

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).

2011 IL App (3d) 090662-U

Order filed August 10, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

<i>In re</i> ANDREW W.,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
a Minor)	Kankakee County, Illinois
)	
(THE PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	Appeal No. 3-09-0662
Petitioner-Appellee,)	Circuit No. 08-JD-195
)	
v.)	
)	
ANDREW W.,)	Honorable
)	Michael J. Kick,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Viewed in the light most favorable to the State, the evidence presented at respondent's bench trial was sufficient to prove him guilty beyond a reasonable doubt of intimidation and harassment of a witness. In addition, because the two offenses in question were based upon multiple physical acts and respondent made no assertion that one offense was a lesser included offense of the other, respondent's one-act, one-crime argument was rejected. The appellate court, therefore, affirmed the judgment of the trial court.
- ¶ 2 After a bench trial, respondent, Andrew W., was found guilty of burglary, disorderly conduct,

intimidation, and harassment of a witness (witness harassment), and was found to be a delinquent minor. Respondent was subsequently sentenced to the juvenile division of the Illinois Department of Corrections for an indeterminate term. Respondent appeals, arguing that: (1) he was not proven guilty beyond a reasonable doubt of intimidation and witness harassment, and, in the alternative (2) that the offense of intimidation must be stricken from his sentencing order based on the one-act, one-crime rule. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4 The evidence presented at the bench trial established that on or about July 28, 2008, respondent and two other minors, Ryan R. (Ryan) and Logan F., broke into a concession stand at the Herscher youth football field and stole candy and soda.¹ Ryan came up with the idea and was the first to enter the concession stand, but the others followed and they all took various items. Almost three months later, on October 24, 2008, a juvenile delinquency petition was filed against respondent alleging that respondent had committed burglary (count I) by entering the concession stand with the intent to commit a theft therein. The petition also alleged that respondent had committed theft (count II) and criminal trespass to real property (count III), arising out of incidents not related to the burglary of the concession stand.

¶ 5 An amended juvenile delinquency petition was filed on November 20, 2008. The amended petition added four additional charges. Count IV of the amended petition alleged that on October 31, 2008, respondent committed disorderly conduct in that he provoked a breach of the peace by

¹Respondent denied that he was involved in the burglary of the concession stand.

However, the trial court found respondent guilty of that offense, and respondent has not challenged that finding on appeal.

threatening Ryan with violence. Count V of the amended petition alleged that between October 31, 2008, and November 18, 2008, respondent committed intimidation in that he communicated a threat to inflict, without lawful authority, physical harm upon Ryan, with the intent to cause him to choose not to testify against respondent. Count VI of the amended petition alleged that between October 31, 2008, and November 18, 2008, respondent committed witness harassment in that with the intent to harass or annoy, he directly communicated a threat of injury to Ryan, a potential witness in a pending legal proceeding, because of his potential testimony. Count VII of the amended petition alleged that on November 18, 2008, respondent committed battery by striking Ryan in the face with his hands.

¶ 6 At the bench trial, Ryan testified for the State. Ryan had an agreement with the State that in exchange for his testimony, he would receive two years' probation for attempted burglary regarding the concession-stand incident.² In addition to the facts regarding the commission of the burglary, Ryan testified as to various incidents where threats were made to him by respondent.

¶ 7 The first such incident was on October 31, 2008. During the bench trial, the State represented that it was presenting Ryan's testimony on that incident as to the disorderly conduct charge. Ryan testified that on the afternoon of October 31, 2008, he was on the sidewalk in front of the police department when respondent rode up on his bicycle and threatened to hurt him. Respondent told Ryan that he was going to make Ryan pay, not with money, but with blood. Ryan reported the threat to the police.

¶ 8 The next incident occurred on November 3, 2008. The State represented to the trial court that

²The specific nature of the agreement was somewhat unclear. Presumably, the agreement was in the context of a juvenile delinquency proceeding against Ryan.

it was presenting Ryan's testimony on that incident as to the intimidation and witness harassment charge. Ryan testified that during the afternoon of November 3, 2008, he was walking back to the school with other members of the basketball team when respondent walked up behind him. When Ryan got to the parking lot behind the school and was by himself, respondent told him that he was going to hurt him. Ryan took the threat seriously and reported it to the police.

¶ 9 The final incident between respondent and Ryan took place on November 18, 2008. The State indicated during the bench trial that it was focusing Ryan's attention on the battery charge. Ryan testified that on November 18, 2008, he was walking home after school with some of his friends when respondent rode up on his bicycle. Respondent cut Ryan off. Ryan tried to walk around respondent, but respondent cut Ryan off again. Ryan told respondent to move, and respondent threw a punch.³ According to Ryan, respondent did not say anything to him before or after respondent threw the punch. After about a minute, a teacher broke up the fight.

¶ 10 The teacher that broke up the fight testified that when she asked the boy who threw the punch what happened, the boy that threw the punch told her that the other boy was accusing him of a robbery that he did not commit. That teacher, however, did not know respondent by name until he was identified by police and could not identify respondent in court as the person that had thrown the punch. Another teacher who had witnessed the confrontation and who knew respondent testified that she heard a commotion, turned around, and saw respondent take a swing at Ryan. That teacher did

³As noted above, respondent was charged with battery in the amended petition for striking Ryan in the face on November 18, 2008. However, the trial court granted a directed finding of not guilty for respondent on that charge because Ryan failed to testify that respondent actually hit him.

not know what had happened prior to the commotion and was not asked to identify respondent in court.

¶ 11 After the State rested, the defense presented some testimony to dispute the alleged threats, at least as to the October 31, 2008, incident. The testimony, however, was somewhat conflicting as respondent's mother and stepfather testified that respondent was home all afternoon and evening, and respondent's stepsister testified that respondent went trick-or-treating with her during the evening. Other testimony from additional witnesses was presented relating to some of the other charges.

¶ 12 At the conclusion of the evidence, the trial court heard the arguments of the attorneys. The State argued that the incidents that occurred from October 31, 2008, through November 18, 2008, were all part of the intimidation and witness harassment charges. Respondent's attorney objected to, and argued against, that suggestion. After the arguments concluded, the trial court took the case under advisement. The trial court later found respondent guilty of burglary, disorderly conduct, intimidation, and witness harassment, and not guilty of the remaining charges. Respondent was subsequently sentenced to the juvenile division of the Department of Corrections for an indeterminate term. This appeal followed.

¶ 13 ANALYSIS

¶ 14 On appeal, respondent argues first that he was not proven guilty beyond a reasonable doubt of either intimidation or witness harassment. Respondent asserts that the State failed to prove the specific intent necessary to establish either of the two offenses. As to the intimidation charge, respondent asserts that the State failed to establish that he acted with the specific intent to cause Ryan to engage in or to omit the performance of some future conduct. As to the witness harassment charge, respondent asserts that the State failed to establish that respondent threatened Ryan because

of Ryan's status as a potential witness against respondent. Respondent asks that both of the offenses be stricken from his sentencing order. The State disagrees with respondent's assertions and argues that the facts and circumstances surrounding respondent's conduct were sufficient to satisfy the elements of the two offenses in question. The State argues, therefore, that the trial court's ruling should be affirmed.

¶ 15 In a juvenile delinquency proceeding, the State must prove beyond a reasonable doubt the elements of the substantive offenses charged in the delinquency petition. *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005). On review, the appellate court will not overturn a trial court's finding of delinquency unless, after viewing the evidence in the light most favorable to the State, no rational trier of fact could have found the elements of the offenses charged proven beyond a reasonable doubt. *Gino W.*, 354 Ill. App. 3d at 777. A finding of guilty in a juvenile delinquency proceeding will not be reversed on appeal unless the evidence is so unsatisfactory or improbable that it raises a reasonable doubt of the respondent's guilt. *In re M.F.*, 315 Ill. App. 3d 641, 645 (2000). The trial court, as trier of fact, is in a much better position than the reviewing court to assess the credibility of witnesses, resolve conflicts in the evidence, and decide what reasonable inferences to draw from the evidence. See *Gino W.*, 354 Ill. App. 3d at 777. The reviewing court will generally not substitute its judgment for that of the trial court on issues relating to those matters. See *In re J.C.*, 260 Ill. App. 3d 872, 882-83 (1994).

¶ 16 The two offenses at issue in this case are intimidation and witness harassment. A person commits intimidation when he communicates a threat to inflict, without legal authority, physical harm on the person threatened, with the intent to cause that person to perform an act or to omit the

performance of an act.⁴ See 720 ILCS 5/12-6(a)(1) (West 2008); *People v. Verkrusse*, 261 Ill. App. 3d 972, 975 (1994); Illinois Pattern Jury Instructions, Criminal, Nos. 11.41, 11.42 (4th ed. 2000) (hereinafter, IPI Criminal 4th). Intimidation is a Class 3 felony. 720 ILCS 5/12-6(b) (West 2008). Witness harassment, on the other hand, is a Class 2 felony, as charged in the present case. See 720 ILCS 5/32-4a(a)(2) (West 2008). A person commits witness harassment when he conveys a threat of injury to a prospective witness in a legal proceeding, because of that person's status as a prospective witness and with the intent to harass or annoy that person.⁵ See 720 ILCS 5/32-4a(a)(2) (West 2008); *People v. Howell*, 358 Ill. App. 3d 512, 528 (2005); IPI Criminal 4th. Nos. 22.11Y, 22.12Y. Intimidation and witness harassment are both specific intent crimes. *Verkrusse*, 261 Ill. App. 3d at 975 (intimidation); *People v. Nix*, 131 Ill. App. 3d 973, 975 (1985) (witness harassment). The intent required for either offense may be established by inference from the surrounding facts and circumstances. *Verkrusse*, 261 Ill. App. 3d at 975 (intimidation); *Nix*, 131 Ill. App. 3d at 975 (witness harassment).

¶ 17 In the present case, the evidence viewed in the light most favorable to the prosecution was sufficient to prove the required intent for each offense. The evidence established that the threats against Ryan did not start until after the burglary charge was filed against respondent, almost three months after the actual burglary occurred. In addition, the trial court heard testimony from one of

⁴This is but one type of intimidation. Under the statute, there are other types of circumstances and conduct that may constitute intimidation, as well. See 720 ILCS 5/12-6 (West 2008).

⁵As with intimidation, this is only one type of witness harassment. See 720 ILCS 5/32-4a (West 2008).

the teachers that stopped the physical confrontation between respondent and Ryan on November 18, 2008, who stated that respondent told her that Ryan had accused him of a robbery he did not commit. Based on the timing of the threats in relation to the filing of the burglary charge, respondent's statement to the teacher, and the other facts and circumstances involved, a rational trier of fact could have concluded beyond a reasonable doubt that respondent had the specific intent to cause Ryan not to participate in the criminal proceeding and that the threats were based upon Ryan's status as a potential witness against respondent. After weighing the evidence, the trial court, as trier of fact, found that the elements of each offense had been proven beyond a reasonable doubt. We will not substitute our judgment here for that of the trial court. See *J.C.*, 260 Ill. App. 3d at 882-83.

¶ 18 As a final issue on appeal, and in the alternative, respondent argues that the offense of intimidation must be stricken from the sentencing order, based upon the one-act, one-crime rule, because the two offenses, intimidation and witness harassment, were based upon the same physical act, the incident that occurred between respondent and Ryan on November 3, 2008. Respondent asserts further that the State should not be allowed on appeal to apportion its evidence differently than it did in the trial court and change its theory of the case. The State argues that neither offense should be stricken from respondent's sentencing order. The State asserts that the two charges were based upon multiple threats that occurred over a period of about three weeks and that any single act of threatening Ryan was sufficient to support each charge.⁶

⁶The State asserts further that the one-act, one-crime rule does not mandate that either offense be stricken from respondent's sentencing order because neither of the offenses involved is a lesser-included offense of the other. In making that assertion, the State notes that each offense has different elements. However, respondent does not raise, or make any argument as to, that

¶ 19 The application of the one-act, one-crime rule is a question of law that is subject to *de novo* review on appeal. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Pursuant to the rule, a defendant may not be convicted and sentenced for more than one offense arising out of the same single physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977); *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996); *Johnson*, 237 Ill. 2d at 97. When a defendant is convicted of two offenses based upon the same single physical act, the court must vacate the less serious offense. *Johnson*, 237 Ill. 2d at 97. However, where a defendant has committed more than one act, the defendant may be guilty of multiple offenses, even if the offenses share a common act. *People v. Curtis*, 367 Ill. App. 3d 143, 147 (2006). "To determine whether the one-act, one-crime rule has been violated, the reviewing court looks first to whether the defendant's conduct constituted a single act and then determines whether any of the offenses of which the defendant was convicted are lesser-included offenses." *Curtis*, 367 Ill. App. 3d at 147. An affirmative answer to either question requires that the conviction at issue be vacated. *Curtis*, 367 Ill. App. 3d at 147.

¶ 20 In the present case, the two charges were not based upon a single physical act but upon multiple acts of threatening Ryan that occurred between October 31, 2008, and November 18, 2008. Respondent's entire assertion to the contrary is based upon the State's representations to the trial court during the presentation of the evidence as to which counts the evidence would apply. It is clear from the record, however, that the State was merely trying to help the trial court organize the evidence presented and was not seeking to limit its proof. The amended petition and the State's closing argument made clear that the State was basing the two charges on multiple acts that occurred during the relevant time period. As respondent's only assertion on this issue is that the two offenses

aspect of the one-act, one-crime rule.

were based upon the same physical act, we must reject respondent's one-act, one-crime argument. We take no position on whether intimidation was a lesser-included offense of witness harassment in this case, as that issue has not been raised by respondent in this appeal.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

¶ 22 Affirmed.