2018 IL App (1st) 161111-U

No. 1-16-1111

Order filed September 7, 2018

Fifth 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. 15 MC1 217677
	)	
DEREK STOKES,	)	Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for battery is affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Derek Stokes was found guilty of battery (720 ILCS 5/12-3(a)(2) (West 2014)) and sentenced to six months court supervision. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 At trial, the victim, Ethel Jernigan testified that she was 82 years' of age and had resided at the same address on the 11600 block of South Aberdeen Street since 1962. Jernigan lives with her son. On July 19, 2015, at approximately 3 p.m., Jernigan was setting up her sprinkler to water her front lawn. Jernigan's son was in the backyard to turn on the water while she was placing the sprinkler in the center of her front yard. Defendant, who lives next door to Jernigan to the south, came onto her property and said not to put the water on his car. Defendant's car was parked in front of Jernigan's home. Defendant kicked the sprinkler onto Jernigan's left leg. Jernigan "pushed [defendant] back off [her]" with the cane she was holding. Defendant pushed Jernigan with both hands and she fell "flat on [her] face on the ground." Jernigan testified that defendant did not apologize or help her up to her feet. Jernigan phoned the police.

¶ 4 On cross-examination, Jernigan acknowledged that defendant has been a good neighbor to her and has done a lot of good things for her so she was surprised that he had pushed her. Jernigan admitted that defendant often parks his car in front of her home and works on his car because he cannot park in front of his own home due to a handicapped parking sign. Jernigan acknowledged that she does not mind when defendant works on his car and "he can park anywhere he wants to." Jernigan admitted that defendant did not ask her to shut off the water and never asked her to move the sprinkler. She acknowledged that there was no way the water from her sprinkler could have hit defendant's car because he parks it away from the curb. At the time of the incident, Jernigan was carrying a cell phone, but called the police from her home phone, which she takes outside with her wherever she goes. Jernigan told the police that defendant kicked the sprinkler on her leg, but the "police screwed the message around." Jernigan acknowledged that she and had previously sued defendant's mother and considers her a "terrible

neighbor." Jernigan testified that the police did not ask her if she needed medical attention. After she spoke with police, Jernigan's son took her to Christ Hospital, where she had x-rays taken. The State rested at the conclusion of Jernigan's testimony. Defendant's motion for directed finding was denied.

¶ 5 Chicago police officer Joseph Hurley testified that he responded to Jernigan's home at approximately 6:45 p.m. Hurley could not remember if an ambulance arrived at the scene, but stated that, since the matter involved a battery, he would have asked Jernigan if she needed an ambulance. Hurley did not see any injuries to Jernigan. Hurley referred to his police report to refresh his recollection and testified that Jernigan told him she "laid the hose on the ground and [defendant] kicked the hose and it got her wet." Jernigan told him that defendant asked her not to get his vehicle wet. Hurley did not arrest defendant after speaking to Jernigan.

¶ 6 On cross-examination, Hurley acknowledged that Jernigan told him that defendant kicked the hose and she "poked" him with her cane. Defendant then pushed Jernigan to the ground.

¶ 7 Shirlene Taylor testified that she lived at 11617 South Aberdeen and was familiar with Jernigan for over 34 years and does not particularly care for her. Taylor testified that Jernigan cannot be trusted and is not truthful. Taylor has not spoken to Jernigan in 15 years. Taylor admitted she was not present for the incident occurred.

¶ 8 Defendant testified that on July 19, 2015, he was working on his car that was parked on the street. Jernigan was outside of her home with her son. Jernigan turned on the hose and the water was getting defendant and his car wet. Defendant walked onto Jernigan's lawn and asked her to move the sprinkler so that it would be away from his car. He moved the hose, but Jernigan moved it back to where it was originally. Jernigan "got to talking all kinds of words out but [he]

wasn't paying no attention." Defendant tried to move the hose again, but Jernigan grabbed him by his left arm and hit him across the shoulder with her cane. Defendant tried to push her off and she fell. She then went into her house. After about 15 or 20 minutes, the police arrived and spoke to defendant. The police officers issued him a citation for repairing his car on the street. Defendant was arrested on August 21, 2015. Defendant testified that he did not kick the sprinkler onto Jernigan's leg.

¶ 9 On cross-examination defendant acknowledged that Jernigan is older than his mother and Jernigan walks with a cane. He testified that, after Jernigan struck him with her cane, "[he] had no other choice" and shoved her. He explained that his contact with Jernigan "wasn't a push it was like a little shove." Defendant did not help Jernigan to her feet or ask her if she was okay.

¶ 10 After hearing closing arguments, the court found defendant guilty of battery. Defendant's motion for judgment notwithstanding the finding and new trial was denied and he was sentenced to six months of court supervision.

¶ 11 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. The standard of review on a challenge to the sufficiency of the evidence is 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. *People v. Lloyd*, 2013 IL 113510, ¶ 42. The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, resolving any conflicts in the evidence and drawing reasonable inferences therefrom. *People v. Hutchinson*, 2013 IL App (1st) 102332, ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). As such, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility

of witnesses." *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 214 Ill. 2d 206, 217 (2005). Moreover, when a conviction depends on eyewitness testimony alone, the reviewing court may find the testimony to be insufficient "only where the record evidence compels the conclusio*n* that no reasonable person could accept it beyond a reasonable doubt." *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001).

¶ 12 In this case, defendant was convicted of battery. In order to sustain defendant's conviction, the State was required to prove beyond a reasonable doubt that he knowingly, without legal justification, by any means made physical contact of an insulting or provoking nature with Jernigan. See 720 ILCS 5/12-3(a)(2) (West 2014); *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224 (2009) (the State must prove each element of an offense beyond a reasonable doubt).

¶ 13 The plain language of the battery statute defines the offense in terms of contact that insults or provokes the victim not contact that injures the victim. See *People v. Peck,* 260 Ill. App. 3d 812, 814 (1994) (The language of the battery statute clearly provides that a battery can be committed if the accused has contact with the victim "by any means." (720 ILCS 5/12–3(a) (West 1992)). The element of contact of an insulting or provoking nature does not require proof by, for example, the victim's testimony that the contact was insulting or provoking. *People v. Nichols,* 2012 IL App (4th) 110519. Rather, "a particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs." *Peck*, 260 Ill. App. 3d at 814 (quoting *People v. d'Avis,* 250 Ill. App. 3d 649 (1993)).

¶ 14 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the elements of the offense of battery beyond a reasonable doubt. Jernigan testified that, while she was setting up her sprinkler to water her lawn, defendant walked onto her property and kicked the sprinkler into her leg. Jernigan "pushed" defendant with her cane and defendant, in turn, pushed her, causing her to fall face first onto the ground. Jernigan summoned the police immediately after the incident. Given this evidence, and the reasonable inferences therefrom, the trial court could conclude that defendant, without legal justification, made physical contact of an insulting or provoking nature with Jernigan and thus committed battery. See *d'Avis*, 250 Ill. App. 3d at 651.

¶ 15 Defendant nevertheless argues that this court should reverse his conviction because Jernigan was an incredible witness. Defendant claims that Jernigan was impeached by the police officer's testimony regarding his police report after the incident. In support of this argument, defendant points out that Hurley testified from his report that Jernigan told him that defendant kicked the hose, not the sprinkler, onto her leg. Defendant also argues that the fact defendant was not arrested until over a month later supports his argument that what Jernigan initially told Hurley was the true story.

¶ 16 We initially note that defendant's arguments regarding Jernigan's credibility are essentially asking this court to substitute its judgment for the trial court's credibility determination. This we cannot do. See *Siguenza-Brito*, 235 Ill. 2d at 224-25. As mentioned, it was for the trial judge, who saw and heard Jernigan's testimony, and was thus in a much better position than this court, to resolve the discrepancies that appeared during trial and determine that Jernigan's testimony was sufficiently reliable. *Id.* at 229. Here, the alleged inconsistencies in

Jernigan's testimony regarding how defendant kicked the hose were fully explored at trial. Given its ruling, the trial court clearly found Jernigan's testimony credible and resolved the complained-of inconsistencies in the evidence in favor of the State. In doing so, the trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004).

¶ 17 In any event, even if defendant kicked the hose and not the sprinkler onto Jernigan's leg, he would still not be justified in pushing her to the ground. As mentioned, a defendant's conviction will be overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. This is not one of those cases.

¶ 18 We are likewise not persuaded by defendant's contention that the trial court allowed its personal views to affect its evaluation of whether defendant's actions were justified. Defendant contends that the trial court gave undo deference to Jernigan's age and thus overlooked his right to self-defense argument.

¶ 19 We have held that "[J]udges are required to be fair and dispassionate arbitrators above all else" *People v. Jones*, 2016 IL App (1st) 141008, ¶ 38; (quoting *People v. Johnson*, 2012 IL App (1st) 091730, ¶ 80; *People v. Phuong*, 287 Ill. App. 3d 988, 994 (1997)). "Any showing of bias against one of the parties or her counsel constitutes reversible error." *Phuong*, 287 Ill. App. 3d at 994. The Illinois Code of Judicial Conduct requires a judge to be "patient, dignified, and

courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." *Jones*, at ¶ 38; Ill. S. Ct. R 63(A)(3) (eff. July 1, 2013).

¶ 20 Here, after a thorough review of the record, there is no support for defendant's contention that the trial court considered Jernigan's age over his right to self defense. After the court found defendant guilty of battery, the matter proceeded immediately to sentencing. The court ultimately sentenced defendant to six months court supervision. In his motion for judgment notwithstanding the finding or new trial, defendant argued that the court precluded him from raising a self defense claim because Jernigan was an 82 year old woman. In denying the motion, the court explained:

> "[B]ecause I want to be real clear when I talked about self defense. I even said I'm not talking about self defense. I was very specific. I said sometimes I've seen women beat men up. So I'm not tripping on the fact that she was a woman fighting.
>
> But I do find her testimony to be much more credible. Here she is on her own property and I'm only doing this for the purposes of argument. She may be a cranky person but you still can't go on her property and knock her down.
>
> And I didn't believe because see, self defense is based on justification. Are you justified. And what a reasonable person, and what a reasonable person—that's the issue is reasonableness and justification. I never once said that he was not—I never got into the issue of justification nor did I get into the issue of reasonableness.
>
> Motion for new trial denied."

¶ 21 Accordingly, contrary to defendant's argument the trial court did not give undo deference to Jernigan's age or overlook his right to self defense. Rather, given its ruling, the court found Jernigan more credible than defendant and concluded that he was not justified in pushing her. For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.