2020 IL App (1st) 172814-U

No. 1-17-2814

Order filed February 28, 2020

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 4977
	)	
MATTHEW HERRED,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed where a rational factfinder could have found that he used a deadly weapon.

¶ 2 Following a bench trial, defendant Matthew Herred was found guilty of aggravated battery with a deadly weapon, domestic battery, and violation of an order of protection (VOP). The court merged the domestic battery count into the aggravated battery count, and sentenced defendant to concurrent terms of four years' imprisonment for aggravated battery and three

years' imprisonment for VOP. He appeals from his conviction for aggravated battery (720 ILCS 5/12-3.05(f)(1) (West 2014)), arguing the evidence was insufficient to prove that he used a deadly weapon. We affirm.

¶ 3 Defendant was charged by information with aggravated domestic battery causing great bodily harm (count I), aggravated battery with a deadly weapon (count II), aggravated battery causing great bodily harm (count III), domestic battery (count IV), and three counts of VOP (counts V-VII).

¶ 4 At trial, Bruce Calhoun, defendant's stepfather, testified that on January 30, 2015, defendant struck him in the head with a hammer. The attack occurred in Calhoun's home on the 1500 block of South Lawndale Avenue. On March 3, 2015, Calhoun obtained a plenary order of protection against defendant. That day in court, Calhoun saw defendant being served with the order.

¶ 5 On March 12, 2015, at 6:20 a.m., Calhoun was at home asleep when he felt a "lick" on his back that hit "bone." He "jumped up" and called for his wife. She entered the bedroom and told him to sit down. Calhoun did so, then felt something warm on his back and realized he was bleeding. Paramedics took him to the hospital, where he received treatment for stab wounds. He did not receive stitches and was discharged later that day.

¶ 6 The State introduced photographs into evidence, including Exhibits 2 and 3, which Calhoun testified were accurate depictions of his bed following the incident. The photographs, which are included in the record on appeal, depict multiple blood stains on the sheets and comforter, several of which appear to be a foot or more in length. In two of the stains, the blood appears to have collected and pooled. Calhoun also identified Exhibits 5 through 8, which depict

stab wounds on his back, neck, and underneath his right arm. The wounds appear to be puncture wounds that are similar in size and shape. Calhoun did not have any stab wounds before falling asleep the previous night.

¶ 7 On cross-examination, Calhoun admitted that he did not see who stabbed him. Nobody was in the room when he jumped up after feeling the "lick." Calhoun spoke with police following the incident on January 30, 2015, but denied stating that defendant struck him with a hammer after becoming "irate" due to a "verbal confrontation."

¶ 8 Shonderek Herred, Calhoun's stepson and defendant's brother, testified that he lives with his mother, Sharon Herred, and Calhoun.[1] On the morning of March 12, 2015, he was asleep in his bedroom when he woke to someone screaming. The first scream "sounded like [Calhoun]." Shonderek heard another scream and entered Calhoun's bedroom. Both his and Calhoun's bedrooms were on the second floor of the two-story home. After entering the room, Shonderek saw blood on Calhoun's bed. He called the police and stayed at home until officers and an ambulance arrived. Shonderek denied stabbing Calhoun. From the time Shonderek went to bed until the time he woke on March 12, 2015, he did not see anyone else in the house. On cross-examination, Shonderek testified that he did not see anyone in the hallway when he exited his bedroom or see anyone in Calhoun's bedroom besides Calhoun.

¶ 9 Sharon testified that she was at home preparing for work on March 12, 2015, at around 6 a.m., when defendant entered the house. He said he needed to "get something," and "brushed" past Sharon to go upstairs. Five to ten minutes later, she heard a scream and ran to the stairs. She saw defendant "skipping" downstairs and asked him "what he had done." As she and defendant

[1] Because Shonderek Herred and Sharon Herred have the same last name, we will refer to them by their first names.

passed on the stairs, she "thought" she saw a "silver object" in defendant's hand. She could not describe the size of the object, and only saw its reflection. The object was "real shiny." She could not recall in which hand defendant held the object.

¶ 10 Defendant rushed out of the house. Sharon went to the bedroom she shares with Calhoun and saw him standing by the window. She noticed blood on his side, and told Shonderek, who was in his bedroom, to call 911. Sharon identified Exhibits 2 and 3 as accurately depicting the blood on Calhoun's bed, and Exhibits 5 through 8 as accurately depicting his "stab wounds."

¶ 11 On cross-examination, Sharon confirmed that she was on the first floor while defendant was on the second floor, and she could not see what happened on the second floor from that location.

¶ 12 The State introduced a certified plenary order of protection for Calhoun against defendant and a certified statement of defendant's conviction for domestic battery in case 15 DV 7104001.

¶ 13 Defendant moved for a directed verdict, arguing that Calhoun did not know what caused his injury and received no stitches at the hospital. The court denied the motion, citing Calhoun's injuries as evidence that defendant used a sharp object.

¶ 14 Defendant entered a stipulation into evidence that Chicago police officer Hugo Saucedo spoke with Calhoun on January 30, 2015, and wrote in his report that "after a verbal confrontation with [defendant], the defendant became irate and struck victim with a hammer in the head."

¶ 15 After closing arguments, the court found that the evidence did not show Calhoun suffered great bodily harm and acquitted defendant on counts I and III. The court found defendant guilty of count II for aggravated battery with a deadly weapon, count IV for domestic battery, and

counts V, VI, and VII for VOP. In so finding, the court stated that the evidence established defendant attacked Calhoun with an object "that was sharp as you can tell from the pictures of the injuries and the court's own life experiences." The court also referenced the photographs showing the shape of the injuries and Calhoun's blood as support for its ruling.

¶ 16 The court denied defendant's motion for a new trial. After a sentencing hearing, the court merged count IV into count II and sentenced defendant to four years' imprisonment for aggravated battery with a deadly weapon, and merged counts VI and VII into count V and sentenced defendant to three years' imprisonment for VOP, with the sentences to run concurrently.

¶ 17 On appeal, defendant argues that his conviction for aggravated battery should be reversed because the State did not prove that the instrument he used to harm Calhoun was a deadly weapon.

¶ 18 We must first determine the appropriate standard of review. Defendant contends that *de novo* review should apply because he is not challenging witness credibility and the relevant facts are not in dispute. See *People v. Skelton*, 83 Ill. 2d 58, 66 (1980) (whether an instrument is a deadly weapon is a question of law if "the character of the weapon is such as to admit of only one conclusion"). The State responds that the matter should be reviewed under the rational trier of fact standard. See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

¶ 19 We agree with the State. In concluding that defendant used a deadly weapon, the trial court considered the exhibits and testimony, and inferred based on this evidence that the implement defendant used satisfied the element. Defendant argues that the evidence does not support this inference. Thus, defendant is challenging "the inferences that the trial court drew

from the evidence," which presents a question of fact. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 35.

¶ 20 When reviewing the sufficiency of the evidence, a court considers the evidence "in the light most favorable to the prosecution" to "determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is the factfinder's responsibility "to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Gray*, 2017 IL 120958, ¶ 35. As such, the reviewing court "will not substitute its judgment for the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *People v. Bradford*, 2016 IL 118674, ¶ 12. The factfinder is "not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." (Internal citation omitted.) *People v. Hardman*, 2017 IL 121453, ¶ 37. The trial court's judgment will not be reversed "unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *Bradford*, 2016 IL 118674, ¶ 12.

¶ 21 Relevant here, in order to prove defendant guilty of aggravated battery, the State had to prove that he used a "deadly weapon" in committing a battery. 720 ILCS 5/12-3.05(f)(1) (West 2014). A deadly weapon is an "instrument that is used or may be used for the purpose of an offense and is capable of producing death." *People v. Blanks*, 361 Ill. App. 3d 400, 411 (2005). Some weapons, such as a " 'gun, pistol, or dirk-knife,' " are deadly *per se*, while other instruments can be used in a manner that makes them deadly weapons. *People v. Ross*, 229 Ill. 2d 255, 273 (2008) (quoting *People v. Dwyer*, 324 Ill. 363, 365 (1927)). When an instrument is

not deadly *per se*, whether it qualifies as a deadly weapon is a question "for the fact finder to determine from a description of the weapon, the manner of its use, and the circumstances of the case." *Blanks*, 361 Ill. App. at 411-12.

¶ 22 The instrument at issue here cannot be considered deadly *per se* because it was not recovered and no witness specifically identified it. We must therefore examine the evidence and the inferences the court made therefrom. The evidence showed that Calhoun was hospitalized and treated for stab wounds, though he was released the same day and did not require stitches. He had wounds underneath his right arm and on his back and neck. The similarity in shape and size of the wounds suggest they were all caused by the same instrument. The wounds caused bleeding, which the photographic evidence shows was substantial. The photographs also portray the locations of the wounds, one of which is near the middle of Calhoun's neck. Sharon described the instrument as "silver," "real shiny," and capable of being held in defendant's hand.

¶ 23 Viewing this evidence in the light most favorable to the prosecution, we find that a rational factfinder could have found that the instrument defendant used to attack Calhoun was a deadly weapon. Based on Sharon's testimony that the instrument was "shiny" and "silver," and the photographic evidence that defendant used it to create stab wounds, it was reasonable for the court to infer that the instrument had a sharp blade. Additionally, defendant used that instrument to inflict three separate wounds, including one on Calhoun's neck. A defendant's use of an instrument to target or harm a "vital" part of the victim's body supports a finding that the instrument was used in a manner capable of causing death. See *People v. Stanley*, 369 Ill. App. 3d 441, 445-46 (2006) (in prosecution for aggravated unlawful restraint, an instrument qualified as a deadly weapon because it was a blade held towards the victim's cheek or jaw, a "vital" part

of her body). Thus, a rational court could have found that defendant used a sharp object to harm a "vital" part of Calhoun's body such that the instrument qualified as a deadly weapon.

¶ 24 Defendant argues that the instrument cannot be considered deadly because Calhoun's injuries did not require extensive treatment or hospitalization. Aggravated battery with a deadly weapon, however, only requires a showing that defendant committed a battery while using a qualifying instrument; the extent of harm to the victim is not an element of the offense. See 720 ILCS 5/12-3.05(f) (West 2014). As discussed above, a rational factfinder could consider the instrument used here a deadly weapon, and there is no dispute that defendant committed a battery. Therefore, the State's evidence satisfied the necessary statutory elements. See *People v. Thomas*, 191 Ill. App. 3d 187, 190-93 (1989) (aggravated battery with a deadly weapon established where the defendant held a sharp object to the throat of the victim, even though the victim's only injuries were superficial cuts to the neck).

¶ 25 Viewing the evidence in the light most favorable to the State, a rational factfinder could have found that defendant used a deadly weapon in committing a battery. Accordingly, we affirm defendant's conviction for aggravated battery.

¶ 26 Affirmed.