2022 IL App (2d) 210082-U
No. 2-21-0082
Order filed May 26, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellee,	)	
v.	)	No. 16-CF-175
WILLIAM M. FISHER,	)	Honorable C. Robert Tobin III,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Bridges and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence supported a conviction of aggravated battery with a deadly weapon where (1) the State's occurrence witnesses testified that defendant struck the victim with a tire iron, a wrench, or some other kind of metal object, and (2) the State's medical expert testified that the victim's neck contusion was consistent with an impact from a metal bar and that such blunt force trauma to the neck was potentially life threatening.

¶ 2 After a jury trial, defendant, William M. Fisher, was convicted of aggravated battery with a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2016)) and sentenced to eight years' imprisonment. On appeal, he contends that his conviction must be reduced to simple battery (*id.*

§ 12-3(a)(1)) because the State failed to prove beyond a reasonable doubt that he used a deadly weapon. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with two counts of battery (*id.* § 12-3(a)(1), (a)(2)), one of which was dismissed before trial, and two counts of aggravated battery (*id.* § 12-3.05(f)(1)), one of which was dismissed before trial. The remaining charges alleged that defendant struck Shawn Jacobson on or about July 6, 2016, causing him bodily injury. The count of aggravated battery alleged that defendant used a deadly weapon, a metal bar. Defendant raised self-defense (*id.* § 7-1(a) (West 2016)).

¶ 5 At trial, Robert Rosenkranz and Kevin Smyth, two Boone County sheriff's deputies, testified that, at about 1:00 a.m. on July 6, 2016, he went to Jennifer Hunt's house in Garden Prairie and met with Jacobson outside. Rosenkranz testified that Jacobson was disoriented and had a line on his neck that appeared to have been made by being struck with an object. Rosenkranz called for an ambulance. Smyth photographed Jacobson's injury. Both deputies testified that the photograph, admitted as a State exhibit, accurately depicted the injury.

¶ 6 Hunt testified as follows. She and defendant had dated for about a year. He never moved into her house but stayed there from time to time. Hunt's two daughters, Tori and Alie, resided with her. On the evening of July 5, 2016, Hunt, her daughters, and defendant were at the house. Outside, there was a bonfire; defendant was drinking beer, and Hunt was using prescription marijuana for her nerve pain. Defendant became increasingly upset that Hunt would not drink with him. Hunt become upset, went inside, and entered her bedroom Defendant followed her in, broke some items, and threw her marijuana onto the floor. He said that, because he had caused so much damage, people would come along and "jump" him. Hunt repeatedly told him to leave.

¶ 7 Hunt testified that Tori, who was in the house the whole time, asked to borrow Hunt's truck to pick up her boyfriend, Phil Clark, Jacobson, and Jacob Dotzle, from Northwest Pallet, where they worked. While Tori was gone, defendant kept pacing in the front yard, breaking things and saying that he was going to be jumped and that he would "take care of this." Defendant called his cousin, Rob Horner, and asked him to come over because people were coming to jump him. Horner arrived with defendant's mother and her friend Joe, all in Joe's van. Hunt asked defendant's mother to take him away.

¶ 8 Hunt testified that, as defendant started to walk away, he heard her truck coming around the corner. Defendant walked back to Hunt's house. As he did, "[a] fight broke out. Everybody was getting out of the vehicle, and the next thing I know, [defendant] [was] back on the scene and [was] just swinging." Asked what she saw defendant do, Hunt testified, "I saw him swing something that was shiny. I think it was a crescent wrench but I'm not for [*sic*] sure." Jacobson's head hit the cement sidewalk. At that time, Hunt was standing on her front porch, 20 feet away. She did not see from where defendant got the object; he did not have it when they were arguing. However, he was out of her sight on more than one occasion that night. Hunt told defendant to leave. He walked down the street, and Horner drove off with defendant's mother and Joe.

¶ 9 Jacobson testified on direct examination as follows. At 12:30 a.m. on July 6, 2016, Tori picked up him, Clark, and Dotzler and drove them to Hunt's house. Tori told them about the argument between Hunt and defendant. Jacobson had seen defendant at the house but never interacted with him. Tori never asked him to confront defendant, and he never intended to do so.

¶ 10 Jacobson testified that he heard a loud bang and some mumbling right after he exited the truck. Defendant stepped out of the shadows and told Jacobson, " 'Oh, I hear you're here to jump me. You think you're going to jump me.' " Tori and Clark told defendant that nobody wanted to

jump him. After talking to defendant some more, Tori turned to go inside and invited her friends in. Jacobson's testimony continued:

"[T]hen I turned with her to go inside and then that was the last thing I remember—or last thing I remembered until I woke up, and when I woke up, I was being carried into the house by Tori and her sister.

Q. So you did not see what happened to you?

A. No.

Q. And when you say woke up, do you— *** what are you talking about?

A. I'm saying that I was walking normal and then something hit me from behind and then I don't remember anything else. I was in an immediate blackout. It was an immediate knockout.

Q. You don't remember being hit?

A. No. I *** can't remember the initial contact or anything. It was so sudden and quick."

¶ 11 Jacobson testified on cross-examination that he did not see defendant until defendant stepped out of the shadows. The cross-examination continued:

"Q. When he stepped into the light, did you notice anything in his hand?

A. I looked him up and down and it looked like he had something somewhat shiny in his hand, but I wasn't for sure if it was a bottle, if it was a beer bottle or what. I didn't give it a second guess."

¶ 12 Tori testified on direct examination that, when she returned from Northwest Pallet, a van pulled up down the street, and defendant got out of it as she and the others were getting out of Hunt's truck. The examination continued:

"Q. And when you saw him get out of the van, what did you see him do?

A. He was walking up towards all of us with a weapon in his hand.

Q. When you say a weapon, can you describe what you saw?

A. It looked like a tire iron or a wrench of some sort."

¶ 13 Tori testified that defendant came close to the truck and accused the four people of being there to jump him. Tori told defendant that nobody was there to jump him, and she tried to get inside with her friends. At that point, she saw defendant, who was standing behind Jacobson, hit him in the side of the head with "[t]he tire iron or wrench, whatever it was that was in his hand at the time." Jacobson fell and hit his head on the sidewalk. He was unconscious, and "[h]is eyes were kind of everywhere." The police were called.

¶ 14 Clark testified that, as soon as Tori returned to Hunt's home, defendant came walking down the street "with something metallic in his hand." Defendant approached Hunt's truck and exchanged words with Jacobson. Clark never saw Jacobson hit or threaten defendant. Defendant was standing to the side of Jacobson and hit him with the metal object. Jacobson fell to the ground. There was screaming, and defendant ran off.

¶ 15 Joseph Lachica, a physician, testified on direct examination as follows. At about 2:30 a.m. on July 6, 2016, he was working in the emergency department of SwedishAmerican Hospital in Belvidere. According to the chart, he treated Jacobson, who said that he had been hit in the neck with a tire iron. Lachica saw a scrape on the right side of Jacobson's head and a contusion on the left side of his neck. The injuries were consistent with being hit with a tire iron or metal bar.

¶ 16 Lachica testified that he ordered bloodwork and medical imaging because blunt trauma to the neck can cause various injuries. Asked whether such injuries are potentially life-threatening, Lachica responded, "Many." These include bleeding to the brain, skull fracture, damage to

vascular structures in the neck, and damage to the spinal cord. On reviewing the examination results, Lachica ruled out intracranial or vascular injury. He discharged Jacobson.

¶ 17 On cross-examination, defendant asked whether Jacobson's injuries "[c]ould *** be consistent with a strike from a hand hard," "like a karate chop." Lachica responded, "I suppose if it were strong enough." He acknowledged that "contusion" is another word for "bruise." On redirect examination, Lachica clarified that "contusion" refers to any blunt force injury, including life-threatening injuries such as a contusion to the brain.

¶ 18 Nancy Eisenman, a physician, testified that, on July 6, 2016, at about 4 p.m., she was working in the emergency department at SwedishAmerican hospital. She examined Jacobson, who had returned to the hospital and complained of headache, dizziness, and nausea. He had a contusion on his neck. A CT scan of Jacobson's head showed a cerebral contusion on his right frontal lobe. Jacobson testified that a lone strike to the neck is not likely to cause a frontal-lobe contusion. However, if someone were struck on the left side of his neck and fell over, a right-side frontal-lobe contusion could be consistent with the fall.

¶ 19 The State rested. Defendant first called Horner, who testified as follows. On July 6, 2016, defendant called him and asked him to come over to Hunt's house. Horner went there with defendant's mother and Joe. When Horner arrived, defendant got out and spoke to Hunt on the sidewalk. Hunt's truck pulled in, and, as Tori and the others got out, defendant walked out onto the gravel way. Horner was standing about 15 to 20 feet away. As Jacobson exited the truck, he got "a little irate" at defendant and approached him. Neither man had anything in his hand. Jacobson made some gestures, and defendant hit him "[w]ith a fist." Jacobson fell to the ground. Horner heard sirens and took off. He never saw Jacobson hit defendant, and defendant was the first person he saw take a swing at someone.

¶ 20 Defendant testified on direct examination as follows. Late on July 5, 2016, he got off work and went to Hunt's home. They started arguing over when to eat dinner, but the argument never got physical. Tori and Alie were there, but, at one point, Tori left to pick up Clark. Hunt then told defendant that Tori would bring a couple of people back with her. Because he and Hunt had been arguing, he believed that they would be coming there to remove him from Hunt's home.

¶ 21 Defendant testified that, when Tori and her friends arrived in Hunt's truck, he and Hunt were outside arguing. Defendant walked toward the road, away from the truck, because he had already called Horner so that he, defendant's mother, and Joe could give him a ride. When the three showed up, the four people in Hunt's truck got out. Jacobson was waving his hands. Defendant asked the group whether they were there to jump him, and Jacobson's hands moved. Defendant hit him with his left hand in the side of the neck. Jacobson fell to the ground. At trial, defendant demonstrated how he hit Jacobson. The court described it for the record as "a straight hand *** perpendicular to the ground."

¶ 22 Defendant testified on cross-examination as follows. When Tori left in the truck, defendant knew that she was going to pick up Clark, as she routinely did, as Clark lived in Hunt's house. Although defendant thought that Tori and her friends would try to remove him from the house, nobody ever told him so. Jacobson did not hit him before he hit Jacobson. After he hit Jacobson, defendant walked around the corner, sat on a neighbor's porch, heard the police coming, and left.

¶ 23 The jury convicted defendant of aggravated battery and simple battery. The trial court entered judgment on the aggravated battery charge and sentenced defendant to eight years' imprisonment. He timely appealed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that, although he was proved guilty beyond a reasonable doubt of battery, the evidence failed to prove beyond a reasonable doubt that he used a deadly weapon. First, defendant challenges the proof that he used a weapon of any kind: he notes that no weapon was recovered and that he and Horner testified that he hit Jacobson with his hand only. By contrast, he contends, the State's witnesses provided vague and inconsistent testimony about the alleged weapon. Second, defendant argues that, if he did use a weapon, it was not a deadly one. He notes that the alleged weapon was never examined and analyzed. He notes further that, although Jacobson suffered a brain contusion, the evidence appears to imply that it was not caused by the blow itself but from Jacobson's fall as the result of being struck. Thus, he reasons that the brain injury was irrelevant to whether the metal object itself was deadly.

¶ 26 For the following reasons, we hold that defendant was proved guilty beyond a reasonable doubt of aggravated battery. As the fact finder, the jury was well within its prerogative to (1) credit the State's witnesses' testimony that defendant used a weapon and (2) conclude that, under the circumstances, the weapon was deadly. Therefore, we affirm.

¶ 27 When faced with a challenge to the sufficiency of the evidence, we ask only whether, after viewing the evidence in the light most favorable to the prosecution, any rational fact finder could have found the elements of the offense beyond a reasonable doubt. *People v. Baskerville,* 2012 IL 111056, ¶ 31. Under this standard, all reasonable inferences must be allowed in favor of the prosecution. *Id.* The finder of fact has the prerogative to determine witness credibility and resolve conflicts in the testimony. *People v. Nitz,* 143 Ill. 2d 82, 104 (1991).

¶ 28 We turn first to the proof that defendant used a weapon of some sort. Hunt, Tori, and Clark all testified that defendant carried and used a metallic object. That Horner and defendant testified that defendant was unarmed merely created a conflict that the jury was entitled to resolve in favor

of the prosecution. Moreover, despite defendant's characterization of the three State witnesses' testimony, they were consistent if imprecise: They all identified the weapon as a metal object of some sort, which was consistent with the charges. Moreover, Lachica testified that Jacobson's external injuries were consistent with being hit by a metal bar. He "suppose[d]" that they could be consistent with being hit by a karate chop or similar unarmed blow, but only if the blow were especially severe. Even that concession was of little use to defendant, as Horner testified that defendant used his fist. Accordingly, we conclude that the evidence was sufficient to prove that defendant used a weapon.

¶ 29 We turn second to whether the State proved that the metal bar was a deadly weapon. 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). Even if not deadly *per se*, an instrument may become deadly by its use as a weapon. *Id.* at 411-12. "When the character of the weapon is doubtful or the question depends on the manner of its use, it 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." *Id.*

¶ 30 In *Blanks*, the State charged the defendant with aggravated battery with a deadly weapon. At his bench trial, one witness described the weapon as a " 'stick' " that was " 'two inches by two inches by approximately forty-two inches' " (*id.* at 402); the victim described it as a " '[t]wo-by-two *** spindle for a railing' " (*id.* at 403); and the property inventory described it as a " '2 x 2 stick approx. 30 inches in length.' " *Id.* The blow hit the victim in the forehead, causing a " 'knot' " on his head, but it did not make him fall. *Id.* The court convicted the defendant. The appellate court held that the State had proved beyond a reasonable doubt that the stick was a deadly weapon, although not such *per se*. The court relied on the character of the stick and the fact that

the defendant had wildly swung it at the witness and the victim and "landed a blow on [the victim's] forehead, a vital part of anyone's body." *Id.* at 412.

¶ 31 The facts supported the jury's verdict here at least as strongly as the facts of *Blanks* supported the trial court's finding there. The weapon was not a wooden stick but a metal bar, which a rational jury could find more dangerous. Defendant connected squarely with Jacobson's neck, creating a contusion. Moreover, we disagree with defendant that Jacobson's injuries due to falling to the pavement were irrelevant to whether the metal bar was a deadly weapon. The jury could rationally find that the immediate and highly foreseeable consequence of a blow with the hard object used by defendant was that Jacobson would fall to the stone pavement and suffer a cerebral contusion—a type of injury that Lachica described as potentially life-threatening.[1] Even without the fall, however, the jury had Lachica's expert testimony that the weapon defendant used could cause life-threatening damage to both the spine and the vascular structures in the neck. The neck is as vital a part of a person's body as the forehead, and Jacobson's injuries were more severe than those suffered by the victim in *Blanks*. We conclude that the State proved beyond a reasonable doubt that defendant used a deadly weapon. Thus, we must affirm his conviction of aggravated battery.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the judgment of the circuit court of Boone County.

[1] Even without this additional consequence, the jury could rationally find that defendant's angry and intoxicated assault of Jacobson with a metal bar had the *potential* to cause death. The State did not need to prove that Jacobson was actually ever in serious danger of death from the blow. See *Blanks*, 361 Ill. App. 3d at 412.

¶ 34 Affirmed.