2018 IL App (1st) 160894-U

No. 1-16-0894

Order filed October 25, 2018

Fourth 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. 14 CR 60065
	)	
HEZEKIAH ANTHONY,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE MCBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated battery are affirmed over his contention that the lack of physical evidence linking him to the crime rendered certain identification testimony unreliable. Pursuant to the one-act, one-crime rule, defendant's mittimus must be corrected to reflect one sentence for aggravated battery.

¶ 2 Following a bench trial, defendant Hezekiah Anthony was found guilty of the class 3 offenses of aggravated battery to a person 60 years of age or older (720 ILCS 5/12-3.05(d)(1) (West 2014)), and aggravated battery on a public way (720 ILCS 5/12-3.05(c) (West 2014)), and

sentenced to two extended-term eight-year prison terms. He was also found guilty of the class 2 offenses of aggravated battery causing great bodily harm to a person 60 years of age or older and aggravated battery causing permanent disability to a person 60 years of age or older (720 ILCS 5/12-3.05(a)(4) (West 2014)), and sentenced to two seven-year prison terms. All sentences were to be served concurrently.

¶ 3 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the lack of physical evidence connecting him to the offenses demonstrates that the testimony identifying him as the offender was unreliable. He also contends that three of his convictions must be vacated pursuant to the one-act, one-crime rule. We affirm in part, vacate in part, and correct defendant's mittimus.

¶ 4 Defendant was charged with attempted murder and four counts of aggravated battery following a July 26, 2014, incident during which the victim, Dora "Mama" Nix, was beaten.

¶ 5 Daniel Mitchell, who was incarcerated at the time of trial due to a conviction for possession of a controlled substance, testified that around 9:50 p.m. on July 26, 2014, he was outside the hotel where he lived when he saw Nix across the street. Nix, who also lived at the hotel, was sitting in a wheelchair. Mitchell "put" Nix at 91 or 92 years old. He then saw Nix "get smashed" by "Law." Mitchell had seen Law before and Law had been in "conflicts" with Mitchell's "woman." Mitchell explained that Law hit and stomped Nix on the head. He saw blood on Nix's forehead and eye, and Nix needed help to enter the hotel. Mitchell later spoke to police and identified Law in a photographic array as the person who beat Nix. Mitchell indentified defendant in court as Law. During cross-examination, Mitchell acknowledged that he had drunk four beers earlier that day.

¶ 6 Elbert Smith, another hotel resident, testified that after being woken up by a scream, he looked out the window. He saw Nix across the street. Then, a "dude" in a white t-shirt walked up and said " 'Hey, where's my ten dollars at, you b***?' " The man hit Nix in the face with a closed hand, knocking out her glass eye and causing her to fall to the ground. Smith did not know the man, but had seen him before. The man hit Nix about five or six times and "stomped" on her head four or five times.

¶ 7 Deborah Norwood testified that, in July 2014, she worked as a security guard at the hotel. That day, she was outside the hotel smoking a cigarette when she saw Nix across the street and invited Nix to " 'come over here.' " Nix declined. At one point, Norwood heard someone say that someone was being beaten across the street. When Norwood went across the street to help Nix, she observed a man wearing a white t-shirt and khaki shorts walking away. She yelled at the man to return but he walked away. Nix was unconscious, bleeding from the head and foaming at the mouth. Norwood shook Nix, and after about five minutes, she came to. However, Nix was dazed and bleeding. Nix did not want to go to the hospital and said that she was " 'fine' " and would go later. Norwood helped Nix back to her room in the hotel.

¶ 8 Norwood spoke to police and described the man as African-American with a medium build. When police brought the man back to her location three or four minutes later, she identified him as the person who stomped Nix. The man was still wearing the white t-shirt. She identified defendant in court as that man. When Norwood checked on Nix the next morning, she was unconscious. Norwood called for an ambulance and observed Nix being taken away on a stretcher. During cross-examination, Norwood testified that defendant was standing by Nix and

that she saw his face as he walked across the street. She did not recall whether she told the police that all she saw was a person's back.

¶ 9 Sergeant Roland Kimble testified that after he was flagged down, he observed a woman with injuries to the face, eye and temple area. He observed "a lot of blood" and "some swelling." The people around Nix pointed in the direction of a man walking away and stated that this man "stomped" and beat the woman. Kimble detained the man. At trial, Kimble identified defendant as that man. He did not recall seeing blood on defendant when he stopped defendant.

¶ 10 The State admitted into evidence a certified copy of a birth certificate for Nix with a birth date of August 8, 1939.

¶ 11 The parties stipulated that Dr. Anthony Parsa would testify that Nix was unresponsive and in critical condition when she arrived at Northwestern Hospital on July 27, 2014. Parsa would further testify that Nix had a "substantial" laceration above the right eye, registered minimal brain activity, and had "sustained a subdural hematoma to the left lobe with mass effect." He would also testify that Nix registered minimal brain activity and was placed on life support. She was subsequently moved to a long term care facility where she remained unresponsive and intubated.

¶ 12 The defense then presented the testimony of Detective Dale Potter, who testified that during an interview with Norwood, she stated that she only saw the offender's back and did not give a description of the person's face or outfit. During cross-examination, Potter testified that Norwood stated that she saw the person as he was walking away and that she knew this person from the neighborhood and her position at the hotel. Although Potter showed Norwood a photographic array, she did not identify anyone.

¶ 13 The trial was then continued. At a subsequent court date, the trial court asked defendant whether he had been injured. Trial counsel indicated that defendant "always had a cane."

¶ 14 When the trial continued, Christopher Williams testified that he was speaking with Norwood when he looked across the street and saw someone on the ground. He pointed the person out to Norwood and they went across the street. He did not see anyone around. During cross-examination, Williams acknowledged that he refused to speak to the police, but denied telling Norwood that someone was beating up a woman.

¶ 15 The State then presented Norwood in rebuttal. She testified that Williams tapped her and said that someone was "stomping the *** out of somebody" across the street.

¶ 16 The trial court found defendant guilty of aggravated battery and stated that the four counts would "merge" for sentencing. At a subsequent court date, the trial court asked defendant whether he had been hurt in jail. Defendant replied that he had been like "this" since he got shot. The trial court stated that it did not think that defendant always had a cane and had not noticed the cane before.

¶ 17 At sentencing, the trial court stated that "this is a single act and all these counts are going to merge with one another." The court sentenced defendant, because of his criminal background, to two extended-term eight-year sentences for aggravated battery to a person 60 years of age or older and aggravated battery on a public way. It also sentenced him to two seven-year prison terms for the aggravated battery causing great bodily harm to a person 60 years of age or older, and aggravated battery causing permanent disability to a person 60 years of age or older. All sentences were to be served concurrently.

¶ 18 On appeal, defendant first contends that he was not proven guilty beyond a reasonable doubt because the lack of physical evidence tying him to the offenses demonstrates that the witness identifications were unreliable.

¶ 19 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*.

¶ 20 Here, taking the evidence in the light most favorable to the State as we must (*Brown*, 2013 IL 114196, ¶ 48), there was evidence from which a rational trier of fact could have found that defendant battered Nix when Mitchell testified that he observed Law, who he had seen before, punch and "stomp" Nix and identified defendant as Law.

¶ 21 Defendant, however, argues that although testimony indicated that Nix was bleeding, no one testified that he was covered in blood, and that this gap in the testimony established that the identification testimony at trial was unreliable. He also notes that, despite the fact that the trial court twice commented on his cane, none of the witnesses testified that he walked with a cane.

¶ 22 Our supreme court has held that identification by a single witness is sufficient to support a conviction when that witness saw the defendant "under circumstances permitting a positive

identification." See *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Here, Mitchell testified that he observed Nix, who was across the street, get "smashed" by Law, and identified defendant, whom he had seen before, as Law. Moreover, Smith testified that Nix was beaten by a man wearing a white t-shirt and Norwood testified that she observed a man in a white t-shirt, whom she identified in court as defendant, walking away from Nix.

¶ 23 Defendant is correct that, while Norwood testified that defendant was wearing a white t-shirt and that she saw his face as he stood by Nix, Detective Potter testified that Norwood told him that she saw the back of the person, did not describe the person's outfit, and also stated she knew the person from the neighborhood. However, this was not fatal to Norwood's credibility. Witness credibility is a matter for the trier of fact, and, therefore, the trier of fact may accept or reject as much or as little of a witness's testimony as it chooses. *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67. Moreover, the fact that there are contradictions or conflicts between the accounts of the State's witnesses does not necessarily render their testimony incredible as long as the evidence taken as a whole satisfies the trier of fact as to the defendant's guilt beyond a reasonable doubt. *Id.* ¶ 67 (the fact that the testimony of one of the State's witness contradicts the testimony of another does not render each one's testimony beyond belief).

¶ 24 Although defendant contends that the nature of the beating created the inference that the perpetrator would be covered in blood and there was no testimony that he was covered in blood, the trial court was not required to make such an inference. See *Bradford*, 2016 IL 118674, ¶ 12 (it is the responsibility of the trier of fact to weigh the evidence and draw reasonable inferences from the facts presented at trial). Further, although the record reveals that the trial court commented upon the fact that defendant had a cane in court, there was no evidence that

defendant had a cane on the day of the beating and the fact that the witnesses did not mention a cane has no effect on their credibility. Ultimately, the trial court was not required to disregard inferences that flow normally from the evidence, seek all possible explanations consistent with innocence and elevate them to reasonable doubt, or find a witness incredible merely because defendant says so. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant's conviction only where the evidence is so improbable or unsatisfactory that a reasonable doubt of his guilt remains; this is not one of those cases. See *Bradford*, 2016 IL 118674, ¶ 12. Accordingly, we affirm defendant's convictions for aggravated battery.

¶ 25 Defendant next contends, and that State concedes, that three of his four convictions for aggravated battery must be vacated pursuant to the one-act, one-crime rule because they all arose from a single act, that is, the beating of Nix. Defendant also notes that, although the trial court stated that the four findings of guilt would merge for sentencing, defendant's mittimus reflects four sentences.

¶ 26 Defendant did not raise his one-act, one-crime challenge in the trial court and, therefore, forfeiture applies. *People v. Harvey*, 211 Ill. 2d 368, 388-89 (2004). However, one-act, one-crime violations are subject to review under the second prong of the plain error doctrine. *Id.* at 389. A conviction challenged under the one-act, one-crime rule presents a question of law, which we review *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 27 Pursuant to the one-act, one-crime doctrine, "a defendant may not be convicted of multiple offenses that are based upon precisely the same physical act." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). When a challenge is raised under the one-act, one-crime doctrine, the court first determines whether the defendant's conduct consisted of a single physical act or separate

acts. *People v. Coats*, 2018 IL 121926, ¶ 12. If only one physical act was undertaken, then multiple convictions are improper. *People v. Artis*, 232 Ill. 2d 156, 165 (2009). Whether the one-act, one-crime doctrine has been violated is reviewed *de novo*. *Coats*, 2018 IL 121926, ¶ 12.

¶ 28 We agree with the parties that all four of defendant's aggravated battery convictions are based upon the same physical act, that is, the beating of Nix. When there is a violation of the one-act, one-crime doctrine, the court should impose sentence on the more serious offense. *Artis*, 232 Ill. 2d at 170.

¶ 29 Here, aggravated battery to a person 60 years of age or older (count 3), and aggravated battery on a public way (count 5) are class 3 felonies with a sentencing range of two to five years' imprisonment. 720 ILCS 5/12-3.05(d)(1), (c), (h) (West 2014); 730 ILCS 5/5-4.5-40(a) (West 2014). Aggravated battery causing great bodily harm to a person 60 years of age or older (count 2), and aggravated battery causing permanent disability to a person 60 years of age or older (count 4) are class 2 felonies, with a sentencing range of three to seven years' imprisonment. 720 ILCS 5/12-3.05(a)(4), (h) (West 2014); 730 ILCS 5/5-4.5-35(a) (West 2014).

¶ 30 Therefore, the class 3 felonies (counts 3 and 5) are the less serious offenses. See *Artis*, 232 Ill. 2d at 170 (when "determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense," as greater punishment is mandated for the more serious offense). Moreover, the class 2 felonies are the same offense and defendant received identical concurrent sentences. See *People v. Price*, 221 Ill. 2d 182, 194-95 (2006) (finding remand was unnecessary where one-act, one-crime principles required the vacation of multiple theft convictions because both the statutory penalty and the

concurrent sentences imposed were identical). Under the circumstances of this case, the sentences imposed upon counts 3, 4, and 5 must be vacated. See *Artis*, 232 Ill. 2d at 170.

¶ 31 For the foregoing reasons, we vacate the sentences for aggravated battery to a person 60 years of age or older (count 3), aggravated battery causing permanent disability to a person 60 years of age or older (count 4), and aggravated battery on a public way (count 5). We affirm the judgment of the trial court in all other aspects. We further direct the clerk of the circuit court to correct the mittimus to reflect a conviction for aggravated battery causing great bodily harm to a person 60 years of age or older under count 2 and the accompanying seven-year prison term.

¶ 32 Affirmed in part and vacated in part; mittimus corrected.