

2017 IL App (1st) 160148-U

No. 1-16-0148

Order filed December 27, 2017

Third 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

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 15 CR 2880
)	
TOM JAMES,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for aggravated battery by strangulation causing great bodily harm.

¶ 2 Following a bench trial, defendant Tom James was found guilty of two counts of aggravated battery. He was sentenced to four years in prison for the class 1 offense of aggravated battery by strangulation causing great bodily harm. On appeal, defendant contends that the State did not prove beyond a reasonable doubt that the strangulation caused great bodily harm.

Accordingly, he contends that his conviction should be reduced to the class 3 version of the offense. We affirm.

¶ 3 Defendant's convictions arose from the January 13, 2015 strangulation and beating of Christopher Seals. Defendant was charged with, *inter alia*, two counts of aggravated battery. Specifically, count 3 alleged that defendant committed aggravated battery by strangulation (720 ILCS 5/12-3.05(a)(5) (West 2014)), and count 4 alleged that defendant committed aggravated battery in that he knowingly caused great bodily harm to Seals (720 ILCS 5/12-3.05(a)(1) (West 2014)). The matter proceeded to a bench trial.

¶ 4 At trial, Christopher Seals testified that he was previously in a dating relationship with Septima Wright. In December 2014, Wright gave birth to a child and told Seals that he was the biological father. Although Seals learned, in January 2015, that he was not the child's biological father, he maintained a friendship with Wright. Wright also had children with defendant.

¶ 5 On January 13, 2015, Seals went to Wright's home. At one point, the buzzer rang and Wright left to see who it was. When Seals heard a light knock on the door, he opened it. Seals observed Wright and defendant. Wright, who had her back toward the door, was telling defendant that he could not come in. Defendant then asked Seals "what the f***" he was doing there. Seals did not say anything. Defendant pushed Wright out of the way, "charg[ed]" Seals with his hands open and grabbed Seals around the neck with one hand.

¶ 6 Seals testified that defendant "wrapped" one hand around his neck and "started squeezing." Seals could not breathe and felt "dazed and unconscious." Defendant then began punching Seals with the hand that was not holding his neck. Defendant next pushed Seals to the ground and began to kick him in the face. Seals was kicked "a lot of times" and lost

consciousness. When Wright tried to cover him and told defendant to stop, defendant began “stomping” her. At one point, defendant stopped, and walked toward the door. However, he then turned around and began to kick and hit Seals again. After defendant left, Seals was taken to a hospital. He remained hospitalized for three days. As a result of this incident, both of Seals’ jaw bones were broken and his mouth was wired shut for a month. He also had bruising on the neck and arms, and a black eye.

¶ 7 Septima Wright testified that she shared three children with defendant, including the child born in December 2014. When Wright exited her apartment to see who rang the buzzer, she observed defendant exiting the elevator. Wright told defendant that he could not come in. She did not remember telling a police officer and assistant State’s Attorney (ASA) that defendant asked her if Seals was in her apartment. Wright testified that defendant knocked on the door and Seals answered it. She and defendant then walked inside and defendant went to the children’s room. When defendant returned, he pushed her out of the way and “tried to get to” Seals. She denied telling a police officer and an ASA that defendant pushed her aside and entered the apartment. After pushing her out of the way, defendant hit Seals in the back. Seals fell to the ground and she got on top of him to protect him. As defendant punched and kicked Seals, some of the blows hit her. When Seals stood up, defendant hit him in the jaw and he fell to the ground.

¶ 8 Detective David Cavazos testified that he was present, alongside two ASAs, when Wright made a written statement on January 29, 2015. In the statement, Wright stated that defendant asked her if Seals was in the apartment, that she told defendant he could not come in, and that defendant pushed her out of the way and entered the apartment.

¶ 9 The parties stipulated that reports from Roseland Hospital and Mt. Sinai Hospital indicated that Seals was treated, and denied a loss of consciousness. The parties also stipulated that Dr. Ryan Sullivan would testify, if called to testify, that he treated Seals and diagnosed Seals with a “transverse fracture of the right aspect of the mandible, along the posterior molar and a left sided fracture through the body of the mandible.”

¶ 10 In finding defendant guilty of two counts of aggravated battery, the trial court noted the stipulation as to the “harm that was done, specifically as to Count 4, the great bodily harm, causing broken facial bones.” Defendant then filed a motion for a new trial. After that motion was denied, defendant filed an amended motion for a new trial.

¶ 11 At a hearing on the motion, the defense argued, in pertinent part, the “the aggravated battery (strangulation) is not a Class 1 because in itself [it] caused no bodily harm and bodily harm is not alleged in that count.” The court responded that it was “more *** of a sentencing issue as opposed to the new trial issue.” The defense then argued:

“Count 3 simply stated that he in committing a battery strangled Christopher Seals; to wit, grabbed him about the neck and applied pressure. Your Honor, the statutory enhancement to a Class 1 requires that *** great bodily harm *** be caused by it ***. It’s a little hard to see how a statutory enhancement regarding bodily harm would apply to Count 3 when there is no evidence to indicate that great bodily harm was caused by the strangulation as opposed to by the kicking which is referred to in Count 4 and because Count 3 fails to allege itself bodily harm *** the harm from the strangulation has neither been pled nor proved.”

¶ 12 That State responded that “under the totality of the circumstances,” Seals’ jaw was broken and he lost consciousness while being kicked and beaten. The State argued that losing consciousness in and of itself “can be construed as great bodily harm” and the “resulting broken bones” sustained as a result of the “entire attack,” including the “strangulation could certainly be found *** to be enough to elevate this under that statute to a Class 1 felony.” The defense responded that the broken jaw was not caused by the strangulation.

¶ 13 The court then found:

“In looking at the statutory definition of the offense, offense means a violation of any penal statute of this State ***. The violation of the penal statute would be the aggravated battery charge and the various subdivisions. *** I believe this is just one act of aggravated battery involving different theories of it and respectfully I think this—although it is not alleged—I think that based on the combination of the two charges that that would be sufficient notice and I feel that as far as Count 3 in reading the offense as being the continuing offense of aggravated battery, the enhancement would apply.”

¶ 14 The trial court sentenced defendant to four years in prison for the class 1 offense of aggravated battery by strangulation causing great bodily harm.

¶ 15 On appeal, defendant contends that the State failed to establish, beyond a reasonable doubt, that the strangulation caused Seals great bodily harm. He therefore contends that his conviction must be reduced to the class 3 version of the offense.

¶ 16 As an initial matter, we must address the standard of review. Defendant contends that *de novo* review of his claim is appropriate because it involves statutory construction. We disagree, viewing defendant’s argument as a challenge to the sufficiency of the evidence to prove an

element of the offense. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005). When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing 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. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id.*

¶ 17 To sustain defendant's conviction for aggravated battery, the State was required to prove beyond a reasonable doubt that, in committing a battery, defendant strangled another individual. 720 ILCS 5/12—3.05(a)(5) (West 2014). To prove the class 1 version of the offense, the State was further required to establish that defendant "caused great bodily harm or permanent disability or disfigurement *** while committing the offense." 720 ILCS 5/12—3.05(h)(b) (West 2014). At issue in this appeal is whether defendant committed "great bodily harm" during the course of the strangulation of Seals.

¶ 18 There is no precise legal definition for "great bodily harm." *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993). However, great bodily harm requires an injury greater and more serious than an ordinary battery (see *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991)), which is defined as "some sort of physical pain or damage to the body, like lacerations, bruises, or abrasions" (*People v. Mays*, 91 Ill. 2d 251, 256 (1982)). Whether an injury rises to the level of

great bodily harm is a question for the trier of fact. *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 12. In making that determination, “the relevant question for the trier of fact to answer is not what the victim did or did not do to treat the injury but what injuries the victim in fact received.” *People v. Edwards*, 304 Ill. App. 3d 250, 254 (1999).

¶ 19 Here, we find that the evidence presented at trial was sufficient for a rational trier of fact to conclude that Seals’ injuries caused by the strangulation were greater and more serious than an ordinary battery. See *Figures*, 216 Ill. App. 3d at 401. The evidence at trial established that defendant “wrapped” one hand around Seals’ neck and “started squeezing,” while hitting Seals in the face with the other hand, resulting in Seals not being able to breathe and becoming “dazed and unconscious,” and causing bruising to the neck.

¶ 20 Defendant argues, however, that Seals was not credible because he testified at trial that he lost consciousness whereas he told certain medical providers that he did not lose consciousness. This argument amounts to an invitation to reassess the credibility of a witness, which is not the function of this court. In the case at bar, the trial court found Seals’ testimony to be credible. It was the trial court, as the trier of fact, who was the best position to resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from the facts. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not substitute our judgment for that of the trial court on issues involving the weight afforded to evidence or the credibility of witnesses. *Bradford*, 2016 IL 118674, ¶ 12.

¶ 21 Defendant further argues that even accepting that Seals testified credibly regarding his injuries, no rational trier of fact could conclude that the State’s evidence showed that the strangulation caused great bodily harm. Defendant cites in support, *inter alia*, *In re J.A.*, 336 Ill.

App. 3d 814, 819 (2003). However, the facts of the case at bar are not similar to the facts of *In re J.A.* In that case, the victim described his injuries as minor, and did not testify that his injury required serious medical attention. *Id.* at 818 (the victim described his stab wound as feeling like a pinch). By contrast, Seals testified that he could not breathe, lost consciousness, and suffered bruising to the neck.

¶ 22 We also note that whether an injury constituted great bodily harm is a question for the trier of fact (*Cisneros*, 2013 IL App (3d) 110851, ¶ 12), and therefore must be based upon the injuries that a victim actually received. Thus, “the element of ‘great bodily harm’ turns squarely upon the *extent* of the harm inflicted.” (Emphasis in original.) *People v. Willett*, 2015 IL App (4th) 130702, ¶ 53. Here, the evidence established that as defendant squeezed Seals’ neck with one hand and hit him in the face with the other, Seals could not breathe and was “unconscious,” and suffered bruises as a result of the strangulation. Accordingly, after viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have concluded beyond a reasonable doubt that the State proved great bodily harm was caused by the strangulation. See *Brown*, 2013 IL 114196, ¶ 48. We therefore have no basis for disturbing the trial court’s judgment that defendant was proven guilty beyond a reasonable doubt of aggravated battery by strangulation causing great bodily harm.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.