05(a)(4) (West 2012)).

¶ 26 Mr. Willis contends that because the first portion of subsection (a)(4) specifies a knowing mental state, that mental state should be applied to each element of the offense, including the element that the individual who was harmed was 60 years of age or older. Mr. Willis therefore asserts that subsection (a)(4) required the State to establish both that he knew his action caused great bodily harm, permanent disability, or disfigurement, and that he knew the victim was 60 years of age or older.

¶ 27 Our review of the statute as a whole makes clear that subsection (a)(4) does not require proof of the defendant's knowledge of the victim's age. Section (a) places the word "knowingly" before listing the several different forms of injury that elevate a battery to an aggravated battery. Subsection (a)(3) reads: "Causes great bodily harm or permanent disability or disfigurement to an individual *whom the person knows to be* a" peace officer, fireman or other individual involved in law enforcement or community safety. (Emphasis added.) 720 ILCS 5/12-3.05(a)(3) (West 2012). The insertion of the knowledge requirement in subsection (a)(3), but not in subsection

(a)(4), makes it apparent that the legislature did not intend to require knowledge of the victim's status for a conviction under subsection (a) generally and did not intend to require knowledge of a victim's age under subsection (a)(4). See *People v. Edwards*, 2012 IL 111711, ¶ 27 ("[w]here language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion").

¶ 28 This conclusion is further supported by subsection (d) of the aggravated battery statute, which provides that a person commits aggravated battery "based on the status of the victim" and states: "A person commits aggravated battery when, in committing a battery, *** he or she *knows the individual battered to be* any of the following." (Emphasis added.) 720 ILCS 5/12-3.05(d) (West 2012). In contrast to subsection (a), subsection (d) makes clear that the defendant must have knowledge of the victim's status. Subsection (d)(1) provides that a person commits aggravated battery when, in committing the offense of battery, he or she "*knows* the individual battered to be *** [a] person 60 years of age or older." (Emphasis added.) 720 ILCS 5/12-3.05(d)(1) (West 2012)). Again, the contrast between these two subsections reflects that the legislature did not intend to require knowledge of the victim's age as an element of aggravated battery under subsection (a)(4).

¶ 29 Other decisions of this court provide further support for this conclusion. The subsection now numbered as (d)(1) was amended effective in 2006 to include the element of the defendant's knowledge of the victim's age. Pub. Act 94-327, § 5 (eff. Jan. 1, 2006) (amending 720 ILCS 5/12-4(b)(10) (West 2004), now 720 ILCS 5/12-3.05(d)(1) (West 2012)). In *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 16, this court noted that, under the statute as it read prior to 2006, a person committed aggravated battery if he or she "[k]nowingly and without legal justification and by any means cause[d] bodily harm to an individual of 60 years of age or older." 720 ILCS

5/12-4(b)(10) (West 2004). The court in *Jasoni* observed that in the prior version of the statute, the word "knowingly" modified "cause[d] bodily harm," while the amended version of the statute featured the term "knows" directly before the phrase "the individual battered to be a person 60 years of age or older." *Jasoni*, 2012 IL App (2d) 110217, ¶ 16. See also *People v. Smith*, 2015 IL App (4th) 131020, ¶ 39 (following *Jasoni* and noting that jury instructions should be updated to include the element of the knowledge of the victim's age as required by the amended and renumbered subsection (d)(1)).

¶ 30 A similar issue of statutory interpretation was recently analyzed by this court in *People v. Harris*, 2017 IL App (1st) 140777. In that case, the defendant was charged with aggravated vehicular hijacking, which requires proof both that the offender "knowingly [took] a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force" and, as an aggravating factor, that the victim was a physically handicapped person or a person 60 years of age or over (720 ILCS 5/18-3, 18-4(a)(1) (West 2012)).

¶ 31 On appeal, the defendant asserted that the State did not prove the required mental state under the statute, including his actual knowledge of the victim's age or physical handicap. *Harris*, 2017 IL App (1st) 140777, ¶¶ 27, 30. This court rejected the defendant's contention that the State was required to prove his knowledge of the victim's physical disability or age. Considering the placement of the term "knowingly" immediately before the phrase describing the prohibited act, this court found the "statute does not assign any mental state" to the aggravating circumstances. *Id.* ¶ 44. Furthermore, this court noted the phrasing of the statute was comparable to the prior form of the aggravated battery statute discussed in *Jasoni*. *Id.* ¶¶ 44-46 (citing *Jasoni*, 2012 IL App (2d) 110217, ¶ 14). The *Harris* court concluded that the State was

not required to prove the defendant's knowledge of the aggravating circumstance, holding that "upon commission of the ordinary form of the offense under section 18-3, the presence of the additional circumstances set forth in section 18-4 proves the aggravated form of the offense, regardless of the defendant's knowledge of aggravating circumstances." *Id.* ¶ 47.

¶ 32 In support of his argument, Mr. Willis directs us to section 4-3(b) of the Code, which reads, in pertinent part: "If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element." 720 ILCS 5/4-3(b) (West 2012). As noted above, however, in subsection (a)(4) of the aggravated battery statute, the legislature did distinguish between the proscribed action and the aggravating factor of the victim's age in reference to the requisite mental state.

¶ 33 Mr. Willis also cites to *People v. Hernandez*, 2012 IL App (1st) 092841, which relied on section 4-3(b) of the Code. In *Hernandez*, this court considered the identity theft statute, which stated, in pertinent part, that a person commits that offense when "he or she *knowingly* uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property." (Emphasis added.) *Id*. ¶ 29 (citing 720 ILCS 5/16G-15(a)(1) (West 2008)). Concluding that the State was required to prove that the defendant knew the personal identifying information that was used belonged to another person, this court found in that statute that the adverb "knowingly" modifies the verb "uses" and "also modifies the subsequent phrase of another person." *Id.* ¶ 39. However, as the court recognized in *Hernandez*, this is an issue of statutory construction and the "court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Id.* ¶ 30. In contrast to the identity theft statute, however, for all of the

reasons outlined above, the aggravated battery statute as a whole makes clear that the State is not required to prove that a defendant knew that the victim was 60 years of age or older to sustain a conviction under subsection (a)(4).

¶ 34 For the foregoing reasons, we affirm Mr. Willis's conviction with respect to count 10. As to counts 11 and 12, we note that although those counts require the same mental state as count 10, the findings of guilt on counts 11 and 12 were merged into count 10, the only count on which Mr. Willis received a sentence. Accordingly, there is no final judgment for us to review with respect to counts 11 and 12. *People v. Caballero*, 102 Ill. 2d 23, 51 (1984) ("The final judgment in a criminal case is the sentence, and, in the absence of the imposition of a sentence, an appeal cannot be entertained.")

¶ 35 B. Subsection (d) of the Aggravated Battery Statute

¶ 36 The State acknowledges that it was required to prove Mr. Willis's knowledge of the victim's age as an element under the offense as charged in count 20, which was brought pursuant to subsection (d) of the aggravated battery statute. *Jasoni*, 2012 IL App (2d) 110217, ¶ 18; *Smith*, 2015 IL App (4th) 131020, ¶ 39. However, the finding of guilt on count 20, like the findings of guilt for counts 11 and 12, was merged into count 10, and no sentence was imposed on that count. Accordingly, there is no final judgment for us to review. *Caballero*, 102 Ill. 2d 23, 51 (1984).

¶ 37 Moreover, because Mr. Willis's conviction on count 10 has been affirmed, the narrow situation in which our supreme court has held that we should entertain jurisdiction over an unsentenced conviction is inapplicable here. See *People v. Neely*, 2013 IL App (1st) 120043, ¶ 14 ("the supreme court has also held that this court should entertain jurisdiction where a greater conviction is vacated so that a nonfinal, unsentenced conviction can be reinstated" (citing *People*

v. Dixon, 91 Ill. 2d 346, 353-54 (1982)). Thus, we have no basis for considering Mr. Willis's argument that the evidence at trial was insufficient to prove his knowledge of the victim's age as required under count 20.

¶ 38 Finally, we note that, even if we were to review and reverse the trial court's finding that Mr. Willis was guilty on count 20, it would not impact his sentence. Mr. Willis was not sentenced on that count and there is nothing in the record that suggests the court was influenced by its finding of Mr. Willis's guilt on count 20 in imposing the sentence on count 10.

¶ 39 CONCLUSION

¶ 40 In conclusion, the State was not required to show Mr. Willis's knowledge of Mr. Rollins's age as to the counts charged under subsection (a)(4) of the aggravated battery statute and, as such, we affirm Mr. Willis's conviction with respect to count 10. As to counts 11, 12, and 20, no sentences were imposed on those counts and there are no final judgments for us to review.

¶ 41 Affirmed.