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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EMANUEL QOSAJ,)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

Case No. 2D18-4109

Opinion filed June 10, 2020.

Appeal from the Circuit Court for Pinellas
County; Joseph A. Bulone, Judge

Howard L. Dimmig, II, Public Defender,
and Stephen M. Grogza, Jr. and Chris W.
Altenbernd, Special Assistant Public
Defenders, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Jeffrey H. Siegal
Assistant Attorney General, Tampa,
for Appellee.

MORRIS, Judge.

Emmanuel Qosaj appeals his convictions and sentences after a jury trial for aggravated battery on a person sixty-five years or older, two counts of battery of an emergency medical care provider, battery, and resisting without violence. He was found

not guilty by reason of insanity (NGRI) of the charge of attempted first-degree murder in the same trial. On appeal, Qosaj argues that the trial court erred in denying his motion for arrest of judgment and acquittal on the aggravated battery count because his guilty verdict on that count is legally inconsistent with the NGRI verdict on the attempted murder count. We disagree and affirm Qosaj's convictions.

I. Facts

On April 13, 2017, seventy-four-year-old Linda Konior was walking her dog and getting her mail in her apartment complex in St. Petersburg. Her dog ran over to another dog being walked by a man and a woman, both of whom Konior did not know. Konior began talking to the woman about the dogs. The man told his female friend to go, and Konior turned her back and started to walk away. Without provocation, the man started choking Konior. Konior heard the man's female friend yell at the man to stop strangling Konior. Konior could not breathe or scream. The man slammed Konior to the ground, got on top of her, and repeatedly punched her. Dirt filled her mouth and her nose so that she could not breathe. She heard the man say, "I'm going to kill you." Konior was unable to fight him off.

Konior's next door neighbor, Greta Perry, witnessed part of the attack. Perry was watching television when she heard a female screaming. She ran downstairs and saw a man straddling and strangling Konior. He was hitting her with his hands, screaming, "I'm going to kill you." Another neighbor, Ashleigh King, was getting out of her car when she heard the screaming. She ran to the scene and saw a man on top of Konior on the pavement. He had a metal dog chain around Konior's neck. He kept pushing Konior down. Then, he turned his focus on his dog and started whipping his

dog with the chain for about thirty seconds. Konior tried to get up but could only crawl. The man went back to Konior and climbed back on top of her. This time, they were in the grass. King saw the man bite Konior. Both King and the man's female friend tried to stop the man from beating Konior. The police arrived and tased the man four or five times.

Deputy Caroline Tarsitano responded to the scene and saw the man, Qosaj, on top of Konior. Deputy Tarsitano heard one of the witnesses say that Qosaj said that Konior was evil. Deputy Tarsitano saw Qosaj bite Konior. Qosaj had to be tased because he would not comply with her orders.

Corporal Jon Dobson also responded to the scene. He helped Konior roll over to her back, and he saw a dog leash wrapped around her neck. Her mouth and nose were packed with dirt, and she could barely open her eyes. Corporal Dobson heard Qosaj tell the paramedics he had done "bars" and had smoked cocaine the night before. Qosaj would answer a question and then would not answer a question, like he was sleeping. On the ride to the hospital with Qosaj, Corporal Dobson heard Qosaj say that he does spice, then he retracted and said that he does not do spice, and then he said again that he does do spice. Qosaj said the drugs were making him crazy. Qosaj spit at a paramedic and then apologized. At the hospital, Corporal Dobson heard Qosaj say, "I just wanted to strangle that bitch just for the f--k of it, that fat bitch." Corporal Dobson read Qosaj his rights, after which Qosaj said, "I just wanted to kill her and her dog." Qosaj repeated that to the medical staff, laughing. Corporal Dobson testified that Qosaj explained why he attacked Konior:

[Qosaj] began by telling me he left his residence. He had his dog with him. He said he trusts his dog. It's man's

best friend is what he said. So he carries the dog leash to the side and has the dog unleashed as it's walking.

He said he crossed where there was a crosswalk, where there were kids at the time, I guess, letting out of school. They were crossing the street, and he saw that the kids were a sign from ISIS, that they were coming down to kill him.

He then moved along, and he saw a Toyota sedan driving by which he described as like a family of four was inside, and he said the rear window was starting to roll down, which he saw was another sign of ISIS coming down to kill him.

He said at that point he told his girlfriend, who he was with, to call his brother to get his gun because there was a war about to begin. He then continued on. He saw a white female with glasses, I don't know eyeglasses or sunglasses. He didn't specify. He saw that her wearing the glasses, she was concealing her identity from an ISIS reference. . . .

He then continued on, and then that's when he came in contact with the victim.

When asked if Qosaj referred to the two attacks and why he tried to kill Konior at that moment, Corporal Dobson answered:

Yes. He--mentioned that there was a first attack to where he was strangling the victim. And he mentioned that some people separated them.

And it was a point where he mentioned he was going after his dog, trying to catch his dog. And he stopped. And there was a time where he turned around to look at the victim, saw that the victim didn't have anyone around her, and he said . . . as Linda did not have anyone around her, he saw that as an opportunity to kill her, and then attempted to carry that out.

During cross-examination, Corporal Dobson testified that Qosaj told him that the woman he attacked looked like the devil and that after she mentioned that her dog weighed 105 pounds, it was a trigger and he wanted to kill her. Corporal Dobson did not know that Qosaj's mother was schizophrenic or that his sister had had mental health problems and committed suicide.

Paramedic Justin Bryce testified that he treated Qosaj at the scene and in the ambulance. Qosaj admitted to using marijuana and spice that day but not cocaine. Qosaj spit on him and one of the firefighters.

The defense presented the testimony of toxicologist Ron Bell. Bell had reviewed the records and did not believe that Qosaj was under the influence of drugs. Rather, the incident was a mental health incident.

The defense also called Dr. Peter Bursten, a psychologist who had previously testified for both the State and the defense on several occasions. He reviewed the records in this case and evaluated Qosaj in jail. He concluded that Qosaj was psychotic at the time of the offenses and could not appreciate the wrongfulness of the behavior because he was responding to his delusions.

In rebuttal, the State presented the testimony of Dr. Emily Lazarou, a forensic psychologist. She had testified in prior cases for the State and the defense. Dr. Lazarou had reviewed the records in the case and had met with Qosaj. She concluded that Qosaj does not suffer from a mental illness. She believed that he was able to understand that he was doing something wrong and anticipate the potential consequences of his actions.

The jury returned a verdict of NGR1 on count one, attempted first-degree murder. The jury found Qosaj guilty of the remaining five counts: aggravated battery on a person sixty-five years or older (count two), battery of an emergency medical care provider (counts three and four), battery (count five), and obstructing or resisting an officer without violence (count six).

The defense filed a motion for arrest of judgment or judgment of acquittal on count two, arguing that the guilty verdict on that count was inconsistent with the NGRI verdict on count one. After a hearing, the trial court denied Qosaj's motion. The trial court sentenced Qosaj on count two to twenty years in prison followed by five years' probation. The trial court sentenced him to five years in prison on counts three and four, consecutive to each other but concurrent with count one. He was sentenced to time served on counts five and six.

II. Analysis

On appeal, Qosaj argues that the jury's verdict of NGRI on count one negates the guilty verdict on count two because the affirmative defense of insanity was both legally and factually identical for counts one and two. He further contends that counts one and two are legally interlocking charges and thus inconsistent verdicts cannot stand on those two charges.

" 'As a general rule, inconsistent verdicts are permitted in Florida' because 'jury verdicts can be the result of lenity and therefore do not always speak to the guilt or innocence of the defendant.' " State v. Cappalo, 932 So. 2d 331, 334 (Fla. 2d DCA 2006) (quoting State v. Powell, 674 So. 2d 731, 732-33 (Fla. 1996)). "Inconsistent verdicts are ordinarily considered to arise from a jury's exercise of its 'inherent authority to acquit' even if the facts support a conviction." Id. (quoting State v. Connelly, 748 So. 2d 248, 253 (Fla. 1999)). Florida recognizes "only one exception to the general rule allowing inconsistent verdicts. This exception, referred to as the 'true' inconsistent verdict exception, comes into play when verdicts against one defendant on legally interlocking charges are truly inconsistent." Powell, 674 So. 2d at 733. "[T]rue

inconsistent verdicts are 'those in which an acquittal on one count negates a necessary element for conviction on another count.' " Id. (quoting Gonzalez v. State, 440 So. 2d 514, 515 (Fla. 4th DCA 1983)).

For example, the verdicts are impermissibly inconsistent where a defendant is convicted of felony murder but convicted of only a misdemeanor rather than the underlying felony, see Mahaun v. State, 377 So. 2d 1158, 1161 (Fla. 1979), or where a defendant is convicted of possession of a firearm during the commission of a felony but convicted of only a misdemeanor rather than the underlying felony, see Redondo v. State, 403 So. 2d 954, 956 (Fla. 1981). Such cases involve an offense that as a matter of law cannot be committed unless another underlying offense has also been committed. The commission of the underlying offense is a necessary element of the other offense. Where a defendant is charged with such legally interlocking offenses and is effectively acquitted of the underlying offense, a guilty verdict on the other offense is an impermissible inconsistent verdict. Because "the underlying felony [is] a part of the crime charged[,] without the underlying felony the charge [can]not stand." Eaton v. State, 438 So. 2d 822, 823 (Fla. 1983).

Cappalo, 932 So. 2d at 334 (alterations in original) (footnote omitted). On the other hand, factually or logically inconsistent verdicts are permissible. Connelly, 748 So. 2d at 252; Cappalo, 932 So. 2d at 334-35.

Qosaj was found NGRI of attempted murder but was convicted of aggravated battery on a person sixty-five or older involving the same victim. These two offenses are not legally interlocking; an acquittal on the attempted murder does not negate a necessary element of the aggravated battery. Compare §§ 782.04(1)(a), 777.04(1), Fla. Stat. (2016), with §§ 784.045(1)(a), 784.08, Fla. Stat. (2016).¹ In other

¹Attempted first-degree murder required a premeditated design to effect the death of Konior and an attempt to kill her. See §§ 782.04(1)(a), 777.04(1).

words, the commission of the attempted first-degree murder is not a necessary element of the aggravated battery; thus, the verdicts are not true inconsistent verdicts.

The two different verdicts may have been the result of a jury pardon. Qosaj argues that if the jury had wanted to pardon Qosaj, it would have simply acquitted him of both offenses. However, the jury pardon includes the ability to dispense partial mercy or lenity. "[T]he power to return an inconsistent verdict, on which the jury was instructed, is necessarily included in its power of lenity, i.e., the power to dispense mercy." Naumowicz v. State, 562 So. 2d 710, 713 (Fla. 1st DCA 1990) (citing Damon v. State, 397 So. 2d 1224, 1228 n.10 (Fla. 3d DCA 1981)). "If the jury decides upon a partial 'pardon' and returns a verdict of guilty on one count and not guilty on another, it is certainly unwise to have a procedure which requires the judge to enter verdicts of acquittal on both counts if the verdict is found to be inconsistent." Id. (quoting Damon, 397 So. 2d at 1228 n.10). If this court were to reverse the conviction for aggravated battery, "we would only exacerbate the apparent partial jury pardon and display of lenience." State v. Carswell, 914 So. 2d 9, 12 (Fla. 4th DCA 2005).

Qosaj argues that this case is different because he asserted an affirmative defense of insanity, which was legally identical for both offenses. Qosaj claims that a finding of insanity on the attempted murder charge bars a conviction on the aggravated battery charge. However, we decline to hold that the assertion of such a defense creates an additional exception to the general rule in Florida permitting inconsistent verdicts.² Indeed, in Cappalo, this court rejected the argument that a verdict of NGRI on

Aggravated battery required an intentional or knowing battery of Konior, who is sixty-five years or older, with a deadly weapon. See §§ 784.045(1)(a), 784.08.

two offenses was legally inconsistent with the guilty verdict on two other offenses committed in the same criminal episode. 932 So. 2d at 333-34; see also Leo v. State, 601 So. 2d 1292, 1293 (Fla. 1st DCA 1992) ("We are unable to agree with appellant that the jury's verdict of not guilty, by reason of insanity, on the count charging aggravated battery is legally inconsistent with the jury's guilty verdicts on the two counts charging possession of contraband in a state correctional institution. Instead, we are of the opinion that the jury's verdicts reflect only what has been referred to as a 'logical inconsistency,' which has long been recognized as an acceptable exercise by the jury of its power of lenity."). To hold as Qosaj urges would deprive the jury of its pardon power in cases in which the insanity defense is asserted.

We also note that the NGRI verdict on the attempted murder charge may not have been the result of a jury pardon. The State presented evidence that Qosaj engaged in two attacks on the victim and that Qosaj's mental state was at issue during the offenses. The jury may have found that Qosaj was insane during the attempted murder but that he was sane during the aggravated battery. The jury may have found that Qosaj was able to form the intent to commit the aggravated battery but that his mental state prevented him from knowing the nature or consequences of his attempt to kill the victim or from being able to distinguish right from wrong when he was attempting to kill the victim. See Patton v. State, 878 So. 2d 368, 375 (Fla. 2004) ("[A]n accused is not criminally responsible if, at the time of the alleged crime, the defendant, by reason of a mental disease or defect, (1) does not know of the nature or consequences of his or

²Qosaj did not provide, and we were unable to find, any authority to support his argument.

her act; or (2) is unable to distinguish right from wrong."). In any event, even where the jury verdicts may be impossible to reconcile factually or logically, they are permitted unless the offenses are legally interlocking. See Connelly, 748 So. 2d at 252-53 (holding that conviction for introducing or possessing contraband into a detention facility could stand, even though court could not "determine the reason that Connelly's jury used its inherent authority to acquit Connelly of the simple possession charge"); Carswell, 914 So. 2d at 11-12 ("[C]onvicting Carswell of aggravated battery after finding that he did not possess or discharge a firearm is impossible to reconcile. Nevertheless, the verdict is not 'truly' inconsistent.").

Because the verdicts in this case are not legally inconsistent and are, at most, factually or logically inconsistent, we find no error in the jury verdicts and accordingly affirm the convictions and sentences.

Affirmed.

VILLANTI and SLEET, JJ., Concur.