2024 IL App (5th) 220561-U

NO. 5-22-0561

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Perry County. |
| | ) | |
| v. | ) | No. 19-CF-72 |
| | ) | |
| ALLEN J. FISHER, | ) | Honorable |
| | ) | James W. Campanella, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Vaughan and Justice Barberis concurred in the judgment.

**ORDER**

¶ 1 *Held*: A rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime of aggravated battery based upon the evidence presented in this case. The defendant's sufficiency of the evidence claim fails. Therefore, we affirm the defendant's conviction and sentence.

¶ 2 Following a bench trial, Allen J. Fisher, the defendant, was convicted of aggravated battery, where he knowingly made physical contact of an insulting or provoking nature with the victim, Adam T. Williams, while on public property. 720 ILCS 5/12-3.05(c) (West 2018). The defendant was sentenced to two years in the Illinois Department of Corrections. On appeal, the defendant claims that the State failed to prove, beyond a reasonable doubt, that the defendant committed aggravated battery where the only testifying witness that was present during the altercation was the victim, who was not credible, and the video evidence did not capture pertinent portions of the altercation. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 29, 2019, the defendant was charged by information with two counts of aggravated battery in violation of section 12-3.05(c) of the Criminal Code of 2012 (720 ILCS 5/12-3.05(c) (West 2018)), Class 3 felonies. The information alleged in count I that the defendant "while on or about public property, being the Perry County Jail, knowingly caused bodily harm to Adam T. Williams," who was being held in Perry County jail, when he grabbed Williams by the head and slammed it into a cell wall. In count II, it was alleged that "while on or about public property, being the Perry County Jail, the defendant knowingly made physical contact of an insulting or provoking nature" with Williams when the defendant used his hands to shove Williams.

¶ 5 A bench trial was conducted on May 6, 2022. The State called two witnesses: Adam T. Williams, the victim, and Doug Clark, an employee of the Perry County jail. The State's first witness was Williams. Williams was being held in the Perry County jail because of a petition to revoke his probation for possession of methamphetamine, a Class 3 felony.

¶ 6 Williams testified that on April 22, 2019, after admitting to a petition to revoke his probation, he was housed in cellblock D of the Perry County jail. Williams described the layout of cellblock D as two separate rooms. There was the dayroom, where the inmates could eat and watch television, and on the opposite side of the cellblock there were three cells. On that day, there was an incident following "chow." After Williams had finished eating, he yelled, "If they're going to treat us like animals, I'm going to act like them," and he threw his tray through the "chuckhole."[1] Williams then turned around and retrieved his mat from the dayroom to return it to his cell when he was confronted by the defendant. Williams alleged that the defendant put his thumbs in Williams's eyes and slammed his head against a concrete wall. Williams demonstrated this

[1]The "chuckhole" is a slot in the door in the front of cellblock D.

conduct using the assistant State's attorney to show how the defendant grabbed Williams's head. Williams put his thumbs under the State's attorney's eyes on his upper cheekbone with his hands on both sides of the State's attorney's head and then pushed his head back.

¶ 7 Following the altercation, Williams was taken to the hospital to be evaluated. Due to an objection made by defense counsel, Williams did not testify whether he suffered any injuries or whether he received any treatment at the hospital.

¶ 8 On cross-examination, Williams testified that the attack happened "really fast" and estimated that the whole altercation lasted 12 seconds. Williams acknowledged that throwing his tray through the "chuckhole" was not in compliance with the jail rules. Williams explained that it was possible to be punished or sanctioned for failing to follow the rules in jail, but he believed that he would only have received a verbal warning for throwing his tray. Williams confirmed that the testimony at trial regarding the incident was consistent with the report he gave to law enforcement the day of the incident. Williams denied that he reported this incident to law enforcement to avoid punishment for throwing his tray through the "chuckhole" and breaking jail rules. Williams did not receive any punishment for throwing his tray.

¶ 9 The State's next witness was Major Doug Clark, who was employed at the Perry County jail. Clark testified that to his knowledge the Perry County jail is owned and operated by the Perry County government with public funds. Clark was aware of this because he oversaw the budget for the jail and worked with the sheriff's office on its budget.

¶ 10 Clark testified that he worked at the jail on April 22, 2019. On that date, both Williams and the defendant were housed in cellblock D of the Perry County jail. Cellblock D is in the southwest corner of the jail, which is "fairly close" to the control room. Clark testified that on April 22, 2019, at approximately five o'clock, he had finished passing out the dinner trays and returned to the

control room when he heard a loud noise. Prompted by the noise, Clark checked the cameras and realized that the sound came from cellblock D. Clark responded to cellblock D in a matter of seconds. When Clark arrived, he saw Williams and the defendant in the dayroom. Williams was near his cell, D-3. The defendant was walking towards his cell, D-1, which was at the other end of the dayroom. Clark testified that he observed a mark underneath Williams's left eye. Clark directed Williams to collect his belongings, so Williams could be evaluated by a medical professional. Clark did not testify about any medical treatment Williams may have received.

¶ 11 Clark's testimony also included a description of how the security camera system worked in the Perry County jail. Clark explained that there are security cameras throughout the jail, which included a camera in front of each of the cellblocks. Clark testified that the camera system and the camera in front of cellblock D were working properly in the jail at the time of the altercation.

¶ 12 The State offered a video recording of the altercation into evidence. Before the State started the recording, Clark pointed out the dayroom on a still image, which showed some of the inmates eating, and the location of the cells, where the inmates were housed at night. Clark indicated that Williams's cell was outside the video coverage because it was near the shower for the inmates of cellblock D. The circuit court requested that Clark identify some of the people in the video before the video was played. As requested, Clark identified the defendant, who was eating at the table in his cell, and said that he thought he could identify others once the video started. Clark informed the circuit court that there was no audio included with the video.

¶ 13 The State played the video, while Clark narrated. Clark indicated Williams had thrown his tray out through the "chuckhole" at 16:53, as evidenced by the timestamp on the video. Clark testified that the thrown tray caused a noise, which is what alerted Clark to a potential issue. Clark relayed that the video showed Williams enter his cell. Subsequently, Clark stated that the video

depicted the defendant come out of his cell, grab Williams, and push him, after which the two went towards the cell that was behind the shower and out of view of the camera.

¶ 14 The video was reviewed more thoroughly by examining "freeze frames" or still images of the recording. At "freeze frames" 16:54:01 and 16:54:02, the defendant was shown coming out of his cell with Williams standing outside in the dayroom with his bunk mat. Clark indicated that it appeared that the defendant grabbed Williams at that point. The State advanced the recording to the next "freeze frame," which depicted the defendant take Williams "back behind the shower there against the wall."

¶ 15 During cross-examination, Clark confirmed that throwing a food tray through the "chuckhole" and leaving a bunk mat in the dayroom were not "jail practice." Clark also testified that if inmates do not follow the rules of the jail, they may be subject to sanctions, punishment, or loss of privileges. Clark testified that, at his request, the cellblock door was opened quicky after his arrival. Clark observed a scratch under Williams's eye. Clark believed that the injury was fresh because it was bleeding. Clark did not notice any other injuries to Williams. Clark took verbal statements from the other inmates that were in cellblock D, including the defendant.[2] Clark did not notice any injuries on the defendant while the defendant was being interviewed by another officer. Clark's testimony concluded the State's case.

¶ 16 The defense did not present any evidence. Defense counsel made a motion for directed verdict to preserve his pretrial objection that the Perry County jail was not "public property" as contemplated by the aggravated battery statute, as charged. The circuit court stated that it believed

[2]The interview of the defendant was not admitted at trial because the defendant filed a motion to suppress his statements for failure to give the defendant his *Miranda* warnings. *Miranda v. Arizona*, 384 U.S. 436 (1966).

it was "bound by the precedent in the Fifth District," which provided otherwise, but that defense counsel had preserved the issue.[3]

¶ 17 In its closing argument, the State argued that it had presented sufficient evidence to sustain its burden of proof on both counts. In support of its argument, the State reminded the circuit court that it had heard testimony from Williams about the attack and from Clark, who had observed an injury on Williams following the altercation. Further in support, the State noted that the circuit court could review a video recording of the defendant pursuing Williams and pushing Williams.

¶ 18 Defense counsel argued that the State failed to prove that there was any bodily harm or any injury to Williams. Defense counsel argued that Clark testified that he could not tell what happened off camera. Williams testified that the defendant came towards him and grabbed his head close to his eyes. However, the video showed that there was a mattress between Williams and the defendant, and the total incident lasted a few seconds on camera and off camera. Defense counsel further argued that Williams's testimony appeared to "fly in the face of how long it actually took on video and what actually transpired on video." Defense counsel pointed out that Williams had broken jail rules and may have claimed that the defendant attacked Williams to avoid the potential repercussions. Defense counsel also argued that Williams had credibility issues because of a prior felony conviction and had given different accounts of the event. Defense counsel contended that the State did not meet its burden beyond a reasonable doubt that the defendant was guilty of the charges.

¶ 19 The circuit court found the defendant not guilty of count I because it was not convinced beyond a reasonable doubt that there was any harm to Williams. However, the circuit court found the defendant guilty of count II, regarding conduct of a provoking nature. After viewing the video

[3]The circuit court did not elaborate further on any case law that it relied upon.

evidence, the court believed that Williams picked up his bunk mat and the defendant came at Williams in "a pretty quick fashion." While the court did not see any "hand-to-hand combat," it was convinced that the defendant made physical contact of a provoking nature with Williams. Following a sentencing hearing, the circuit court sentenced the defendant to two years in the Illinois Department of Corrections to be served consecutive to the sentence the defendant was already serving.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the defendant solely contends that the State failed to prove, beyond a reasonable doubt, that the defendant committed aggravated battery. In support of the defendant's contentions, he argues that the only testifying witness present during the altercation was the victim, who was not credible; and the video evidence did not capture the pertinent portions of the altercation.

¶ 22 When a defendant claims the evidence is insufficient to sustain his conviction, a reviewing court determines whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies whether the evidence is direct or circumstantial. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). As we employ this standard of review, we are mindful that it is the trier of fact, not the reviewing court, that must resolve conflicts in testimony, weigh the evidence presented to it, and draw reasonable inferences. *Siguenza-Brito*, 235 Ill. 2d at 224. Accordingly, we will not substitute our judgment for that of the trier of fact on issues that involve the weight of the evidence or the credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25.

¶ 23 We will not set aside a criminal conviction "unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Siguenza-Brito*, 235 Ill. 2d

at 225. Moreover, it has been the longstanding and "firm" holding of the Illinois Supreme Court "that the testimony of a single witness, if positive and credible, is sufficient to convict," even when contradicted by a defendant. *Siguenza-Brito*, 235 Ill. 2d at 228. We will not reverse a conviction simply because a defendant claims that "a witness was not credible." *Siguenza-Brito*, 235 Ill. 2d at 228. We recognize that the trier of fact "is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *Siguenza-Brito*, 235 Ill. 2d at 228. The trier of fact, having seen and heard the witnesses testify, is "in a much better position than are we to determine their credibility and the weight to be accorded their testimony." *Siguenza-Brito*, 235 Ill. 2d at 229. Likewise, it is the function of the trier of fact, not the reviewing court, to resolve any discrepancies that appeared during a trial, as well as a defendant's attacks upon the character of the witnesses who testify against that defendant. *Siguenza-Brito*, 235 Ill. 2d at 229.

¶ 24 The State bears the burden of proving beyond a reasonable doubt each element of each offense with which the defendant is charged. *Siguenza-Brito*, 235 Ill. 2d at 224. To prove the defendant guilty of aggravated battery, as charged, the State had to establish that the defendant knowingly without legal justification by any means made physical contact of an insulting or provoking nature with Williams on public property. 720 ILCS 5/12-3(a)(2), 12-3.05(c) (West 2018). The defendant does not contest that the incident in question occurred on public property. Thus, the issue is whether the defendant knowingly, without legal justification, by any means, made physical contact of an insulting or provoking nature with Williams.

¶ 25 In this case, the defendant challenges the sufficiency of the evidence used to convict him, claiming on appeal that the State failed to prove that the defendant made contact of an insulting or provoking nature with Williams. More specifically, the defendant contends that there was no

definitive evidence that the defendant made contact of an insulting or provoking nature with Williams, and that Williams was not credible because he gave different accounts of the event, which were not corroborated by the video evidence. The State counters that Williams's testimony was sufficient to prove that the defendant was guilty, as it was accepted by the trier of fact and supported by the video evidence presented.

¶ 26 After reviewing the entire record in the light most favorable to the State, we hold that the evidence presented to the circuit court was sufficient to prove the defendant guilty of aggravated battery beyond a reasonable doubt. Williams testified that following dinner he yelled, "If they're going to treat us like animals, I'm going to act like them," and threw his tray through the "chuckhole." After Williams threw his tray he returned to the dayroom, where he had eaten, to retrieve his bunk mat and return it to his cell. While Williams was returning his bunk mat to his cell, he was confronted by the defendant, who put his thumbs in Williams's eyes and slammed Williams's head against the wall. Williams was taken to the hospital to be evaluated following the incident. During Williams's testimony, he also demonstrated how the defendant grabbed Williams's head.

¶ 27 Clark, an employee of the Perry County jail, testified that he heard a loud noise from cellblock D, which was later determined to be Williams throwing his tray. Clark also testified that he observed a fresh injury under Williams's eye after he arrived at cellblock D. The video evidence was introduced during Clark's testimony. The video corroborated Williams's testimony regarding the events that took place before the aggravated battery occurred.

¶ 28 As explained above, the relevant question in this appeal is "whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *Siguenza-Brito*, 235 Ill. 2d at 224. It is the trier of fact—in this case, the circuit court judge—not the

reviewing court, that is to resolve conflicts in the testimony, weigh the evidence presented to it, and draw reasonable inferences from basic facts to ultimate facts. *Siguenza-Brito*, 235 Ill. 2d at 224. This court "will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *Siguenza-Brito*, 235 Ill. 2d at 224-25. We will not set aside a criminal conviction "unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 29 The circuit court in this case was tasked with carefully weighing the credibility of Williams, as well as the other evidence presented in support of his testimony. Ultimately, the circuit court accepted that Williams was credible. We do not believe that the evidence the court considered was so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. We therefore conclude that a rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime of aggravated battery based upon the evidence presented in this case. Accordingly, we decline the defendant's invitation to usurp the trier of fact and invalidate its verdict.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 32 Affirmed.