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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2708-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HEIDY V. VALDEZ,

Defendant-Appellant.

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Argued September 21, 2016 – Decided August 4, 2017

Before Judges Fuentes, Simonelli and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 12-09-1328.

Alyssa A. Aiello, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Ms. Aiello, of counsel and on the briefs).

Nancy A. Hulett, Assistant Prosecutor, argued the cause for respondent (Andrew C. Carey, Middlesex County Prosecutor, attorney; Ms. Hulett, of counsel and on the brief).

PER CURIAM

Following a jury trial, defendant Heidy V. Valdez and co-defendant Juan Del Rosario were convicted of second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count one); third-degree endangering an injured victim, N.J.S.A. 2C:12-1.2(a) (count two); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count three); fourth-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count four); and fourth-degree obstructing administration of law, N.J.S.A. 2C:29-1(b) (count five). The charges against defendant stemmed from his striking a security guard in the head with a baseball bat during a brawl in a nightclub parking lot, causing her serious bodily injury, and fleeing from the scene. Del Rosario was prosecuted and convicted as an accomplice.

On appeal, defendant raises the following contentions:

POINT I

IN ANSWERING THE JURY'S QUESTION REGARDING TRANSFERRED INTENT, THE TRIAL COURT FAILED TO EXPLAIN THAT THE DOCTRINE COULD NOT BE USED TO FIND [DEFENDANT] GUILTY OF SECOND-DEGREE AGGRAVATED ASSAULT BY ATTEMPTING TO CAUSE SERIOUS BODILY INJURY. (Not Raised Below).

POINT II

THE JURY SHOULD NOT HAVE BEEN PERMITTED TO CONSIDER WHETHER [DEFENDANT] WAS GUILTY OF SECOND-DEGREE AGGRAVATED ASSAULT BY CAUSING SERIOUS BODILY INJURY BECAUSE THE STATE FAILED

TO PRESENT EVIDENCE SUFFICIENT TO WARRANT A  
CONVICTION FOR THAT OFFENSE.

POINT III

THE TRIAL [COURT] ERRED IN DENYING  
[DEFENDANT'S] MOTION FOR A JUDGMENT OF  
ACQUITTAL ON THE CHARGE OF ENDANGERING AN  
INJURED VICTIM.

We reject these contentions, and affirm.

I.

We derive the following facts from the record. On the evening of July 28, 2012, M.B.<sup>1</sup> was working as a security guard at a nightclub located on Route 35 in South Amboy. That evening, defendant and Del Rosario went to the nightclub with two or three women.

The club had to be cleared by 2:00 a.m. At approximately 1:30 a.m., M.B. was stationed outside the club by the front doors, escorting patrons out of the nightclub. The front doors of the nightclub led to the parking lot. At approximately 1:40 a.m., two women began fighting on the stairs by the front doors. The fight continued into the parking lot and became a "giant brawl" involving numerous individuals. M.B. saw people in the parking lot jumping on and kicking another security guard, W.H., and went to his aid. She attempted to get the crowd to disperse by telling them the

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<sup>1</sup> We use initials to identify the victim and witnesses in this matter in order to protect their privacy.

police were called and they would all be charged with driving while intoxicated unless they left. The next thing she recalled was waking up on the ground looking up. She tried to get up, but people told her to stay down and that she had just been hit with a bat. An ambulance eventually arrived and transported her to the hospital.

W.H. testified that he was in the parking lot when he saw the hatch of an SUV rise and "a bat come out where two gentlemen were standing behind." He went behind the men in an attempt to remove the bat from them. He struggled with them over the bat, and lost his grip when three or four other men pushed him against the SUV and threw punches at him. A few seconds later, he heard what sounded like someone getting hit with a bat and saw the bat on the ground. He did not actually see M.B. get hit, but saw her lying on the ground "basically unconscious" with blood all over her head. He grabbed the bat, threw it over a fence, and ran after the SUV as the driver, later identified as defendant, was attempting to exit the parking lot. A police officer who had arrived at the scene saw W.H. running after the SUV, stopped the vehicle, and arrested defendant.

Another security guard, R.G., saw a man in a red shirt, later identified as defendant, come out of an SUV with a baseball bat and "smash" the back of M.B.'s head and neck. R.G. saw M.B.

"drop[] like a sack of potatoes[,]" and he thought she was dead. Defendant looked at R.G. after striking M.B., and ran off. R.G. ran after defendant, yelling to other security guards to "get the guy in the red shirt." Defendant took off his red shirt as he ran through the parking lot. R.G. continued chasing defendant and saw him run across the highway, jump over a concrete median, continue across the other side of the highway, and duck behind a parked SUV. R.G. continued to follow defendant and eventually flagged down a police officer and told the officer: "That's your guy right there." Defendant was then arrested.

Another security guard, J.R., saw defendant go to the back of an SUV, take out a baseball bat, start swinging, and strike M.B. in the head. Defendant then dropped the bat, removed his red shirt as he ran through the parking lot, and continued running. Defendant ran toward the highway and jumped over the median. J.R. ran after defendant and saw the police placing him under arrest.

Officer Dennis McQuade was dispatched to the nightclub. As he approached the parking lot, he saw a male running across the highway. When he arrived at the parking lot, a security guard informed him that the male who struck M.B. ran through the parking lot and across the highway. McQuade radioed to another officer who later arrested defendant. McQuade stopped Del Rosario from exiting the parking lot, and arrested him.

There was surveillance video of the parking lot. The assault of M.B. was not captured on video, but the video did capture R.G. chasing defendant through the parking lot as defendant removed his red shirt. Defendant's red shirt and the bat were later recovered from the scene.

## II.

The trial judge instructed the jury on aggravated assault in accordance with Model Jury Charge (Criminal), Aggravated Assault-Serious Bodily Injury N.J.S.A. 2C:12-1b(1) (2012), and on causation and transferred intent when purposeful or knowing conduct was involved in accordance with Model Jury Charge (Criminal), Causation and Transferred Intent (N.J.S.A. 2C:2-3) (2013). During deliberations, the jury asked the following question: "For the aggravated assault [charge], is the verdict supposed to reflect intent to hurt [M.B.] or a person in general?" Without objection, the judge responded to the jury question by repeating the original causation and transferred intent instruction.

In Point I, defendant contends for the first time on appeal that the judge erred in failing to explain that the doctrine of transferred intent could not be used to find him guilty of aggravated assault by attempting to cause M.B. serious bodily

injury because transferred intent cannot be applied to an inchoate crime. This contention lacks merit.

"[A]ppropriate and proper [jury] charges are essential [to] a fair trial." State v. Baum, 224 N.J. 147, 158-59 (2016) (quoting State v. Reddish, 181 N.J. 553, 613 (2004)). "The trial court must give a 'comprehensible explanation of the questions that the jury must determine, including the law of the case applicable to the facts that the jury may find.'" Id. at 159 (quoting State v. Green, 86 N.J. 281, 287-88 (1981)). "Thus, the court has an 'independent duty . . . to ensure that the jurors receive accurate instructions on the law as it pertains to the facts and issues of each case, irrespective of the particular language suggested by either party.'" Ibid. (quoting Reddish, supra, 181 N.J. at 613). "Because proper jury instructions are essential to a fair trial, erroneous instructions on material points are presumed to possess the capacity to unfairly prejudice the defendant." Ibid. (quoting State v. Bunch, 180 N.J. 534, 541-42 (2003)).

When a defendant fails to object to an error regarding jury charges, we review for plain error. State v. Funderburg, 225 N.J. 66, 79 (2016). "Under that standard, we disregard any alleged error 'unless it is of such a nature as to have been clearly capable of producing an unjust result.'" Ibid. (quoting R. 2:10-2). "The mere possibility of an unjust result is not enough. To

warrant reversal by this court, an error at trial must be sufficient to raise "'a reasonable doubt . . . as to whether the error led the jury to a result it otherwise might not have reached.'" Ibid. (quoting State v. Jenkins, 178 N.J. 347, 361 (2004)).

Further, "[w]hen a jury requests a clarification, the trial judge is obligated to clear the confusion." State v. Conway, 193 N.J. Super. 133, 157 (App. Div.), certif. denied, 97 N.J. 650 (1984). There is no plain error in the judge's responding to a jury question by repeating the original instructions. State v. Scher, 278 N.J. Super. 249, 271 (App. Div. 1994).

There was no error, let alone plain error, here. Even if, as defendant argues, transferred intent does not apply to an inchoate crime, there is no inchoate crime to aggravated assault. "[A]tttempted assault . . . is not defined as an inchoate crime . . . but as a form of the substantive crime of assault[.]" Cannel, New Jersey Criminal Code Annotated, comment 3 on N.J.S.A. 2C:5-1 (2017). Thus, a person is found guilty of aggravated assault, not attempted aggravated assault, if he "[a]ttempts to cause serious bodily injury to another." N.J.S.A. 2C:12-1(b)(1). Accordingly, there was no error in the judge responding to the jury question by repeating the original causation and transferred intent instruction.



### III.

Defendant moved for a judgment of acquittal on the aggravated assault count at the close of the State's case. He argued, as he does on appeal, the evidence was insufficient to establish that M.B. suffered serious bodily injury. We disagree.

At the close of the State's case, the trial judge may enter "a judgment of acquittal of one or more offenses charged in the indictment . . . if the evidence is insufficient to warrant a conviction." R. 3:18-1. In ruling on a motion for a judgment of acquittal, the judge must determine

whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.

[State v. Samuels, 189 N.J. 236, 244 (2007) (quoting State v. Reyes, 50 N.J. 454, 458-59 (1967)).]

Under Rule 3:18-1, the court "is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the State." State v. Muniz, 150 N.J. Super. 436, 440 (App. Div. 1977), certif. denied, 77 N.J. 473 (1978). "If the evidence satisfies that standard, the motion must be denied." State v. Spivey, 179 N.J. 229, 236 (2004). We use the same standard as the trial judge in

reviewing a motion for judgment of acquittal at the close of the State's case pursuant to Rule 3:18-1. Bunch, supra, 180 N.J. at 548-49.

A person is guilty of aggravated assault if he "causes [serious bodily] injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury[.]" N.J.S.A. 2C:12-1(b)(1). Serious bodily injury means "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ[.]" N.J.S.A. 2C:11-1(b).

"Where a person causes serious bodily injury, he is guilty whether his mental state is purposeful, knowing or reckless." State v. McAllister, 211 N.J. Super. 355, 362 (1986). A person acts purposely "if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does[.]" Model Jury Charge (Criminal), Aggravated Assault-Serious Bodily Injury N.J.S.A. 2C:12-1b(1). A person acts knowingly "if he/she is aware that it is practically certain that his/her conduct will cause such a result." Ibid. A person acts recklessly

if he/she consciously disregards a substantial and unjustifiable risk that the result will occur from his/her conduct. The risk must be of such a nature and degree that, considering

the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, fool-hardily.

[Ibid.]

Two eyewitnesses saw defendant strike M.B. in the back of her head with a baseball bat. M.B. was rendered unconscious and appeared to be dead to one of the witnesses. M.B. testified, without objection, about the nature and extent of her injuries. She testified that she sustained a "pretty thick" gash on the back of her head that required five stitches and left a scar, and intense bruising all over her body. The jury was shown pictures that fairly and accurately represented her injuries. She also testified that she suffered severe back, neck, and head pain; headaches; ringing in her ears; and severe numbness and tingling down her arms. She could not remember her name, how to spell words, close her eyes, stand up without falling, shower on her own, or lay flat, and she had to sleep sitting up for eight months after the attack. At the time of trial approximately two years after the attack, she still had recurring symptoms and suffered from seizures that caused her to abandon her goal of becoming a law enforcement officer or continue as an emergency medical technician or volunteer

firefighter. Defendant did not dispute the nature or extent of M.B.'s injuries.

Viewing the State's evidence in its entirety, and giving the State the benefit of all favorable inferences which can be drawn therefrom, a reasonable jury could find defendant guilty beyond a reasonable doubt of aggravated assault by causing serious bodily injury to M.B. The evidence was sufficient for the jury to find that defendant created a substantial risk of death or a permanent disfigurement, or protracted loss, or impairment of bodily function by striking her with great force in the back of her head with a bat, and that he acted purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. M.B.'s injuries were serious, they affected her daily life and normal activities, and they were protracted, prolonged and extended in time. Accordingly, the judge properly denied the motion for judgment of acquittal.

#### IV.

Defendant contends in Point III that because M.B.'s co-workers came to her aid before he left the scene, the judge erred in denying his motion for judgment of acquittal at the close of the State's case on the endangering an injured victim count. This contention lacks merit.

N.J.S.A. 2C:12-1.2(a) provides as follows:

A person is guilty of endangering an injured victim if he causes bodily injury to any person or solicits, aids, encourages, or attempts or agrees to aid another, who causes bodily injury to any person, and leaves the scene of the injury knowing or reasonably believing that the injured person is physically helpless, mentally incapacitated or otherwise unable to care for himself.

Physically helpless means a "condition in which a person is unconscious, unable to flee, or physically unable to summon assistance[.]" N.J.S.A. 2C:12-1.2(b)(1). Mentally incapacitated means "that condition in which a person is rendered temporarily or permanently incapable of understanding or controlling one's conduct, or of appraising or controlling one's condition, which incapacity shall include but is not limited to an inability to comprehend one's own peril[.]" N.J.S.A. 2C:12-1.2(b)(2). Bodily injury "means physical pain, illness or any impairment of physical condition[.]" N.J.S.A. 2C:11-1(a).

To satisfy the statute, defendant's flight need not enhance the risk of further injury. State v. Munafo, 222 N.J. 480, 490 (2015). "The Legislature, instead, chose to criminalize the act of leaving the scene of an injury with knowledge that the victim was helpless." Ibid. That behavior, alone, "presents the risk of further injury." Ibid. Essentially, "[t]he law makes it an offense to cause bodily injury and flee the scene with knowledge

or a reasonable belief that the injured person was in a vulnerable state." Id. at 492.

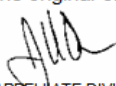
"It is an affirmative defense to prosecution for a violation of this [statute] that the defendant summoned medical treatment for the victim or knew that the medical treatment had been summoned by another person, and protected the victim from further injury or harm until emergency assistance personnel arrived." N.J.S.A. 2C:12-1.2(c). The defendant must prove this affirmative defense by a preponderance of the evidence. Ibid. Defendant does not argue he was entitled to a judgment of acquittal because he established this affirmative defense. Nevertheless, he cannot establish the defense, as he did not know that others had summoned medical treatment and did not protect M.B. from further injury or harm until emergency assistance personnel arrived.

Viewing the State's evidence in its entirety, and giving the State the benefit of all favorable inferences which can be drawn therefrom, a reasonable jury could find defendant guilty beyond a reasonable doubt of endangering an injured victim. Defendant indisputably caused bodily injury to M.B. and fled the scene. The jury could reasonably infer from the evidence that defendant knew or reasonably believed that M.B. was physically helpless or mentally incapacitated.

Lastly, we reject defendant's argument that N.J.S.A. 2C:12-1.2(a) does not apply because M.B.'s co-workers had already come to her assistance before he fled the scene. The statute does not require the State to prove that defendant's flight from the scene increased the risk that further harm would come to M.B. Munafo, supra, 222 N.J. at 489-90. Leaving the scene of an injury knowing the victim was helpless is the gravamen of the charge. Ibid. Defendant fled the scene knowing or reasonably believing that the victim, whom he struck in the back of her head and knocked unconscious, was physically helpless, mentally incapacitated, or otherwise unable to care for herself. Id. at 486.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION