2017 IL App (1st) 150842-U

No. 1-15-0842

Order filed May 12, 2017

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 12 CR 21675
	)	
CLAUDE BOWEN,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm defendant's conviction for aggravated battery over his contention that the State failed to prove him guilty beyond a reasonable doubt, where the trial court determined that evidence that defendant slapped the victim was credible.

¶ 2 Following a bench trial, defendant Claude Bowen was convicted of aggravated battery (720 ILCS 5/12-3.05(d)(1) (West 2012)) and sentenced to two years of probation, 70 hours of community service, and five days of Sheriff's Work Alternative Program (SWAP). On appeal,

defendant contends that the State failed to prove him guilty beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3 Defendant was charged with four counts of aggravated battery of the victim, 92-year-old John Fort, a resident at the Park House Nursing Home (Park House) where defendant was employed. Prior to trial, the State entered a *nolle prosequi* on counts 1 and 3, which related to aggravated battery resulting in bodily harm and aggravated battery by strangulation. The remaining aggravated battery charges stemmed from insulting and provoking contact with someone over the age of 60 (count 2) and strangulation of someone over the age of 60 (count 4).

¶ 4 At trial, Raysteen O'Connor testified for the State that she is a licensed practical nurse (LPN) at Park House and was defendant's supervisor. At approximately 7:45 p.m. on October 25, 2012, O'Connor was in Fort's room with defendant to give Fort medication and an injection of heparin, a blood thinner. Fort was wheelchair-bound and suffered from dementia. O'Connor did not have trouble administering Fort's medication and injection. Fort did not kick or swing at her. After administering Fort's medication, O'Connor left his room and went to the nurse's station. Although she did not recall why, O'Connor returned to Fort's room shortly thereafter.

¶ 5 When O'Connor returned to Fort's room, she observed defendant slap Fort's face twice. Fort was sitting in his bed, and O'Connor heard the sound of the slaps. She did not observe Fort swing or kick at defendant, but she heard defendant say "m***." O'Connor then observed defendant put both hands on Fort's neck, squeeze him, and drag him up. She asked defendant what he was doing and told him to vacate the room. After defendant left, O'Connor checked Fort for injuries and noticed that he was agitated. She then informed her supervisor about the incident and notified the other nurse on duty. O'Connor did not "have issues" with defendant prior to the incident.

¶ 6 On cross-examination, O'Connor testified that Fort was on "fall protection" because he had a history of falls. Because of his risk of falling, Fort's bed was in a low position. O'Connor spoke with police the day after the incident and informed Detective Pamela Childs that Fort suffered from dementia and believed he could leave the facility. She denied telling Detective Childs that she initially left Fort's room to obtain a sedative because Fort was agitated. She could not recall whether she told police that defendant said "m***." O'Connor acknowledged that Fort had no redness, swelling, bruising, or marks when she checked him after witnessing the encounter with defendant. She further acknowledged that she did not call police the night of the incident.

¶ 7 The parties stipulated that on October 25, 2012, Fort was 92 years old. After the State rested, defendant moved for a directed finding on count 4, aggravated battery by strangulation. The court directed a finding on count 4, finding that the State failed to prove that defendant intentionally impeded Fort's normal breathing or circulation of blood.

¶ 8 Cawonda Wilson testified for the defense that she works at Park House as an LPN. Wilson conducted Fort's physical therapy five days a week and stated that Fort is a high risk for falls and tends to get out of his wheelchair without assistance. For safety purposes, Fort is required to wear a seatbelt in his wheelchair and needs a mat on the floor next to his bed.

¶ 9 Sandra Thomas, defendant's fiancée, testified that she spoke on the phone with defendant on October 25, 2012 in the evening when she got off work. While they were on the phone, defendant told her to hold on, and she heard him tell a patient, "It's time for you to go to bed." Thomas then heard a female voice say, "Claude, you know I'm going to have to write you up for that." Thomas testified that the voice was not angry and she did not hear any swearing.

¶ 10 The parties stipulated that if called, Marissa Figueroa, an investigator for the Cook County Public Defender's Office, would testify that she went to Park House to take photographs and measurements. In the course of completing her investigation, she photographed a room at Park House, which displayed an example of a low bed. The bed measured 14.5 inches from the ground to the top of the mattress.

¶ 11 Defendant testified that he is 53 years old and was honorably discharged from the Navy. After his service, defendant became a certified nursing assistant (CNA) and worked in nursing homes. In 2012, defendant worked at Park House as a CNA and had been caring for Fort for approximately five to six months. Defendant took care of Fort by cleaning him up for dinner, feeding him, and taking him to and from the activity hall. He additionally showered Fort and put him to bed. Defendant "affectionately" referred to Fort as "Pop," and the two discussed their prior military experiences. Defendant knew that Fort suffered from dementia and Alzheimer's disease.

¶ 12 On October 25, 2012, defendant was taking care of Fort. Fort was disoriented that evening because he has sundowning Alzheimer's, which means he gets confused at night. After defendant undressed Fort, O'Connor entered the room to give Fort an injection of heparin, which made Fort bruise easily. Two persons were needed to administer the injection because Fort was agitated. Defendant helped Fort lay down on the bed and held his arms, but told O'Connor to wait to give Fort the injection because of his agitation. However, O'Connor gave Fort the injection without waiting. When O'Connor inserted the needle, Fort yelled, "[Y]ou're trying to kill me. You MFs are trying to kill me." Fort then kicked O'Connor in the forehead and she fell backwards. The needle remained in Fort's leg, and Fort was "very, very, very highly irate."

Defendant told O'Connor that she should have waited to give Fort his injection. He then asked O'Connor to check whether a sedative was available for Fort.

¶ 13 After O'Connor left the room, defendant stood over Fort to ensure he did not fall to the ground. Thomas called, and defendant asked her to hold on and placed his telephone on the nightstand. Defendant grabbed Fort's legs and said, "Pops, you have to lay down now." Fort was sitting on the bed, but sliding toward the edge, so defendant attempted to move Fort's legs onto the bed. Because defendant is six feet tall, he had to bend over to grab Fort's legs. When defendant bent over, Fort grabbed his collar and yanked him down. Defendant put his left hand on Fort's collar and his right hand out to prevent Fort from hitting him but denied putting his hand around Fort's neck. Defendant described the interaction as a "tug-of-war" where defendant tried to remove Fort's hand and prevent Fort from swinging at him. He denied touching Fort's face or slapping him.

¶ 14 O'Connor reentered the room when defendant's left hand was on his collar over Fort's hand and his right hand was on Fort's chest, and said, "Claude, I'm going to have to write you up." Defendant asked why and attempted to explain that Fort was grabbing him. O'Connor then left the room and told a psychologist, security, and the other nursing staff that defendant was in Fort's room. She did not tell defendant to leave Fort alone. Defendant was arrested a week later.

¶ 15 On cross-examination, defendant testified Fort is approximately 5′3″ or 5′4″. Defendant spoke with Detective Struck on November 3, 2012, but he did not recall telling the detective that Fort was trying to punch O'Connor. Defendant acknowledged that he was later fired from Park House.

¶ 16 On redirect, defendant testified that he took Thomas's call that night because she suffers from seizures and he always answers her calls in case she has a medical emergency.

¶ 17 O'Connor testified in rebuttal for the State that Fort did not yell that anyone was trying to kill him when she administered his injection. She denied that Fort kicked her in the face and did not see Fort grab defendant's collar. O'Connor further denied telling defendant that she was going to write him up. On cross-examination, O'Connor testified that she left the room after administering Fort's injection. She denied leaving the room to get a sedative and stated that she did not have a reason for returning to Fort's room.

¶ 18 The parties stipulated that Detective Pamela Childs, if called, would testify that on November 2, 2012 at the police station, O'Connor told her that Fort was confused and she left his room to get a sedative because of his agitation. She would additionally testify that she was present on November 3, 2012 at 2 p.m. when defendant told detectives that Fort attempted to kick and punch O'Connor.

¶ 19 Following arguments, the trial court found defendant guilty of aggravated battery of Fort. The court found that O'Connor was credible and defendant's testimony was contradictory to O'Connor's testimony. In finding defendant guilty, the court found that defendant's testimony was not credible. The court noted that defendant took a phone call in the middle of treating a patient, had his fiancée call him rather than 9-1-1 in the case of an emergency, and testified that the contact resulted from a struggle between himself and a frail, 92-year-old man. Defendant subsequently moved for a new trial, alleging that the State failed to prove him guilty beyond a reasonable doubt. The trial court denied defendant's motion, and sentenced him to two years of probation, 70 hours of community service, and five days of SWAP. This appeal followed.

¶ 20 On appeal, defendant contends that the evidence was insufficient to convict him of aggravated battery. The State responds that they proved defendant guilty beyond a reasonable

doubt because the evidence established that defendant slapped 92-year-old Fort, called him a derogatory name, and pulled him up by his neck.

¶ 21 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 22 It is well established that "the testimony of a single credible witness, even if it is contradicted by the defendant, may be sufficient to sustain a conviction." *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 45. Further, it is within the province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Siguenza-Brito*, 235 Ill. 2d at 228. A defendant's claim that a witness was not credible, standing alone, is insufficient to reverse a conviction. *Id.*

¶ 23 To prove aggravated battery, the State must first establish that the defendant committed a battery. 720 ILCS 5/12-3.05(d) (West 2012). A defendant commits battery if he "knowingly without legal justification by any means *** makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a)(2) (West 2012). A defendant commits

aggravated battery if he knew that the victim was over 60 years of age or older. 720 ILCS 5/12-3.05(d)(1) (West 2012).

¶ 24 Here, defendant does not dispute that he made physical contact with Fort, an individual over 60 years old. Rather, defendant argues that he did not slap Fort, but instead made physical contact with Fort while attempting to prevent Fort from hitting him, and O'Connor misconstrued the situation. Thus, according to defendant, his version of the incident was more credible than O'Connor's, and the evidence did not establish beyond a reasonable doubt that his physical contact with Fort was of an insulting or provoking nature.

¶ 25 Here, defendant essentially asks us to overturn the trial court's credibility determination, which we decline to do. See *Siguenza-Brito*, 235 Ill. 2d at 228. While defendant testified that he was engaged in a struggle with Fort in order to prevent Fort from pulling him down and swinging at him, the trial court, as trier of fact, having heard the testimony, was in the best position to weigh the evidence and determine witness credibility. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court stated on the record that O'Connor's testimony was credible and that it did not believe defendant's "tug-of-war" version of the incident, given that Fort was a frail, 92-year-old man.

¶ 26 Furthermore, O'Connor's testimony was sufficient to prove defendant's contact with Fort was insulting or provoking. *Fultz*, 2012 IL App (2d) 101101, ¶ 45. In determining whether the defendant's contact was insulting or provoking, the trier of fact may consider "the context in which [his] contact occurred." *Fultz*, 2012 IL App (2d) 101101, ¶ 49; see also *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55 ("[t]he victim does not have to testify [that] he *** was provoked; the trier of fact can make that inference from the victim's reaction at the time").

¶ 27 In this case, O'Connor testified that she witnessed defendant, who was in charge of caring for Fort, slap Fort twice and drag him up by his neck while saying "m***." She further testified that Fort was agitated after the incident. O'Connor's account could have led the trier of fact to reasonably conclude that defendant's acts of slapping and dragging Fort were of an insulting or provoking nature. Illinois courts have previously held that less extreme behavior was insulting or provoking. See *People v. DeRosario*, 397 Ill. App. 3d 332, 332-34 (2009) (contact was insulting or provoking where the defendant's "right knee touched [the victim's] back through [a] chair, and his left knee touched her hip" because it occurred in the context of a failed relationship and the room was not crowded); *People v. Peck*, 260 Ill. App. 3d 812, 814-15 (1994) (where spitting in a police officer's face "clearly amount[ed] to insulting or provoking contact").

¶ 28 Additionally, we reject defendant's contention that, had he slapped or dragged Fort by his neck, there would have been a bruise or mark. We first note that whether or not a mark would have resulted is an inference to be drawn from the evidence, and whether to draw that inference is an issue for the trier of fact. *People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007) (quoting *People v. McDonald*, 168 Ill. 2d 420, 447 (1995) (" 'Where evidence is presented and such evidence is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution.' ")) We further note that insulting or provoking contact does not require that the victim suffer harm or sustain injuries. *DeRosario*, 397 Ill. App. 3d 334. Thus, we find that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated battery.

¶ 29 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.