

No. 1-10-2374

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> JAMESHIA H., A MINOR	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 10 JD 1794
	)	
JAMESHIA H., a minor,	)	Honorable
	)	Lori M. Wolfson,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Epstein and Justice Joseph Gordon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Respondent was proven guilty beyond a reasonable doubt of aggravated assault where a police officer testified that respondent raised her hand in a fist as if to strike the officer, placing the officer in apprehension of receiving a battery.
- ¶ 2 Following a trial in juvenile court, respondent Jameshia H. was found guilty of aggravated assault on a peace officer. On appeal, respondent contends the evidence failed to establish that she acted knowingly when she raised her hand so as to place a peace officer in apprehension of receiving a battery. Respondent also contends that the circuit court's inaccurate

recollection of testimony undermined her defense, depriving her of due process of law. We affirm.

¶ 3 The State filed a petition for adjudication of wardship charging the 14-year-old minor respondent with one count of assault and one count of aggravated assault on Chicago Police Officer Brooke Finneke. At trial, Officer Finneke testified that on April 12, 2010, she was in uniform, and she and her partner were on routine patrol in a marked squad car. At about 3:30 p.m. they observed respondent in the vicinity of 1616 West Jonquil Terrace in Chicago. Respondent was "in a really erratic state screaming, yelling profanities, out of control, swinging her book bag around, getting in the faces of other people." Initially, the officers took no action, waiting to see whether respondent would calm down. When respondent's aggressive conduct progressed, Finneke and her partner left their vehicle. Finneke told respondent at least three times to "come here." When respondent refused to do so, Finneke grabbed respondent by her shirt sleeve. Then respondent "raised her arm in a closed fist and kind of swung it backwards," and Finneke thought respondent was going to strike her. After respondent raised her arm, Finneke grabbed respondent's arm, pulled her over to the squad car, and placed her in the back seat to calm her down. A woman approached and yelled at the officers, "What the f\*\*\* you doing with my daughter?" Respondent's mother was screaming and a crowd was forming, so the officers decided to take respondent to the police station.

¶ 4 Tameika Benjamin testified on behalf of respondent that she was a friend of respondent and her mother. On school days, Benjamin and respondent's mother would alternate picking up the children from the Steven Gale Academy School at 1616 West Jonquil. On April 12, 2010, at about 3:35 p.m., Benjamin saw respondent outside the school. Respondent was upset because an altercation had taken place between her nephew and another student. A police car pulled up but the officers did not get out at first; they just asked everyone to get off the school grounds and go

home. Benjamin gathered up some of the children and started walking. Respondent was still upset and Benjamin told her, "come on; let's go home." Benjamin heard an officer tell respondent, "you're going to have to stop the profanity." Benjamin and respondent started walking, but respondent was still yelling and cursing. Benjamin grabbed respondent's left hand and began walking away. An officer exited the police car, approached respondent from behind, grabbed her arm, and told her to quit using the profanity. Benjamin said she was going to get respondent's mother. When asked whether she saw respondent at any time raise her fist, Benjamin responded, "No. She was crying. She was already crying and she just started crying even more when the officer, you know, grabbed her arm and asked her, you know, to quit using all that profanity. She was already crying, so I just ran home and got her mom."

¶ 5 Benjamin was asked whether the officer took respondent to the police car.

"A At that point I just seen them grab her arm and they started walking towards the car and I –

Q Did [respondent] walk with her?"

A Yes.

Q Did she struggle at all?

A As far as – I didn't see that. I didn't see a struggle.

Because I had already –

Q I'm sorry.

A I had already turned to go get her mom but as far as I seen [*sic*], I didn't see any struggle or a strike or anything.

Q Okay. Did you ever see [respondent] ball up her fist?

A No."

¶ 6 After the parties rested, the court's review of the testimony included the following:

"[Finneke] asked her several times to respond to her request to come to her, so she went over to her, grabbed her shirt sleeve. At that point, that's when she took the minor into custody is when Ms. Benjamin testified she left the scene, did not see the minor being transported to the squad car. She went and ran home \*\*\*.

It was between that trip, from the street to the squad car, that the officer testified that the minor kept pulling away from her and raised her arm as if to hit her, putting the officer at reasonable apprehension of receiving a battery."

¶ 7 The circuit court found respondent guilty of aggravated assault. The court entered a dispositional order that no further action by the court was required, and the case was closed.

¶ 8 On appeal, respondent challenges the sufficiency of the finding on the basis that the evidence did not establish respondent acted knowingly in raising her hand.

¶ 9 Respondent contends that the appropriate standard of review is *de novo* because respondent's claim in this case "does not entail any assessment of the credibility of witnesses, but only whether a settled set of facts is sufficient to meet the reasonable doubt standard." However, within her argument respondent challenges the evidence, refuting Finneke's testimony that respondent's hand was clenched in a fist and denying that she walked away from Finneke when the officer ordered her to "come here." We find the appropriate standard of review to be that, when considering a challenge to a conviction based upon the sufficiency of the evidence, our inquiry is limited to "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This constitutional safeguard of proof beyond a reasonable doubt applies to the adjudicatory

stage of juvenile delinquency proceedings. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893 (2007), citing *In re Winship*, 397 U.S. 358, 368 (1970). This standard of review recognizes the responsibility of the trier of fact to assess witness credibility, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts or inconsistencies in the testimony. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). In applying this standard, the testimony of a single witness is sufficient to convict if the testimony is positive and the witness is credible. *Id.*

¶ 10 The elements of assault are that respondent, (1) without lawful authority, (2) engaged in conduct (3) which placed another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1 (West 2010). The elements of aggravated assault include the elements of assault plus one of the various factors of aggravation which, in this case, was that respondent knew the individual assaulted to be a peace officer engaged in her official duties. 720 ILCS 5/12-2(a)(6) (West 2010). The statute defining assault does not expressly contain the element of committing an act knowingly. However, knowledge is the mental state required to sustain a conviction for aggravated assault. *People v. Primmer*, 111 Ill. App. 3d 1046, 1051 (1983); *People v. Sedlacko*, 65 Ill. App. 3d 659, 663 (1978). A person knows, or acts knowingly or with knowledge of the result of her conduct, when she is consciously aware that the result is practically certain to be caused by her conduct. 720 ILCS 5/4-5(b) (West 2010). No premeditation or malice is required to be shown to establish aggravated assault. *People v. Perry*, 19 Ill. App. 3d 254, 259 (1974).

¶ 11 Respondent does not deny the State's evidence established that she raised her hand to Finneke. However, respondent contends she did not act knowingly in merely raising her hand. She asserts that she was walking away when Finneke grabbed her by the sleeve and that she raised her arm in reaction to what she describes as Finneke's "sudden and unanticipated action" which "startled" her. Respondent contends that all of the evidence demonstrates that she "did not know that her conduct would result in a perceived threat of harm to Finnecke."

¶ 12 Respondent did not testify, and there was no direct evidence of her mental state. However, by its very nature, knowledge is ordinarily proven by circumstantial evidence. *Keith C.*, 378 Ill. App. 3d at 258. Here, respondent's knowledge could be inferred from evidence of the surrounding circumstances. It is undisputed that respondent was screaming and yelling profanities. Finneke, who was in uniform, had commanded respondent three or more times to come to her, a command which respondent ignored by walking away. Respondent's contention, that she was not walking away from Finneke but was pacing back and forth, is belied by the record. Finneke testified: "When I originally approached her, she wasn't walking away until I told her to come here and then she was walking away from me, yes." Respondent's defiant refusal to acknowledge the commands of the uniformed officer could be interpreted as displaying an intentionally contemptuous behavior or attitude. Finneke testified that when she grabbed respondent by the sleeve, respondent raised her hand and drew it back with fist clenched. However, respondent claims on appeal that her "closed hand may not have been a fist so much as her hand closed around the straps of her book bag." This is pure speculation, unsupported by the trial evidence. Respondent also speculates that she raised her hand merely because she was startled when her "personal space was \*\*\* invaded, from behind, by an unknown adult." This conjecture ignores the evidence that a uniformed police officer was approaching her, repeatedly calling out to her, ordering her to "come here."

¶ 13 It was reasonable to infer from respondent's conduct that she knew that Finneke was a peace officer and that, in raising her fist, she was placing Finneke in reasonable apprehension of receiving a battery. After carefully reviewing the entire record, we conclude that the evidence proved beyond a reasonable doubt that respondent knowingly assaulted a peace officer engaged in the performance of her official duties.

¶ 14 Respondent's second claim of error is that the circuit court incorrectly recalled the testimony of defense witness Tameika Benjamin which resulted in the court's failure to consider the crux of the defense, namely, that Finneke's testimony that respondent raised her fist was contradicted by Benjamin. Respondent claims that Benjamin testified respondent did not raise her fist, creating a reasonable doubt that an assault occurred. Characterizing this case as "a credibility contest between Finneke and Benjamin," respondent asserts the circuit court was in error in finding that Benjamin had already left the area when respondent raised her fist and that the court's mistake in incorrectly recalling the evidence, which would have cast doubt on Finneke's testimony, resulted in the denial of due process.

¶ 15 We find this argument disingenuous. Respondent conceded in her first claim of error, dealt with above, that she did raise her hand. Moreover, respondent's claim is not supported by the record. The circuit court did consider respondent's argument that Benjamin's testimony contradicted Finneke as to whether respondent raised her hand.

¶ 16 At the conclusion of the trial, the court found that when respondent refused to step over to Finneke when ordered to do so, Finneke approached respondent and grabbed her shirt sleeve; that Finneke took respondent into custody; that Benjamin left the scene at that time; and that it was not until Finneke led respondent to the squad car that respondent raised her arm as if to strike Finneke. However, the record shows Finneke testified that after respondent raised her hand in a closed fist, Finneke grabbed respondent by the arm and then pulled her to the squad car. Benjamin testified she left the scene after seeing Finneke grab respondent. However, respondent asserts that Benjamin also testified she saw the officer "grab her arm and they started walking towards the car \*\*\*." Respondent contends that Benjamin must still have been at the scene because "the alleged assault did not occur during the trip to the squad car; it occurred when Finneke grabbed her shirt-sleeve from behind." Respondent concludes that the circuit court erred

in finding that Benjamin had already left the scene and could not have seen respondent raise her fist.

¶ 17 Our careful review of the testimony shows that, despite the circuit court's mistaken belief that respondent did not raise her fist until Finneke was taking her to the police car, the testimony supports the court's conclusion that Benjamin turned away after Finneke grabbed respondent by the sleeve and could not have seen respondent raise her fist. Critically, Benjamin did not testify that respondent never raised her fist. Benjamin testified only that she did not *see* respondent raise her fist. The distinction is crucial because Benjamin's testimony, when considered as a whole and in the light most favorable to the prosecution, did support the circuit court's conclusion that Benjamin had left the scene when respondent raised her fist, and that Benjamin's testimony did not impeach or contradict Finneke. Benjamin testified that she saw Finneke approach respondent from behind and grab her arm, heard the officer tell her to quit using profanity, and said she was going to get respondent's mother. When asked whether she saw respondent raise her fist at any time, Benjamin testified, "No. She \*\*\* was already crying and she just started crying even more when the officer, you know, grabbed her arm and asked her, you know, to quit using all that profanity. She was already crying, so I just ran home and got her mom." When Benjamin was asked whether respondent struggled when being taken to the police car, Benjamin replied, "I had already turned to go to get her mom but as far as I seen [*sic*], I didn't see any struggle or a strike or anything." Any rational trier of fact could have concluded from the testimony that Benjamin did not actually see respondent being taken to the police car, that Benjamin saw Finneke grab respondent only the first time, *i.e.*, when the officer grabbed her by the sleeve, and that Benjamin left before respondent raised her fist.

¶ 18 The circuit court saw and heard the testimony firsthand and observed the demeanor of the witnesses, their confidence or hesitancy in testifying, and the clarity of their testimony. It was for

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the circuit court to determine what Benjamin could or could not have seen before she left the scene. Any issues of credibility and inconsistencies in the evidence were properly before the circuit court as the trier of fact. We shall not reweigh the evidence, as it is not our function to resolve any conflict or inconsistency in the testimony where the circuit court was in a superior position to do so. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). We conclude that the facts, viewed in the light most favorable to the State, support the court's determination that Benjamin did not see respondent raise her fist because Benjamin had already left the scene, and that the evidence established defendant's guilt of aggravated assault beyond a reasonable doubt.

¶ 19 Affirmed.