2018 IL App (1st) 162065-U

No. 1-16-2065

Order filed January 11, 2019

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 CR 7098
	)	
EMILE BROWN,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt because it did not show that: (1) he knowingly caused bodily harm to the victim; and (2) the altercation occurred on a public way. Defendant's order assessing fines, fees and costs is modified.

¶ 2 Following a bench trial, defendant Emile Brown was convicted of aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)) and sentenced to two years' probation. He was also assessed a total of $449 in fines, fees, and costs. On appeal, defendant contends that the evidence

presented was insufficient to sustain his conviction because the State failed to prove beyond a reasonable doubt that: (1) he knowingly caused bodily harm to the victim; and (2) the altercation took place on a public way. He also argues that the order assessing fines, fees, and costs should be corrected to remove an improperly assessed fee and that he receive presentence incarceration credit for eligible fines. We affirm and modify the fines, fees, and costs order.

¶ 3 Defendant was charged by information with five counts of aggravated battery (720 ILCS 5/12-3.05(West 2014)), stemming from an altercation that took place in the parking lot of Mercy Hospital. Prior to trial, the State *nolle prosequi* counts two, three, and four. Count one alleged that defendant, in committing a battery, knowingly caused bodily harm to the victim, Mark Daniel, a Mercy Hospital Security Officer, by cutting him in the neck with scissors while defendant knew the victim to be a private security officer (720 ILCS 5/12-3.05 (d)(4)(i) (West 2014)). Count five alleged defendant knowingly caused bodily harm to the victim by cutting him in the neck with scissors while they were on a public way to wit: Mercy Hospital parking lot located at 2525 South Michigan Avenue (720 ILCS 5/12-3.05 (c)(West 2014)).

¶ 4 At trial, the victim Mark Daniel testified that on April 20, 2015, he was working as a security guard in the emergency room of Mercy Hospital located at 2525 S. Michigan Avenue. Daniel wore a security uniform and had a badge displayed on his uniform. Daniel's duties included securing the hospital for patients, visitors and staff. At approximately 1:15 p.m., Daniel monitored a call of a patient fleeing from the hospital. Daniel left the hospital through the emergency room exit to try and find the fleeing patient. When Daniel entered the parking lot, he observed defendant running on the sidewalk adjacent to the hospital. Daniel saw that defendant

had an "IV" in his arm and was carrying a bag. Daniel ordered defendant to stop, but defendant kept running.

¶ 5 As Daniel neared defendant, he saw an object in defendant's hand that he later determined to be a pair of scissors. Defendant swung the scissors at Daniel, who told defendant to stop. Defendant continued to swing the scissors and hit Daniel in the neck with the scissors. Another security officer arrived on the scene and helped Daniel "wrestle" defendant to the ground. Daniel identified a photograph of his injury and explained he received "four, maybe three to four stitches maybe five [stitches]" to his neck. Daniel also testified that his knees were "damaged, scarred and bruised" from wrestling defendant to the ground. Daniel's injury occurred in the entry way of the hospital parking lot. Daniel testified the parking lot was considered a public way.

¶ 6 On cross-examination, Daniel testified that the hospital parking lot is owned by Mercy and used by patients, doctors and employees. He stated that "we have people that travel through the parking [lot]." Daniel did not know if defendant paid for the IV prior to leaving the hospital. Daniel acknowledged that he was aware that a patient is free to leave a hospital if he chooses, but the patient must fill out paperwork before leaving. In response to a question posed by the court, Daniel testified the IV defendant left with was not a bag or a pole. The State rested.

¶ 7 Defendant testified that he entered Mercy Hospital on April 19, 2015, but did not see a doctor. He stayed overnight at the hospital and left in the morning because a nurse kept coming into his room and was "putting bleach on her shoes." Defendant explained that, on the morning of April 19, 2015, he left his bed to use the washroom and, when he returned, he noticed an opened box of powdered bleach next to his laxative. Defendant decided to leave the hospital, and

grabbed his bag and started walking toward the exit. As he did so, he heard a woman on the radio calling for security. Defendant walked out of the emergency room door and to the sidewalk. There, two security guards approached him. One of the guards threw defendant on the ground, causing him to drop his bag. The other guard handcuffed defendant. The guards placed defendant in a wheelchair and "rode him back into the hospital and dumped [him] on the ground."

¶ 8 On cross-examination, defendant testified he had three pairs of scissors in his bag because he works with scissors "cutting nails, cutting yard, and working the nails in the yard." Defendant also had a hammer, a pair of pliers and two pairs of glasses in his bag. He acknowledged he had an IV in his arm, but it was from Stroger Hospital. Defendant explained he was at Stroger before going to Mercy. Defendant left Mercy because he "felt like he was being poisoned with his laxative." He acknowledged that he never gave Mercy a payment. Defendant had the scissors in his bag and they were in his bag until he "got tossed to the ground." He denied swinging the scissors at Daniel or stabbing him. Defendant testified he did not raise a hand to Daniel, who "just threw [him] to the ground."

¶ 9 The court found defendant not guilty as to count one and guilty as to count five—aggravated battery on a public way. In announcing its ruling, the court noted:

> "I don't think he has—the fact is he was swinging the scissors, and the fact that he did cut the man's neck, and it looks to be at lest (*sic*) five stitches from the picture.
>
> And otherwise how does his neck get cut, there's no rational explanation for his neck being cut so other than the witness's testimony so there will be a finding of guilty on Count five."

¶ 10 The court sentenced defendant to two years' felony probation with the first six months in Cook County Jail. Defendant was credited with 417 days in custody and assessed costs of $449.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. Specifically, he argues that the evidence presented was insufficient to find him guilty of aggravated battery because the State did not prove beyond a reasonable doubt that he knowingly battered the victim and that the altercation occurred on a public way.

¶ 12 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. Wheeler,* 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless of whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill. App. 3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *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). 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. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins,* 214 Ill. 2d 206, 217 (2005).

¶ 13 In this case, defendant was found guilty of aggravated battery. As relevant here, to establish that defendant committed aggravated battery under the charged count, the State was required to prove both that defendant committed a battery and the offense occurred on a public way. *People v. Cherry*, 2016 IL 118728, ¶ 16; 720 ILCS 5/12-3.05 (c)(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). "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or proving nature with an individual." 720 ILCS 5/12-3(a) (West 2014).

¶ 14 Defendant first contends that his conviction should be reversed because the State failed to prove that he knowingly caused bodily harm to Daniel. In support of this argument defendant maintains that Daniel initiated the confrontation by forcibly stopping him as he attempted to leave the hospital.

¶ 15 Intent is an essential element of the offense of battery. *People v. Robinson*, 379 Ill. App. 3d 679, 684-85 (2008). As such, the State had the burden of proving that defendant's conduct was knowing or intentional. *Id.* A person acts "knowingly" when he or she is "consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(b) (West 2014). "Intent, such as knowingness, may be proven by circumstantial evidence and inferred from the defendant's action and the conduct surrounding it." *People v. Lee*, 2017 IL App (1st) 151652, ¶ 20; see also *People v. Jasoni*, 2012 IL App (2d) 110217 ¶ 20 (quoting *People v. Farrokhi*, 91 Ill. App. 3d 421, 427 (1980) "[B]ecause of its very nature, the mental element of an offense, such as knowledge, is ordinarily established by circumstantial evidence rather than by direct proof.").

¶ 16 After reviewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found that defendant knowingly caused bodily harm to Daniel. Stated differently, the circumstantial evidence and defendant's conduct on the afternoon in question support the inference that he intended to hit Daniel. The record shows that Daniel, a security guard, monitored a call of a patient fleeing from the hospital. When Daniel entered the parking lot he saw defendant, who had an IV in his arm and was carrying a bag, running on the sidewalk adjacent to the hospital. Daniel ordered defendant to stop, but defendant kept running. Daniel testified that, as he approached, defendant swung a pair of scissors in his direction. Daniel asked defendant to stop, but defendant continued to swing the scissors at him. Defendant hit Daniel with the scissors in the neck. When this evidence is considered as a whole, it shows that defendant had the requisite intent to cause bodily harm to Daniel.

¶ 17 In reaching this conclusion, we are not persuaded by defendant's reliance on *Lee*, which he cites in support of his argument that he did not act knowingly. Here, unlike in *Lee*, there was no evidence that Daniel grabbed or placed his hands on defendant prior to defendant swinging the scissors. *Id.* ¶ 22. In addition, here there is no evidence that defendant inadvertently struck Daniel as they struggled over the scissors. *Id.* Rather, defendant continued to swing the scissors at Daniel even after Daniel told him to stop. Finally, unlike in *Lee*, here there is no indication that, at the time of the altercation, defendant's mental state was compromised such that he was not "consciously aware" of what he was doing and the results of his actions. *Id.* ¶ 21 (the defendant, a diagnosed schizophrenic, who was admitted to the hospital, was behaving turbulently, yelling indiscriminately, and did not recall certain parts of his encounter with the

victim, a nurse, because he had attempted suicide by overdosing on prescription medication after learning that his son had died in a car accident).

¶ 18 Next, defendant contends that the evidence was insufficient to show that the altercation occurred on a "public way." He maintains that a hospital's private parking lot does not fall within the meaning of a public way, as contemplated by the aggravated battery statute. See 720 ILCS 5/12-3.05(c) (West 2014). In setting forth this argument, defendant invites this court to interpret the statute as excluding the hospital parking lot in this case.

¶ 19 Here, we need not engage in statutory interpretation to conclude that the hospital parking lot constituted a "public way." Illinois courts have interpreted the term public way, as it relates to the aggravated battery statute, to mean "an area accessible to the public." *People v. Ojeda*, 397 Ill. App. 3d 285, 287 (2009); see also *People v. Williams*, 161 Ill. App. 3d at 619-20 (1987) (finding that the aggravated battery statute applied to an offense occurring in a private parking lot of an apartment building because the lot was accessible to the public and, therefore, a public way); *People v. Kamp*, 131 Ill. App. 3d 989 (1985) (finding that a park open to the public, irrespective of its ownership, met the requirement of occurring on or about a public way or property). As explained in *People v. Ward*, 95 Ill. App. 3d 283, 287-88, (1981), whether "the property was actually publicly owned and, therefore, 'public property' rather than a privately owned 'public place of accommodation' is irrelevant; what is significant is that the alleged offense occurred in an area accessible to the public."

¶ 20 After viewing the evidence in the light most favorable to the State we conclude that a rational trier of fact could have found that the altercation occurred on a public way *i.e.* an area accessible to the public. The record shows that the parking lot in question where the battery

occurred was accessible to the public. Daniel testified that although the lot was owned by Mercy Hospital, it was used by patients, staff and doctors of the hospital. Additionally, Daniel testified that "we have people that travel through the parking [lot]." As such, the parking lot was a place frequented by, and accessible to, the public, and thus constituted a public way for the purposes of the aggravated battery statute. See *People v. Williams*, 161 Ill. App. 3d at 619-20 (1987) (finding that the aggravated battery statute applied to an offense occurring in a private parking lot because the lot was accessible to the public and, therefore, a public way). Accordingly, the evidence presented was sufficient to sustain defendant's conviction for aggravated battery.

¶ 21 Lastly, defendant contends his fines, fees, and costs order must be amended. Defendant argues that one assessment must be vacated because it was erroneously assessed. In addition, defendant argues he is entitled to apply presentence monetary credit against two assessments that were labeled as fees but are actually fines.

¶ 22 Defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Nevertheless, he urges this court to review his assessments under the plain error doctrine.

¶ 23 The State acknowledges the forfeiture, but asserts that the *per diem* monetary credit is a statutorily mandated benefit that cannot be waived. *People v. Caballero*, 228 Ill. 2d 79, 83 (2008). The State further asserts that defendant's claims may be considered under the plain error doctrine (*People v Lewis*, 234 Ill. 2d 32, 48 (2009)) or as a claim of ineffective assistance of counsel. (*People v. Seidlinski*, 279 Ill. App. 3d 1003, 1005-07 (1996).

¶ 24 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against his fines but, rather, is raising a substantive issue regarding whether the

assessments labeled as fees are fines and therefore, is subject to forfeiture. See *People v. Brown*, 2017 IL App (1st) 150203, ¶ 40-41. Defendant's challenges are not reviewable under the plain error doctrine. *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017). Nor can they be reviewed as a claim of ineffective assistance of counsel. *People v. Rios-Salazar*, 2017 IL App (3d) 150524, ¶ 8 (failure to object to fines and fees is not an error of constitutional magnitude that will support a claim of ineffectiveness). *Pet for leave to appeal granted*, No. 123052 (Mar, 21, 2018). However, the rules of forfeiture and waiver also apply to the State and where the State fails to argue that defendant forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46.

¶ 25 First, the parties agree and we concur that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony conviction for aggravated battery. Thus, we vacate the $5 electronic citation fee and direct the clerk of the circuit court to amend the fines, fee and costs order accordingly.

¶ 26 Defendant further argues that two of the assessments labeled as fees were actually fines that are subject to offset by his $5-per-day presentence incarceration credit. A defendant incarcerated on a bailable offense who does not supply bail, and against whom a fine is levied, is allowed a credit of $5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). Here, defendant received credit for 417 days in custody prior to sentencing.

¶ 27 Defendant argues that he is entitled to use this credit to offset the applicable fines assessed against him. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("[T]he credit for presentence incarceration can only reduce fines, not fees."). "Broadly speaking, a 'fine' is a part

of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State." *Id.* at 582. A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill.2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id*. The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any cost incurred as a result of prosecuting the defendant. *Id*.

¶ 28 Defendant contends, the State concedes, and we agree that he is due full credit for the $15 state police operations fee (705 ILCS 105/27.3a (1.5) (West 2014)) and the $50 court system fee (55 ILCS 5/5-1101(c) (West 2014)). The parties agree that although these two charges are labeled as fees, this court has previously held that they are fines because they do not compensate the State for expenses incurred in the prosecution of defendant and thus, are subject to offset by the monetary sentencing credit. *People v. Wynn,* 2013 IL App (2d) 120575, ¶¶ 13, 17. Therefore, we direct the clerk of the circuit court to amend the fines, fees, and costs order to reflect a $15 credit for the state police operations fee and a $50 credit for the court system fee.

¶ 29 In sum, we affirm defendant's conviction for aggravated battery. We order the clerk of the circuit court to modify the fines, fees and costs order to vacate the $5 electronic citation fee and apply defendant's presentence custody credit to offset the $50 court systems fee and the $15 state police operations fee.

¶ 30 Affirmed; fines, fees, and costs order modified.