2017 IL App (1st) 150783-U

No. 1-15-0783

Order filed September 6, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 MC6 000361
	)	
DAVID SMITH,	)	Honorable
	)	Kathleen Ann Panozzo,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for battery and disorderly conduct affirmed over his challenges to the sufficiency of the evidence.

¶ 2 Following a bench trial, defendant David Smith was found guilty of misdemeanor battery and disorderly conduct based upon acts he committed while a patient in a hospital emergency room. The trial court sentenced defendant to two years' probation and 10 days in the Cook County Department of Corrections (CCDOC). On appeal, defendant contends that the State

failed to prove him guilty beyond a reasonable doubt of battery because the evidence showed that his actions were involuntary and in direct response to the medical emergency he was undergoing at that time. Defendant also contends that the State failed to prove him guilty beyond a reasonable doubt of disorderly conduct because there was no evidence that his yelling provoked a breach of the peace, or that his conduct was unreasonable under the circumstances. We affirm.

¶ 3 Defendant was tried on two counts of battery for making physical conduct of an insulting nature with two hospital security officers, and one count of disorderly conduct for shouting and yelling threats to one of those officers. At trial, security officer Quentin Grupp testified that about 5 a.m. on December 30, 2012, he reported to the emergency room at Franciscan St. James Hospital in Olympia Fields to respond to a possibly combative and uncooperative patient arriving in an ambulance. The paramedics had called the hospital while en route and requested assistance from security.

¶ 4 As the paramedics removed defendant from the ambulance, he was yelling that he did not want to be at that particular hospital. Grupp testified that "the charge nurse determined his condition wasn't life threatening." Consequently, defendant was transported on a gurney through the emergency room to the triage area to be evaluated by a nurse and to wait for an exam room to become available. Grupp never heard defendant say that he needed to see a doctor because he could not breathe, and he did not appear to be having difficulty breathing. He was not receiving oxygen and did not complain that something was stuck in this throat. Grupp did not recall whether he was coughing. Defendant was yelling the entire time he was wheeled through the emergency room, a distance of about 100 yards. Grupp added "[s]o he was breathing."

¶ 5 In triage, defendant was told that he had to wait to see a doctor, and that he needed to register. Defendant continued yelling that he did not want to be at that hospital. Grupp told him to be quiet and calm down. There were other patients about 15 to 18 feet from defendant. When Grupp directed defendant to transfer from the gurney to a wheelchair, defendant refused to get off the gurney. Grupp and the paramedics then moved defendant to the wheelchair. Grupp called for assistance and security officer Larry Szpejnowski arrived.

¶ 6 Defendant continued being "aggressive and yelling," and began swinging. Defendant grabbed Grupp's sweater by the collar and pulled him down. Grupp and Szpejnowski tried to keep defendant in the wheelchair, but he pushed the chair with his feet and slid to the ground. Grupp and Szpejnowski handcuffed defendant, and Szpejnowski called police. Grupp denied that he ever struck defendant, and he did not see Szpejnowski strike defendant.

¶ 7 Grupp testified that he could not recall exactly what defendant was yelling while he was in the wheelchair, but he used profane language towards Grupp that was of a "real abusive, aggressive nature." Defendant told Grupp that he was going to sue him and that he "better have a good lawyer." After defendant was handcuffed, Grupp noticed a strong odor of alcohol. The police arrived and took defendant into custody, placing him in the back of their squad car.

¶ 8 Security officer Larry Szpejnowski responded to Grupp's call for assistance and observed defendant being "loud and boisterous," yelling and swinging his arms, attempting to get out of the wheelchair. Grupp was standing to the side of the chair, trying to keep defendant seated by holding onto his shoulder. Szpejnowski went to the other side of the wheelchair and also tried to hold defendant in. Defendant was hanging onto Grupp, then took a swing at Szpejnowski and grabbed his shirt. Szpejnowski denied striking defendant and did not see Grupp strike him.

Szpejnowski did not recall defendant asking to see a doctor immediately, nor did he recall him saying that he was having trouble breathing. He did say that he wanted some type of medication. Szpejnowski and Grupp wrestled defendant to the ground, handcuffed him, and called police.

¶ 9 Olympia Fields police officer Michael Smith arrived at the emergency room and observed defendant sitting on the floor being loud and aggressive, yelling and screaming at the staff. Defendant yelled that he was going to sue the hospital, and that he should not be in handcuffs or going to jail. Defendant was not yelling that he needed immediate treatment. Smith walked defendant to the squad car, placed him in the rear of the vehicle, and transported him to the police station. Defendant was quiet in the car, but became loud again when they arrived at the station. Defendant never told Smith that he needed medical treatment, but said that he needed his medication. Smith did not recall defendant coughing, but smelled alcohol on his breath.

¶ 10 Defendant's roommate, Michael Fischer, testified for the defense that he was with defendant on the night of the incident, but remembered "very little." After they arrived home from a bowling alley, defendant started choking and coughing, and had trouble breathing. Defendant's brother called an ambulance, which transported defendant to the hospital.

¶ 11 Fischer arrived at the hospital before defendant, and while waiting in triage, he heard "a loud ruckus noise," which may have been defendant yelling. When defendant was wheeled to triage, he was waving his hand and yelling that he needed to go to the back because he was not breathing right. Two security officers stood on each side of defendant and held him down on the gurney by his shoulders. Defendant continued waving towards the emergency room and yelling that he wanted to go there. One of the officers then punched defendant in the stomach. Defendant had been coughing up until that moment.

¶ 12 The security officers pulled defendant off of the gurney and wrestled with him on the floor. Fischer testified that defendant was never placed in a wheelchair. One of the officers got on top of defendant, and defendant tried to get away. He pushed the officers but did not swing at them. The police arrived, handcuffed defendant, and took him into custody. Fischer described defendant as being "loud" and "disturbing." He acknowledged that defendant's behavior was "disruptive," but testified that no one else was present in the triage area.

¶ 13 Defendant testified that he drank two beers over four hours at the bowling alley. When he arrived home, he had a few sips of beer when something became caught in his throat. It bothered his breathing and he began coughing. His attempts to dislodge the irritation by coughing were unsuccessful, and his brother called for an ambulance. Defendant told the paramedics that he was choking, could not breathe, and could not stop coughing. He requested to go to the hospital in Olympia Fields because that is where his doctors were located. He denied having any problems or struggle with the paramedics.

¶ 14 When he arrived at the hospital, defendant was still coughing and had difficulty breathing. The paramedics wheeled him inside, and someone said "triage." Defendant stated that he needed to see a doctor and pointed to the exam area in the emergency room. The paramedics wheeled him past the exam area and said something about triage and registering first. Defendant was still choking and again pointed to the exam area and said he needed to go there because he could not breathe. Two security officers approached him, and one of them grabbed his arm and held it down. The other officer grabbed his legs and other arm. Defendant told them that he could not breathe and needed to see a doctor. One of the officers then punched him in the stomach. Defendant began breathing "a little bit better but not much."

¶ 15 Defendant began panicking because the officers were sitting on him and he could not breathe. He felt like he was being smothered by one of the officers and tried to push him away. The officers then slid him from the gurney into a wheelchair and took him to the waiting room. The officers continued forcing themselves on him. Defendant was afraid and tried to get away from them by pushing the wheelchair backwards with his feet. Defendant slid out of the wheelchair and onto the floor. He also testified that the officers dragged him out of the wheelchair and pinned him down on the floor. He wrestled with them and tried to push them away because he was still coughing and trying to breathe. A police officer then handcuffed him.

¶ 16 Defendant denied swinging at the security officers, but acknowledged that he made contact with one of them. Defendant testified "I held his shirt and kind of held on to it so that way he couldn't swing at me to hit me. Because I pulled him down. So he couldn't get his arm up to hit me again."

¶ 17 Defendant was still coughing while being escorted to the squad car. He told the officer that he was having difficulty breathing, but his breathing was better. Defendant denied telling Grupp that he was going to sue him.

¶ 18 The trial court found all of the State's witnesses credible and consistent with each other. The court found that defendant's testimony was not credible, not reasonable, and did not make any sense. It also found Fischer's testimony was contrary to everyone else, including defendant. The court further found that the evidence showed that defendant's condition was not life-threatening because he was taken to triage rather than being rushed into an exam room, and he left the hospital and was taken to the police station without receiving any treatment and without

any further incident. The court stated that everyone acted reasonably, except for defendant, who was the only person who was aggressive and out of control.

¶ 19 The trial court found defendant not guilty of battery against Szpejnowski because there was no testimony that he made contact with that officer. The court found defendant guilty of battery against Grupp, noting "Defendant even admitted on the stand that he had grabbed Mr. Grupp by the collar." The court also found defendant guilty of disorderly conduct, stating that he was "[d]isturbed and alarmed and caused a breach of the peace." The trial court sentenced defendant to two years' probation and 10 days in the CCDOC.

¶ 20 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of both battery and disorderly conduct. When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 21 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not

reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 22 Defendant first contends that the State failed to prove him guilty of battery because the evidence showed that his actions were involuntary and in direct response to the serious medical emergency he was undergoing at that moment. Defendant argues that his unrebutted testimony established that he was choking, struggling to breathe, and in a panic when he took the reckless and desperate action of pulling on Grupp's shirt.

¶ 23 To prove defendant guilty of battery in this case, the State was required to show that he intentionally or knowingly made physical contact of an insulting nature with Grupp by placing his hands on Grupp in an aggressive and combative nature. 720 ILCS 5/12-3(a)(2) (West 2012). A person acts intentionally when his conscious objective or purpose is to accomplish the result or engage in the conduct described by the statute defining the offense. 720 ILCS 5/4-4 (West 2012). He acts knowingly when he is consciously aware that his conduct is practically certain to cause the result proscribed by the offense. 720 ILCS 5/4-5(b) (West 2012).

¶ 24 Defendant's actions also must have been voluntary. 720 ILCS 5/4-1 (West 2012). A person cannot be held criminally responsible for an involuntary act, including body movements that are not controlled by a conscious mind such as those committed during sleep, unconsciousness, convulsions or seizures. *People v. Grant*, 71 Ill. 2d 551, 558 (1978). Acts that result from a reflex, or are not the product of defendant's effort or determination, are also considered involuntary. *People v. Martino*, 2012 IL App (2d) 101244, ¶ 13. A cornerstone of the

defense of involuntary conduct is that defendant lacked the volition to control or prevent his conduct. *Grant*, 71 Ill. 2d at 558.

¶ 25 Here, viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find defendant guilty of battery. Defendant's own testimony established that his act of grabbing Grupp's shirt was not involuntary, but instead, was a voluntary and intentional act of which he was consciously aware. Defendant testified "I held his shirt and kind of held on to it so that way he couldn't swing at me to hit me. Because I pulled him down. So he couldn't get his arm up to hit me again." Defendant's testimony shows that he had a conscious objective or purpose to grab hold of Grupp's shirt and pull him down, and thus, he acted intentionally.

¶ 26 We find no evidence in the record to support defendant's claim that his act was an involuntary result of a medical emergency. Grabbing Grupp's shirt was not an uncontrolled reflex or unconscious body movement as one might experience when suffering a seizure or other medical episode. The record shows that defendant was alert and in full control of his conduct and actions. Defendant was combative, aggressive and belligerent from the moment he arrived at the hospital, and likely even before as the paramedics called the hospital to request assistance from security upon their arrival.

¶ 27 Moreover, defendant's claim that he acted in a panic because he could not breathe was contradicted by the State's witnesses who testified that he never said he was having difficulty breathing, nor did he appear to be experiencing such difficulty. Instead, he was continuously yelling throughout the incident. The trial court found the State's witnesses credible and consistent, and found defendant's testimony not credible and nonsensical. The court also found

that defendant's condition was not life-threatening, noting that he was taken to triage rather than being rushed into an exam room, and that he left the hospital without receiving treatment and without any further incident. The record supports the trial court's finding that defendant was proven guilty of battery, and we find no reason to disturb that determination.

¶ 28 Defendant also contends that the State failed to prove him guilty of disorderly conduct because there was no evidence that his yelling provoked a breach of the peace. Defendant claims that yelling and shouting in an emergency room does not breach the peace because it is not a quiet and peaceful environment, but instead, is a chaotic setting where patients are routinely yelling in pain and distress. Defendant also argues that his conduct was not unreasonable due to his serious medical condition and need for medical attention. Finally, defendant argues that there is no evidence that he yelled actual threats at Grupp as alleged in the complaint. He asserts that his statement that he was going to sue was not a threat, but an expression of his intent to do something that was lawfully within his rights.

¶ 29 As a threshold matter, defendant asserts that this court should exercise *de novo* review for this issue rather than applying the sufficiency of the evidence standard because he is not challenging the credibility of the witnesses, but instead, is questioning whether the uncontested facts were sufficient to prove the elements of the offense. See *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). The State responds that *de novo* review is not appropriate because defendant's argument that he did not threaten Grupp is a challenge to the facts of this case. We agree with the State that there is a factual dispute as to whether or not defendant threatened Grupp, and therefore, *de novo* review is not appropriate. *People v. Salinas*, 347 Ill. App. 3d 867, 879-80 (2004).

¶ 30 To prove defendant guilty of disorderly conduct in this case, the State was required to show that defendant knowingly shouted and yelled threats to Grupp in such an unreasonable manner as to alarm and disturb him and provoke a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2012). Generally, to constitute a breach of the peace, defendant's conduct must threaten another person or have an effect on the surrounding crowd. *People v. McLennon,* 2011 IL App (2d) 091299, ¶ 31. When determining whether a breach of the peace occurred, the context of the conduct is important. *Id.* However, it is not necessary that the act occurred in public. *Id.* In addition, to determine whether defendant's conduct was reasonable, the court considers his conduct in relation to the surrounding circumstances. *Id.* ¶ 32. The main purpose of the disorderly conduct offense is to guard against the invasion of a person's right not to be molested or harassed, mentally or physically, without justification. *Id.* ¶ 35 (citing *People v. Davis*, 82 Ill. 2d 534, 538 (1980)).

¶ 31 Here, viewed in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find defendant guilty of disorderly conduct. Defendant's conduct of yelling, acting aggressively, swinging his arms, refusing to comply with Grupp's directions to calm down and transfer into the wheelchair, and grabbing hold of Grupp's shirt and pulling him down was conduct which harassed Grupp and threatened his safety. Defendant's conduct also threatened the safety of Szpejnowski, who assisted Grupp as he attempted to keep control of defendant. Furthermore, Grupp testified that there were other patients in the triage area just 15 to 18 feet away from defendant during this incident. Defendant's loud and aggressive conduct would have also affected these patients, possibly threatening their safety. The evidence therefore established that defendant's conduct constituted a breach of the peace.

¶ 32 We find no merit in defendant's argument that his conduct was reasonable due to his medical condition and need for medical attention. As discussed above, the trial court found that, contrary to defendant's assertion, his medical condition was not life-threatening. He left the hospital without receiving any treatment and without any further incident. In addition, the State's witnesses, whom the court found credible, testified that defendant never complained that he could not breathe, and he did not appear to be having any difficulty breathing. The record thereby contradicts defendant's claim that he was suffering a serious medical emergency, and thus, his assertion that his conduct was reasonable on that basis is unpersuasive.

¶ 33 Finally, we reject defendant's claim that he was not proven guilty of the offense as charged because there was no evidence that he yelled actual threats at Grupp. The complaint alleged that defendant committed disorderly conduct when he knowingly shouted and yelled threats to Grupp. Grupp testified that although he could not recall defendant's exact words, defendant used profane language towards him that was of a "real abusive, aggressive nature." Defendant also told Grupp that he was going to sue him and that he "better have a good lawyer." We find no merit in defendant's claim that this statement was not a threat. Defendant made this statement while using profane, abusive and aggressive language toward Grupp. The record also shows that defendant's conduct at this time was aggressive and combative, and he had grabbed Grupp's shirt and pulled him down. Based on the context and circumstances, we find that the statement did constitute a threat. Accordingly, the record supports the trial court's finding that defendant was proven guilty of disorderly conduct.

¶ 34 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.