

2020 IL App (1st) 171834-U
No. 1-17-1834
Order filed December 24, 2020

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 10644
)	
DAVID LUKASZEWSKI,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for aggravated battery of a peace officer is affirmed over his contention that it should be reversed because the State's evidence did not establish that he knowingly caused the complaining officer's injuries and the trial court, therefore, improperly denied his motion for a directed finding.
- ¶ 2 Following a bench trial, defendant David Lukaszewski was found guilty of aggravated battery of a peace officer and resisting or obstructing a peace officer and sentenced to 38 months' imprisonment for aggravated battery of a peace officer. On appeal, defendant argues that his

conviction should be reversed because the State's evidence did not establish that he knowingly caused the complaining officer's injuries and the trial court should have granted his motion for a directed finding at the close of the State's case. For the following reasons, we affirm.

¶ 3 Defendant was charged by information with aggravated battery to a peace officer and resisting or obstructing a peace officer.¹ The aggravated battery to a peace officer count alleged that, on or about June 18, 2016, defendant committed a battery in that he knowingly caused bodily harm to Chicago police officer Manuel Naanep by striking him on or about his body, knowing Officer Naanep to be a peace officer performing his official duties (720 ILCS 12/3.05(d)(4)(i) (West Supp. 2015)). The resisting or obstructing a peace officer count alleged that, on that date, defendant knowingly resisted the performance by Officer Naanep, whom defendant knew to be a peace officer, of any authorized act within his official capacity and was the proximate cause of an injury to Officer Naanep (720 ILCS 5/31-1(a-7)) (West 2016)).

¶ 4 At trial, Officer Naanep testified that around 5:05 p.m. on June 18, 2016, he and his partner, Chicago police officer Sean Finnegan, responded to a call of a disturbance on the 4000 block of West School Street in Chicago, Illinois. The officers were in uniform. Upon arriving at that location, the officers met defendant's sister, Lisa Lukaszewski. The officers then proceeded to the second-floor apartment and found defendant, whom Officer Naanep identified in court, inside. The officers asked defendant if he needed help, and defendant said he was agitated and did not want anything to do with them. The officers told defendant he was under arrest for hitting his sister, and he responded, "I'm not going to listen to a ch***k officer." Officer Naanep tried to handcuff

¹ The State nol-prossed two similar counts directed at defendant's conduct toward a second police officer.

defendant, but defendant stated he was not going to go with them, “pushed away,” and began “throwing punches” with a closed hand at Officer Naanep’s head, face, and upper body. Officer Naanep was hit “[a] few times.” After a “small struggle,” the officers placed defendant in custody.

¶ 5 Officer Naanep testified he sustained a sprained back, bruised knee, and a sprained buttock, and went to the hospital for a medical examination of his injuries. Later that day, Officers Naanep’s and Finnegan’s injuries were photographed at the police station. Officer Naanep identified the photographs depicting his left knee and his uniform pants with “debris and dirt from the scuffle.”

¶ 6 On cross-examination, Officer Naanep testified that he was not wearing a body camera that day, but he was familiar with the general order that officers on field duty were required to wear body cameras. Officer Naanep further testified that the injury to his knee was not the result of defendant punching him in the head or body, but that it “happened when [they] all fell to the ground.”

¶ 7 At the close of the State’s case, defense counsel moved for a directed finding, which the trial court denied.

¶ 8 Defendant testified that in the late afternoon of June 18, 2016, he was in his kitchen preparing for a barbecue. At some point his sister went for a walk. Around 30 minutes later, two police officers, Officers Naanep and Finnegan, appeared on defendant’s back porch and said they needed to talk to him. The officers stated that defendant’s sister was scared to reenter the house. Defendant sat at the kitchen table having a cigarette, speaking with Officer Finnegan, when Officer Naanep “kinda like raged,” walked into the kitchen, and began to place defendant under arrest. Defendant asked what he was being placed under arrest for, and a “struggle” ensued. Defendant explained that he turned around for Officer Naanep to handcuff him, and Officer Naanep “pulled

extremely hard” on defendant’s right arm causing a “very sharp sensation” or “burning feeling.” Defendant turned back around and pushed Officer Naanep into a refrigerator and Officer Naanep fell onto a table. Officer Naanep stood up and another “slight struggle” ensued before defendant “gave in” and was arrested. Defendant testified that he sustained a broken nerve or nerve damage, which made his rotator cuff tender.

¶ 9 On cross-examination, defendant admitted that he argued with his sister that day and told Officer Naanep something about how he did not “want to talk to a ch***k.” Defendant also admitted that when Officer Naanep grabbed his wrist to take him into custody, defendant said “[n]o, I’m not” and pushed him into a refrigerator, causing Officer Naanep to fall on the floor by a table. Defendant denied punching Officer Naanep, testifying that he pushed him into the refrigerator. He denied telling a detective at the police station that he started punching Officer Naanep when Officer Naanep tried to grab his wrist. He did tell the detective, “When I started fighting the ch***k, the other p***y jumped me from behind.”

¶ 10 In rebuttal, the State called Chicago police detective Matthew Daquilante, who testified that on June 18, 2016, he spoke with defendant at the police station. Defendant told Detective Daquilante that an officer tried grabbing his wrist, so defendant started punching him. Defendant did not have any injuries that Detective Daquilante observed, complain of any injuries, or request medical treatment.

¶ 11 After all of the testimony concluded, the defense failed to renew its motion for a directed finding. Following closing arguments, the trial court found defendant guilty of aggravated battery of a peace officer and resisting or obstructing a peace officer.

¶ 12 Defendant filed a posttrial motion for a new trial, which the trial court denied. The court merged the resisting or obstructing a peace officer count into the aggravated battery of a peace officer count and sentenced defendant to 38 months' imprisonment for aggravated battery to a peace officer.

¶ 13 On appeal, defendant argues that his conviction for aggravated battery to a peace officer should be reversed because the State's evidence did not establish that he knowingly caused Officer Naanep's injuries. Specifically, defendant asserts that the trial court should have granted his motion for a directed finding of not guilty on that charge because Officer Naanep's testimony established that he sustained his injuries during a fall, not as a result of being punched, and the State therefore could not establish he caused Officer Naanep's injuries knowingly. Defendant asserts that judgment should instead be entered on the resisting or obstructing a peace officer count.

¶ 14 Defendant acknowledges he failed to renew the motion for a directed finding at the close of all evidence, but argues extensively that (1) the failure to renew the motion for a finding of not guilty constituted forfeiture, not waiver; (2) the issue can be reviewed for plain error; and (3) even if there was no plain error, then defense counsel's failure to preserve the issue constituted ineffective assistance. The State counters that defendant waived any challenge to the trial court's ruling on the motion for a directed finding. The State contends that, even if the issue was not waived, the trial court's denial of the motion was proper.

¶ 15 We need not belabor whether the issue is forfeited rather than waived because they both mean the same thing. Even if the issue was forfeited, there can be no plain error or ineffective assistance of counsel because, for the reasons that follow, we find the trial court made no error and that the denial of the defendant's motion for a directed finding was proper and, therefore, there

was no ineffective assistance of counsel. See *People v. Moon*, 2019 IL App (1st) 161573, ¶¶ 45, 47 (declining to review plain error and ineffective assistance of counsel claims where no error occurred).

¶ 16 “When, at the close of the State’s evidence or at the close of all the evidence, the evidence is insufficient to support a finding *** of guilty the court may and on motion of the defendant shall make a finding *** of not guilty, enter a judgment of acquittal and discharge the defendant.” 725 ILCS 5/115-4(k) (West 2016); see *People v. Williams*, 2017 IL App (1st) 152021, ¶ 26. “The purpose of a motion for a directed finding in a criminal trial is to test the constitutional sufficiency of the evidence by determining whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact *could* have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis added.) *Williams*, 2017 IL App (1st) 152021, ¶ 26. In moving for a directed finding, a defendant “admits the truth of the facts stated in the prosecution’s evidence,” and the trial court “does not pass upon the weight of the evidence or witness credibility in testing the sufficiency of the evidence to withstand a motion for a directed finding.” *Williams*, 2017 IL App (1st) 152021, ¶ 26. We review the trial court’s ruling on a motion for a directed finding *de novo*. *Williams*, 2017 IL App (1st) 152021, ¶ 26.

¶ 17 Defendant was convicted of aggravated battery to a peace officer. As charged here, a person commits the offense of aggravated battery to a peace officer when, in committing a battery other than by discharge of a firearm, he knows the individual battered to be a peace officer performing his official duties. 720 ILCS 5/12-3.05(d)(4)(i) (West Supp. 2015). In turn, a person commits battery if he knowingly without legal justification by any means causes bodily harm to an individual. 720 ILCS 5/12-3(a)(1) (West 2016). Defendant does not claim he did not know Officer

Naanep was a peace officer performing his official duties. He solely argues the State's evidence does not support a finding that he knowingly caused Officer Naanep's injuries. Thus, we limit our review to that issue.

¶ 18 We find Officer Naanep's testimony could support a guilty finding on the charge of aggravated battery to a peace officer. Officer Naanep testified that, when the officers attempted to arrest defendant, defendant stated he would not listen to Officer Naanep and that he was not going with the officers. Then, when Officer Naanep tried to handcuff defendant, defendant "pushed away" and punched Officer Naanep's head, face, and body with a closed hand. Officer Naanep was hit a few times but continued to try to place defendant in custody, which he was able to do after a "struggle" that resulted in them falling to the ground. During the course of his skirmish with defendant and ensuing fall, Officer Naanep sustained a sprained back, a bruised knee, and a sprained buttock. Officer Naanep testified his knee injury occurred when he and defendant fell to the ground. Photographs of Officer Naanep's knee injury were published to the trial court. The State's evidence, taken as true, could clearly support a finding that defendant knowingly caused Officer Naanep bodily harm where defendant proclaimed he would not cooperate with the officers and Officer Naanep sustained injury to his back, buttock, and knee as a result of defendant's subsequent punching and struggling with him to avoid arrest.

¶ 19 Nevertheless, defendant contends that, although Officer Naanep's testimony could establish he was injured during the struggle, it could not establish defendant caused the injuries "knowingly," as required for the offense. He points to Officer Naanep's testimony that his knee injury resulted from falling to the ground with defendant during the scuffle, not from being punched by defendant. He also points to Officer Naanep's failure to specify the cause of his

sprained back and buttock, injuries defendant claims are inconsistent with being punched in the face and upper body.

¶ 20 We initially note that, to prove aggravated battery to a peace officer, the State had to present sufficient evidence that defendant knowingly “by any means” caused bodily harm to Officer Naanep. 720 ILCS 5/12-3(a)(1) (West 2016); 720 ILCS 5/12-3.05(d)(4)(i) (West Supp. 2015). It did not have to prove the specific means by which defendant caused the bodily harm to Officer Naanep or the type of bodily harm that occurred, as these are not elements of the offense. See 720 ILCS 5/12-3(a)(1) (West 2016); 720 ILCS 5/12-3.05(d)(4)(i) (West Supp. 2015).² However, once defendant punched the officer, he became responsible for the natural effect of that punch, which caused the officer to fall to the ground, causing his injuries.

¶ 21 In fact, Illinois courts have found that “there need not be direct evidence of injury to sustain a conviction of battery based upon bodily harm.” *People v. Rotuno*, 156 Ill. App. 3d 989, 992 (1987). “Although it may be difficult to pinpoint exactly what constitutes bodily harm for the purposes of the statute, some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent, is required.” *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Thus, to the extent defendant appears to argue that he did not specifically intend to injure Officer Naanep’s knee, back, or buttock and therefore could not knowingly have caused that bodily harm, the State did not need to establish that defendant knowingly caused these specific injuries.

² Although the State charged that defendant caused bodily harm to Officer Naanep by striking him about the body, the specific means of injury is not a necessary element of the offense of battery and, thus, aggravated battery. See 720 ILCS 5/12-3(a)(1) (West 2016); 720 ILCS 5/12-3.05(d)(4)(i) (West Supp. 2015). Therefore, the phrase “to wit: struck Officer Naanep on or about the body” included in the information is immaterial surplusage rather than an essential element of the offense. See *People v. Collins*, 214 Ill. 2d 206, 219 (2005).

Instead, the State needed only to establish that defendant knowingly caused any bodily harm to Officer Naanep.

¶ 22 A person acts with knowledge of the result of his conduct, here causing bodily harm by any means as set forth in the battery statute, when he is consciously aware that his conduct is practically certain to cause that particular result. 720 ILCS 5/4-5 (West 2016); *People v. Castillo*, 2018 IL App (1st) 153147, ¶ 26. Generally, knowledge is established through circumstantial evidence rather than direct proof, including through evidence regarding the character of the assault and the seriousness and nature of the injury. *Castillo*, 2018 IL App (1st) 153147, ¶ 26; *People v. Jamison*, 2018 IL App (1st) 160409, ¶ 27. Further, in determining whether a defendant's actions caused bodily harm, the trier of fact may infer injury based on circumstantial evidence in light of common experience. *People v. Bishop*, 218 Ill. 2d 232, 250 (2006).

¶ 23 Here, Officer Naanep's testimony showed that defendant was agitated, that defendant would not comply with the officer's request to take him into custody, that the defendant disrespected the officer because he was of Asian descent, and followed through on his statement by pushing away and punching the officer when the officer attempted to handcuff him, and then continued to struggle to avoid arrest, causing the parties to fall to the ground. Officer Naanep sustained back and buttock injuries during his attempts to arrest defendant and a knee injury when they fell. Given it is common sense and practically certain that pushing, punching, and then continuing to struggle with someone to the extent that all fall to the floor will result in some type of injury or pain to the other person, we find the State's evidence ample to support a finding that defendant knowingly caused Officer Naanep's injuries. Thus, the trial court properly concluded the State's evidence was sufficient to overcome defendant's motion for a directed finding. As there

No. 1-17-1834

was no error, we need not address defendant's ineffective assistance claim. See *Moon*, 2019 IL App (1st) 161573, ¶ 47.

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

¶ 25 Affirmed.