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2013 IL App (3d) 110700-U

Order filed April 9, 2013

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

<i>In re</i> E.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0700
)	Circuit No. 11-JD-256
v.)	
)	
E.S.,)	
)	Honorable Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The evidence was sufficient to support respondent's conviction and corresponding delinquency for mob action pursuant to section 25-1(a)(1) of the Criminal Code. 725 ILCS 5/25-1(a)(1) (West 2010).
- ¶ 2 A juvenile petition charged the respondent, E.S., a minor, with the offenses of aggravated

battery and mob action.

¶ 3 Following a bench trial in Peoria County, the trial court found respondent guilty of mob action beyond a reasonable doubt and found that it was in the best interest of the community to make respondent a ward of the court.

¶ 4 The trial court ordered respondent to a full commitment for an indeterminate term of up to three years.

¶ 5 Respondent appeals his delinquency adjudication, claiming that the State did not prove him guilty of mob action beyond a reasonable doubt, as there was insufficient evidence to show that he was "acting together" with the other boys.

¶ 6 We affirm.

¶ 7 BACKGROUND

¶ 8 Respondent was charged by juvenile petition with the offenses of aggravated battery and mob action. The mob action charge specifically alleged that he "knowingly by the use of force and violence, disturbed the public peace in that the minor, while acting together with G.Z. and others" beat and hit Jesus Reteguin, thereby inflicting bodily injury. Respondent asserted the affirmative defense of self-defense.

¶ 9 At trial, Reteguin testified that he was driving his car down an alley off Green Street. His wife was in the front seat and his eight-year-old son was in the back. Respondent and another youth, who was described as a tall, white male, were in front of Reteguin's car flashing gang signs. Reteguin stopped the car and opened the door to talk to respondent. Reteguin testified that he told respondent and the other teen he did not want any problems and that they should not

be making these signs at him. The two youths then approached the car and started hitting him when he opened his car door.

¶ 10 Reteguin testified that he fought back, smacking respondent in the face. He stated that he "wasn't going to just sit there and wait for them to hit me." When asked if he started the fight by slapping respondent, Reteguin replied, "why would [respondent] have left the location after the fight?"

¶ 11 While in the midst of fighting respondent, Reteguin heard a whistle that was followed by the arrival of four more teens. Reteguin stated that they came from houses in the alley and from behind a building. Reteguin testified that he was hit with sticks and stones, and that respondent continued to hit him while the other boys also fought with him.

¶ 12 Reteguin stated that when his wife attempted to get the six boys off of him, one of them hit her with a box. He did not see his wife hit anyone. Finally, a young man identified as Conrado Carrillo helped pull the boys off Reteguin. From a nearby store, a woman yelled that she was going to call the police, and the boys fled.

¶ 13 Conrado Carrillo testified that he was first alerted to the scuffle when he heard a noise. He looked out of his house and saw a person, Reteguin, being hit by six or seven people. Carrillo did not witness how the fight started. Carrillo stated that he and the woman (Reteguin's wife) attempted to separate the combatants. All of the boys were trying to hit Reteguin and some were using sticks and stones. Reteguin defended himself and talked back to the boys. According to Carrillo, he saw Reteguin try to throw punches or push the boys away in an attempt to defend himself. Carrillo never saw Reteguin actually hit respondent, nor did he see respondent actually

hit Reteguin. He stated with all that was happening, he could not see who hit who and that there was a lot of moving around.

¶ 14 Reteguin's wife, Elsa Quintero, also testified that respondent and a tall, white male were in the alley behind Green Street and that they were "making signs" at them. According to Quintero, the two boys lunged at Reteguin as he had one foot out of the car; respondent pulled him the rest of the way out of the car and hit him. She pulled the driver's side door closed and tried to find her cell phone to call for help.

¶ 15 Reteguin hit respondent, but Quintero stated he did not strike first. When the four other boys arrived "all of the sudden," she exited the car and pulled at the boys' shirts to get them off her husband. One of the boys threw a box at her, and respondent hit Reteguin in the head with a rock while another boy hit Reteguin in the foot. Then Carrillo arrived at the scene and helped break up the fight. The boys all scattered at the mention of the police.

¶ 16 Officer Matthew Legaspi responded to a call about a large fight. Upon arriving at the scene, Reteguin approached him and told Legaspi that he had been jumped by respondent. Legaspi went to respondent's home and upon questioning, respondent admitted to fighting with Reteguin. Respondent told Legaspi that others joined the fight and he ran because someone had called the police. Respondent showed Legaspi a bloody abrasion on his back. While discussing the incident with respondent, Legaspi learned of another possible suspect, Geovanny Zavala. Legaspi knew that Zavala's mother, Diane Munoz, worked at a nearby store.

¶ 17 Diane Munoz testified that she worked at a grocery store near Green Street. On her cigarette break, she stated that she heard voices growing louder and then saw respondent get hit

and fall to the ground. According to Munoz, after respondent was hit, there were 15 to 20 people attacking him for 5 to 10 minutes. She did not know who was fighting whom. Then a car came down the alley and slammed on its brakes near the group.

¶ 18 Munoz said she saw the woman who was driving get out of the car, pick up a rock, a metal high chair and an orange milk crate. The woman proceeded to hit respondent in the back with the high chair. Reteguin was hitting other people at that point, but, according to Munoz, not in a defensive manner. Munoz then called the police and the group scattered.

¶ 19 Respondent, who was 15 years old at the time of the incident, testified that he was walking through the alley with his friend Bobby, a tall, white male with short hair, when a car stopped and the driver said something derogatory to him in Spanish. Respondent flicked the driver off and yelled expletives. Although admitting to being in a gang, respondent denied flashing gang signs at the vehicle's occupants. Respondent testified that Reteguin got out of the car, said "come here" and then slapped him. Respondent punched Reteguin back, and a fight ensued.

¶ 20 Respondent testified that Reteguin hit him 30 to 40 times and tried to kick him once. He was able to hit Reteguin a couple of times. Respondent testified that Carrillo came out of his house and asked Reteguin if he needed help. Bobby and Carrillo fought. Some other boys came out to help respondent and Bobby. Respondent testified that he did not whistle for them and he did not recognize the boys.

¶ 21 Respondent further testified that he saw Reteguin's wife pick up a broken two-by-four. He and Reteguin then started fighting again and Reteguin's wife hit him with a chair. When

respondent turned around, he stated that Reteguín then had the two-by-four and was swinging it at the other boys, but he did not see Reteguín strike anyone. Then the woman from the nearby store yelled that the police were coming and everyone ran.

¶ 22 According to respondent's recollection of the events, no one else hit Reteguín—only respondent fought with Reteguín. Respondent could not be sure if any of the other boys approached, hit or kicked at Reteguín. He did not approach the driver's side of the vehicle, and told the officer that he was acting in self-defense.

¶ 23 At the close of evidence, the trial court found that the State had failed to prove respondent guilty of count I (aggravated battery) beyond a reasonable doubt. From the evidence presented, the court found that it could not determine who threw the first punch and that it was a mutual confrontation.

¶ 24 As to the charge of mob action, the court relied heavily on the testimony of Carrillo, finding him very credible. The court put very little stock in the testimony of Diane Muñoz and respondent, finding it difficult to believe that while respondent testified that six or seven other individuals assisted him during the fight, he still did not know what was happening or who they were. The court found respondent guilty of mob action, and held it was in the best interest of the community that he be made a ward of the court.

¶ 25 Respondent filed a posttrial motion, alleging that if the trial court found the incident was the result of a mutual fight, it should have resulted in an acquittal on the charge for mob action. The trial court denied respondent's posttrial motion. This timely appeal followed.

¶ 26

ANALYSIS

¶ 27 Respondent raises a single issue on appeal, namely, that the State failed to prove his guilt beyond a reasonable doubt where the evidence was insufficient to show that he was "acting together" with the other boys such that it constituted mob action pursuant to section 25-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/25-1(a)(1) (West 2010)).

¶ 28 A criminal conviction will not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of defendant's guilt. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). When reviewing the sufficiency of the evidence to sustain a verdict on appeal, the relevant inquiry is "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." (Internal quotation marks omitted.) *People v. Pollock*, 202 Ill. 2d 189, 217 (2002); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This standard of review applies to both direct and circumstantial evidence. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

¶ 29 In support of his contention, respondent first argues that the evidence failed to show that he acted with Geovanny Zavala, who was specifically named in the petition. We find that this has no bearing on the trial court's finding that respondent committed mob action.

¶ 30 Respondent points the court to the testimony of Diane Munoz, Geovanny Zavala's mother. She testified that her son was a dark-skinned Hispanic. However, Reteguín and his wife, Quintero, testified that respondent was with a tall, white male. Even respondent testified that before the incident occurred, he was walking down the alley with his friend Bobby, whom he described as a tall, white male with short hair. We first note that the trial court deemed the

testimony of Munoz unbelievable and unreliable, as it was completely within its province to do. Indeed, this court does not substitute its judgment for that of the trier of fact on questions involving the weight to be assigned evidence or the credibility of witnesses. *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000).

¶ 31 Regardless, the respondent is not absolved of responsibility for his actions based on who he was with *before* the fight broke out. Nor does proving who respondent was with at the time constitute a material element of the offense of mob action. The unbiased testimony of Carrillo, whom the trial court found very credible, was that all of the other boys were attempting to hit or kick Reteguín and some were using sticks and stones. Even if Zavala had not been with respondent at the outset, indeed, even if respondent had been alone at the time, the evidence supports the conclusion that respondent, in concert with five other boys, proceeded to inflict bodily injury on Jesus Reteguín.

¶ 32 Taking another tack, respondent also posits that there was no evidence that the actions of respondent and the other boys were in any way coordinated or concerted, and that there was no indication that they were acting collectively or as a unit. The evidence presented at trial belies this argument.

¶ 33 Reteguín, Quintero and Carrillo all testified that when either respondent or his companion whistled and yelled, the other four teens arrived immediately and began to fight with Reteguín. Our supreme court has held that in weighing the evidence, the trier of fact is not required to disregard inferences, which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt.

People v. Jackson, 232 Ill. 2d 246, 281 (2009). It was certainly not a leap for the trial court to infer that respondent's whistle was a call that the four other teens responded to. It appears a clear indication that the boys were acting in concert, and discredits respondent's testimony that he did not know the other boys, or have any knowledge of what they were doing or why they were assisting him. Testimony elicited at the outset of trial only bolsters that conclusion, as respondent admitted that he was a gang member and evidence established that he and his companion were flashing gang signs. Taking these facts together, any rational trier of fact could reasonably infer that respondent was "acting together" with the other individuals in beating and hitting Reteguin.

¶ 34 Accordingly, we find that after viewing the evidence in the light most favorable to the prosecution, the trial court properly found the essential elements of mob action beyond a reasonable doubt.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.