

No. 1-10-2620

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,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 22056
)	
JOSIAH SAUNDERS a/k/a Daniel Woods,)	Honorable
)	Marcus R. Salone,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER¹ delivered the judgment of the court.
Justices Garcia and McBride concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant's conviction for misdemeanor battery was reversed.

¶ 2 Following a bench trial, defendant Josiah Saunders, also known as Daniel Woods, was convicted of battery by making physical contact of an insulting or provoking nature (720 ILCS 5/12-3(a)(2) (West 2008)) with Officer Regan Allen and sentenced to serve six months in the Cook County Department of Corrections. On appeal, defendant contends that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) even if the court finds defendant intentionally or knowingly made contact with Officer Allen, the State failed to prove the contact

¹ Justice Robert Cahill delivered the original judgment of the court. Subsequent to the grant of rehearing, Justice Cahill passed away. Justice Palmer serves in his stead on this matter.

was of an insulting or provoking nature; and (3) even if the court finds defendant intentionally or knowingly made physical contact of an insulting or provoking nature, he was legally justified in approaching Officer Allen because he was coming to the defense of another. We previously affirmed defendant's conviction in *People v. Saunders*, 2011 IL App (1st) 102620-U. Defendant subsequently filed a petition for rehearing. That petition was granted, the parties were ordered to brief the issues presented and oral argument was held. We withdrew the previous Rule 23 order and now reverse defendant's conviction.

¶ 3 Defendant was tried on felony charges of two counts of aggravated battery of a police officer, resisting or obstructing a peace officer and criminal damage to government property. At trial, Chicago police officer Regan Allen testified that about 9:15 p.m. on November 10, 2008, he was working as an enforcement officer for a narcotics surveillance team. He was dressed in plain clothes, wearing a hoodie with his police badge around his neck. He was also wearing a protective vest, his duty belt and his weapon. Officer Allen and his partner, Officer Carradia, responded to a radio call to arrest a man who was selling drugs on the street. When the officers approached the man, later identified as Robert Terrell, the man immediately reached to his side, where police later discovered he had a weapon. When the officers attempted to arrest Terrell, they became engaged in a struggle.

¶ 4 Defendant came up behind Officer Allen and asked "what the [expletive deleted] is going on here?" Officer Allen testified that he responded "police, step back." Defendant stepped up to him, grabbed his upper rear shoulder and "dragged" him off Terrell. Officer Allen was then struggling with both defendant and Terrell. Defendant and Officer Allen landed on the hood of a squad car that arrived on the scene. The officer denied that the squad car struck him. He also denied that he initiated the contact with defendant, and that he pushed defendant into the squad car. Defendant fled the scene and was later apprehended by other officers. The hood and grill of the squad car, which was owned by the Chicago police department, was cracked. Officer Allen

was taken to a hospital where he was treated for bruised ribs.

¶ 5 A video of the incident was recorded by a police pod in the area. The video was played in court and Officer Allen explained what was being depicted on the recording, identifying the people in it. The officer denied that the video showed defendant with his hands in the air. Officer Allen again explained that defendant grabbed his back in the area of his shoulder and he then turned toward defendant. Officer Allen testified that the video showed defendant dragging him backwards.

¶ 6 Chicago police officer Victor Ramirez testified that he arrived on the scene in his squad car, which was owned by the City of Chicago, to assist the officers with arresting Terrell. As he approached, he saw Officers Allen and Carradia struggling with Terrell with their backs turned to defendant. Officer Ramirez drove his car up to the sidewalk and over the curb, and defendant and Officer Allen fell onto the top of his squad car. The front grill and a piece of the car between the grill and the hood were broken.

¶ 7 In her motion for a directed finding, defense counsel argued that the video spoke for itself. She argued that it did not show defendant putting his hands on Officer Allen in a way that would cause harm. She also claimed the video showed defendant raising both arms up as though he were withdrawing. The State maintained that the video showed defendant interfering in the arrest of Terrell and putting his hands on Officer Allen.

¶ 8 The trial court found that the video showed no visible indicia that Officer Allen was a police officer. It further found that defendant was pushed against the squad car and did not knowingly damage the car. Accordingly, the trial court found defendant not guilty of all four charges but denied the motion for a directed finding with regard to the lesser included offense of battery.

¶ 9 Defense counsel asked the court if, from viewing the video, it found that there was some contact between defendant and Officer Allen. The court answered "[y]es," and specifically added

"[o]f an insulting or provoking nature."

¶ 10 Defendant testified that when he exited a store, he saw three men fighting and asked them what was happening. One of the men responded "C.P.D. business, mother [expletive deleted]." Defendant testified that he did not know what CPD meant, so he did not realize they were police officers. He denied that he touched, grabbed or pulled any of the men and denied that there was contact with Officer Allen. Defendant testified that the squad car struck him from behind. He then realized that it was the police and fled. Defendant acknowledged that he knew Terrell from the neighborhood but denied that they were friends. In rebuttal, the State offered proof of defendant's five earlier convictions.

¶ 11 In closing argument, defense counsel noted that the parties and the court watched the video and that, based on the video, there was some doubt about who initiated the contact between defendant and Officer Allen. Defense counsel argued that Officer Allen initiated the contact but acknowledged that the video did show defendant approaching the officer. The State argued that defendant's testimony that there was no contact between him and Officer Allen was incredible because the video showed obvious contact between them.

¶ 12 The trial court found that Officers Allen and Carradia were attempting to arrest Terrell, who was physically resisting them, when defendant inserted himself into the struggle. The court found that the video clearly showed that defendant was standing with his arms down, but that he advanced on Officer Allen. The officer then stopped that advance by extending his arm into defendant's chest. It further found that defendant was pushed into the squad car by Officer Allen. The court found defendant guilty of the lesser included offense of simple battery because there was no visible sign that Officer Allen was a police officer. The court sentenced defendant to six months in the Cook County Department of Corrections, time having been served.

¶ 13 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the trial court found that he did not initiate the physical contact with

Officer Allen and only approached the officer after happening on him engaged in a fight with two other men and "trying to determine what had occurred." Defendant argues that the State failed to prove that he intentionally or knowingly made physical contact with Officer Allen.

¶ 14 Defendant asserts that he is not challenging the trial court's factual findings but, instead, he is arguing that those findings do not support the finding of guilt because they do not satisfy the elements of the offense. Defendant claims that this court should apply *de novo* review. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where the facts are undisputed, the defendant's guilt is a question of law that is reviewed *de novo*). We disagree with defendant's characterization of the court's factual findings and find that there is a factual dispute between the parties as to whether or not defendant made physical contact with Officer Allen. *De novo* review is not appropriate in this case. See *People v. Gilmore*, 356 Ill. App. 3d 1023, 1034 (2005).

¶ 15 Our standard of review is whether a rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, the trial judge is responsible for determining the credibility of the witnesses, weighing the testimony, resolving conflicts in the evidence and drawing reasonable inferences therefrom. *People v. Austin*, 349 Ill. App. 3d 766, 769 (2004). A reviewing court may reverse a defendant's conviction if the evidence is so unreasonable, improbable or unsatisfactory that it leaves reasonable doubt of the defendant's guilt. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008).

¶ 16 A defendant is guilty of battery when, without legal justification, he intentionally or knowingly by any means makes physical contact of an insulting or provoking nature with another person. 720 ILCS 5/12-3(a)(2) (West 2008).

¶ 17 We believe that the evidence was insufficient for the trial court to find defendant guilty of battery beyond a reasonable doubt. Our review of the record shows that the trial court did not find that the surveillance video supported Officer Allen's description of the incident. Rather, the

trial court found contact was first made when Allen raised his arm as defendant advanced on him. It is this contact upon which the court based its finding that defendant was guilty of battery. We note that at oral argument the State adopted this position, which differed from the facts alleged in the State's "Complaint for Preliminary Examination" and in the "Information." It also differs from the State's arguments at trial and in the State's appellate briefs.

¶ 18 Nothing in the record, including Allen's testimony and the video, supports the State's new contention that defendant made the initial contact when Allen extended his arm to stop defendant's advance. Specifically, Allen does not describe this contact, and the video shows Allen's arm coming up to defendant's chest and pushing him backward.

¶ 19 The State argued at oral argument that the battery conviction could be sustained upon a finding that the defendant walked into Allen's extended arm. Arguably the video is unclear on that exact moment of contact, but as noted above, Allen's testimony does not support the State's position. Absent any evidence showing that defendant made the initial contact with Allen, the evidence is so unsatisfactory that it leaves a reasonable doubt of defendant's guilt and thus his conviction for battery cannot stand.

¶ 20 Having found the evidence does not support a finding that defendant made the initial contact with Allen, we need not address defendant's other contentions.

¶ 21 For these reasons, we reverse the judgment of the circuit court.

¶ 22 Reversed.