

No. 1-11-2477

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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. 11 CR 186383
LACRISTA EWING,)	
)	Honorable
Defendants-Appellees)	Stanley L. Hill,
)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concur in the judgment.

ORDER

¶ 1 *Held:* The State failed to prove defendant guilty of reckless conduct because it presented no evidence that defendant consciously disregarded the risk that her comments to a crowd would endanger the bodily safety of others. The evidence was sufficient to sustain defendant’s conviction for aggravated assault of a peace officer.

¶ 2 Following a bench trial, defendant was convicted of reckless conduct and aggravated assault and received concurrent sentences of 180 days’ imprisonment on each count. On appeal,

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she maintains that the State failed to prove her guilty of either charge beyond a reasonable doubt. She further contends that her first amendment rights to free speech were violated because her arrest for reckless conduct followed from comments she made to a police officer. For the following reasons, we affirm in part and reverse in part.

¶ 3 BACKGROUND

¶ 4 In the early morning hours of May 18, 2011, Officer Marlon Holt responded to a call about a “disturbance” on East 106th Street in Chicago. When he and his partner arrived, they observed a crowd of about 60 or 70 people who had just left a nearby party and were gathering in the street and on the lawn. Holt testified that the people in the crowd were intoxicated and yelling obscenities. He called for backup to assist in dispersing the crowd as soon as he arrived.

¶ 5 Holt first approached defendant on the sidewalk in front of her house. He testified that defendant was telling people in the crowd that they did not have to disperse. Specifically, she said, “Fuck the police. We don’t have to go nowhere,” although he stated that she was not yelling at him specifically. He testified that defendant was “inciting the crowd” because “instead of dispersing, they were staying there, *** getting more riled up by her.” He testified that defendant was given several verbal commands to go inside her house, but she refused. He then arrested her. He testified that the crowd eventually dispersed after defendant and six other people were taken into custody.

¶ 6 Defendant was transported to the police station and placed in a holding room with the other individuals. They were all seated and handcuffed together. Holt testified that Officer Miller told the individuals that they could accept a citation in lieu of being arrested for reckless

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conduct, to which defendant replied, "Fuck that. I am not signing anything." Holt testified that defendant then stood up and stated that she was leaving the holding room. As she did so, she pulled the other individuals with her. Holt and Miller decided to transport defendant to another room because "she was inciting the other individuals *** to basically leave or try to attempt to leave." They uncuffed defendant from another detainee and cuffed her hands behind her back.

¶ 7 Holt then transported defendant to a separate holding room. He was on one side of defendant and Miller was on the other side. Holt stated that defendant was "belligerent" while he was transporting her and that she was yelling and cursing and refusing to walk. A third officer, Officer Belmontes, then assisted in transporting defendant to the holding room. When they got to the holding room, Holt uncuffed defendant's hands so she could be cuffed to a bench. After he uncuffed her, he held on to her right arm, but defendant then "lunged toward him with her head and her shoulders." He testified that he "believed she was going to try to knock [him] back so she can get her right arm free and start fighting me and the other officers in the room." At that point, Holt "knocked her back" with his knee. Holt and Belmontes then "subdued" defendant. On cross-examination, he admitted that he and the other officers were all armed.

¶ 8 Defendant then testified. She stated that on the night of the incident, she had been at a friend's house around the corner and was just returning home. She stated that her niece, who also lived at the home, threw a party that night.

¶ 9 Defendant testified that Miller and Belmontes were the two officers who approached her that night and that she did not see Holt until she arrived at the police station. She stated that Miller asked her whether she lived at the house. She said yes and tried to go up to her house, but

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Belmontes then arrested her. She stated that she was not yelling “Fuck the police” that night or talking to anyone in the crowd.

¶ 10 Defendant testified that when she got to the police station, Miller told her that she had the option to accept a citation and get out of jail, but that she refused it. She explained that she felt that she was “wrongly arrested.”

¶ 11 Defendant described being taken to the holding room at the police station. She stated that the officers were “aggressive.” She stated that Miller grabbed her and put handcuffs on her to transport her. She said that Holt then appeared and started “tugging” at her. When they got into the other room, she stated that Holt “started kicking [her] and choking [her].” She testified that she did not lunge at any of the police officers.

¶ 12 Following closing arguments, the court found defendant guilty of reckless conduct and aggravated assault. As to the reckless conduct conviction, it found that Holt credibly testified that defendant told people that they could disobey police orders to disperse the crowd and yelled obscenities to encourage them to ignore the police. It found defendant incredible because she denied the events occurred and acted as though “she shows up and they just arrest her for no reason.” As to the aggravated assault conviction, the court found that Holt credibly testified that while engaged in his duties as a police officer, defendant’s act of charging at him with her head and shoulders put him in fear of receiving a battery. The court sentenced defendant to 180 days imprisonment. After denial of a motion to reconsider, this appeal followed.

¶ 13

ANALYSIS

¶ 14 Defendant first argues that the State failed to prove her guilty of reckless conduct beyond

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a reasonable doubt. The State has the burden of proving each element of the offense beyond a reasonable doubt. *People v. Phillips*, 215 Ill. 2d 554, 574 (2005). When reviewing the sufficiency of the evidence presented for that purpose, we must determine “ ‘whether, after reviewing 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. [Citations].’ ” (Emphasis in original.) *People v. Herman*, 407 Ill. App. 3d 688, 703 (2011), quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979). Our function is not to retry the defendant, but rather, we must carefully examine the evidence while giving due consideration to the fact that the trier of fact saw and heard the witnesses. *Herman*, 407 Ill. App. 3d at 704. After such consideration, if we are convinced that the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant’s guilt, we must reverse the defendant’s conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). This standard of review applies regardless of whether the evidence is direct or circumstantial and regardless of whether the defendant receives a bench or jury trial. *Herman*, 407 Ill. App. 3d at 703.

¶ 15 At the time of this incident, section 12-5(a) of the Criminal Code of 1963 (Code) provided:

“A person who causes bodily harm to or endangers the bodily safety of an individual by any means, commits reckless conduct if he or she performs recklessly the acts that cause the harm or endanger safety, whether they otherwise are lawful or unlawful.” 720 ILCS 5/12-5(a) (West 2010).

Furthermore, section 4-6 of the Code provided:

“A person *** acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2010).

Thus, in order to sustain a conviction for reckless conduct, the State must prove beyond a reasonable doubt that defendant: (1) yelled obscenities and instructed the crowd to disobey police orders to disperse, (2) with conscious disregard for the risk that doing so would cause bodily harm or endanger the bodily safety of an individual by any means, and (3) that such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. See *People v. Martin*, 401 Ill. App. 3d 315, 322 (2010).

¶ 16 Here, the State produced no evidence to support the allegation that defendant’s comments endangered the bodily safety of any individual. Holt testified that defendant was “inciting the crowd” by yelling, “Fuck the police. We don’t have to go nowhere.” He then testified that as a result, “instead of dispersing, they were staying there *** getting more riled up by her.” Holt never stated what it meant that the crowd was “riled up” and did not indicate what the crowd was “incited” to do, if anything. He never testified that anyone in the crowd was angry or that there was any fighting or arguing. At no point in his testimony did he suggest that he arrested defendant out of fear that he or someone else would get hurt. Rather, he testified that she was arrested “[a]fter she was given several verbal commands *** to disperse and she refused.”

¶ 17 The State’s contentions to the contrary are unsupported by the record. The State argues

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that Holt was “[c]ognizant of the fact that such a large group of intoxicated partygoers posed a potential danger to themselves and others,” so he called for backup. Holt simply provided no testimony to support that statement; rather, he testified that he called for backup “to disperse the crowd.” Moreover, Holt testified that he and his partner called for backup as soon as they arrived at the scene and observed the size of the crowd, before they had any contact with defendant.

¶ 18 The State also argues that it was reasonable for the circuit court to conclude that “the longer the rowdy and intoxicated crowd stayed on or near the street[,] the greater the likelihood that those individuals could be injured by passing cars.” Again, there is no evidence to support those claims. First, the court never made such a finding. In fact, in making its ruling, the court found only that defendant was “telling people that they could disobey police officers” and “yelling obscenities as if to encourage folks to ignore the lawful orders by the police,” but made no finding as to how or if she endangered another person’s bodily safety. Holt also never testified that he was concerned about people being injured by passing cars at 2:30 in the morning.

¶ 19 The State also argues that there was an increased “potential of an altercation among the intoxicated members of the crowd.” As stated above, Holt never testified that he was concerned about an altercation among members of the crowd. Nevertheless, even if an altercation were likely to occur, there is no evidence to suggest that it would have resulted from defendant’s comments.

¶ 20 The State further argues that defendant’s comments “endangered the safety of those police officers who were attempting to disperse the group.” Again, Holt never testified to that effect. He did not state or suggest that his safety or the safety of his fellow officers was

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threatened in any way by defendant's actions or by the crowd's actions. Thus, the State failed to prove an element of the reckless conduct charge, which makes the evidence so unsatisfactory that her conviction may not stand. *Smith*, 185 Ill. 2d at 541. Accordingly, defendant's conviction for reckless conduct must be reversed. In light of our holding, we need not address defendant's claim that her first amendment rights were violated. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) (restating its admonition that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort).

¶ 21 Defendant also argues that the State failed to prove her guilty of aggravated assault beyond a reasonable doubt. The aforementioned standards for reviewing the sufficiency of the evidence apply to our analysis of this argument.

¶ 22 At the time this incident occurred, section 12-2(a)(6) of the Code stated that “[a] person commits aggravated assault when, in committing an assault, he *** knows the individual assaulted to be a peace officer *** engaged in the execution of any of his official duties.” 720 ILCS 5/12-2(a)(6) (West 2010). An assault occurs when “without lawful authority, [one] engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILCS 5/12-1(a) (West 2010). A battery occurs when one “(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 ILCS 5/12-3(a) (West 2010). Whether the victim was placed in reasonable apprehension of receiving a battery is a question for the fact finder to resolve. *In re Gino W.*, 354 Ill. App. 3d 775, 777-78 (2005). It is an objective standard, meaning that “the apprehension must be one which would normally be aroused in the mind of a reasonable person.” (Internal quotations

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omitted.) *In re Gino W.*, 354 Ill. App. 3d at 779. However, the victim need not testify expressly that he was in apprehension of receiving a battery. *In re Gino W.*, 354 Ill. App. 3d at 778.

Rather, reasonable apprehension may be inferred from the evidence presented at trial, including the conduct of the victim and the respondent. *In re Gino W.*, 354 Ill. App. 3d at 778.

¶ 23 Here, Holt’s testimony was sufficient to establish that defendant engaged in conduct that placed Holt in reasonable apprehension of a battery, meaning bodily harm or physical contact of an insulting or provoking nature. Holt, who was wearing his police uniform, testified that defendant had been “belligerent” in the police station and that she had been yelling and cursing while he was transporting her to a holding room. After Holt uncuffed defendant’s hand, defendant “lunged toward [him] with her head and her shoulders.” Holt stated that he believed that defendant was going to “knock [him] back” to get her arm free and “start fighting [him] and the other officers.” At that point, Belmontes assisted Holt in subduing defendant so she could not “charge forward” again. After viewing this testimony in the light most favorable to the prosecution, we must conclude that a rational trier of fact could have found the essential elements of aggravated assault beyond a reasonable doubt. *Herman*, 407 Ill. App. 3d at 703.

¶ 24 Indeed, the circuit court found that while Holt was engaged in the execution of his official duties, defendant “attempt[ed] to cause a battery to [Holt] or at least put him in fear of receiving a battery” when she “put her head down and shoulders down and charged at him.” Although defendant denied that she lunged at or attacked Holt and the other officers, the court found her testimony to be incredible. It is solely within the province of the fact finder to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve

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conflicts or inconsistencies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004).

Accordingly, we affirm defendant's conviction for aggravated assault.

¶ 25 For all of the foregoing reasons, we reverse defendant's conviction for reckless conduct and affirm her conviction for aggravated assault.

¶ 26 Affirmed in part and in reversed in part.