

No. 1-12-2590

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. 12 MC1 185191
)	
MAURICIO TOLVER,)	Honorable
)	Clarence L. Burch,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State's evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant's shooting gesture placed the probation officer in an objectively reasonable apprehension of receiving an immediate battery.
- ¶ 2 Following a bench trial, defendant Mauricio Tolver was found guilty of misdemeanor assault and sentenced to 30 days in the Cook County Department of Corrections. On appeal, defendant contends that his conviction should be reversed because the State failed to prove beyond a reasonable doubt that his conduct placed the victim, a probation officer, in reasonable apprehension of receiving an immediate battery.
- ¶ 3 At trial, Lisa Castaneda, a 17-year Cook County probation officer, testified that on May 7, 2012, she was in the Branch 43 courtroom to file a violation of probation (VOP) petition against

1-12-2590

one of her probationers, Ericka Brooks. During a recess, Castaneda noticed Brooks standing with defendant in the doorway. Brooks pointed a finger at her, then defendant raised his right hand and made a shooting gesture in her direction, and ran out of the courthouse before she was able to get the attention of the sheriff's deputy in the courtroom. Castaneda testified that defendant's conduct made her feel "unsafe" because "you don't know who can and cannot make any type of harmful situations for you when you walk out the door."

¶ 4 On cross-examination, Castaneda testified that defendant was standing about 50 feet away from her when he made the shooting gesture. She also acknowledged that a sheriff's deputy was in the courtroom at that time and she knew defendant was not pointing a real gun at her. On redirect examination, Castaneda maintained that she felt threatened by defendant's conduct even in the presence of the sheriff's deputy.

¶ 5 Thereafter, the State rested its case-in-chief and the trial court denied defendant's motion for a directed finding. Defendant did not testify, and the defense rested without presenting any evidence.

¶ 6 Following closing arguments, the trial court found defendant guilty of assault and sentenced him to 60 days in the Cook County Department of Corrections. The trial court subsequently granted defendant's motion to reconsider his sentence and reduced it to 30 days.

¶ 7 In this court, defendant contends that Castaneda's apprehension of receiving an immediate battery was unreasonable given the conduct itself and the secure setting in which it occurred. Defendant argues that a shooting gesture, without additional gestures or verbal threats, is insufficient to show that Castaneda was placed in reasonable apprehension of receiving a battery. Otherwise, he reasons, "any person glaring at a probation officer or flipping a probation officer the middle finger could be subject to prosecution for assault."

¶ 8 He further argues that Castaneda's apprehension was unreasonable based on the security measures taken inside a typical courthouse, including those borne out in Castaneda's testimony, and a shooting gesture from 50 feet away. Lastly, defendant argues that his conduct did not place

1-12-2590

Castaneda in fear of receiving an *immediate* battery because he pointed a finger, not a weapon, then ran out of the courtroom. He seizes on Castaneda's testimony that she immediately recognized that he was not pointing a gun and her fear was "of harmful situations for you when you walk out the door," rather than a harmful situation *inside* the courtroom.

¶ 9 When defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Under this standard, a court of review must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009).

¶ 10 A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a) (West 2010). The victim need not expressly testify about his or her apprehension where it may be inferred from the evidence presented at trial, including the conduct of defendant and the victim. *In re Gino W.*, 354 Ill. App. 3d 775, 778 (2005). Whether the victim was placed in reasonable apprehension of receiving a battery is measured by an objective standard, *i.e.*, " 'the apprehension must be one which would normally be aroused in the mind of a reasonable person.' " *In re Interest of C.L.*, 180 Ill. App. 3d 173, 178 (1989) (*quoting* Prosser & Keeton on Torts § 10, at 44 (5th ed. 1984)). Although we examine the emotional effect upon the victim, that response must be objectively reasonable. *People v. Floyd*, 278 Ill. App. 3d 568, 570 (1996).

¶ 11 Here, the evidence presented at trial supports the trial court's finding that the State proved defendant guilty beyond a reasonable doubt of misdemeanor assault. The evidence established that during a court recess in Branch 43, defendant made a shooting gesture toward Castaneda, who was there to file a VOP petition against defendant's companion Brooks, who had pointed her finger at Castaneda. Although defendant ran out of the courthouse before Castaneda was able to

1-12-2590

alert the sheriff's deputy in the courtroom, Castaneda testified that defendant's shooting gesture made her feel "unsafe" because "you don't know who can and cannot make any type of harmful situations for you when you walk out the door." Considering the facts and circumstances confronting Castaneda when defendant made the shooting gesture at her, we cannot conclude that no rational trier of fact could have found that Castaneda's apprehension of receiving a battery was objectively unreasonable. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 32; *People v. Bradley*, 73 Ill. App. 3d 347, 351 (1979).

¶ 12 The fact that defendant made a shooting gesture, without additional gestures or verbal threats, is unlike his hypothetical scenario where "any person glaring at a probation officer or flipping a probation officer the middle finger could be subject to prosecution for assault." "An assault may consist of using a gesture toward another so as to give him reasonable grounds to believe that the person using that gesture means to apply actual force to his person." *People v. Preis*, 27 Ill. 2d 315, 318 (1963). Defendant's conduct in this case conveyed more than a glare or the "universal signal of discontent" (*People v. Meyers*, 352 Ill. App. 3d 790, 794 (2004)). Further, the mere existence of security measures, inside the courthouse and the Branch 43 courtroom, does not diminish the reasonableness of Castaneda's belief that defendant meant to apply actual force to her person. See *Cook County v. Illinois Industrial Commission*, 165 Ill. App. 3d 1005, 1010 (1988) (that "common sense suggests that fewer assaults would occur near a courthouse because sheriffs are assigned to all courtrooms and police officers regularly enter and exit courthouses," ignores the ever-present danger that requires the presence of security personnel). Defendant's shooting gesture toward Castaneda occurred in the courtroom and prompted her to immediately alert the sheriff's deputy for assistance as defendant ran out of the courthouse. Castaneda's fear "of harmful situations for you when you walk out the door [of the courtroom]," was objectively reasonable under these circumstances.

¶ 13 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.

1-12-2590