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State v. Nuse Respondent's Brief Dckt. 44574

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STATEMENT OF THE CASE

Nature Of The Case

Chynna Dawn Nuse appeals from the judgment entered upon the verdict finding her guilty of battery on a healthcare worker. Nuse claims the evidence was insufficient to support the verdict.

Statement Of The Facts And Course Of The Proceedings

The state charged Nuse with battery against a healthcare worker after she threw her IV at Dr. Mark Urban, "striking him in the face with fluids from the IV line." (R., pp.71-72.) The jury found Nuse guilty of the charged offense, and the district court entered a withheld judgment and placed Nuse on probation. (R., pp.139, 142-147.) Nuse timely appealed from the entry of the withheld judgment. (R., pp.150-152.)

ISSUE

Nuse states the issue on appeal as:

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

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Do the applicable legal standards and the evidence presented at trial require this Court to reject Nuse's argument that the evidence was insufficient to support her conviction for battery on a healthcare worker?

ARGUMENT

There Was Substantial Competent Evidence Admitted At Trial From Which The Jury Found Nuse Guilty Of Battery On A Healthcare Worker

A. Introduction

Nuse challenges her conviction for battery on a healthcare worker, claiming the evidence was insufficient to support the verdict because, she argues, throwing her IV did not constitute “striking.” (Appellant’s Brief, p.7.) Nuse’s argument fails because it ignores the nature of the battery charge, which was based on her act of throwing her IV at Dr. Urban *and* striking him with the fluids from the IV. Application of the correct legal standards to the evidence presented shows the state presented substantial competent evidence to prove every element of battery on a healthcare worker. Nuse has failed to show otherwise.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Id. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury’s verdict. Id.

C. Nuse's Claim That The State Did Not Present Sufficient Evidence To Prove The Essential Elements Of Battery On A Healthcare Worker Is Contradicted By The Evidence And The Law

The state charged Nuse with battery on a healthcare worker based on her actions against Dr. Mark Urban, an emergency room physician who treated Nuse on September 9, 2015. (R., pp.71-72.) Specifically, on that date, Nuse became upset with Dr. Urban after he would not provide her stronger pain medication during Nuse's emergency room visit. (Trial Tr., p.138, L.11 – p.149, L.3.) Nuse “[c]ursed at [Dr. Urban] rather profusely” and, as Dr. Urban stood up to leave, Nuse “stood up and pulled her IV out and flung it at [him].” (Trial Tr., p.151, Ls.14-21; see also p.156, Ls.1-10.) As a result, “IV fluids and two drops of blood” hit Dr. Urban in the face. (Trial Tr., p.156, L.11 – p.157, L.3; see also p.158, Ls.4-9 (Dr. Urban testifying that he had IV fluids on his glasses and two drops of blood on his cheek).)

The jury found Nuse guilty after the court instructed it that, in order to do so, it was required to find 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.

(R., p.125 (Instruction No. 14); Trial Tr., p.193, L.19 – p.194, L.14.)

The district court further instructed the jury that “[a] ‘battery’ is committed when a person actually, intentionally and unlawfully touches or strikes another person against the will of the other.” (R., p.126 (Instruction No. 15); Trial Tr., p.194, Ls.15-17.)

On appeal, Nuse argues the evidence was insufficient to support the jury’s verdict because, she claims, “there was no evidence that Ms. Nuse touch [sic] or struck Dr. Urban.” (Appellant’s Brief, p.7.) According to Nuse, “[t]hrowing an IV at another person does not, as a matter of law, constitute striking within the meaning of I.C. § 18-903(b).”¹ It is true that throwing is not the same as “striking,” but it is also irrelevant. The word “throwing” in the elements instruction was used in conjunction with the word “striking” because it was the fact that Dr. Urban was struck in the face with blood and fluid when Nuse threw her IV at him that resulted in the battery. (R., p.125.) Since striking, “as a matter of law, constitute[s] striking within the meaning of I.C. § 18-903(b),” the evidence was sufficient for the jury to conclude that Nuse was guilty of battery on a healthcare worker based on Dr. Urban’s testimony that Nuse threw her IV at him, striking him in the face with blood and fluids. Compare State v. Billings, 137 Idaho 827, 830-831, 54 P.3d 470, 473-474 (Ct. App. 2002) (holding that I.C. § 18-903(b)

¹ Idaho Code § 18-903(b) defines battery as an “[a]ctual, intentional and unlawful touching or striking of another person against the will of the other.” This is the definition of battery that was provided to the jury in Nuse’s case. (R., p.126 (Instruction No. 15).)

“requires proof of intent to touch or strike another person,” recognizing that “[c]riminal intent may be inferred from the defendant’s actions and surrounding circumstances,” and concluding the evidence was sufficient to support “infer[ence] that when Billings fired his shotgun into the ground near Merchant, he expected and intended that ricocheting pellets would strike Merchant”).²

Nuse has failed to meet her burden of establishing the evidence was insufficient to support her conviction.

CONCLUSION

The state respectfully requests that this Court affirm the withheld judgment entered upon the jury verdict finding Nuse guilty of battery on a healthcare worker.

DATED this 18th day of July, 2017.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

² Nuse also cites Billings, but “presum[es]” the Court upheld Billings’ conviction under I.C. § 18-903(a). (Appellant’s Brief, p.8.) It is unclear what this presumption is based on since the Court in Billings noted that “the jury was instructed on all three of the [] alternative means of committing battery,” and the Court’s sufficiency determination tracked the intent required under I.C. § 18-903(b). Billings, 137 Idaho at 830-831, 54 P.3d at 473-474.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of July, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

JML/dd