2021 IL App (1st) 192466-U

No. 1-19-2466

Order filed October 20, 2021

Third 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. 16 CR 60278
	)	
STEPHAN MIKA,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Justice McBride and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed over his contention that the State failed to prove that he knew the victim was 60 years or older.

¶ 2 Following a jury trial, defendant Stephan Mika was found guilty of two counts of aggravated battery. The trial court merged the counts and imposed six years' imprisonment. On appeal, defendant argues the State failed to prove that he knew the victim was 60 years or older. For the following reasons, we affirm.

¶ 3 Defendant was charged by information with three counts of aggravated battery and one count of aggravated unlawful restraint related to an incident on December 8, 2016. The State proceeded on counts I and II. Count I alleged that, in committing a battery, defendant knowingly caused great bodily harm to Eliseo Diaz by stabbing him, and Diaz was 60 years or older (720 ILCS 5/12-3.05(a)(4) (West 2016)). Count II alleged that, in committing a battery, defendant knowingly caused bodily harm to Diaz by stabbing him with a deadly weapon, namely, a knife (720 ILCS 5/12-3.05(f)(1) (West 2016)).

¶ 4 At trial on September 12, 2019, Diaz testified he was born November 29, 1951. Around 6:30 a.m. on December 7, 2016, Diaz encountered defendant, whom he identified in court, in a bank. Defendant, whom Diaz had never met, suddenly yelled profanities. Diaz felt concerned, so he left the bank and walked towards a Starbucks. Defendant followed Diaz, screaming profanities and "nasty stuff." Diaz entered Union Station, where he assumed more people and police officers would be. After 10 to 15 minutes, Diaz went to Starbucks. He did not see defendant again that day.

¶ 5 Around 6:17 a.m. on December 8, 2016, Diaz was drinking coffee inside the Starbucks when defendant approached the window and appeared to photograph Diaz with a cell phone. Diaz stood and photographed defendant with his cell phone. Defendant left the window and Diaz finished his coffee.

¶ 6 When Diaz left Starbucks, defendant appeared and screamed profanities. Defendant then ran towards Diaz, "got in [his] face," and grabbed him with both arms around his arms and chest. Diaz tried to push defendant away. Defendant's right arm made "a jabbing motion" toward the side and back of Diaz's ribcage and Diaz felt like he was "struck with something." Defendant then walked away. Diaz was "covered in blood" and realized he had been stabbed. He returned to

Starbucks and an employee called an ambulance. Diaz was transported to a hospital, where he was treated overnight for two stab wounds requiring six or eight stitches.

¶ 7 The State entered photographs Diaz took of defendant on his cell phone, photographs taken of Diaz's injuries at the hospital on December 8, 2016, a photo lineup form signed by Diaz, and a photo array in which Diaz identified defendant as the offender. The State also published footage of the incident, which Diaz testified fairly and accurately depicted the events. The footage, which is included in the record on appeal, shows Diaz exiting Starbucks, defendant approaching Diaz as Diaz crossed the street, and them engaging in a physical altercation.

¶ 8 Amtrak railroad police officer John Nies testified that around 6 a.m. on December 8, 2016, he heard a call reporting a stabbing near a Starbucks by Union Station. Nies responded to the scene and spoke with Diaz. Afterwards, Nies left to look for the suspect, whom he knew by the name of "Steve Mika" and identified in court as defendant. Nies eventually located and detained defendant and transferred him to the Chicago police. The State entered a photograph of defendant that Nies testified depicted him after being detained.

¶ 9 Chicago police evidence technician Richard Sanchez testified that on December 8, 2016, he photographed a laceration to defendant's hand at a hospital. The State entered the photographs into evidence.

¶ 10 The jury found defendant guilty on both counts of aggravated battery. Defendant filed a motion and an amended motion for judgment notwithstanding the verdict or, in the alternative, a new trial, which the trial court denied. Following a hearing, the court merged count II into count I, imposed six years' imprisonment, and denied defendant's motion to reconsider sentence.

¶ 11 On appeal, defendant argues the State failed to prove that he knew Diaz was 60 years or older when the offense occurred. Specifically, defendant contends that the aggravated battery statute requires a mental state for each element of the offense, including that the individual harmed was 60 years or older. Defendant therefore asserts that the State had to establish both that he knowingly caused great bodily harm and knew Diaz was 60 years or older. The State responds that the State was not required to prove defendant knew the victim's age at the time of the offense.

¶ 12 Defendant's claim presents a question of statutory interpretation, which we review *de novo*. See *People v. Tolbert*, 2016 IL 117846, ¶ 12. "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent." *People v. Johnson*, 2017 IL 120310, ¶ 15. The most reliable indicator of that intent is the plain and ordinary meaning of the statutory language. *Id.* We consider the statute in its entirety, the subject of the statute, and the legislature's apparent objective in enacting the statute. *People v. Douglas*, 381 Ill. App. 3d 1067, 1070 (2008) (citing *People v. Cordell*, 223 Ill. 2d 380, 389 (2006)).

¶ 13 The aggravated battery statute, in relevant part, provides:

> "(a) A person commits aggravated battery when, in committing a battery, other than by the discharge of a firearm, he or she knowingly does any of the following:
>
> * * *
>
> (3) Causes great bodily harm or permanent disability or disfigurement to an individual whom the person knows to be a peace officer, community policing volunteer, fireman, private security officer, [or] correctional institution employee ***
>
> * * *

(4) Causes great bodily harm or permanent disability or disfigurement to an individual 60 years of age or older." 720 ILCS 5/12-3.05(a)(3), (4) (West 2016).

¶ 14 Defendant was convicted under subsection (a)(4). Viewing the statute as a whole, subsection (a)(4) does not require proof of the defendant's knowledge of the victim's age. Section (a) provides that a person commits aggravated battery when he "knowingly" causes certain injuries, including, under subsections (a)(3) and (a)(4), great bodily harm, permanent disability, or disfigurement. Subsection (a)(3) specifies that a person commits aggravated battery when he knowingly inflicts such injury on "an individual *whom the person knows to be*" involved in community safety. (Emphasis added.) 720 ILCS 5/12-3.05(a)(3) (West 2016). Subsection (a)(4), however, merely provides that a person commits aggravated battery when he knowingly causes such injury "to an individual 60 years of age or older." 720 ILCS 5/12-3.05(a)(4) (West 2016). Thus, both subsections require that a person act knowingly in causing great bodily harm, permanent disability, or disfigurement, but only subsection (a)(3) contains the additional element that the person know the special status of the victim. "Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion." *People v. Edwards*, 2012 IL 111711, ¶ 27. The phrasing of subsection (a)(3) therefore makes apparent that the legislature did not intend to require knowledge of the victim's status for a conviction under subsection (a) generally, and thus, did not intend to require knowledge of the victim's age under subsection (a)(4).

¶ 15 Our conclusion is further supported by section (d) of the aggravated battery statute. Section (d) outlines offenses based on the status of a victim and states: "A person commits aggravated battery when, in committing a battery, *** he or she *knows the individual battered to be* any of the

following," including, *inter alia*, a person 60 years or older. (Emphasis added.) 720 ILCS 5/12-3.05(d) (West 2016). Thus, in contrast to section (a), section (d) requires that a defendant know the victim's status. This contrast reflects the legislature's intent not to require knowledge of the victim's age as an element of aggravated battery under subsection (a)(4). See *Edwards*, 2012 IL 111711, ¶ 27. Accordingly, the State was not required to prove defendant knew Diaz was 60 years or older at the time of the offense.

¶ 16 We next consider the sufficiency of the evidence as to the elements of aggravated battery as charged. The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). When considering the sufficiency of the evidence to sustain a defendant's criminal conviction, it is not the reviewing court's function to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Instead, the standard of review is whether, after viewing 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). The trier of fact is responsible for assessing witness credibility, weighing testimony, and drawing reasonable inferences from the evidence. *People v. Hutchison*, 2013 IL App (1st) 102332, ¶ 27 (citing *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001)). A reviewing court will reverse a criminal conviction only where the evidence is so improbable, unsatisfactory, or inconclusive that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 17 Viewed in a light most favorable to the State, the evidence was sufficient to find defendant guilty beyond a reasonable doubt of each element of the offense. Diaz testified that on December 8, 2016, defendant approached him on the street and attacked him. During this altercation, Diaz

suffered two stab wounds to his ribcage, necessitating an overnight hospital stay and several stitches. See, *e.g.*, *People v. Flemming*, 2014 IL App (1st) 111925, ¶ 68 (finding the victim suffered "great bodily harm" where he was repeatedly stabbed, hospitalized for one day, and required stitches). Diaz also testified he was born on November 29, 1951, and thus, on the date of the incident, he was 65 years old. Therefore, the evidence demonstrated that defendant knowingly caused great bodily harm to an individual 60 years or older.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 19 Affirmed.