2020 IL App (1st) 181094-U

No. 1-18-1094

Order filed November 24, 2020

Second 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 1289
	)	
GRACE CANCEL-RODRIGUEZ,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for felony reckless conduct is affirmed where the evidence presented was sufficient to prove beyond a reasonable doubt that defendant's actions caused great bodily harm to her five-month-old son.

¶ 2 Following a bench trial, defendant Grace Cancel-Rodriguez was convicted of felony reckless conduct (720 ILCS 5/12-5(a)(2) (West 2014)) and sentenced to 30 months' imprisonment. On appeal, defendant argues her conviction should be reduced to misdemeanor reckless conduct

because the trial court found her conduct resulted in "injury" rather than great bodily harm to her son K.F. We affirm.

¶ 3 Defendant and her boyfriend, co-defendant Mark Feliciano, were both charged with two counts of aggravated battery and two counts of aggravated domestic battery for shaking their then five-month-old son, K.F., which caused him great bodily harm and permanent disability.[1] The two counts of aggravated battery alleged that defendant and Feliciano caused great bodily harm (Count I) and permanent disability (Count II) to K.F., a child under the age of 13, by shaking him about the body. The two counts of aggravated domestic battery alleged that defendant and Feliciano caused great bodily harm (Count III) and permanent disability (Count IV) to K.F., their child, by shaking him about the body.

¶ 4 At the simultaneous and severed bench trial for defendant and Feliciano, Detective Pamela Childs testified that she and her partner, Detective Joseph Struck, were assigned to investigate the child abuse case concerning K.F., who had been treated at Lurie's Children's Hospital on December 17, 2015. At the hospital, Childs spoke with medical staff and K.F.'s parents, whom she identified in court as defendant and Feliciano.

¶ 5 Childs interviewed defendant at the hospital using the services of an interpreter, Detective Tom Olson. Defendant told Childs the baby had been "twitching" and "having convulsions" that morning, so she and Feliciano took him to the hospital. Defendant told Childs that no one else cared for K.F. besides herself and Feliciano. Defendant had no explanation for the injuries K.F. had sustained, but stated that once K.F. "almost rolled off the bed on the floor, but she grabbed him and caught him and [he] never hit the floor." She also told Childs that K.F. once "jerked in

[1] Feliciano also filed an appeal which is currently pending under appellate case number 1-18-1206.

his bouncy chair and jerked his head back." Defendant said that one night "between that Monday and Tuesday" K.F. was crying uncontrollably, so she went to get her neighbor for assistance, who then told her that if K.F. continued to cry, she should take him to the hospital.

¶ 6 After meeting with the doctors, Childs and Struck concluded that K.F.'s injuries were a result "of shaken baby." They subsequently arrested defendant and Feliciano. At the police station, Childs interviewed defendant again using the assistance of a translator. Defendant told Childs that "when the baby cried it would make her nervous" and indicated she had shaken him by holding him by his arms and moving him back and forth. Childs and Struck also interviewed Blanca Armenta and Marisol Beltran-Gonzalez, defendant and Feliciano's neighbor and landlord, who lived in the same building. Childs used the translation services of Detective Tom Olson for these interviews. Childs also investigated the apartment where defendant and Feliciano lived and took photographs, which she identified in court.

¶ 7 Defendant made a video statement at the police station, which was published in court. In the statement, she stated that on December 15, 2015, she was alone taking care of her children. K.F. began crying uncontrollably, which caused defendant to become frustrated and lose control. She shook K.F. four to five times before she realized she was hurting him. A few days later, she saw K.F. was shaking and opening and closing his eyes erratically, so she and defendant took him to the hospital, where the staff informed her that K.F. was experiencing convulsions and had a brain bleed. She admitted she caused the injuries to K.F.

¶ 8 On cross-examination, Childs stated that when defendant was arrested on December 30, she initially told Childs that K.F. was colicky and she once prevented him from rolling off the bed. Defendant later gave more information, including that she shook K.F.

¶ 9 Detective Joseph Struck testified that he took the lead role in interviewing Feliciano. Feliciano told Struck he had shaken K.F. and knew he injured him. Feliciano agreed to give a video statement, which was published in court.

¶ 10 Dr. Sandeep Narang, the division head of child abuse pediatrics at Lurie Children's Hospital in Chicago, testified as an expert in the field of child abuse pediatrics. Dr. Narang was consulted regarding K.F. on December 18, 2015. He examined K.F., reviewed his medical records, and discussed the case with other doctors. He found that K.F. had bleeding inside his head or "an acute or fresh subdural hemorrhage." K.F.'s medical history indicated he did not have any prior bleeding or clotting disorder or any history of infectious symptoms. Dr. Narang diagnosed K.F. with abusive head trauma, after he ruled out other possible causes for the hemorrhage. After reviewing the video statements, Dr. Narang believed that the parents separately reporting shaking K.F. was "a consistent mechanism for these findings."

¶ 11 On cross-examination, Dr. Narang stated he examined K.F. during a follow up appointment in December 2016, and found "[c]omplete resolution of the prior bleeds * * * and no further clotting issues." "From a gross anatomic perspective," K.F.'s brain appeared to be within normal limits at that time.

¶ 12 On redirect examination, Dr. Narang testified that it was "difficult to say" whether K.F. would have any lingering effects for the rest of his life, but that he did "have some mild developmental delay at this point." K.F. did not have "significant deficits" like some children with abusive head trauma. He explained that only a small percentage of cases of abusive head trauma result in fractures, neck injuries, or bruising.

¶ 13 The court then questioned Dr. Narang regarding his opinion of the level of disability K.F. suffered as a result of the trauma. Dr. Narang stated it was difficult to answer, but found K.F.'s injuries "not significant" in relation to the spectrum of possible effects. K.F. fell into the category of children who "end up with some minor deficits of motor skills and cognitive delays," which were "still permanent injuries."

¶ 14 Detective Ranzzoni testified he assisted Detectives Childs and Struck with translation services for the separate interviews of defendant and Feliciano.[2] Defendant never indicated she did not understand what was being said during her interview. Ranzzoni also translated during defendant's video statement. He testified that he reviewed the video statement submitted into evidence, and found it to be a true and accurate video of the statement he assisted translating.

¶ 15 Sergeant Thomas Olson testified he acted as a Spanish interpreter for defendant at Lurie Children's Hospital. He also provided translation services for Detectives Childs and Struck's interview of Blanca Armenta and Marisol Beltran-Gonzalez. The State rested its case in chief.

¶ 16 For the defense, Meredith Magulak testified she worked as a pediatric primary care nurse practitioner at the Kedzie Family Health Center, and was the treating nurse practitioner for K.F. Magulak saw K.F. in August 2017, when she performed a 24-month, well-child assessment on him. The assessment included checking his developmental progress. Magulak found K.F. "had very significant gains from when he was younger," and had started speaking and walking. She also found that he was "slightly behind in communication development, but that he had made gains" from prior assessments.

[2] Detective Ranzzoni did not state his first name on the record.

¶ 17 Magulak evaluated K.F. again on November 15, 2017, the day before she testified, and found he had made gains in "fine motor and personal social development." She found K.F. had "met all the developmental gains for an 18 month old," and had "attained the majority of the developmental milestones for a 24 month old." Magulak found K.F. fell short in two areas: "fine motor and communication." K.F. had several psychosocial risk factors that put him at risk for developmental delays, including living in a family with more than three children and growing up in a multi-lingual household.

¶ 18 Based upon her observations of K.F.'s progress, Magulak did not see "any reason why he would not continue to make progress," but could not "answer that 100 percent." Magulak also could not answer with certainty as to whether K.F. would one day meet developmental norms. She also could not answer whether the developmental delays he had were directly attributed to abusive head trauma. She explained that other factors contributed to K.F.'s developmental delays, and he "continued to make developmental delays" but he has been healing. According to Magulak, K.F. was "not significantly delayed."

¶ 19 On cross-examination, Magulak stated K.F. was delayed. She acknowledged that she could not testify as to whether "everything had cleared up." She stated K.F. was not taking any medication at the time of trial.

¶ 20 Dr. Thomas Ptak, an emergency radiologist employed by Emory University, testified as an expert in neuroradiology. Dr. Ptak reviewed K.F.'s medical records, and concluded that he was "not comfortable" with the diagnosis that K.F. had been subjected to abusive head trauma, because many of the findings were "not characteristic" of abusive head trauma. Dr. Ptak believed the

hemorrhages from K.F.'s MRI did not resemble the typical injuries which occur as a result of a baby being shaken, and disagreed with several of Dr. Narang's findings.

¶ 21 On cross-examination, Dr. Ptak stated he never examined K.F. himself. He stated the injuries to K.F.'s brain could have been the result of some clotting disorder. The court then directly questioned Dr. Ptak regarding his viewing of the videotaped statements. Dr. Ptak found the statements "odd" because both defendants demonstrated the same actions in shaking the baby, including holding him the exact same way. He acknowledged that his viewing of the videos played a role in his findings, but not "a major role." He informed the court that the parents' actions, as described in the statements, could have "aggravated" some preexisting condition, if one existed.

¶ 22 Defendant testified through an interpreter that on December 16, 2015, she was in the house watching her two children. K.F. woke up as if he were "not comfortable" and was crying in a way that he had never cried before, "as if he was hurting." K.F. was five months old at the time. Defendant asked her neighbor, Blanca Armenta, for help because she also had children. After they treated K.F. for colic, he calmed down, and did not cry like that again. Defendant never shook K.F. or got upset or impatient with him. Two days later, she and Feliciano saw K.F. was making "strange noises" and was "shaking on one side of the body." They took K.F. to the hospital, where the staff questioned her extensively. After K.F. was released from the hospital, he stayed with his grandmother, because he was in the custody of the Department of Children and Family Services.

¶ 23 When defendant was arrested, she explained to the police officers what had happened with K.F., which was the same thing she said at the hospital. The officers continued to question her, telling her that they could help her if she had shaken the baby and give her parenting classes so she could be with him again. A that point, defendant felt like "a bad mom" and told the officer she

had shaken K.F. The officer told her that if she said "only four or five times, that would be fine." Defendant denied shaking K.F. and did not know what happened to him to make him start seizing.

¶ 24 On cross-examination, defendant stated that she told the police she had shaken K.F. four to five times, and stated at the time of the interview that nobody threatened her or made any promises to her. She stated that she told the police she had lost control and shaken K.F. and was afraid they would take her children and felt guilty.

¶ 25 Blanca Armenta testified through an interpreter that on December 16, 2015, she lived at the same address as defendant. On that day, defendant approached Armenta because her baby was crying, and she did not know the reason. Armenta told her the baby was "colicky." Armenta did not see any injuries on the baby and assumed he was crying because of colic. The baby calmed down after approximately 15 minutes.

¶ 26 The court found defendant and Feliciano both guilty of the lesser included offense of felony reckless conduct "with injuries." In announcing its ruling, the court noted "[w]hat's not in question here, is that the young child, [K.F.], suffered injuries that had manifested themselves with delays in his development." The court further noted K.F.'s parents caused the injuries, since they had both admitted to shaking K.F. "to some excessive degree." The court found each of the parents did so with a reckless, rather than an intentional or knowing, mental state. The court specified its ruling was "as to all counts and all merge."

¶ 27 The court denied defendant's motion for a new trial, noting it "gave every bit of deference it could" to defendant. In sentencing defendant, the court stated that K.F. was improving, "albeit

at a slowed and delayed level with what appears to be a great chance of having some permanent ramifications from all this." The court sentenced defendant to 30 months' imprisonment.[3]

¶ 28 On appeal, defendant argues that this court should reduce her conviction for felony reckless conduct to misdemeanor reckless conduct, because the trial court found that her conduct resulted in "injury" rather than "great bodily harm."

¶ 29 In setting forth this argument, defendant claims that the classification of K.F.'s injury depends on the facts and circumstances of this case and the court's finding that K.F. sustained "injuries" may be reversed only if it is against the manifest weight of the evidence. However, defendant maintains that whether the court applied a proper construction of the reckless conduct statute is a question of law that this court should review *de novo*. We disagree.

¶ 30 Although defendant argues the trial court applied an improper construction of the law, she is essentially arguing that the trial court had insufficient evidence to convict her of felony reckless conduct, because the evidence did not establish that her conduct caused K.F. great bodily harm. Therefore, we will review defendant's argument as a challenge to the sufficiency of the evidence.

¶ 31 The standard of review in challenging the sufficiency of the evidence is "whether, 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. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, is responsible for resolving conflicts in the testimony, weighing the evidence, and

[3] The mittimus indicates defendant was found guilty of four counts of reckless conduct with concurrent 30-month sentences; however, in its oral ruling, the court found the counts of reckless conduct all merged. The court's oral pronouncement controls. See *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87.

drawing reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the evidence or substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *Id*. A reviewing court will not reverse a criminal conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). For the following reasons, we find the evidence sufficient to support defendant's conviction of felony reckless conduct.

¶ 32 Here, defendant was charged with aggravated battery and aggravated domestic battery and found guilty of the lesser-included offense of felony reckless conduct. *People v. Lane*, 2017 IL App (1st) 151988, ¶¶ 18-20 (felony reckless conduct is a lesser-included offense of both aggravated battery and domestic battery). To support a conviction for felony reckless conduct, the State must establish that defendant recklessly performed an act which caused great bodily harm or permanent disability or disfigurement to another person. 720 ILCS 5/12-5(a)(2) (West 2014). In announcing its ruling, the trial court did not clarify whether it found defendant caused great bodily harm or permanent disability to K.F. but noted it found defendant guilty of felony reckless conduct "with injuries."[4]

¶ 33 In this court, defendant does not dispute that she acted recklessly. Rather, she solely contends that because the trial court found she caused "injuries" to K.F. instead of great bodily harm, we must reduce her conviction to misdemeanor reckless conduct.

¶ 34 After viewing the evidence in the light most favorable to the State, we find a rational trier of fact could find beyond a reasonable doubt that defendant caused great bodily harm to K.F.

[4] The mittimus indicates the offense was reckless conduct with "great bodily harm."

Whether an injury constitutes great bodily harm is a question of fact to be determined by the factfinder, and is not precisely defined in Illinois. *People v. Mandarino*, 2013 IL App (1st) 111772, ¶ 63; *People v. Costello*, 95 Ill. App. 3d 680, 684 (1981). " 'While the element of great bodily harm does not lend itself to a precise legal definition, it requires proof of an injury of a greater and more serious nature than a simple battery.' " *Mandarino*, 2013 IL App (1st) 111772, ¶ 63 (quoting *In re J.A.*, 336 Ill. App. 3d 814, 815 (2003)).

¶ 35 Defendant and Feliciano both testified that K.F. was "shaking" and "twitching" when they took him to the hospital, where the staff informed them that K.F.'s convulsions were due to bleeding in his brain. As a result of his injuries, K.F. was in the hospital for 10 days. Dr. Narang, who examined K.F. testified that he found K.F. had an acute subdural hemorrhage, or fresh bleeding in his brain, due to child abuse. Dr. Narang testified that although K.F. did not have "significant deficits" like other children develop from abusive head trauma, he did "have some mild developmental delay at this point." Dr. Narang explained that K.F.'s "minor deficits of motor skills and cognitive delays" were "still permanent injuries." Further, Magulak testified that as of August 2017, K.F. was progressing developmentally in many areas; however, he still had deficits with respect to his communication and fine motor control compared to a normal 24-month-old child. She affirmed she could not determine whether "everything had cleared up." Given this record, a rational trier of fact could have found that K.F.'s subdural hemorrhage and subsequent convulsions, which required hospitalization, constituted great bodily harm. *People v. Figures*, 216 Ill. App. 3d. 398, 401 (1991) (great bodily harm requires injury of a greater and more serious character than the bodily harm required for ordinary battery, which has been defined as "physical

pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent.") (quoting *People v. Mays*, 91 Ill. 2d 251, 256 (1982)).

¶ 36 Nevertheless, defendant argues this court should reduce her conviction to misdemeanor reckless conduct, because the trial court found K.F. sustained "injuries," a lesser degree of harm than great bodily harm. The offense of misdemeanor reckless conduct specifies the necessary damage is "bodily harm" to another person (720 ILCS 5/12-5(a)(1) (West 2014)), which defendant interprets as equivalent to the court's use of "injuries" rather than the great bodily harm necessary for felony reckless conduct. She argues that courts have ruled that an "injury" is not the same as "great bodily harm, permanent disfigurement or death." In support of her argument, she relies on *People v. Edgecombe*, 2011 IL App (1st) 092690, and *People v. Alvarez*, 2016 IL App (2d) 140364. However, both cases are distinguishable.

¶ 37 In *Edgecombe*, the defendant was found guilty of first-degree murder, attempt first-degree murder, and aggravated battery with a firearm. 2011 IL App (1st) 092690, ¶ 9. He was sentenced to a total of 55 years' imprisonment with a 25-year firearm enhancement for first degree murder and a concurrent sentence of 25 years. *Id.*, ¶ 10. The defendant filed a *pro se* petition for postconviction relief, which was dismissed by the circuit court. *Id*, ¶ 11. On appeal, both parties requested remand for resentencing and to decide the mandatory minimum cumulative sentence which defendant faced on resentencing. The State requested we find defendant to be subject to a 25-year sentencing enhancement for the attempt murder charge. *Id*, ¶ 16. We held that the elements of attempt murder as stated in the jury instruction did not supply the elements required for the sentencing enhancement, in particular that it did not charge "great bodily harm, permanent disability, permanent disfigurement, or death" but rather "that defendant intentionally caused

injury." *Id*., ¶¶ 20-21 (emphasis in original). In explaining why the sentencing enhancement did not apply in that case, we held "an ' injury ' is not the same as ' great bodily harm, permanent disability, permanent disfigurement, or death.' " *Id*., ¶ 21.

¶ 38 In *Alvarez*, the defendant was found guilty of attempted first-degree murder, aggravated battery with a firearm, and armed violence, and was sentenced to a total of 88 years' imprisonment, including mandatory consecutive sentences for two of the convictions. 2016 IL App (2d) 140346, ¶ 1. On appeal, the defendant argued the trial court erred in imposing consecutive sentences, because the court's findings of "great bodily harm and permanent disfigurement" were insufficient to support a finding of "severe bodily injury" for purposes of consecutive sentencing, as they were different standards. *Id*, ¶ 21. We held that because "great bodily harm" determines whether a sentencing enhancement applies and "severe bodily injury" determines whether the sentences should be consecutive, the trial court's finding of "great bodily harm" did not necessarily result in a finding of "severe bodily injury" for purposes of consecutive sentencing. *Id*., ¶ 24. Therefore, without the trial court's "explicit finding" of "severe bodily injury," we declined to uphold the imposition of consecutive sentences. *Id*.

¶ 39 These two cases each involve issues regarding the court's findings with respect to sentencing enhancements or consecutive sentencing, and are thus distinguishable from the issue here. In *Edgecombe*, the sentencing enhancement at issue required an additional finding that the defendant caused "great bodily harm" but the jury instruction provided indicated the defendant need only cause "injury." *Edgecombe*, 2011 IL App (1st) 092690, ¶¶ 20-21; see 720 ILCS 5/8-4(c)(1)(D) (West 2014). Similarly, in *Alvarez*, the court needed specifically to find "severe bodily injury" to impose mandatory consecutive sentences, rather than "great bodily harm," which

applied to sentencing enhancements. *Alvarez*, 2016 IL App (2d) 140346, ¶ 24; see 730 ILCS 5/5-8-4(d)(1) (West 2014). In contrast, here, neither a sentencing enhancement nor mandatory consecutive sentences is at issue. Rather, this is a challenge to the sufficiency of the evidence to sustain defendant's conviction for felony reckless conduct. Unlike in *Edgecombe* and *Alvarez*, which dealt with sentencing issues, the trial court here was not required to mention the specific level of harm suffered by K.F. in order to find defendant guilty of felony reckless conduct. *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998) (A trier of fact in a bench trial "is not required to mention everything—or, for that matter, anything—that contributed to its verdict."). If the record contains facts supporting the court's finding, we may consider those facts to affirm the finding, even if the trial court did not specifically state that it relied on them. *People v. Mandic*, 325 Ill. App. 3d 544, 546-47 (2001).

¶ 40 Here, as previously stated, the State presented sufficient evidence to support the conclusion that defendant caused K.F. great bodily harm. The record shows that K.F. spent 10 days in the hospital for an acute subdural hemorrhage, or fresh bleeding in his brain. As a result of the injury, K.F. experienced mild developmental delay and minor deficits of motor skills and cognitive delays, which Dr. Narang classified as "permanent injuries." Although in announcing its ruling the court used the word "injuries," this is not tantamount to defendant's assertion that the trial court found K.F. suffered a lesser degree of harm and misconstrued the statute. See *People v. McCoy*, 207 Ill. 2d 352, 357 (2003) ("[W]e must presume that a trial judge knows the law.").

¶ 41 Taking the evidence in a light most favorable to the State, we find a rational trier of fact could have found defendant caused great bodily harm to K.F. Accordingly, we affirm the trial court's judgment finding defendant guilty of felony reckless conduct.

¶ 42 Affirmed.