FIFTH DIVISION
July 31, 2015

No. 1-14-0589

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 110
	)	
AUSTIN HOOD,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: The evidence was sufficient to prove aggravated battery where it was reasonable to infer that defendant, while attempting to flee a traffic stop, drove his vehicle into a police car occupied by an officer. Physical contact of an insulting or provoking nature was shown by defendant propelling his vehicle forward into a collision with the officer's vehicle, which inevitably transmitted force to the officer so that physical contact with the officer was made by an object that defendant put into motion.

¶ 2 Following a bench trial, defendant Austin Hood was convicted of aggravated battery and sentenced to four and one-half years' imprisonment. On appeal, defendant asserts that the State did not prove him guilty beyond a reasonable doubt. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with two counts of aggravated battery and one count of criminal damage to government-supported property, allegedly committed on or about December 2, 2011, by driving a motor vehicle into a vehicle owned by the University of Illinois at Chicago (UIC) and occupied by UIC police officer Daniel Lubin, causing physical contact of an insulting or provoking nature with Lubin and no more than $500 damage to the UIC vehicle. One count of aggravated battery alleged that defendant used his vehicle as a deadly weapon.

¶ 4 At trial, UIC Officer Ronald Guichon testified that he and Officer Todd Gross were in uniform and patrolling in a marked police car at about 1:30 a.m. on the day in question. They observed a "white SUV traveling northbound on Racine [Avenue] at a very high rate of speed that alarmed both of us." They followed the SUV, which slowed but failed to stop at a stop sign and then went around another northbound vehicle by making a lane change without signaling. The officers activated their lights and siren to signal the SUV to stop, and the SUV pulled over to the curb and stopped after about a block. The officers stopped behind the SUV, reported the stop by radio, and approached the SUV on foot with Officer Guichon on the driver's side and Officer Gross on the other. The SUV had dark-tinted windows except for the windshield so the officers could not see how many people were inside. The SUV's brake lights were still lit as the officers walked towards it, which Officer Guichon took to mean that it was still in drive gear.

¶ 5 As the driver's window was still up, Officer Guichon knocked on it and asked the driver to roll down his window, but the driver shook his head in a "no" gesture. Officer Guichon knocked and asked again more firmly, and the driver lowered the window about an inch or two while insisting (using a profanity) that he would not lower it further. Officer Guichon could now observe

the driver and identified him at trial as defendant. He still could not determine if there were any passengers, and he repeatedly demanded that defendant lower the window. Using profanities, defendant maintained that it was his right to not lower the window as they were not on the UIC campus. After several demands by Officer Guichon to produce his license and proof of insurance, defendant passed the documents without further lowering the window. However, defendant did not comply when Officer Guichon repeatedly demanded that he place the SUV into park gear and turn off the engine.

¶ 6 In response to the officers' earlier radio report, Officer Lubin had arrived at the scene about a minute or two into the stop. Officer Lubin stopped his marked police car, with emergency lights active, at an angle about four feet in front of the SUV. At some point in the stop, the SUV drove forward into Officer Lubin's police car, "causing it to rock back and forth," and Officer Lubin exited the car. Officer Guichon drew his baton and repeatedly but unsuccessfully ordered defendant to stop the SUV and exit it. When the SUV stopped upon striking the police car, Officer Guichon observed that defendant was making "a lot of movement" including "reaching for something between his legs" so he broke the driver's window with his baton, reached inside to unlock the door, and removed defendant from the SUV. By this time, Officer Gross had come to the driver's side of the SUV to assist Officer Guichon, as had Officer Lubin. Defendant was arrested, and Officer Guichon observed that the SUV's bumper caused a pair of dents in the passenger-side door of the police car.

¶ 7 On cross-examination, Officer Guichon testified that the SUV's lit brake lights could indicate it was in neutral or drive gear. The officers intended to cite defendant for disregarding a

stop sign and improper lane usage but not for speeding. He could not recall if defendant asked why he was stopped, and he did not tell defendant why he was stopped beyond "several traffic violations." While he was investigating the possibility that defendant was driving under the influence of alcohol, which he suspected because defendant would not lower his window, he did not ask defendant if he had been drinking. He denied rapping on the window with his baton and maintained that he knocked on the window with his hand, and he denied using profanity in response to defendant's profanities until after he broke the window. Officer Guichon was asked if the SUV "lurched forward" but answered that it "moved forward" and its wheels did not spin. The object that defendant was reaching for when Officer Guichon broke the window turned out to be a cellphone, and no contraband was found in the SUV. When defendant was asked to perform field sobriety tests at the station, he agreed and passed the tests.

¶ 8 Officer Todd Gross testified consistently with Officer Guichon, adding that he observed no front passenger upon arriving at the SUV and assisted Officer Guichon by shining a flashlight into the SUV. He could see little inside the SUV beyond "animated" but unspecified movements; he could not see where, or with which hand, defendant reached for his license.

¶ 9 Officer Daniel Lubin testified that he was patrolling the UIC campus in uniform and a marked police car when he was sent to assist Officers Guichon and Gross. Before he began his patrol that night, he checked his police car and observed no dents. He arrived at the scene with emergency lights lit and his window partially open though it was raining, explaining that leaving the window at least partially open is "an officer safety issue." He saw Officer Guichon at the driver's window of a white SUV with its brake lights lit and Officer Gross on its other side, and he

heard Officer Guichon repeatedly asking the driver to lower his window. Officer Lubin parked his car at an angle about four feet in front of the SUV to block its exit. He could observe the driver and identified him as defendant. He was still in the vehicle when the SUV drove forward "as if he was trying to get away" and struck his car, causing it to shake or be jostled. He did not hear the SUV's engine roar or its wheels screech before the collision. He was "a little shaken up" and "a little scared" and exited the car immediately out of concern that the SUV would ram it. As he walked towards the SUV, Officer Guichon repeatedly ordered defendant to exit the SUV and broke its driver's window with a baton. Officers Guichon and Gross removed defendant from the SUV with Officer Lubin's assistance. When Officer Lubin looked at his car, he observed a dent in the rear passenger-side door that had not been there on his earlier inspection. He received no medical attention due to this incident.

¶ 10 The court denied defendant's motion for a directed finding.

¶ 11 Defendant testified that he was a UIC student and, at about 1:30 a.m. on the day in question, he was driving alone in his SUV when he observed emergency lights behind him and pulled over to the curb. He noticed that the police car was a UIC car and the approaching officer was a uniformed UIC officer; he noticed only one officer. He lowered his window "halfway" and gave the officer his license and proof of insurance upon the officer's request. He asked why he was stopped, but the officer walked away without answering and then returned almost immediately. Defendant relowered his window "halfway," explaining that this was several inches or eye-height. He asked "what's the problem," and the officer repeatedly (and in a raised voice) requested that he lower the window further. Defendant repeated his question and, on receiving no direct answer,

asked for the officer to summon a sergeant. The officer "got mad"—raised his voice further and employed a profanity in demanding that defendant lower the window—and defendant repeated his request for a sergeant. The officer then drew his baton and tapped on the driver's window with it, telling defendant to open the window "before I bust it." Defendant picked up his cellphone, and then saw that an "officer blocked the front of my car in" while another walked alongside the SUV so that he felt "surrounded" by officers. The officer at the window tapped harder and repeated his command to open the window lest he break it. Defendant phoned his mother, who advised him to comply while she called an attorney. He was about to open the car door when the officer with the baton broke the window open. When the glass "hit me in the face," defendant lifted his foot from the brake and the SUV lunged forward before he could brake again. He denied using the accelerator pedal and denied that he was trying to leave the scene. The officer had not asked or ordered defendant to exit the SUV before he broke the window.

¶ 12 On cross-examination, defendant testified that the night in question was not his first time driving in general or driving that SUV in particular. The SUV's side windows were tinted, and he was aware that the SUV would move upon taking his foot off the brake pedal "if it's in drive." He denied failing to stop for a stop sign. He left the engine on after pulling over. He maintained that he could not recall if the SUV was in park, neutral, or drive gear, and maintained that he could not recall if it was in park even when asked if the SUV could have lunged as he admitted if it had been in park. However, when pressed on why the SUV lunged, he answered that it was in neutral gear. Regardless, the officer never asked him to turn off the SUV or shift gears to park. He could not recall if the SUV struck the police car, but recalled that the police car was in front of the SUV and

that the SUV briefly lunged forward before he reapplied the brakes. He denied that he was "upset" when he repeatedly asked the officer to call a sergeant; he merely wanted to know why he was stopped, but the officer would not tell him though he asked repeatedly. He exited the SUV "of my own free will" after the other officers arrived.

¶ 13 Following closing arguments, the court found defendant guilty on all counts. The court noted the officers' testimony that defendant repeatedly refused to comply with Officer Guichon's requests or commands and was making movements before the collision, and defendant corroborated that he was making movements. The court indicated that there were three officers at the scene but defendant described being surrounded by many officers. The court noted the clear evidence of a collision between the SUV and police car while defendant was in control of the SUV as its driver, defendant's professed inability to recall what gear the SUV was in, and the officers' testimony that the SUV's engine was on and brake lights lit. The court found that defendant "did purposely leave and move the [SUV] into the other vehicle because he felt he was being surrounded" and that he was aware of Officer Lubin based on his testimony about being surrounded.

¶ 14 In his unsuccessful posttrial motion, defendant challenged the sufficiency of the evidence. The court reiterated that defendant's intent was supported by his belligerence or non-compliance and his awareness of a marked police car with a uniformed officer inside it in front of his SUV.

¶ 15 The court merged defendant's convictions into one count of aggravated battery (the count alleging aggravated battery upon a police officer, knowing the officer battered was a peace officer performing his official duties (720 ILCS 5/12-3.05(d)(4)(i) (West 2012)) and sentenced him to six

years' imprisonment. On his motion to reconsider, the court reduced his sentence to four years and six months of imprisonment. This appeal timely followed.

¶ 16 On appeal, defendant contends that the evidence is insufficient to convict him of aggravated battery or criminal damage, in that the State failed to prove (1) the requisite intent for either offense, and (2) physical contact between defendant and Officer Lubin.

¶ 17 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence. *Id*. The weight of the evidence and credibility of witnesses are matters for the trier of fact, who may accept or reject as much or little of a witness's testimony as it chooses. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 131. We do not retry the defendant—we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses—and we accept all reasonable inferences from the record in favor of the State. *Brown*, 2013 IL 114196, ¶ 48. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id*. A conviction will be reversed

only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 18 The offense of aggravated battery includes battery of a person the defendant knows to be a police officer performing his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West 2012). Battery is committed when a person "knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2012). A person commits the offense of criminal damage to government supported property by knowingly damaging any government supported property. 720 ILCS 5/21-1.01(a)(1) (West 2012)(formerly 720 ILCS 5/21-4).

¶ 19 A person acts knowingly (or willfully) as to the nature or circumstances of his conduct if he "is consciously aware that his *** conduct is of that nature or that those circumstances exist," while "[k]nowledge of a material fact includes awareness of the substantial probability that the fact exists," and a person acts knowingly as to a result of his conduct if he "is consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2012). A defendant's intent or *mens rea* need not be expressed but may be inferred from his conduct and the surrounding circumstances. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 17. A defendant need not intend the specific consequences of his wrongful act, as he is responsible for unintended consequences of his wrongful act where they are a natural and probable consequence of that act. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 44.

¶ 20 Here, taking the evidence in the light most favorable to the State as we must, a reasonable trier of fact could find the requisite *mens rea* for aggravated battery and criminal damage to

government-supported property. It is undisputed that defendant was the driver of the SUV, seated at its controls, and no evidence contradicts the officers' testimony that the SUV's brake lights were still lit. Defendant admitted to being aware of the arrival of the police car a few feet in front of his SUV; in his own words, "the other officer blocked the front of my car in." We are not required to elevate to the level of reasonable doubt the slim possibility that he was unaware of Officer Lubin in the car that just arrived. If he did not directly see Officer Lubin a few feet away – his presumable focus on Officer Guichon at his side window would not rob him of peripheral vision to see out his windshield – he would know that someone must have just driven the police car in front of his SUV. Moreover, defendant admitted awareness that an "officer blocked" his path forward. The court accepted the account of the UIC officers that defendant was generally uncooperative during the traffic stop, which is corroborated in part by his own testimony that he only partially lowered the window. That evidence combined with defendant's testimony that he felt surrounded by the officers, and his location at the controls of an SUV that he had driven before, led the trial court to a reasonable inference that he consciously drove the SUV forward in an attempt to flee the scene. The court was not required to accept defendant's testimony to the contrary, nor must we raise to the level of reasonable doubt the possibility that the SUV moved forward other than by defendant's conscious decision.

¶ 21 It is a natural and probable consequence of trying to flee in the SUV with the police car only a few feet ahead, to the point where it "blocked the front of my car [*sic*] in" as defendant said, that the SUV would collide with the car. It does not avail defendant that "[h]ad Lubin's squad car been a few more feet in front of defendant's vehicle, the contact would likely not have occurred at

all," since a defendant's actions are judged under the circumstances he faced when he acted rather than another hypothetical set of circumstances. It is practically certain—and proven by the evidence of denting to the UIC police car—that an SUV colliding with a car will cause *some* amount of damage; the State did not allege, and thus did not have to prove, an aggravating measure of damage. And we consider it a natural and probable consequence of colliding with an occupied vehicle that the occupants will either be harmed or be insulted or provoked by the collision.

¶ 22 Defendant contends that the absence of physical contact by himself or his car with Officer Lubin defeats his aggravated battery conviction. Our supreme court has stated that what elevates an act from assault to battery is "any touching or other form of physical contact with the victim" (*People v. Abrams*, 48 Ill. 2d 446, 459-60 (1971)) so that a "battery, the wilful touching of the person of another by the aggressor, or some substance put in motion by him, [citation] is the consummation of an assault." *People v. Grieco*, 44 Ill. 2d 407, 411 (1970). However, defendant's act of propelling the SUV forward with the police car only a few feet ahead inherently imparted physical force to the police car; that is, the SUV collided with it. In turn, the police car inherently by the laws of physics imparted that force to its occupant, Officer Lubin, sufficiently that he felt the car shake or jostle him. In sum, defendant's actions, as determined from the evidence by the trial court, caused a physical touching of Officer Lubin by something put in motion by defendant. While defendant argues that Officer Lubin was not harmed by the collision, the State did not need to prove harm from the physical contact but, as charged, that the physical contact was of an insulting or provoking nature. As stated above, a willful collision of one's vehicle with another's is of such a nature.

¶ 23 Defendant argues that the State did not prove that he used his SUV as a deadly weapon. However, while the court found defendant guilty of the count of aggravated battery so alleging, it sentenced him upon only the count of aggravated battery not so alleging. We are affirming the charge of which defendant was convicted—that is, sentenced—and see no reason to address an issue that will not affect the judgment of the trial court.

¶ 24 Accordingly, we affirm the judgment of the circuit court.

¶ 25 Affirmed.