

2011 IL App (1st) 101952-U

FOURTH DIVISION
August 18, 2011

No. 1-10-1952

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff-Appellee,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
GEORGE GOTTLIEB,)	No. 10 M1 113649
)	
Defendant-Appellant.)	The Honorable
)	Mauricio Araujo,
)	Judge Presiding.
)	

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Salone and Sterba concurred in the judgment.

O R D E R

HELD: State employee's battery conviction was upheld where he knowingly and without justification poked a supervisor on the arm in a provoking manner during a conversation concerning his grievances; trial court did not misconstrue terms in the battery statute.

¶ 1 Following a bench trial, defendant George Gottlieb was found guilty of battery, and was placed on supervision for two

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years. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt, and that the trial court committed reversible error by misconstruing terms in the battery statute.

¶ 2 As amended, the misdemeanor complaint charged defendant with battery in that he, without legal justification, knowingly made physical contact with Lainie Krozel in that he "poked her in her arm several times in an insulting or provoking nature."

¶ 3 At trial, three witnesses who were all employees of the State of Illinois testified: Lainie Krozel (the victim) and Richard Haymaker (an eyewitness) testified for the State, and defendant testified on his own behalf. Lainie Krozel was employed by the Illinois Department of Revenue as the Director of the Illinois Liquor Control Commission and the acting chief of staff of the Illinois Department of Revenue. She had an office in Chicago on the seventh floor of the Thompson Center, and she also had an office in Springfield. Richard Haymaker was the chief legal counsel for the Illinois Liquor Control Commission and his office was located on the same floor as Krozel's office at the Thompson Center. Defendant had been employed by the Liquor Control Commission for 10 years. Previously, defendant had been employed by the Chicago police department for 30 years.

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He had also served with the Illinois Army National Guard and the Marine Corps. Defendant's office was located in Des Plaines, Illinois, but he routinely picked up office supplies at the Thompson Center on the same floor as the offices of Krozel and Haymaker.

¶ 4 At approximately 5:30 p.m. on January 4, 2010, defendant was picking up office supplies at the Thompson Center, and Krozel was on her way to see Haymaker, when defendant stopped Krozel. Krozel then approached defendant, wished him a Happy New Year, and extended her hand. Krozel and defendant shook hands and exchanged pleasantries, but the conversation quickly became "aggressive," according to Krozel. Defendant approached Krozel and was inches from her face as he expressed anger about a suspension that he had received in 2009. Defendant was also angry that non-sworn personnel were overseeing sworn officers. Although defendant was not yelling, he was speaking louder than a normal speaking voice. Krozel believed that it was intimidating for defendant to move so close to her so quickly. She felt nervous, threatened, and intimidated, and she was sufficiently concerned for her safety.

¶ 5 The conversation had lasted approximately 1½ minutes when Krozel turned and said, "'I think perhaps the chief legal

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counsel, Rick Haymaker, may be able to answer some of your questions.'" Krozel then left abruptly, and brought Haymaker back with her. A second conversation ensued which lasted approximately 30 to 45 minutes.

¶ 6 Defendant continued to express anger, frustration, and bitterness about a number of things, such as how he had been overlooked for promotions, the Chicago police department, and the former governor, Rod Blagojevich. Defendant spoke loudly and alternated "between almost whispering and borderline shouting," according to Krozel. Defendant was shaking, his eyes were bulging, his face was red, and saliva came out of his mouth when he spoke; he was angry and he spat as he spoke.

¶ 7 According to Haymaker, defendant hurled accusations against the Director and other public officials. Defendant spoke very loudly and appeared very, very agitated, very emotional, anxious, disgruntled, and bitter. Haymaker had seen defendant in the office before but had never previously seen defendant like that.

¶ 8 According to Krozel, defendant reached out to poke her during the conversation, and he poked her "[o]n her arms between [her] upper arm and [her] lower arm." When defendant poked Krozel, it made her feel nervous, sufficiently concerned for her

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safety, and concerned that his behavior was explosive. Krozel testified:

"I was--it was provoking. He poked in a way that was provoking, not social."

¶ 9 When defendant reached out to poke Krozel, they were probably two feet apart. Haymaker initially was on one side of Krozel, but as defendant continued to poke at Krozel in a provoking manner, Haymaker positioned himself between defendant and Krozel. Defendant, however, continued to poke Krozel, and poked her more than 6 times but probably fewer than 12 times, according to Krozel. No one else entered the office at that time, and Krozel did not know whether any security personnel were around.

¶ 10 According to Haymaker, defendant "was using physical contact as a point of emphasis in his conversation. So he reached out and he would poke her arm." After defendant poked Krozel once, Haymaker thought that it was inappropriate and he was a little concerned, but Haymaker did not do anything and would not make a big issue out of it because he thought that it was only one time. However, when defendant poked Krozel a second time, Haymaker thought that the situation "could turn pretty ugly," so Haymaker tried to move between defendant and Krozel to

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prevent defendant from poking her again. Haymaker believed that defendant poked Krozel three or four times after that. The conversation ended shortly after 6 p.m.

¶ 11 Krozel was nervous and felt threatened by defendant's physical gestures and statements, such as "[y]ou tell this person, I'm going to get him, that I fight like a man, that I'm coming after him." Krozel worried that the situation would escalate further. However, there were no visible security personnel on the seventh floor and there was no quick way to summon security.

¶ 12 Krozel alerted internal State of Illinois authorities about the incident on the next day because defendant had made threats against specific State of Illinois employees and officials. The misdemeanor complaint concerning the January 4, 2010, incident was notarized on January 25, 2010, and was file-stamped, "Feb 18, 2009 [sic]."

¶ 13 During cross-examination, Krozel testified that defendant poked her on her arm between her upper arm and her forearm. Krozel was not sure whether she explained to investigators exactly where on the arm defendant poked her. Krozel believed that "it may have been [her] right arm." When defense counsel said, "You don't remember, do you?", Krozel

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testified, "Well, I believe it was my right arm, but it was an intimidating scene." Krozel believed that she indicated to the investigators that she thought it was her right arm.

¶ 14 During cross-examination, Haymaker testified that defendant made very demonstrative statements and accusatory, bitter statements about certain individuals, and that he was "using his fingers to point and poke her arm every time the point was made." Defendant pointed, but when he poked, the finger was intended to make contact with Krozel. To Haymaker's knowledge, Krozel did not receive any injury and did not complain of any injury.

¶ 15 Haymaker knew that they were going to be speaking about the incident on the next business day internally within the Department of Revenue. Haymaker was concerned about defendant's agitated mental state, but the immediacy had passed. There was no thought initially to call 911 or to flag down a police officer. The incident was not violent, but in Haymaker's opinion, it definitely was battery, because the battery statute indicated that if the contact was committed in a provocative or insulting way, then a battery occurred.

¶ 16 Defendant testified that he never touched Krozel, that he knew better than to place his hands on anyone, and that he had

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never had any "brutality beefs" during many years of working in high crime areas as a Chicago police officer. Defendant also had a serious heart condition from a heart attack in 2000 and he had a defibrillator in his chest. Defendant had taken the afternoon off to see his cardiologist. On the way home, defendant decided to stop at the Thompson Center to get some supplies for his office in Des Plaines. Although defendant had a conversation with Krozel, he never poked her. They exchanged New Year's greetings and he then asked her why he had been given a 15-day suspension the previous August.

¶ 17 Defendant suggested that the battery charge against him was a retaliatory measure for an interview he had given to Chuck Goudie on ABC television news. During that interview, defendant accused former Governor Rod Blagojevich of demanding a donation of \$500,000 from Krozel's father-in-law, the chief financial officer of Prairie Concrete. Defendant also accused Krozel's father-in-law of making a \$100,000 "donation to Rod Blagojevich's Pay to Play," and defendant stated that \$25,000 "of that was for [Krozel's father-in-law] to pay for [Krozel's] job."

¶ 18 During cross-examination, defendant testified that Krozel had always been kind, above board, and fair, but that the incident that precipitated the prosecution was [defendant's]

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"exposing some unethical things on ABC television with Chuck Goudie in December." Defendant believed that there was a major cover-up by Haymaker, whom he believed had swept the investigation under the rug.

¶ 19 When defendant was asked whether Krozel and Haymaker "have it in" for him, defendant testified:

"Not Mr. Haymaker, he doesn't know me that well. But he goes with the flow. It's one big club up there. And whatever they--everybody sticks together, all the high ranking people, including internal affairs. And by the way, Director Krozel, in addition to being chief of staff for the Department of Revenue, the director of the Illinois Liquor Commission, she was also the director of internal affairs on the date this incident happened."

¶ 20 On appeal, defendant contends first that he was not proved guilty beyond a reasonable doubt. He argues that the State's witnesses presented a biased and highly improbable account, the gist of which was that he became irate about a prior disciplinary action against him and poked Krozel several times. He argues that the State's witnesses never specified which of Krozel's arms he allegedly poked, where on the arm he allegedly

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poked her, or the number of times he allegedly poked her. He argues that he credibly testified that he never poked her, that he was not arrested immediately, and that a complaint was not filed until weeks later. He argues that he had a long civil service work history and knew better than to place his hands on anyone, and that it would be highly unlikely that he would suddenly breach office etiquette and commit a criminal battery. He suggests that the battery charge was a subterfuge to retaliate against him for whistleblowing about Krozel and others during the ABC television interview with Chuck Goudie in December 2009, concerning the corrupt manner in which convicted felon and former Governor Rod Blagojevich doled out state government jobs to Krozel and others in exchange for monetary kickbacks.

¶ 21 A criminal conviction will not be set aside and the trial court's determinations of witness credibility and the sufficiency of the evidence will not be disturbed unless the evidence, viewed in the light most favorable to the State, was so improbable as to create a reasonable doubt of guilt. See *People v. McLaurin*, 184 Ill. 2d 58, 79-80 (1998). The question on appeal is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v.*

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Cunningham, 212 Ill. 2d 274, 278 (2004); *People v. Dunker*, 217 Ill. App. 3d 410, 415 (1991). A court of review must not retry the defendant. *Cunningham*, 212 Ill. 2d at 279. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Digirolo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt).

¶ 22 To prove that the defendant was guilty of battery beyond a reasonable doubt, the State is required to prove that defendant knowingly and without legal justification made physical contact of an insulting or provoking nature with Krozel. 720 ILCS 5/12-3(a)(2) (West 2008). The contact must insult or provoke the victim, and need not injure the victim. *People v. DeRosario*, 397 Ill. App. 3d 332, 334 (2009).

¶ 23 In *Dunker*, 217 Ill. App. 3d at 412-13, a student's father committed a battery against his son's teacher by poking her on the face and chest, using profanity, yelling at her, and grabbing papers that she was holding and flinging them down. The teacher testified that it was a vigorous poke and that it shocked her. *Id.*

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¶ 24 Similarly, in the present case, the trial court could find that defendant knowingly provoked Krozel by poking her on the arm while complaining loudly of various grievances. The testimony of the victim, Krozel, and an eyewitness, Haymaker, established that defendant repeatedly poked Krozel on the arm. Initially, Krozel and defendant exchanged New Year's greetings. Krozel stepped back, but defendant approached her and was inches from her face while he angrily and loudly referred to his suspension and the fact that unsworn personnel were overseeing sworn officers. Defendant poked Krozel repeatedly on the arm during that heated conversation, and he was physically agitated as he spoke about his suspension the previous year, the authority of nonsworn personnel over sworn officers, and other grievances. Defendant poked Krozel more than six times between the upper and lower area of her right arm during a time when his behavior was described as "explosive." Krozel felt intimidated and threatened, she was concerned about her safety, and Haymaker believed that defendant had committed a battery. The trial court stated that it had heard the testimony and the witnesses, and found that defendant was guilty of battery beyond a reasonable doubt. Thus, the trial court resolved the credibility issues in favor of the State's witnesses and believed that defendant did

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poke Krozel. See *Dunker*, 217 Ill. App. 3d at 415. Given that the trial court believed that defendant had committed a battery, defendant's alleged whistleblowing is not legally significant. Nor was the trial court required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt, such as defendant's alleged lack of "brutality beefs" as a Chicago police officer and his alleged knowledge of appropriate office behavior. See *Digirolamo*, 179 Ill. 2d at 45; see also *Slinkard*, 362 Ill. App. 3d at 858. Krozel and Haymaker waited to contact authorities because defendant had threatened state employees and officials and they believed that the situation needed to be handled internally, there were no security guards that they could see on the seventh floor, and they could not have reached security personnel quickly. Viewed in the light most favorable for the State, the evidence was not so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *Dunker*, 217 Ill. App. 3d at 415.

¶ 25 Next, defendant contends that the trial court misconstrued the terms "insulting" or "provoking nature" in the battery statute and committed reversible error by concluding that poking a person on the arm during a conversation was insulting or

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provoking within the meaning of the battery statute. Defendant maintains that the trial court appears to have applied the subjective standard of the State's witnesses to determine whether the conduct was insulting or provoking, when the court should have examined the factual context and should have made an objective determination. Defendant suggests that, viewed in an objective manner, his conduct was not insulting or provoking. He argues that an element of the offense of battery is to cause harmful consequences, and that he did not so intend.

¶ 26 *Dunker* is dispositive of defendant's contention that poking is not insulting or provoking. Defendant argues that intent is an element of battery, but the statute in effect prior to July 1, 2011, required *either* intent *or* knowledge (*Dunker*, 217 Ill. App. 3d at 415; 720 ILCS 5/12-3 (West 2008)), and the misdemeanor complaint in this case was amended to charge defendant only with knowledge, not with intent. The statute as currently codified has dispensed with the element of intent. Pub. Act 96-1551 (eff. July 1, 2011) (amending 720 ILCS 5/12-3 (West 2008)). We have also considered, and rejected, all of defendant's other arguments on appeal.

¶ 27 The judgment of the circuit court is affirmed.

¶ 28 Affirmed.

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