

2019 IL App (1st) 171485-U

No. 1-17-1485

Order filed March 15, 2019

SIXTH DIVISION

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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 23254
)	
ANDREW PASCUS,)	Honorable
)	Timothy J. Chambers,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions for aggravated battery of a peace officer affirmed where his jury waiver was valid, the testimony from the police officers was credible, and the evidence established that he acted knowingly.
- ¶ 2 Following a bench trial, defendant Andrew Pascus was convicted of two counts of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4)(i) (West 2012)) and sentenced to one year of probation. On appeal, defendant contends that he did not knowingly and voluntarily

waive his right to a jury trial. Defendant also contends that the State failed to prove him guilty beyond a reasonable doubt because the testimony from the police officers was not credible, and the evidence did not establish that he acted knowingly. We affirm.

¶ 3 Defendant was charged with six counts of aggravated battery of a peace officer. On April 2, 2014, defense counsel asked the court to set a date for a bench trial. The court asked “[a] bench trial; is that correct?” Counsel replied “[y]es, ma’am.” The court admonished defendant that he needed to return to court “[f]or your bench trial on May 14th.”

¶ 4 On August 6, 2014, counsel stated that the case was set for trial for that day and he was ready to proceed. The State requested a fitness evaluation because defendant had stated in his answer to discovery that he was taking medication for Asperger’s Syndrome, and that he suffered from attention deficit disorder, attention deficit hyperactivity disorder, and obsessive compulsive disorder. Counsel objected and stated that defendant’s fitness and sanity were not at issue. Counsel stated “[h]e knows full well the procedures that occur in a court. He knows what each person in a courtroom does for the system. He knows what the charges are. He’s able to communicate with counsel. He is perfectly fit for trial.” The trial court granted the State’s request for a behavioral clinical fitness exam (BCX). Counsel again objected, and defendant interjected “[m]y father was a lawyer for 30 years.” Defendant was found fit to stand trial with medication and legally sane at the time of the offense.

¶ 5 On November 13, 2014, the court stated “[b]y agreement with for bench December 15th.” The court admonished defendant “Andrew, December 15th.” Defendant replied “I understand.”

¶ 6 On March 10, 2015, the prosecutor stated “[t]his is set for a bench trial today.” The State nol-prossed four counts and indicated it would proceed to trial on two counts of aggravated

battery – one for spitting on the officer, and one for striking the officer. The court verified “[t]his is a bench, right; not a jury?” Counsel replied “[y]es, Judge.” The court asked “[i]s this a jury waiver here?” Counsel replied “I’m going to file that right now, your Honor.” There is no indication that the trial court admonished defendant of his right to a jury trial. The record contains a written jury waiver signed by defendant. The waiver was originally dated August 6, 2014. That date was crossed out, as were additional handwritten dates of November 13 and December 15. A fourth date of March 10, 2015, the date trial began, was written on the waiver form, and the form was stamped filed on that same date.

¶ 7 At trial, Lee June Holden testified that he was head of security for Double Door Liquor, a music venue in Chicago. About 9 p.m. on December 3, 2012, security officer Dave Williams notified Holden over his walkie-talkie that a man was smoking in the basement of the club and refused to extinguish his cigarette. Holden observed Williams standing with defendant at the bottom of the stairs, and over his walkie-talkie, heard Williams tell defendant to extinguish his cigarette. Holden identified defendant in court. Williams held defendant’s arm, and defendant pushed him away. Holden told Williams to grab defendant firmly and bring him upstairs. At the top of the stairs, defendant threw Williams to the ground and sat on top of him. Defendant appeared that he was about to punch Williams. Holden grabbed defendant by his belt and shirt and “slung” him to the ground. Holden held down defendant’s legs while Williams held down his arms. Holden told defendant to calm down and that he was being ejected from the club for smoking. Defendant replied “you n*****s aren’t kicking me out of here. I paid to get in here.” Defendant freed one of his arms and tried to punch Williams. Another security officer, Don Gibson, arrived and held down both of defendant’s arms. Holden told the general manager to call

911. Holden repeatedly told defendant to calm down and that he had to leave the club. Defendant tried to bite and spit on Holden and Gibson, and repeatedly called them n*****s. A police officer arrived and handcuffed defendant, who was cursing, spitting, and kicking. Additional police officers arrived and removed defendant from the club. On cross-examination, Holden testified that neither he nor any of his security officers punched or struck defendant.

¶ 8 Chicago police sergeant James Poremba testified that he was driving his police vehicle when someone ran out of the Double Door and told him that a fight was occurring inside. Poremba parked his vehicle and entered the club. He observed two or three security officers on top of defendant, who was lying on the ground. One of the security officers said defendant was smoking cannabis inside the club. Defendant was yelling and screaming obscenities. He was maneuvering quickly and freed one of his arms from the security officer. The security officers helped Poremba handcuff defendant. Chicago police officers Jose Hernandez and Richard Robles arrived at the club and helped Poremba lift defendant to his feet. Hernandez and Robles escorted defendant out of the club and transported him to the police station.

¶ 9 Hernandez testified that he and Robles responded to a call of a man fighting with security at the Double Door. Both officers wore civilian clothes, their police stars, and black vests that stated “police” in large letters. The officers exited their vehicle and entered the club. Hernandez observed Poremba and two security officers on top of defendant, who was handcuffed and lying face down on the ground. Hernandez identified defendant in court. Hernandez and Robles raised defendant from the ground and escorted him out of the club to their marked police vehicle. Defendant resisted walking, and the officers forced him to do so. Defendant continuously screamed and yelled obscenities. He repeatedly yelled “Call the FBI. Call the DA. F*** you.

F*** you. My dad is a lawyer. F*** you. F*** you.” Chicago police officer Tim Deberry arrived at the club and spoke with a security officer. Deberry told Hernandez that the security officer was signing a complaint against defendant for battery. Hernandez and Robles then transported defendant to the police station.

¶ 10 At the station, the officers escorted defendant into the holding room located next to the processing office. Hernandez identified a photograph of the holding room in court. The holding room is approximately six feet by nine feet. It contains two steel benches with steel bars that run the length of each bench to allow a person to be handcuffed to the bench. The officers handcuffed one of defendant’s hands to the bench that was immediately adjacent to the door. The officers left the holding room, closed the door, and began their paperwork in the processing area.

¶ 11 Defendant began banging on the door loudly from inside the holding room, and continued screaming and yelling the same obscenities as earlier. Hernandez observed the door moving and thought defendant was going to damage the door. Hernandez and Robles opened the door, entered the holding room, and warned defendant to stop yelling and hitting the door. Defendant continued yelling and screaming. The officers exited the holding room and closed the door.

¶ 12 Defendant began aggressively banging on the door harder than before and screaming nonstop. The steel door was “literally shaking.” Hernandez and Robles decided to handcuff both of defendant’s arms to prevent him from hitting the door. Hernandez and Robles reentered the holding room with Officer Michael Younan and Sergeant Robert O’Donnell. Defendant was seated on the bench and Hernandez leaned over him. Hernandez grabbed defendant’s free arm and attempted to handcuff it to the steel bar. Hernandez and defendant were face-to-face about one foot apart. Defendant kicked Hernandez on the upper part of his shin near his knee. As

Hernandez handcuffed defendant's arm to the bar, defendant spat on Hernandez's face. The trial court stated that record would reflect that Hernandez demonstrated defendant's act in court by making a sound like he was gathering spit and mucous in his mouth, then puckered his lips and indicated that he was spitting forward. Hernandez testified that defendant looked at him and clearly directed the spit towards his face. Defendant's spit landed "all over" Hernandez's face, including near his mouth. Hernandez was in shock and disbelief. He left the holding room and went to the bathroom. He saw several spots of saliva mixed with blood on his face. Hernandez washed his face immediately. He did not call for an evidence technician to photograph his face because he did not want to wait to wash his face. Hernandez testified "[t]he guy just spat on my face. I felt very violated."

¶ 13 On cross-examination, Hernandez acknowledged that the complaint he signed that night alleged that defendant committed aggravated battery "in that he spat at & striking the officer with his spit on the right leg knowing the victim to be a police officer." He explained that "spat at" and "striking" were two different acts. The complaint did not state that defendant spat on his face. Hernandez did not recall if he signed a separate complaint alleging that defendant had kicked him in the leg. Hernandez acknowledged that at the preliminary hearing, he was asked if what really happened was that blood came out of defendant's mouth while he was talking, and Hernandez replied that he did not recall. Hernandez testified at trial "I clearly recall him puckering his lips and spitting on my face. It was very disgusting."

¶ 14 Immediately after defendant spat on Hernandez, O'Donnell struck defendant with a closed fist on the right side of his face while defendant was handcuffed. Defendant was bleeding after O'Donnell struck him. As Hernandez left the room, defendant continued spitting and

kicking at the officers. The police later cuffed defendant's legs because he continued kicking and pounding. When Hernandez and Robles grabbed hold of defendant at the club, he had minor bruises on the right side of his cheek by his eye and blood on his lips. Hernandez did not recall defendant telling police to look inside his wallet, or that he had a card from his doctor stating that he was not intoxicated or using drugs.

¶ 15 Pursuant to the court's questioning, Hernandez testified that after defendant's second arm was handcuffed, he continued kicking, spitting, and being very aggressive. After he spat on Hernandez, the officers repeatedly told defendant to stop spitting, but he continued to do so.

¶ 16 Robles testified substantially the same as Hernandez regarding their arrival at the Double Door, lifting defendant from the ground, escorting him out of the club, and transporting him to the police station. Defendant had redness and swelling under his right eye, and drops of blood on his lips. Defendant was yelling obscenities and screamed "I'm being held against my will. Call the FBI. Call the DEA. My father is an attorney." Robles identified defendant in court.

¶ 17 Robles further testified the same as Hernandez that they placed defendant inside a holding room, handcuffed one of his arms to a steel bar, exited the room, and closed the door. Robles heard defendant screaming and heard a loud banging noise coming from inside the door, which was moving on its hinges. Similar to Hernandez, Robles testified that they told defendant to stop yelling and banging on the door, but he continued to do so. Robles, Hernandez, O'Donnell and Younan entered the holding room. Hernandez leaned into defendant and grabbed his free arm to cuff it to the steel bar. Defendant had droplets of blood on his mouth. Defendant kicked Hernandez in the shin. Defendant then spat on Hernandez's face. Robles observed slimy saliva spit mixed with blood on Hernandez's face. Hernandez backed away and O'Donnell struck

defendant in the face with a closed fist. Defendant continued spitting at the officers and kicked his legs at Younan. Younan struck defendant in the face with an open hand. Younan then held defendant's head still with his face turned away from the officers so he could not spit on them.

¶ 18 On cross-examination, Robles testified that after both of defendant's arms were handcuffed to the bar, he continued banging on the door with his legs. O'Donnell used a riot shield to cover the officers to prevent defendant from spitting on them while they shackled his legs. O'Donnell made contact with defendant using the riot shield. Robles acknowledged that paramedics and an ambulance arrived at the station to take defendant to the hospital more than two hours after O'Donnell struck him. Detectives Rick Green and Nicholas Spanos arrived at the station and interviewed Robles and Hernandez. Robles inventoried defendant's personal items, including his wallet. Robles did not see a doctor's note inside the wallet, nor did he recall defendant telling police to look for a document in his wallet.

¶ 19 Paramedic Jill Hutchinson testified for the defense that about 12:30 a.m. on December 4, she arrived at the police station to treat defendant. Defendant was inside a holding room with his hands and ankles cuffed. He was bleeding from his nose and mouth. Hutchinson spoke with an unidentified police officer who told her that defendant received his injuries from banging his head on the wall, and he was spitting blood everywhere.

¶ 20 Deberry testified for the defense that he did not see defendant inside the club, or at the police station. Deberry obtained shackles for defendant to prevent him from kicking the door. He also stayed with defendant at the hospital. Deberry did not recall how long defendant stayed at the hospital or for what conditions he received treatment. Deberry wrote a police incident report documenting the aggravated battery of Hernandez based on his conversation with Hernandez.

Deberry confirmed that the information in his report accurately reflected what Hernandez had told him. That information included that defendant was kicking the door and screaming obscenities. Hernandez said that he entered the holding room with Robles and Younan to investigate and prevent defendant from continuing his actions. Defendant kicked Hernandez in the shin and spat on him. Hernandez said that shortly thereafter, O'Donnell, Poremba, Deberry, and officers Julio Rodriguez and Walsh¹ entered the room to assist with subduing defendant. Hernandez reported that O'Donnell brought a police shield in the room to subdue defendant.

¶ 21 O'Donnell testified for the defense that defendant was yelling and screaming profanities, and kicking the door of the holding room. O'Donnell was not involved with defendant's arrest, but as a supervisor, was responsible for the property and equipment in the office, including the doors and walls. He did not want any property to be damaged. Defendant kicked the steel door so hard that it almost came off its hinges. O'Donnell entered the holding room with Hernandez, Robles and Younan. While defendant was handcuffed to a wall, O'Donnell struck him with a closed fist. He did so as defendant was gathering more saliva in his mouth to spit at the officers again. After O'Donnell struck him, Younan hit defendant with an open hand. Defendant was already bleeding from the mouth prior to O'Donnell and Younan striking him. O'Donnell did not observe any extra blood on defendant after he hit him. The paramedics were called after O'Donnell struck defendant. The police department did not take any action against O'Donnell for striking defendant. O'Donnell never heard defendant tell any officer to look inside his wallet.

¶ 22 On cross-examination, O'Donnell testified that when he heard defendant screaming, swearing, and banging on the holding room door, it was his responsibility as a supervisor to

¹ Officer Walsh's first name does not appear in the record.

address it. The door was moving while defendant banged on it. O'Donnell did not want the door to be damaged, nor did he want defendant to hurt himself. O'Donnell heard Hernandez and Robles tell defendant to be quiet. Defendant, however, continued screaming profanities and kicked the door harder than before. As Hernandez leaned over defendant to cuff his second arm, defendant collected spit in his mouth and spat in Hernandez's face. When defendant spat at the officers a second time, O'Donnell struck him. Younan slapped the side of defendant's face and held defendant's head with his face turned away so he could not spit at the officers. O'Donnell then left the holding room.

¶ 23 On re-direct examination, O'Donnell acknowledged that they could have left the door open so it would not be damaged. They also could have moved defendant to the opposite wall where he would not have been able to hit the door. O'Donnell acknowledged that a photograph of a wall inside the holding room depicted gang graffiti and chipped paint.

¶ 24 Spanos testified for the defense that he arrived at the police station about 10:45 p.m. on December 3 in response to a report of an aggravated battery of a police officer. Spanos interviewed seven police officers and defendant. Defendant had blood around his lips. After Spanos advised defendant of his *Miranda* rights, defendant began ranting about a fuse in Afghanistan and about how he would be "killing mother f*****s over there." When defendant stated that he wanted to go to the hospital, an ambulance was called.

¶ 25 Younan testified for the defense that he entered the holding room with Hernandez, Robles, and O'Donnell. Defendant was shouting obscenities. Younan observed O'Donnell strike defendant with a closed fist. Younan struck defendant with an open hand.

¶ 26 On cross-examination, Younan testified that he was in the sergeant's office when he heard a loud banging noise and heard someone shouting obscenities. Younan observed the steel door of the holding room moving back and forth. Younan entered the holding room with Hernandez, Robles and O'Donnell to cuff defendant's free arm. Younan observed that defendant had swelling near the right side of his eye, and was bleeding in his mouth area. Hernandez was face-to-face with defendant as he attempted to handcuff his arm. Defendant pulled his hand away and flailed his body and legs. Defendant kicked Hernandez in the lower leg and spat on his face. When Hernandez stepped back, defendant continued kicking, shouting obscenities, and spitting at the officers. O'Donnell struck defendant in the face. Defendant continued kicking and spitting. Younan struck defendant on the right side of his face with an open hand, and held defendant's face against the wall to prevent him from spitting at them. All of the officers then left the room.

¶ 27 Gail Pascus, defendant's mother, testified for the defense that defendant was treated for multiple neurological problems including Tourette syndrome, ADHD, anxiety disorder, and various learning disabilities including dyslexia. Due to Tourette's, defendant experiences tics including constant blinking, twitching, and "walking and stopping." In very stressful or highly emotional situations, defendant may make inappropriate comments or use inappropriate words, including swearing. He also displays soft neurological signs, including shakes and rapid eye movement. In addition, defendant experiences visual perceptual problems, delayed processing speed, a severe reading disability, and difficulties with social skills and communication. At the time of the offense, defendant was taking medication for anxiety and attention disorders. Defendant's physician, Michael Feld, wrote a note for defendant to carry in his wallet. The note explained that defendant often displays rapid eye movement due to a medical condition which

may make him appear that he is under the influence when he is not. Feld wrote the note because defendant was afraid of being misunderstood by police. When defendant returned home on December 5 after being released, Pascus observed wet blood on his clothing.

¶ 28 The defense presented a stipulation that Chicago police lieutenant Sarah McDermott would testify that she was the watch commander at the time of this incident. About 12:15 a.m., she spoke with defendant in the holding room. After she asked him what happened, defendant screamed “F*** you, bitch. My dad’s a lawyer and is going to f*** you up.” McDermott attempted to calm down defendant and asked if he needed assistance. Defendant replied “I’m fine. I’m not f****d up, you are. I have a card in my wallet from my doctor stating I’m not intoxicated or using drugs.”

¶ 29 The trial court found that Hernandez’s testimony that defendant spat in his face was credible. It further found that although O’Donnell’s actions were not defensible, they occurred after defendant spat at and struck Hernandez. The court stated that defendant’s condition addressed in the doctor’s note was not relevant to this case. It stated that this case was about defendant’s behavior, which must conform with the law. Accordingly, the trial court found defendant guilty of two counts of aggravated battery of a peace officer.

¶ 30 A few months after trial, the defense requested a BCX to determine defendant’s fitness for sentencing. While that determination was pending, the State requested that defendant’s bond be revoked. Defendant had called the U.S. Department of Justice Internal Affairs Division, was belligerent and hostile, and reported that Judge Catherine Haberkorn, who oversaw pretrial proceedings in this case, was corrupt. Defense counsel explained that defendant had not threatened anybody, but believed that the system in general was corrupt, and that he had not

received a fair trial. The court placed defendant on electronic home monitoring. Defendant was subsequently found fit for sentencing and fit to stand trial. The trial court merged the two counts and sentenced defendant on count 1 to one year of felony probation.

¶ 31 On appeal, defendant first contends that he did not knowingly and voluntarily waive his right to a jury trial because he signed the written jury waiver seven months before trial, and the trial court did not admonish him of his right to a jury trial. Defendant also argues that his mental health condition affected his ability to understandingly waive his right.

¶ 32 When considering whether a jury waiver was valid, this court reviews the trial record to determine if defendant understandingly waived his right to a jury trial. *People v. Tooles*, 177 Ill. 2d 462, 469 (1997). Because the facts surrounding defendant's jury waiver are not in dispute, the issue presents a question of law which we review *de novo*. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004).

¶ 33 The validity of a jury waiver is determined by analyzing the particular facts and circumstances of each case. *Id.* at 269. A written jury waiver, while not always dispositive, is one way to establish defendant's intent. *Id.* at 269-70. Although the trial court must ensure that a jury waiver is understandingly made, there are no specific admonishments or advice required for a waiver to be effective. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008). "Generally, a jury waiver is valid if it is made by defense counsel in defendant's presence in open court, without an objection by defendant." *Bracey*, 213 Ill. 2d at 270. It is defendant's burden to establish that his jury waiver was invalid. *People v. Gatlin*, 2017 IL App (1st) 143644, ¶ 14.

¶ 34 We find that the facts and circumstances in this case establish that defendant knowingly and understandingly waived his right to a jury trial. The record shows that on April 2, 2014, with

defendant present, counsel asked the court to set a date for a bench trial. The court admonished defendant that he needed to return to court “[f]or your bench trial on May 14th.” On August 6, 2014, counsel stated that the case was set for trial for that day and he was ready to proceed. When the State requested a BCX for defendant, counsel objected and stated that defendant’s fitness and sanity were not at issue. Counsel stated “[h]e knows full well the procedures that occur in a court. He knows what each person in a courtroom does for the system. He knows what the charges are. He’s able to communicate with counsel. He is perfectly fit for trial.” When the trial court granted the State’s request for a BCX, counsel again objected, and defendant interjected “[m]y father was a lawyer for 30 years.” Defendant was found fit to stand trial with medication and legally sane at the time of the offense.

¶ 35 Defendant’s trial was rescheduled for November 13, 2014. On that date, however, the trial was again rescheduled. The court stated “[b]y agreement with for bench December 15th.” The court admonished defendant “Andrew, December 15th.” Defendant replied “I understand.” Defendant’s trial was finally held on March 10, 2015. On that date, the prosecutor stated “[t]his is set for a bench trial today.” After the State nol-prossed four counts, the court verified “[t]his is a bench, right; not a jury?” Counsel replied “[y]es, Judge.” The court asked “[i]s this a jury waiver here?” Counsel replied “I’m going to file that right now, your Honor.”

¶ 36 The record contains a written jury waiver signed by defendant. The waiver was originally dated August 6, 2014. That date was crossed out, as were additional handwritten dates of November 13 and December 15. A fourth date of March 10, 2015, the date trial began, was written on the waiver form, and the form was stamped filed on that same date.

¶ 37 The record thus shows that for nearly a year, defense counsel, with defendant present, consistently and repeatedly requested a bench trial. Defendant never objected or expressed disagreement. At no time did the defense ever suggest that defendant may be considering a jury trial. The court was not required to convey any specific admonishments or advice to defendant for his waiver to be effective. *Bannister*, 232 Ill. 2d at 66. We caution, however, that absent such clear indications of defendant's consent to a bench trial, a written waiver with the date crossed out and changed several times, combined with the trial court's failure to orally admonish defendant, could be cause for reversal.

¶ 38 Moreover, defendant's claim that his mental health condition affected his ability to understandingly waive his right is contradicted by the record. When the State requested a BCX for defendant, counsel objected and stated that defendant's fitness and sanity were not at issue. Counsel stated "[h]e knows full well the procedures that occur in a court. He knows what each person in a courtroom does for the system. He knows what the charges are. He's able to communicate with counsel. He is perfectly fit for trial." Defendant interjected "[m]y father was a lawyer for 30 years." Defendant was found fit to stand trial with medication. This exchange shows that defendant knew what a jury trial was and understood that he was waiving that right. Based on this record, we find that defendant's waiver of his right to a jury trial was understandingly made, and thus, the jury waiver was valid.

¶ 39 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt because the testimony from the police officers was not credible, and was contradicted by independent witnesses and objective evidence. Defendant also argues that the evidence did not establish that he acted knowingly.

¶ 40 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 41 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 42 To prove defendant guilty of the two counts of aggravated battery of a peace officer in this case, the State was required to show that he intentionally or knowingly made physical contact of an insulting or provoking nature with Hernandez by spitting on Hernandez's body, and by striking Hernandez about the body, knowing Hernandez was a Chicago police officer, while Hernandez was engaged in the performance of his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2012).

¶ 43 Defendant first contends that the testimony from the police officers was not credible, and was contradicted by independent witnesses and objective evidence. Defendant claims that the evidence supported his theory that the officers' version of events was a "cover story" to hide the grievous conduct of O'Donnell and Younan, who struck defendant in the face while both of his hands were secured to the wall in handcuffs. Defendant asserts that the evidence showed that it was he, not Hernandez, who was battered.

¶ 44 Specifically, defendant argues that Hernandez's testimony that defendant intentionally spat saliva containing blood onto his face is not credible. Defendant claims that Hernandez's testimony was contradicted by the criminal complaint he signed on the night of the incident alleging that defendant committed aggravated battery "in that he spat at & striking the officer with his spit on the right leg knowing the victim to be a police officer." Defendant argues that Hernandez originally claimed that defendant spat on his leg, not on his face. Defendant also points to Hernandez's testimony from the preliminary hearing where he was asked if what really happened was that blood came out of defendant's mouth while he was talking, and Hernandez replied that he did not recall. Defendant argues that Hernandez's prior statements impeached his trial testimony that defendant spat on his face, rendering that testimony not credible.

¶ 45 Defendant's argument is unpersuasive. The record shows that Hernandez repeatedly and adamantly testified that defendant intentionally spat on his face. Hernandez testified that as he leaned over defendant to handcuff his arm to the bar, they were face-to-face, about one foot apart. Hernandez demonstrated that defendant gathered spit and mucous in his mouth, puckered his lips, and spit forward. Defendant looked at Hernandez and clearly directed the spit towards

his face. Hernandez testified that the spit landed “all over” his face, including near his mouth. When Hernandez looked in a mirror, he saw several spots of saliva mixed with blood on his face.

¶ 46 The record further shows that when defense counsel questioned Hernandez about the allegation in the complaint, Hernandez explained that the terms “spat at” and “striking” described two different acts. Hernandez did not recall if he signed a separate complaint alleging that defendant kicked him in the leg. No such complaint is contained in the record. It therefore appears that Hernandez signed the one complaint to encompass defendant’s two separate acts of spitting on him and kicking him in the leg. Moreover, the fact that Hernandez did not recall if blood came out of defendant’s mouth while he was talking does not imply that defendant’s act of spitting on Hernandez was not intentional. Hernandez testified “I clearly recall him puckering his lips and spitting on my face. It was very disgusting.” Hernandez’s testimony was corroborated by Robles, O’Donnell and Younan. The trial court expressly found that Hernandez’s testimony that defendant spat on his face was credible. It was the trial court’s responsibility to make that determination, and based on the record, we find no reason to disturb its finding. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 47 Defendant further claims that Holden’s testimony that none of the security officers at the club struck defendant shows that the police officers’ testimony that defendant was bruised and bloody when he left the club was false. Defendant asserts that if he was not injured at the club, he could not have spit blood on Hernandez. Defendant claims that Holden’s testimony shows that the police fabricated the allegations against him to justify their conduct of striking him.

¶ 48 We do not agree. Although Holden’s testimony showed that the security officers did not punch or strike defendant, Holden did not testify that defendant was not injured or bleeding when

he left the club. Holden testified that defendant threw Williams to the ground, sat on top of him, and appeared that he was going to punch Williams. Holden grabbed defendant by his belt and shirt and “slung” him to the ground. Holden, Williams and Gibson held defendant face-down on the ground until the police arrived, handcuffed him, and escorted him out of the club. The record shows that during this time, defendant continuously struggled with the security officers. He freed one of his arms and tried to punch Williams. He tried to bite and spit on Holden and Gibson. When Poremba arrived, defendant was cursing, spitting, kicking, and maneuvering quickly on the ground. Hernandez and Robles testified that when they grabbed hold of defendant at the club and lifted him from the ground, he had minor bruises, redness and swelling on the right side of his face near his eye, and blood on his lips. It is quite possible that defendant sustained these injuries when Holden “slung” him to the ground, and while he struggled with security while being held face-down on the ground. It appears that the trial court found the officers’ testimony that defendant was injured and bleeding when he left club credible. Based on Holden’s testimony, we find no reason to disturb that determination. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 49 Defendant next argues that the trial court failed to consider Hutchinson’s testimony when it made its credibility findings. Defendant claims that Hutchinson’s testimony that an unidentified officer told her that defendant was injured from banging his head on the wall, and that he was spitting blood everywhere shows that the charges against defendant were fabricated to conceal the misconduct of O’Donnell and Younan. This argument is also unpersuasive. The trial court found that although O’Donnell’s actions were not defensible, the evidence showed that O’Donnell and Younan struck defendant after he kicked and spat on Hernandez. The record therefore shows that regardless of the explanation provided to Hutchinson, the trial court found

that the testimony from the police officers that defendant kicked and spat on Hernandez was credible. It was the trial court's duty to weigh the testimony from all of the witnesses and determine their credibility. *Siguenza-Brito*, 235 Ill. 2d at 228. Here, we find no reason to disturb the court's findings.

¶ 50 Defendant also contends that the trial court failed to critically assess the officers' testimony that they needed to restrain defendant because they feared that he would cause property damage to the steel door and cinderblock walls of the holding room. Defendant argues that the officers' testimony is inconsistent with the photographs introduced at trial which show that the steel door is inches thick, and the walls in the holding room contain graffiti and chipped paint. Defendant claims that the officers' concern about property damage is preposterous and shows their willingness to lie.

¶ 51 The record shows that Hernandez, Robles, O'Donnell and Younan all testified that defendant was banging on the steel door with such force that the door was shaking and moving on its hinges. O'Donnell further testified that his concern was not only that the door was not damaged, but also that he did not want defendant to hurt himself. Sitting as the trier of fact, it was within the province of the trial court to weigh all of the evidence, resolve any conflicts therein, and determine the veracity of the testimony from all of the witnesses. *Siguenza-Brito*, 235 Ill. 2d at 228. Contrary to defendant's claims, the record shows that the trial court considered all of the testimony and evidence presented, and determined that the officers credibly testified that defendant spat on and kicked Hernandez before he was struck by O'Donnell and Younan. The trial court rejected defendant's theory that the charges against defendant were fabricated as

part of a cover-up by the police. Based on our review of the record, we find no basis to disturb the trial court's credibility findings.

¶ 52 Defendant next contends that the State failed to prove that he acted knowingly. Defendant claims that he accidentally spat and kicked Hernandez in the shin while flailing his body during a fit induced by his mental health conditions. Defendant asserts that being handcuffed to a wall in a room surrounded by four officers was distressing, confusing, and disorienting for him due to his numerous health disorders, which caused him to respond in a way that was involuntary and irrational. Defendant claims he was not consciously aware of his actions.

¶ 53 The State responds that the evidence shows that defendant knowingly spat on and kicked Hernandez because he was angry, and that his actions were not due to his mental health. It argues that defendant spat multiple times by gathering saliva in his mouth, puckering his lips, and directing his spit at the officers. The State points out that defendant became angry at the club where he threw a security officer to the ground, tried to bite a security officer, and was kicking and spitting at security before police arrived. The State asserts that defendant's conduct at the club was angry and violent, and he continued that same conduct with the police.

¶ 54 A person acts knowingly when he is consciously aware that his conduct is practically certain to cause the result proscribed by the offense. 720 ILCS 5/4-5(b) (West 2012). Due to its very nature, knowledge is usually proven by circumstantial evidence, and thus, may be inferred from the facts and circumstances in the case. *People v. Slabon*, 2018 IL App (1st) 150149, ¶ 35.

¶ 55 Defendant's actions also must have been voluntary. 720 ILCS 5/4-1 (West 2012). A person cannot be held criminally responsible for an involuntary act, including body movements that are not controlled by a conscious mind such as those committed during sleep,

unconsciousness, convulsions or seizures. *People v. Grant*, 71 Ill. 2d 551, 558 (1978). Acts that result from a reflex, or are not the product of defendant's effort or determination, are also considered involuntary. *People v. Martino*, 2012 IL App (2d) 101244, ¶ 13. A cornerstone of the defense of involuntary conduct is that defendant lacked the volition to control or prevent his conduct. *Grant*, 71 Ill. 2d at 558.

¶ 56 Here, viewed in the light most favorable to the State, we find that the evidence showed that defendant knowingly and intentionally spat on and kicked Hernandez, and that his acts were not accidental or involuntary. The record shows that defendant became angry and violent at the club when he was told by security that he had to leave because he refused to extinguish his cigarette. Defendant stated that he had paid to enter the club and was not leaving. Defendant threw a security officer to the ground, sat on top of him, and appeared that he was going to punch him. Defendant engaged in a struggle with three security officers whom he tried to bite and repeatedly called a vulgar name. Defendant was cursing, spitting, and kicking. The record shows that defendant continued this same angry, aggressive and violent behavior after he was escorted out of the club by police. Defendant resisted walking to the police vehicle and had to be forced to do so. He continuously screamed and yelled obscenities.

¶ 57 At the police station, defendant repeatedly banged on the holding room door with such force that the steel door was moving on its hinges. He disregarded the officers' orders to calm down and stop such conduct. As Hernandez attempted to handcuff defendant's second arm to the railing, the two men were face-to-face about one foot apart. Defendant kicked Hernandez in the upper part of his shin near his knee. Defendant then gathered spit and mucous in his mouth, puckered his lips, and spat directly into Hernandez's face. The trial court expressly found that

defendant's mental health condition was not relevant to this case. Instead, the court stated that this case was about defendant's behavior, which must conform with the law.

¶ 58 Based on the facts and circumstances in this case, we find no evidence that suggests that defendant's acts were not knowingly committed or accidental. The record shows that defendant was consciously aware of his conduct, and that he had the volition to control that conduct. *Grant*, 71 Ill. 2d at 558. Accordingly, we find that the record supports the trial court's finding that defendant was proven guilty beyond a reasonable doubt of two counts of aggravated battery of a peace officer, and we find no reason to disturb that determination.

¶ 59 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 60 Affirmed.