2019 IL App (4th) 160881-U

NO. 4-16-0881

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 29, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
FRANK WESLEY,	)	No. 15CF1724
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The State presented sufficient evidence that defendant acted voluntarily and in a "public place of accommodation or amusement" to support his conviction for aggravated battery.

¶ 2 A jury found defendant, Frank Wesley, guilty of aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). The trial court sentenced him to four years and six months in prison. On appeal, defendant argues that the State failed to present sufficient evidence to prove beyond a reasonable doubt that (1) he acted voluntarily when he made physical contact with the victim and (2) the lobby where the incident occurred was a "public place of accommodation or amusement." We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2015, the State charged defendant with one count of aggravated battery after defendant followed a postal worker and "grabbed her upper thigh" while in "a public place of accommodation or amusement ***." 720 ILCS 5/12-3.05(c) (West 2014).

¶ 5 In January 2016, the trial court entered an order for appointment of a psychiatrist to determine defendant's fitness to stand trial. Dr. Lawrence Jeckel conducted an evaluation of defendant and found that, although defendant sustained a traumatic brain injury years earlier in a car accident, he was able to understand the nature and purpose of the proceedings against him and he was fit to stand trial.

¶ 6 Defendant's jury trial was held in September 2016. Genevieve Taylor testified that she worked as a mail carrier in the city of Champaign, Illinois. She stated that on December 2, 2015, defendant approached her as she was delivering the mail. Taylor indicated she had been approached by defendant on several previous occasions during which he made inappropriate sexual comments. On this occasion, he informed Taylor that "he was going to be leaving campus soon." He asked "if [she] was going to miss him and if [she] was going to ever give him [her] phone number." Taylor testified that she continued walking, while talking with a coworker on her cell phone, and told defendant not to touch her.

¶ 7 Taylor stated that she went into a building located at 616 East Green Street that "houses both public and private spaces," including several restaurants and apartments. Taylor entered the building through two double doors that were accessible from the street and remained unlocked during business hours. The incident occurred during business hours. Taylor testified "you go in a set of two double glass doors and then there's like a little open lobby and then [the mailboxes are] there on the wall on the left side." There is also an elevator on the right side of

the lobby as one enters from the street. Taylor proceeded into the lobby to unlock the mailboxes. Defendant followed Taylor inside and asked if they were "ever gonna hook up." He then touched Taylor's left pocket on her "left hip side." Taylor yelled at defendant and told him not to touch her. Taylor's coworker, who was still on the phone, told Taylor to lock up the mailboxes and he would call the police. As Taylor walked out of the building, defendant reached for her again and touched her key chain. The following day, Taylor went to the police station and identified defendant in a photo lineup.

¶ 8 On cross-examination, Taylor admitted that defendant did not "seem normal." She acknowledged that, when she gave defendant "cues" that his behavior was unwelcome, "[defendant] reacted in a different way than *** other people would."

¶ 9 Lee Temple testified next. He stated that he was Taylor's coworker and he had been on the phone with Taylor when the incident occurred. Temple testified that he heard Taylor tell defendant to "leave her alone" and she sounded "very nervous" at the time. Temple called the police after the incident.

¶ 10 Chad Shipley, a Champaign police officer, testified that he was dispatched to 600 East Green Street in response to a report of a post office employee being harassed. Officer Shipley approached and questioned defendant. According to Shipley, defendant admitted to touching Taylor and then demonstrated how he "light[ly] touch[ed]" her arm.

¶ 11 Defendant testified on his own behalf. He stated that he recognized Taylor from the "campus area." He testified that "[he] was sitting on [a] bench and [Taylor] came and sat by [him]." Defendant denied touching Taylor but subsequently stated that he "may have shook her hand."

¶ 12 Defendant presented the testimony of Dr. Shanna Kurth, a clinical neuropsychologist. Dr. Kurth testified that she reviewed defendant's medical records and conducted an evaluation of defendant. She stated that, according to defendant's medical records, he sustained a traumatic brain injury in 1995 and he was "still exhibiting effects from it." Based on the neuroimaging scans she reviewed, it was "clear that there was quite a bit of bleeding and other indications of damage to the frontal lobes" of defendant's brain. She stated that the most prominent feature of defendant's brain injury was deficits related to behavioral regulation and executive functions. She explained that defendant suffered from a "limited ability to delay gratification" and he lacked "self-modulation."

¶ 13 When asked whether defendant would be able to comply if he were told not to touch someone, Dr. Kurth responded that it was "[v]ery unlikely that he would." She stated "[defendant] does not have the equipment to modulate his behavior." She explained that, "if there's a stimulus in front of [defendant] and he has an urge or a desire to touch it, he's bound to that stimulus and will very likely touch it regardless of the fact that someone has said, 'Don't touch it.' " Dr. Kurth further explained that, even though defendant "understands that he shouldn't [engage in the behavior], *** he would be very likely to do so anyway." She stated that, when a stimulus has "higher salience," then defendant would be at a "higher risk" for failing to regulate his behavior.

¶ 14 With respect to defendant's ability to act "voluntarily," Dr. Kurth testified as follows:

> "MS. YANCHUS [(DEFENSE COUNSEL):] Is [defendant's] action [of] not *** comporting to what he knows he should do a voluntary action on his part?

A. I'll need you to tell me what you mean by the word 'voluntary.'

Q. Is he able to stop himself from doing it?

A. Ah, no. This is where the equipment is not functioning correctly. His go, no-go equipment *** is not functioning. So, no, he's not able to stop himself.

Q. I used the example of reaching out and touching someone earlier. He knows he shouldn't touch them. He is responding to a stimulus to do so. The action of reaching his hand out and touching, he's not able to stop that from happening?

A. Correct."

¶ 15 On cross-examination, Dr. Kurth acknowledged that "[t]here are times when [defendant] can control his behavior after he's been stimulated[.]" She stated that, during her interview with defendant, he did not touch her inappropriately. She believed the presence of "authority figures" at that time helped him to modulate his behavior.

¶ 16 Ultimately, the jury found defendant guilty of aggravated battery. The trial court sentenced defendant to four years and six months in prison. Defendant subsequently filed a motion for reconsideration of his sentence. The court denied the motion.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues on appeal that the State failed to present sufficient evidence to prove beyond a reasonable doubt that (1) he acted voluntarily when he made physical contact with the victim and (2) the lobby where the incident occurred was a "public place of accommodation or amusement."

¶ 20 A. Voluntary Acts

¶ 21 Defendant contends he did not act voluntarily when he touched Taylor, a postal worker, as she delivered the mail. Specifically, he argues that a traumatic brain injury that he sustained years earlier left him "unable to regulate his behavior."

¶ 22 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008). "[A] conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007).

¶ 23 To sustain a conviction for aggravated battery in a public place, the State must prove the defendant knowingly made "physical contact of an insulting or provoking nature" with the victim in a "public place of accommodation or amusement ***." See 720 ILCS 5/12-3(a)(2), 5/12-3.05(c) (West 2014).

¶ 24 In addition, the State must prove beyond a reasonable doubt that the defendant "engaged in a voluntary act ***." *People v. Nelson*, 2013 IL App (3d) 120191, ¶ 26, 2 N.E.3d 613. "A material element of every offense is a voluntary act ***." 720 ILCS 5/4-1 (West 2014). Our supreme court has stated that "[c]ertain involuntary acts, *i.e.*, those committed during a state of automatism, occur as bodily movements which are not controlled by the conscious mind."

People v. Grant, 71 Ill. 2d 551, 558, 377 N.E.2d 4, 8 (1978). Examples of such involuntary acts may include "those committed during convulsions, sleep, unconsciousness, hypnosis or seizures." *Id.*

¶ 25 Here, in support of his position that he did not act voluntarily when he touched Taylor, defendant relies primarily on *People v. Nelson*, 2013 IL App (3d) 120191. In *Nelson*, the defendant, who suffered from Tourette's syndrome, was found guilty of telephone harassment following a bench trial. *Id.* ¶ 19. The defendant had made several telephone calls to an 84-year-old woman, asking her to "go out on a date" with him and making other lewd comments. *Id.* ¶¶ 4, 6. The defendant testified that he "picked [the victim's] name and number out of the phone book at random" and he "knew the statements he made would scare or offend an elderly woman." *Id.* ¶ 12. The defendant explained that he had "no control" when he experienced motor tics resulting from his Tourette's syndrome. *Id.* ¶ 9. The defendant's treating psychiatrist testified that, when the defendant experienced motor tics, " 'cognitive control is not possible and *** not under [the defendant's] voluntary control.' " *Id.* ¶ 14. " 'The tic is part of an automatic stimulus response motion that goes in one *** automatic motion from thought to action without any way to stop it.' " *Id.* The psychiatrist opined that "picking up the phone and dialing it, or even looking up a person's phone number in the phone book, were due to uncontrollable tics." *Id.* ¶ 15. The psychiatrist further explained that, without medication, the defendant could not control the tics. *Id.* ¶ 16. The appellate court reversed the defendant's conviction, stating that "the uncontroverted evidence presented at trial cannot support a conclusion that [the defendant] acted voluntarily when he made the phone calls" to the elderly woman. *Id.* ¶ 29. The court determined that the testimony showed "the phone calls were not acts done under [the defendant's] conscious

control." *Id.*

¶ 26 We find *Nelson* distinguishable from the present case. Notably, in *Nelson*, the uncontroverted testimony established the defendant had "*no control*" when he experienced motor tics caused by his Tourette's syndrome and, thus, the harassing phone calls the defendant made were not deemed to be voluntary. (Emphasis added.) *Id.* ¶¶ 9, 16. By contrast, in the instant case, Dr. Kurth testified that "[t]here are times when [defendant] can control" his behavior despite the continuing effects of his traumatic brain injury. She explained that, when there is "a stimulus in front of [defendant] and he has an urge or a desire to touch it, he's bound to that stimulus and will very likely touch it ***." However, Dr. Kurth subsequently acknowledged that "[*t*]*here are times when* [*defendant*] *can control his behavior after he's been stimulated*[.]" (Emphasis added.) Dr. Kurth testified that, while it was "unlikely" defendant would control his behavior, he was capable of controlling himself under some circumstances even after being triggered by a stimulus.

¶ 27 Based on Dr. Kurth's testimony, the jury reasonably could have concluded that defendant was capable of refraining from touching Taylor if he so chose. After all, defendant had interacted with Taylor on multiple prior occasions without ever having touched her. Although the jury heard expert testimony that defendant continues to suffer from the ongoing effects of his traumatic brain injury, Dr. Kurth did not testify that defendant had "no control" over his actions. Unlike in *Nelson*, the trier of fact here reasonably could have found that defendant acted voluntarily. Accordingly, viewing the evidence in the light most favorable to the State, as we must, we find there was sufficient evidence that defendant acted voluntarily when he touched Taylor.

¶ 28 B. A Public Place of Accommodation or Amusement

¶ 29 Defendant also argues the State failed to present sufficient evidence to prove beyond a reasonable doubt that the lobby where the battery occurred was a "public place of accommodation or amusement" pursuant to the aggravated battery statute. Defendant maintains that the lobby was located in a "mixed use building" containing private apartments and restaurants. He contends the lobby was situated in a "private area" with mailboxes for the apartments above. The State counters that the lobby qualified as a "public place of accommodation or amusement" because the incident occurred during business hours in an area of the building that was accessible to the public. We agree with the State.

¶ 30 "When challenging the sufficiency of the evidence, the relevant question 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. Nunn*, 301 Ill. App. 3d 816, 825, 704 N.E.2d 683, 689 (1998).

¶ 31 As stated, to prove aggravated battery in a public place, the State is required to establish that a battery occurred in a "public place of accommodation or amusement ***." See 720 ILCS 5/12-3.05(c) (West 2014). The determination of whether the location of a battery was a public place of accommodation or amusement involves a matter of statutory construction, which we review *de novo*. *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶ 12, 104 N.E.3d 1145.

¶ 32 "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent." *Id.* "[O]ur legislature was of the belief that a battery committed in an area open to the public constitutes a more serious threat *to the community* than a battery committed

elsewhere." (Emphasis in original.) *People v. Lee*, 158 Ill. App. 3d 1032, 1036, 512 N.E.2d 92, 95 (1987). "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." *People v. Ward*, 95 Ill. App. 3d 283, 287-88, 419 N.E.2d 1240, 1244 (1981).

¶ 33 As stated, the State contends the lobby where the incident occurred in this case qualified as a public place of accommodation or amusement because it was open during business hours and accessible to the public at the time the battery occurred. In support of its position, the State analogizes this case to cases in which parking lots outside of businesses were found to be "public places of accommodation or amusement" for purposes of the aggravated battery statute.

¶ 34 In *Lee*, the defendant was convicted of aggravated battery after he struck the victim in the parking lot of a convenience store. *Lee*, 158 Ill. App. 3d at 1032-33. On appeal, the defendant argued that a parking lot *outside* a store or business did not fall within the meaning of the statutory term "public place of accommodation." *Id.* at 1034. This court affirmed the defendant's conviction, stating, "We see no logical or reasonable basis for interpreting the language of this subsection so as to distinguish between the premises within the 'public place of accommodation' and the parking lot immediately outside its door." *Id.* at 1036. Similarly, in *Ward*, a hotel parking lot was found to be a "public place" within the meaning of the aggravated battery statute. *Ward*, 95 Ill. App. 3d at 287-88. The court in *Ward* emphasized "what is significant is that the alleged offense occurred in *an area accessible to the public*." (Emphasis added.) *Id.* at 288.

¶ 35 Here, like in *Lee* and *Ward*, a battery was committed in an area accessible to the

public. Taylor testified that defendant made physical contact with her as she was delivering mail in the lobby of a building that "houses both public and private spaces." The building contained several restaurants and apartments. Taylor testified that the lobby was located directly inside two double doors that were accessible from "the street" and were "not locked" during "business hours."

¶ 36 Based on the evidence presented, we find the lobby where the battery occurred qualifies as a "public place of accommodation or amusement." 720 ILCS 5/12-3.05(c) (West 2014). Accordingly, we conclude that the evidence was sufficient to support defendant's conviction for aggravated battery.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 39 Affirmed.