NOTICE

Decision filed 10/02/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120202-U

NO. 5-12-0202

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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 re COREY B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 12-JD-15
	)	
Corey B.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove the defendant guilty of battery and cruelty to an animal.

¶ 2 Corey B. (the respondent), a juvenile, was adjudicated a delinquent on charges of battery and animal cruelty. He was placed on probation. On appeal, he challenges only the sufficiency of the evidence to prove him guilty.

¶ 3 On January 10, 2012, a petition for adjudication of wardship was filed in the circuit court of St. Clair County charging the respondent with having committed simple battery against his older brother, Christopher B., by knowingly making physical contact of an insulting or provoking nature with Christopher in that he hit Christopher in the face several times and kneed Christopher in the face several times (count I) and with having committed cruelty to an animal by knowingly abusing an animal in that he choked the family dog (count

II). Bench trial was held on the petition on March 23, 2012, at the conclusion of which the respondent was found guilty on both counts. His motion for a judgment of acquittal notwithstanding the verdict was denied following a hearing. On May 3, 2012, the respondent was found to be delinquent, made a ward of the court, and placed on probation.

¶ 4 The following evidence was adduced at the respondent's bench trial. Alan Haake, a patrol sergeant with the St. Clair County sheriff's department, testified that on January 7, 2012, he responded to a report of a physical disturbance in progress at the home where the 15-year-old respondent lived with his older brother Christopher, his two sisters, and his mother Cathy and her husband. Haake was met in the front yard by 15-year-old Christian Coca, a friend of the family, who reported that the respondent was tearing up the residence. Inside the residence Haake was met by Christopher. It was clear that Christopher had been in an altercation–he had blood on his lip and stated that his finger was injured. Christopher stated that the respondent was out of control and was in the back bedroom. Christopher stated that the respondent had injured him. The respondent's mother stated that the respondent had "torn up the house" knocking a door off its hinges and fighting with his brother. The respondent was taken into custody. He appeared to be "excited" but did not appear to have any injuries. Later, at the police station, it appeared that the respondent did have a small cut inside his mouth.

¶ 5 There was also a dog in the house, what appeared to Haake to be a medium-sized boxer. Haake was told that the altercation had begun because the respondent had grabbed the dog and begun choking it. Christopher had tried to pull the respondent off the dog and this started the fight.

¶ 6 Christian Coca testified that he was 15 years of age. He had been friends with the respondent and Christopher for some time. He stated that he was "really good friends" with Christopher. The altercation began with an argument over the volume of the respondent's

music and escalated when the respondent grabbed the family dog tightly by the collar. Coca believed that the dog was being hurt. He described the dog as a 50- to 60-pound pit bull. The dog was trying to get away from the respondent. Christopher intervened to rescue the dog. ¶ 7 Coca testified that the respondent struck the first blow. He testified that Christopher suffered "a busted lip" and a broken finger in the altercation. He did not observe any injuries to the respondent.

¶ 8 On cross-examination Coca admitted that when he went to the police station the next day he told the police facts which he had not told them the evening of the altercation. He told them that the respondent had threatened him with a knife and that Christopher had an airsoft gun. He admitted that he was better friends with Christopher than with the respondent.

¶ 9 Christopher B. testified that he was 17 years of age, one year older than the respondent. Christopher testified that the respondent came home the evening of the incident in an angry mood and just wanted to destroy the house. He stated that the respondent "choked the dog out pretty much but she was still breathing, made holes in our walls, destroyed the laptops, computers, technology." The respondent "dropped his knee in my lip a little bit, a couple of times, three or four times." Christopher then grabbed the respondent and began punching him to stop him.

¶ 10 Christopher explained that when the respondent was choking the dog by its collar, he grabbed the respondent in order to restrain him. The respondent pushed back and Christopher fell backwards over a sofa with the respondent landing on top of him. At some point Christopher saw the respondent had a knife in his hand. Christopher believed the dog was in danger–it was crying. Christopher suffered some injuries to his face and a broken finger.

¶ 11 Christopher admitted that the day after the incident he told the police details that he

had not told them the evening of the fight.

¶ 12 The respondent testified on his own behalf. He admitted that on the night of the altercation he had come home upset. He stated that he grabbed the dog by its collar because the door was open and he was afraid it might run outside. The door had been left open by his sisters, who had "left the house when [he] was yelling and upset." He denied strangling his dog and denied that she yelped or gave any indication that she was in pain. He stated that the dog was just sitting down and he was holding her.

¶ 13 When the respondent grabbed the dog's collar, Christopher grabbed the back of the respondent's shoulder and threw him to the floor. When asked whether he touched Christopher before Christopher touched him, the respondent stated, "Yes. I started hitting him while he was hitting me at the same time."

¶ 14 The respondent's mother, Cathy B., testified for the respondent. Both of her sons were fighting equally. She called the police to break up the fight.

¶ 15 This concluded the evidence. The court found the respondent guilty as charged.

¶ 16 On appeal the respondent challenges the sufficiency of the evidence on both counts. When a delinquency petition is filed the State must prove the elements of the substantive offense charged beyond a reasonable doubt. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). In delinquency proceedings, as in criminal cases, when evaluating a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing all 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. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Generally, the trier of fact has had the opportunity to hear and see the witnesses and, for that reason, is in the best position to judge credibility. *Austin M.*, 2012 IL 111194, ¶ 107. Thus, it is not the function of a reviewing court to retry the respondent. *Austin M.*, 2012 IL 11194, ¶ 107. Rather, a reviewing court must allow all reasonable inferences from the record

in favor of the prosecution and reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt. *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 17 The respondent first argues that the State failed to prove him guilty of battery. A person commits battery when he "intentionally or knowingly without legal justification and by any means *** makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2010).

¶ 18 The respondent argues that he was not proved guilty because the evidence was conflicting on whether the respondent struck Christopher first or whether the respondent was protecting himself, that is, acting with legal justification. The respondent points out that the testimony of both Coca and Christopher is flawed. Both boys were biased against the respondent and had motives to lie to minimize their roles in the altercation. Coca testified that he was "really good friends" with Christopher, which increases the likelihood that his testimony would tend to support Christopher and not the respondent. Both boys gave statements at the scene that differed from the statements they gave the next day at the police station. The respondent also argues that the two witnesses did not agree on exactly what happened the evening of the fight.

¶ 19 We reject the respondent's argument. Coca testified unequivocally that the respondent struck the first blow. Christopher testified that the respondent reacted violently when Christopher grabbed him to restrain him from choking the dog. The respondent knocked Christopher to the ground and dropped his knee into Christopher's face several times. Only then did Christopher respond violently. Even the respondent's own testimony as to who struck the first blow was confusing at best. The testimony of the two witnesses as to what happened that evening was consistent in most respects. Both boys testified that the respondent came home angry, that he was out of control, and that he attempted to choke the

dog. Furthermore, there are no inconsistencies in the different statements the boys gave to the police. The statements given the day after the incident were simply more detailed than the statements the boys gave the evening of the fight.

¶ 20 It is up to the circuit court to judge the credibility of the witnesses. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Viewing all the evidence in the light most favorable to the prosecution and allowing all inferences in favor of the prosecution, we cannot conclude that the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt of battery.

¶ 21 The respondent next argues that the State failed to prove him guilty of cruelty to an animal in that there was no proof that he knowingly or deliberately choked the family dog. A person commits cruelty to an animal when he beats, cruelly treats, torments, starves, overworks, or otherwise abuses any animal. 510 ILCS 70/3.03 (West 2010).

¶ 22 The respondent argues that the evidence at trial showed only that the respondent was holding the collar of the family dog, a 60-pound pit bull, to prevent it from escaping through the open door. He argues that there was nothing to contradict this evidence as both Coca and Christopher agreed that the respondent was simply holding the dog by the collar. There was no evidence that the respondent twisted the collar to make it tight or that he in any way deliberately tried to choke the dog.

¶ 23 To the contrary, both Coca and Christopher unequivocally testified that the respondent was not simply holding the dog's collar, but that he was "choking" the dog and hurting the dog, that the dog was crying and was in pain, and that it was trying to get away from the respondent. Christopher testified that the respondent "choked the dog out pretty much but she was still breathing." Christopher testified that he believed the dog was in danger.

¶ 24 Again, it is up to the circuit court to judge the credibility of the witnesses. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Viewing all the evidence in the light most favorable to

the prosecution and allowing all inferences in favor of the prosecution, we cannot conclude that the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the respondent's guilt of cruelty to an animal.

¶ 25 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 26 Affirmed.