6-2-2017

State v. Nuse Appellant's Brief Dckt. 44574

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	**NO. 44574**
	)	
Plaintiff-Respondent,	)	**ADA COUNTY**
	)	**NO. CR-FE-2015-13951**
v.	)	
	)	
CHYNNA DAWN NUSE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE SAMUEL A. HOAGLAND
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Chynna Dawn Nuse appeals from her conviction for battery against a healthcare worker. She argues the evidence was insufficient to support her conviction because there was no evidence she touched or struck her treating physician, and thus no evidence she committed battery as instructed. This Court should vacate Ms. Nuse's conviction and remand this case to the district court for entry of an acquittal.

Statement of Facts and Course of Proceedings

Ms. Nuse went to the emergency room at St. Luke's Hospital in Boise, Idaho, on September 9, 2015, complaining of abdominal pain, and having a history of ectopic pregnancy. (Tr., p.141, Ls.2-9, p.142, L.24 – p.143, L.1, p.173, Ls.6-13.) A nurse placed an IV with normal saline in Ms. Nuse's left arm. (Tr., p.150, Ls.7-16, p.170, Ls.19-25.) Dr. Mark Urban performed a physical examination of Ms. Nuse, and ordered blood and urine tests and a CT scan. (Tr., p.143, Ls.2-5, p.144, Ls.13-18.) Dr. Urban determined Ms. Nuse was not suffering from a medical emergency, and advised her she was going to be discharged, and should follow up with her doctor. (Tr., p.145, Ls.13-18, p.147, Ls.3-16.)

Dr. Urban testified that Ms. Nuse thought he had not appropriately addressed her pain, and requested an ultrasound. (Tr., p.147, Ls.17-21.) Dr. Urban refused to order an ultrasound and offered pain medications to Ms. Nuse, which she refused. (Tr., p.148, Ls.5-21, p.176, Ls.2-5.) At that point, according to Dr. Urban, the encounter "escalated." (Tr., p.151, Ls.14-15.) Dr. Urban testified, "[She] [c]ursed at me rather profusely, as well as the gentleman in the room was also cursing at me, and at that point I was standing up to exit [the exam room]. It's well

within their right to leave and be discharged and go to another facility if they wanted to, and that's when she stood up and pulled her IV out and flung it at me." (Tr., p.151, Ls.15-21.) Dr. Urban went to the bathroom and "saw IV fluids across [his] glasses and two drops of blood on [his] right che[ek]."[1] (Tr., p.158, Ls.4-7.) Dr. Urban called the police because he "knew it was a battery." (Tr., p.162, Ls.1-2.) He testified he believed Ms. Nuse deliberately threw her IV at him because "[s]he made eye contact, she was cursing and screaming at me and it flew directly at me in a single fluid motion." (Tr., p.162, L.22 – p.163, L.2.)

Ms. Nuse was charged by Information, and subsequently Amended Information, with felony battery against a healthcare worker, in violation of Idaho Code § 18-915C. (R., pp.30-31, 71-72.) The Amended Information alleged Ms. Nuse "did willfully and unlawfully use force and/or violence upon the person of Dr. Mark Urban or actually, intentionally, and unlawfully touch and/or strike the person of Dr. Mark Urban by ripping out her IV and throwing it at the victim, striking him in the face with fluids from the IV line . . . ." (R., pp.71-72.)

Following a two-day trial, the jury was instructed that, to find Ms. Nuse guilty of battery against a healthcare worker, the State had to prove each of the following elements beyond a reasonable doubt:

1. On or about September 9, 2015
2. in the state of Idaho
3. the defendant, Chynna D. Nuse, committed a battery
4. upon Dr. Mark Urban
5. by ripping out her IV and throwing it at him, striking him in the face with fluids from the IV line, and
6. at the time of the offense, Dr. Mark Urban was licensed, certified or registered by the state of Idaho to provide health care, or employed by a hospital, medical clinic or medical practice, and
7. at the time of the offense, Dr. Mark Urban was in the course of performing his official duties.

[1] Dr. Urban did not report any contact with blood in his medical report, but did mention being contacted with IV fluids. (Tr., p.160, Ls.1-6.)

(Tr., p.193, L.19 – p.194, L.10; R., p.125.) The jury was instructed that "[a] 'battery' is committed when a person actually, intentionally and unlawfully touches or strikes another person against the will of the other." (Tr., p.194, Ls.15-17; R., p.126.) The jury asked one question during its deliberations: "Can fluids be used to unlawfully strike or touch a person?" (Tr., p.211, Ls.21-25; R., p.138.) The district court instructed the jury, in writing:

> You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply depends on your determination of the facts. You will disregard any instruction that applies to a state of facts you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

(R., p.138.)

The jury found Ms. Nuse guilty. (R., p.139.) At sentencing, Ms. Nuse told the district court, "I did not have any intent whatsoever to do anything that has been mentioned at trial whatsoever. I mean, this is – I'm not a troublemaker. I don't do these things." (9/22/16 Tr., p.18, Ls.19-22.) The district court entered a withheld judgment, and placed Ms. Nuse on probation for a period of three years. (R., pp.141, 142.) The order withholding judgment was entered on September 26, 2016, and Ms. Nuse filed a timely notice of appeal on October 19, 2016. (R., pp.142-49, 150-52.)

ISSUE

Was the evidence sufficient to support Ms. Nuse's conviction for battery against a healthcare worker?

ARGUMENT

The Evidence Was Insufficient To Support Ms. Nuse's Conviction For Battery Against A Healthcare Worker

A. Introduction

The evidence was insufficient to support Ms. Nuse's conviction for battery against a healthcare worker because there was no evidence she touched or struck Dr. Urban, and thus no evidence she committed battery within the meaning of I.C. § 18-915C and § 18-903(b). Dr. Urban testified Ms. Nuse removed the IV from her arm, and "flung it at [him]," leaving IV fluids (normal saline) on his glasses, and two drops of blood on his right cheek. (Tr., p.151, Ls.15-21, p.158, Ls.4-7.) The jury was instructed that "[a] 'battery' is committed when a person actually, intentionally and unlawfully touches or strikes another person against the will of the other." (Tr., p.194, Ls.15-17; R., p.126.) Because there was absolutely no evidence that Ms. Nuse either touched or struck Dr. Urban, no rational trier of fact could have found beyond a reasonable doubt that she committed this essential element of the offense as instructed. The act of causing IV and bodily fluids to make contact with another person, even if done intentionally, does not constitute battery within the meaning of I.C. § 18-903(b), and thus cannot constitute battery against a healthcare worker under I.C. § 18-915(C).

B. Standard of Review

Ms. Nuse can challenge the sufficiency of the evidence on appeal even though she did not move for a directed verdict or judgment notwithstanding the verdict in the district court. *See State v. Faught*, 127 Idaho 873, 877-878 (1995). "Appellate review of the sufficiency of the evidence is limited in scope." *State v. Goggin*, 157 Idaho 1, 5 (2014). "The relevant inquiry is not whether this Court would find the defendant guilty beyond a reasonable doubt, but 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." *State v. Eliasen*, 158 Idaho 542, 546 (2015) (quotation marks omitted) (emphasis in original). The question for this Court is "whether there is substantial evidence upon which a reasonable jury could have found that the State met its burden of proving the essential elements of the charged crimes beyond a reasonable doubt." *Id.* (quotation marks omitted). This Court "will not substitute its judgment for that of the jury on issues of witness credibility, weight of the evidence, or reasonable inferences to be drawn from the evidence" but "exercises free review over questions of law." *Id.* (quotation marks omitted).

C. No Rational Trier Of Fact Could Have Found Beyond A Reasonable Doubt That Ms. Nuse Either Touched Or Struck Dr. Urban, Which Was An Essential Element Of The Offense

Ms. Nuse was charged with battery against a health care worker contrary to I.C. § 18-915C, which states, in pertinent part:

> Any person who commits battery as defined in section 18-903, Idaho Code, against or upon any person licensed, certified or registered by the state of Idaho to provide health care, or an employee of a hospital, medical clinic or medical practice, when the victim is in the course of performing his or her duties . . . shall be subject to imprisonment in the state prison not to exceed three (3) years.

I.C. 18-915C. Idaho Code § 18-903 "sets forth three alternative methods of committing a battery." *State v. Carlson*, 134 Idaho 389, 400 (Ct. App. 2000). This statute defines "battery" as:

> (a) Willful and unlawful use of force or violence upon the person of another; or
> (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or
> (c) Unlawfully and intentionally causing bodily harm to an individual.

I.C. § 18-903.

The State alleged in the Amended Information that Ms. Nuse committed battery against a healthcare worker by committing a battery against Dr. Urban, pursuant to I.C. § 18-903 subsections (a) or (b). (R., pp.71-72.) The comment to the Idaho pattern jury instruction defining battery provides that "[t]he definition [of battery] should be tailored to fit the allegations in the charging document." ICJI 1203, cmt. (citations omitted). However, the jury was only instructed on the definition of battery pursuant to I.C. § 18-903(b). The jury was instructed that "[a] 'battery' is committed when a person actually, intentionally and unlawfully touches or strikes another person against the will of the other." (Tr., p.194, Ls.15-17; R., p.126.) The evidence was not sufficient to support the verdict because there was no evidence that Ms. Nuse touch or struck Dr. Urban.

There is no evidence Ms. Nuse touched Dr. Urban at any point during their doctor/patient encounter on September 9, 2015. When viewed in the light most favorable to the State, the evidence suggests that Ms. Nuse removed her IV from her arm, and threw it a distance of approximately six feet, at Dr. Urban. (Tr., p.163, Ls.3-10.) Throwing an IV at another person does not, as a matter of law, constitute striking within the meaning of I.C. § 18-903(b). In *State v. Sohm*, 140 Idaho 458 (Ct. App. 2004), the Court of Appeals stated "[t]he word strike, when used as a verb, is synonymous with such terms as 'hit,' 'smite,' and 'cuff.'" *Id.* at 459 (citing WEBSTER'S NEW INTERNATIONAL DICTIONARY, Unabridged (3d ed. 1993). Throwing is neither hitting, smiting, nor cuffing.

In the typical case where a defendant is charged with battery under I.C. § 18-903(b), the evidence of touching or striking is clear. *See, e.g., State v. Purdie*, 144 Idaho 911, 912, 914 (Ct. App. 2007) (evidence sufficient to support defendant's conviction for aggravated battery under I.C. § 18-903(b) where he admitted he engaged in an altercation with the victim,

"repeatedly struck him," and used a knife during the fight). In *State v. Billings*, 137 Idaho 827, the defendant challenged the sufficiency of the evidence supporting his conviction for aggravated battery resulting from firing a shotgun into the ground, causing the victim to be struck by ricocheting pellets.[2] *Id.* at 828. Unlike in the present case, the jury in *Billings* was instructed on all three of the alternative means of committing battery. *Id.* at 829-30. The Court of Appeals agreed with the defendant that, based upon the plain language of the statute, the culpable state of mind under subsection (a) is "willful," which requires a showing that the accused purposely used force or violence upon the victim's body. *Id.* at 830. The Court then held the evidence was sufficient to support the defendant's conviction (presumably under I.C. § 18-903 (a)), because the State presented sufficient evidence to prove that the defendant intended to cause shotgun pellets to hit the victim. *Id.* at 830-31.

The Idaho Legislature has criminalized the propelling of bodily fluid or waste directed at certain persons. *See* I.C. § 18-915B (providing, in pertinent part, that it is a felony for a prisoner or pretrial detainee to "knowingly propel[ ] any bodily fluid or bodily waste at any detention officer, correctional officer, staff member, private contractor or employee of a county or state correctional facility"). But it has not defined this crime as a battery. Ms. Nuse recognizes that the State could possibly have presented sufficient evidence to support a conviction under I.C. § 18-903 (a), assuming a jury would find that her act of throwing her IV at Dr. Urban represented a willful and unlawful use of force or violence, but the evidence was not sufficient to support a verdict of guilty under I.C. § 18-903 (b). Because the State failed to present substantial evidence to the jury proving, beyond a reasonable doubt, that Ms. Nuse committed a battery within the

[2] A person commits aggravated battery who, in committing battery, *inter alia*, uses a deadly weapon or instrument. I.C. § 18-907(1)(b).

meaning of Idaho Code § 18-903(b), this Court must vacate her conviction for battery upon a healthcare worker.

CONCLUSION

Ms. Nuse respectfully requests that this Court vacate her conviction and remand this case to the district court with instructions to enter an acquittal.

DATED this 2nd day of June, 2017.

/s/
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, as follows:

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