Cite as 2012 Ark. App. 246

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 11-553

	Opinion Delivered April 11, 2012
BOBBY LYNN LYTLE APPELLANT	APPEAL FROM THE GRANT COUNTY CIRCUIT COURT, [NO. CR-2010-54-1]
V.	HONORABLE CHRIS E WILLIAMS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

ROBIN F. WYNNE, Judge

Appellant Bobby Lytle appeals from his conviction for second-degree battery, claiming that the jury should have been instructed on third-degree battery as a lesser-included offense. We affirm.

Lytle was charged as a habitual offender with second-degree battery following an incident involving his mother that occurred on May 6, 2010. The felony information alleged that Lytle "knowingly, without legal justification, caused physical injury to a person he knew to be an individual sixty (60) years of age or older." At the jury trial held on December 17, 2010, Deputy James Holmes testified that on the date in question, he responded to a disturbance call involving Brenda Berry, Lytle's mother. Deputy Holmes stated that, when he arrived at the residence, Ms. Berry came out and told him that she and her son had a verbal argument, that her son became very angry, and that her son hit her several times in the face.

Deputy Holmes observed swelling and redness on the right side of Ms. Berry's face around the eye and cheek area.

Ms. Berry testified that she was sixty-five years old and that Lytle was her oldest son. She stated that Lytle had been "just really out of control" for several weeks prior to the incident. She stated that he came over to her house that day and was very belligerent, and the two began arguing over some property Lytle held in Saline County. Ms. Berry told Lytle, "You're just like your sister, always looking for a free ride and the next person you can sponge off of." At that point, Lytle struck Ms. Berry in the face several times. Ms. Berry testified that, when she fell to the floor, Lytle continued to hit her all over her head. She stated that she passed out for a few minutes, and when she came to, she crawled up into a chair. Lytle was still there, and Ms. Berry asked him for a glass of water, which Lytle gave to her. She then said to Lytle, "Either call me an ambulance or go ahead and kill me," to which Lytle replied, "I'm not finished yet." After that, Lytle turned his back to her, and Ms. Berry was able to run to a neighbor's house across the street.

Ms. Berry further testified that, as a result of the attack, she suffered a broken nose and sustained permanent damage to her right ear, causing partial loss of hearing. She also stated that the sinus cavity on the right side of her face was ruptured, causing frequent swelling when her sinuses filled. She continued to have pain in her jaw and numbness on the right side of her face, and she still could not fully open her jaw on the right side, making it difficult to chew. The State introduced photographs of Ms. Berry's injuries that had been taken a couple of days after the incident.

After the conclusion of the testimony, Lytle asked the court for an instruction to the jury on the lesser-included offense of third-degree battery. He proffered an instruction that stated, "That Bobby Lynn Lytle, with the purpose of causing physical injury to Brenda Berry, caused physical injury to Brenda Berry." The court denied the motion, reasoning that, because there was unrefuted evidence that Lytle knew his mother was over the age of sixty, an instruction on a lesser-included offense would be inappropriate.[1] The jury retired and, after deliberating for nine minutes, returned a verdict of guilty of second-degree battery. The jury then sentenced Lytle to twelve years' incarceration. This appeal followed.

On appeal, Lytle asserts only that the court erred in giving jury instructions. His entire argument is as follows:

> In the case styled Johnson v. State, 28 Ark. App. 256, 773 S.W.2d 450, this Court held as follows: In Second degree prosecutions, Court erred in refusing to give instruction on lesser included offense of third degree battery where the Jury could rationally have found that the Defendant "recklessly" caused the injury.
> Likewise, in the case at bar, the Jury should have been given, but were denied, the opportunity to consider third degree battery as a lesser included offense.

As we have said many times, when the appellant does not cite authority or make a convincing legal argument, and where it is not apparent without further research that the point is well taken, we will affirm. *City of Greenbrier v. Roberts*, 354 Ark. 591, 594, 127 S.W.3d 454, 456 (2003). We will not do the appellant's research for him. *Id.*; *see also J & J Bonding, Inc. v. State*, 330 Ark. 599, 602, 955 S.W.2d 516, 518 (1997). Here, although Lytle cites a case and

[1] When there is no evidence tending to disprove one of the elements of the larger offense, the trial court is not required to give an instruction on a lesser-included offense. *Davis v. State*, 97 Ark. App. 6, 10, 242 S.W.3d 630, 634 (2006).

states its holding, he offers no comparison of the facts or explanation of how the holding in that case is on point with this case. The mere assertion that we should reverse his conviction because we reversed another case with a similar issue does not constitute convincing legal argument.

Furthermore, to the extent that Lytle attempts to argue that the jury in his case could have rationally found him to have "recklessly" caused the injuries to Ms. Berry, that argument is not preserved. A person commits third-degree battery if (1) with the purpose of causing physical injury to another person, the person causes physical injury to any person; (2) the person recklessly causes physical injury to another person; (3) the person negligently causes physical injury to another person by means of a deadly weapon; or (4) the person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance. Ark. Code Ann. § 5-13-203(a) (Repl. 2006). Lytle proffered an instruction on third-degree battery based on the first definition, which involves purposely causing physical injury. There is no indication that Lytle requested an instruction based on the second definition, which involves recklessness. Because parties are bound on appeal by the scope and nature of the objections and arguments they presented below, and arguments not raised below will not be addressed for the first time on appeal, Lytle is procedurally barred from raising this argument based on an element of recklessness. *See Hinkston v. State*, 340 Ark. 530, 541–42, 10 S.W.3d 906, 913 (2000).

Affirmed.

PITTMAN and HOOFMAN, JJ., agree.