

2011 IL App (1st) 101458-U  
No. 1-10-1458

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FIRST DIVISION  
August 8, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 7774
	)	
L'TANYA SIMMONS,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hall and Justice Hoffman concurred in the judgment.

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**O R D E R**

*HELD:* Defendant was properly proved guilty of aggravated battery of a CTA employee beyond a reasonable doubt where the trial court was justified in finding that the testimony of the complaining witness was credible and was corroborated by the testimony of a bystander.

¶ 1 In a bench trial, defendant L'Tanya Simmons was convicted of aggravated battery and sentenced to two years' probation. On appeal she contends that her guilt was not proven beyond a reasonable doubt.

¶ 2 At trial, Chicago Transit Authority (CTA) bus driver Annedrewnetta Startin-Neat (complainant) testified that on April 10, 2009, she was driving her bus northbound at 111th and Michigan in Chicago. She was in a uniform which identified her as a CTA employee. At 111th, complainant stopped the bus to allow 12 to 15 passengers board. Among the first to board was defendant L'Tanya Simmons. She walked past the fare box to the right side of the bus and began to look through her purse. All the other people had boarded the bus and paid their fares, while defendant continued looking through her purse.

¶ 3 Complainant drove the bus several blocks, then stopped when she saw that defendant was unstable on her feet. Defendant asked complainant if she was waiting for her, and when complainant said yes, defendant told her to proceed because she had her fare. However she did not pay and complainant continued to wait. Defendant asked if complainant was still waiting for her and when complainant replied in the affirmative, defendant began calling her names and told her she was holding up the passengers. Defendant said she had four or five fare cards and

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had the money, so complainant told her to pay her fare.

Defendant said:

"You "F" CTA people. You think you rule the world. I got my fare. You can proceed. You can move the "MF" bus. What the heck's wrong with you? You slow or something."

Defendant then pulled out a fare card and moved closer to complainant, telling her she could move now. Complainant touched the fare box and again told defendant to pay her fare. Defendant used the card to pay and complainant drove the bus down the street.

¶ 4 Defendant continued to call complainant names, telling her she was stupid and took her job too "serious." Complainant put her hand up, while still driving, and said "[L]ady, why don't you just have a seat. I don't want to hear it." At this point, according to complainant, defendant was about one foot away from complainant. She did not sit down, but continued to call complainant names. She also reached around complainant's raised hand and pushed complainant in the face with her finger. In response, complainant braked the bus, looked at defendant, and told her she would make defendant "part of the bus" if defendant put her hands on complainant again. Defendant continued to stand there and make comments to complainant, even

when passengers began telling defendant to leave the bus driver alone and have a seat. Complainant again put her hand up and told defendant to sit down. In response, defendant again pushed complainant in the face. Complainant slammed on the brakes, put the bus in park, and told defendant to sit down and that if she did not "get off of" her, complainant was going to "beat her down." Defendant then sat down and complainant drove the bus to 103rd and Michigan, where she was scheduled to be relieved for lunch. There, a passenger from the rear of the bus came up and reported that his son had been injured. Complainant called the central CTA station, and police and paramedics arrived within a few minutes.

¶ 5 On cross-examination, complainant denied that she became angry or used offensive language with defendant. Complainant also testified that she was afraid defendant might fall because she seemed intoxicated and unsteady on her feet when she boarded the bus and walked to the side of it.

¶ 6 David L. Corley testified that he was sitting at the back of the bus that day with his six-year-old son. He noticed that complainant and defendant were conversing a lot and he assumed they were friends although he was wearing headphones and could not hear what they were saying. When he saw complainant put her hand up and then saw defendant "getting irate" and "moving her hand on the other side of [complainant] like to her

face" he took off his headphones. He heard people on the bus telling defendant to stop and he could also hear complainant and defendant "cussing each other out." When asked if he saw defendant make contact with complainant, he stated:

From where I was sitting at, I'm pretty sure it was, because I didn't see her hand anymore. It is like right up on her face. I'm assuming there was contact."

Corley testified that "after the contact" there were more words said and then complainant slammed on the brakes, which propelled Corley's son between the seat in front of him and the window. Corley pulled his son out and then went to the front of the bus to confront complainant and defendant about the fact that his son had been injured. Complainant then called the paramedics. Corley also testified that he never saw complainant touch defendant. He said he was "pretty sure" defendant touched complainant's face because he "didn't see [defendant's] hand or face anymore, and know they [sic] can't be that much distance." However he also testified that he could not be sure there was contact.

¶ 7 Defendant denied ever touching complainant. She testified that when she boarded the bus she had just left the hospital, where she was treated for pharyngitis, which prevented

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her from speaking above a whisper. She was unsteady because of medication she had been given. She stepped to the side of the bus to search for her fare card. According to defendant, complainant kept demanding that she pay her fare and when defendant attempted to tell her that she was not feeling well and to please bear with her because she was not feeling well, complainant said she did not want to hear that "shit." Defendant continued to tell complainant that she was going to pay her fare, that she had money, but that she was sick. After about a minute, defendant found her fare card and paid her fare. She admitted that she and defendant got into a verbal confrontation. Defendant testified that complainant told her that she had a big mouth and should pay her fare. Complainant also swore at defendant, who called her "something" back and told her it did not make sense to be "that mean or that evil." Defendant asserted that complainant threatened her with bodily harm and began to unbuckle her seat belt, at which point defendant pointed her finger in complainant's face without touching her and said "'B', you and what army." Complainant then either slammed on the brakes or put on the parking brake, causing defendant to fly into the windshield and then back. At this point defendant was standing behind the fare box. She then sat down and called the police to relate what had occurred but the police could not understand her. After Corley reported that his son had been

injured, complainant reported the incident to the CTA. Defendant claimed that her back was injured in this incident.

¶ 8 The parties stipulated that a videotape from the bus would show defendant boarding the bus, placing her purse on the luggage rack, and searching through her purse. It then showed the bus stopping and passengers getting on and off the bus. The bus started moving again while defendant was still searching her purse. The video, which had no audio, then ended before defendant paid her fare or approached the fare box or the driver.

¶ 9 At this time the State also impeached defendant with four felony convictions for retail theft.

¶ 10 Defendant contends that her guilt was not proven beyond a reasonable doubt. In evaluating such a claim on appeal we will view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found that the State proved the essential elements of the crime beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). It is not our function to retry the defendant; it is the function of the trier of fact, in this instance, the trial court, to determine the credibility of witnesses, what weight to give their testimony, and the reasonable inferences which should be drawn from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 11 Defendant was charged with the aggravated battery of a CTA employee, which required proof that she committed a battery against an employee of the CTA, a unit of local government, when the CTA employee was engaged in his or her official duties and when defendant knew that complainant was a CTA employee. 720 ILCS 5/12-4(b)(19) (West 2008). The only element at issue in this trial was whether defendant committed a battery. Defendant does not dispute that she knew complainant, who was in uniform and driving a CTA bus, was a CTA employee conducting her official duties at the time of this incident.

¶ 12 Defendant contends that the missing portion of the videotape from the bus should have caused the court to draw a negative inference against the State. But defendant fails to establish that this CTA tape was under the control of the State. Defendant also contends that the testimony of David L. Corley was impeaching of defendant because he could not testify that defendant ever actually touched complainant. In fact that testimony supported complainant's testimony in several aspects. Defendant claimed that she was unable to speak above a whisper that day because of a medical condition. But Corley testified that he could hear defendant and complainant cursing at each other from his position at the back of the bus, which tended to undermine defendant's claim. Corley also testified to a near certainty that defendant touched complainant's face when she

reached out her hand and this corroborated complainant's testimony that defendant had poked her in the face. Defendant was also impeached with her four prior felony convictions for retail theft. Defendant contends that complainant had a motive to lie in order to cover for her bad driving, but this argument was made to the trial judge, who in his discretion rejected it.

¶ 13           Based upon all of this evidence we find that the trial court did not err in holding that the State proved the essential elements of the crime beyond a reasonable doubt. Accordingly, we affirm defendant's conviction and sentence.

¶ 14           Affirmed.