2015 IL App (1st) 130708-U

FIFTH DIVISION
JUNE 19, 2015

No. 1-13-0708

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 MC6 007349
	)	
DANUEL J. BOYKIN,	)	Honorable
	)	John D. Turner, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction is affirmed where the State proved beyond a reasonable doubt that defendant placed the victim in reasonable apprehension of receiving a battery. Also, the trial court did not abuse its discretion by sentencing defendant to 12 months of conditional discharge despite the existence of several mitigating factors.

¶ 2 Following a bench trial, defendant, Danuel J. Boykin, was convicted of aggravated assault and sentenced to 12 months' conditional discharge. He appeals, asserting (1) the State

failed to prove him guilty beyond a reasonable doubt, and (2) the trial court erred by sentencing him to conditional discharge instead of supervision. For the reasons that follow, we affirm.

¶ 3 At trial, Lavar Johnson testified that he, his wife, and his two children were living next door to defendant on July 23, 2012. A four- or five-foot steel gate separated the lawns of Johnson and defendant. At around 10 a.m., Johnson's wife called to inform him the police visited their home because Johnson's 10-year-old daughter "had messed with the front gate of the house," which, according to subsequent testimony, generated a nuisance ticket. Later, at around 4:30 p.m., defendant approached Johnson while Johnson was mowing his lawn. Defendant walked toward the gate, pointed a handgun at Johnson, and stated, "I will kill you, mother fucker" from about five or six feet away. Johnson felt "scared for [his] life."

¶ 4 Johnson looked at his kids running outside, and started recording with his cell phone while backing up toward the gate. Johnson explained that his family and the neighbors were involved in "a long ongoing thing," so he wanted to record the incident "just to be on the safe side" and to "make sure" he had "everything, and [he was] safe." Johnson acknowledged his recording does not show defendant holding a weapon, explaining that when defendant had his handgun pointed toward Johnson, Johnson "was more concerned with [his] life than worried about videotaping." He also stated that after he started recording, defendant lowered the firearm to his side and hid it behind his back. Defendant continued to threaten Johnson, "rambling stuff" like, "If you touch my gate again, I will kill you[.]"Johnson responded, "if it's my day, if it's my day to meet the Lord," meaning he would rather defendant shoot him than shoot his children or wife. Johnson stopped recording after he observed someone "come out the front door" and his family all ran in the garage and waited for the police to arrive.

¶ 5 Johnson denied being aware that in the morning, his wife received a nuisance ticket, later explained as arising from defendant's complaint to the police that Johnson's daughter had attempted to unlatch the fence which would release his dogs. He also denied calling the police several times to complain about the nuisance ticket, denied holding a baseball bat, and denied telling police officer Rhodes that defendant should be arrested until "[t]he last time after the gun had been pulled and the recording had been made[.]" Johnson said he was cool, calm, and did not raise his voice when he spoke to the police. He acknowledged that his wife also videotaped the incident with her cell phone. [1]

¶ 6 The parties stipulated to the authenticity and foundation of the video recorded by Johnson, which the trial court admitted into evidence. The video shows defendant standing near the fence with a handgun to his side. He tells Johnson "f*** with my gate again, see what I do for your m****r f*****g a**." Johnson is on the other side of the fence and tells defendant not to "hide the gun now." Johnson tells defendant, "say it again," and defendant continues saying "f*** with the gate" as Johnson backs toward the gate. Johnson then begins repeating, "maybe it's my day," to which defendant responds, "it's going to be your day." As defendant walks away, Johnson says, "I want to meet the Lord" repeatedly, following defendant along the fence. Defendant eventually enters his house before walking back outside. After defendant enters his home, Johnson walks away, and he can be heard telling somebody to "go back in the house" repeatedly. When Johnson turns the camera back toward defendant, defendant is approaching,

[1] In his briefs, defendant refers to "videos" rather than just one video. The disc contained in the record on appeal contains two videos, one recorded by Johnson and one (apparently) recorded by Johnson's wife. However, at trial, Johnson's wife did not testify, and it appears the court only admitted into evidence the video recorded by Johnson. In any event, the two videos capture the same events.

saying, "You want to meet him? Here's your f*****g lucky day." Johnson continues telling defendant, "bring your a** out that gate" and later says, "exactly what I wanted." At no point does the video depict defendant raising, lowering, or pointing the handgun at Johnson. It also does not show defendant telling Johnson he will kill him.

¶ 7 Defendant testified that he was outside watering plants on the morning of July 23. When he heard his dogs "barking aggressively" at the side of the house, he walked around and observed Johnson's daughter lifting up the latch and opening the gate. Defendant yelled to her, "do not open up my gate, young lady." After Johnson's daughter went back into her house, defendant called the South Holland police. An officer arrived and issued a nuisance complaint to "Miss Johnson."

¶ 8 Defendant picked up his wife and returned to his residence at around 4:45 p.m. As he backed his vehicle into the garage, he observed Johnson and his wife on the driveway and saw Officer Rhodes arriving and going into the Johnsons' home. Defendant went inside. After a period of time, he looked out the window to make sure the gate was not open before he let out his dogs. He saw "Miss Johnson" standing at the gate, which was open, and Johnson standing at the rear of defendant's home with a baseball bat in his hand. Feeling threatened, defendant drew his unloaded firearm. He went outside and asked Johnson, "would you stop opening up my gate." Defendant said he brought his weapon outside to protect himself but denied pointing it at or using it to threaten Johnson or his wife. Johnson was videotaping defendant and screaming "let me see your gun." Defendant went back inside and instructed his wife to call the police. When Officer Rhodes arrived, defendant gave him his handgun and a copy of his Firearm Owners Identification (FOID) card.

¶ 9 Antoinette Boykin, defendant's wife, testified that defendant picked her up from work and they returned to their home at approximately 4:30 p.m. on July 23. As they were parking their vehicle in the garage, a South Holland police officer arrived. Boykin and defendant went inside their house. At some point, Boykin "heard a lot of screaming." Through a window, she saw Johnson near the front gate of their home, which was open, "screaming toward" their house with a baseball bat in his hands. Defendant was outside, although Boykin did not see him until he came back into the house. The yelling continued for about two to three minutes. Boykin called the police and waited at the front of her home for them to arrive. She knew defendant owned a gun but did not know he had it outside.

¶ 10 Officer Rhodes of the South Holland police department testified that he went to Johnson's home three times on July 23, 2012. During each of the visits, Johnson acted "very excited" and demanded defendant be "locked up." Rhodes first arrived at the home around 3:30 p.m. because Johnson made a complaint about a false police report regarding the nuisance ticket that was issued earlier that day. Rhodes spoke to Johnson about the ticket, and Johnson complained about defendant calling the police. About 15 minutes after the first call, Rhodes returned to Johnson's home a second time in response to Johnson's complaint that defendant "was staring at him." Rhodes could not ascertain if defendant was even home at that time, and he explained he could not "lock up" defendant for staring.

¶ 11 When Rhodes arrived at the Johnson residence for the third and final time at around 4:30 p.m., he found Johnson outside. Johnson was not holding a baseball bat, and Rhodes did not recover a baseball bat from Johnson's property. Johnson told Rhodes he had a video of defendant pointing a gun at him. Rhodes watched the video but did not see defendant pointing a firearm at

Johnson. Rhodes also spoke to defendant, who gave Rhodes his handgun, which was unloaded. Johnson told Rhodes he was standing at the rear fence of defendant's home when the incident occurred. Defendant did not indicate he was mowing his lawn.

¶ 12 The trial court found defendant guilty of aggravated assault, stating the incident between defendant and Johnson "escalated far more than it needed to." The court found as follows.

> "It appears to me also clearly according to the defendant he saw the complaining witness outside. Whether he had a bat or not, I don't know. But let's assume he did have a bat. If he had the bat, where's the impetus to then leave the protection of your house with or without a loaded gun to try to resolve the matter in that fashion?
>
> I am the complaining witness. I see you come out with a firearm. Whether you point it to me or not, I get the message. You intend to do bodily harm to me and threaten me. Yes, there is some coaching on behalf of the complaining witness as well who's videotaping, possibly wants to get more action out of this as well.
>
> But there were steps you went too far beyond in acting in your own behalf. It was no encroachment on your individual property. There apparently had been no individual charge that was said back. You left the protection of your home to take it to a higher level."

¶ 13 Defendant filed a motion for new trial. At a hearing, the trial court denied the motion, stating as follows.

> "In my finding of guilty I think I pointed out *** after the conclusion of closing arguments the question was raised if in [*sic*] indeed [defendant] felt threatened and he saw Mr. Johnson outside with a bat from the window why not call the police from the

> abode as opposed to leave your home, come outside with a weapon. *** I did watch the video. And, I did see Mr. Johnson tell him certain things you know to also his daughter to go in the house. Cause he was in his right mind when some one is out there with a weapon that harm was going to happen to him. And, he wanted to protect his daughter. And, he said—I think in his testimony he was ready to meet his maker that day if need be."

¶ 14 The matter then proceeded to sentencing. The State requested "[a]t the very least" for "conviction and possibly" Sheriff's Work Alternative Program (SWAP). In mitigation, defense counsel noted that defendant was 50 years old, had no criminal background, and did not use drugs or alcohol. Defendant had been honorably discharged from the Army, suffered from lower back problems and carpal tunnel, and was receiving disability from the social security veteran administration. Defendant had also earned a GED and bachelor's degree and was enrolled in a master's program with an anticipated graduation date of May 2013. Counsel asserted that defendant was a "perfect" candidate for supervision. Defendant made the following statement: "I want to apologize to the Court for this situation occurring. But as a result from what I see is when you have younger neighbors you can't speak with unfortunately situations like these do happen."

¶ 15 The trial court sentenced defendant to 12 months' conditional discharge and ordered him to take anger management classes, stating as follows. "[Y]ou don't take the law in your own hands. That's what I sense you did. You got fed up. You never called the police. The police were called as to you. You decided that you are going to decide how to resolve this in your own matter

with a weapon. You didn't think clearly enough. And, anger management classes would be beneficial to you."

¶ 16 Thereafter, defendant filed a motion to reconsider the sentence. At a hearing on the motion, defense counsel indicated defendant had enrolled in anger management classes, and counsel requested the court reconsider its sentence and impose a sentence of supervision. The court denied the motion, finding defendant "left the protection of the home, went out in the backyard and had a handgun, in a threatening manner." The court further reasoned that defendant "took the law into his own hand" and "could have discharged the weapon—in fact the victim stated he was ready to meet his maker that day, when he was approached by the Defendant with the handgun." In sum, the court found defendant's lack of criminal background did not "vitiate the crime that was committed" and nothing in the facts or law or defendant's enrollment into anger management warranted imposing supervision instead of conditional discharge.

¶ 17 This appeal followed.

¶ 18 Defendant first asserts he was not proven guilty beyond a reasonable doubt because the State failed to demonstrate his conduct placed Johnson in reasonable apprehension of receiving a battery. Defendant observes Johnson and his wife recorded the encounter rather than retreating, moving their children into the house, or calling the police, and Johnson baited defendant by moving closer to him, following him along the fence line as he walked away, and telling him to "bring [his] a** out the gate." He also notes the recording does not depict him pointing a handgun, waving his firearm at Johnson, lowering his handgun, or making any verbal threats to use his weapon. Finally, defendant questions Johnson's credibility, pointing out Johnson possessed a motive to lie and portions of his testimony were contradicted by either Rhodes'

testimony or the video footage. We disagree with defendant and find the evidence sufficiently established Johnson was placed in reasonable apprehension of receiving a battery.

¶ 19 In resolving a challenge to the sufficiency of the evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). In doing so, we will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Rather, our duty is to carefully examine the evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will reverse only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

¶ 20 To prove defendant guilty of aggravated assault, the State was required to establish that while using a deadly weapon and without lawful authority, he engaged in conduct that placed another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-2(c)(1) (West 2012); *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005). Whether the victim was placed in reasonable apprehension of receiving a battery is a question for the fact finder to resolve. *Id.* 777-78. The victim need not expressly testify about his apprehension where it may be inferred from the evidence presented, including both the victim's and defendant's conduct. *Id.* 778. A victim's response must be objectively reasonable. *People v. Floyd*, 278 Ill. App. 3d 568, 570 (1996).

¶ 21 Viewing the evidence in the light most favorable to the prosecution, a reasonable trier of fact could have found Johnson was placed in reasonable apprehension of receiving a battery. The evidence established that defendant and Johnson's daughter were involved in a dispute earlier in the day over Johnson's daughter opening defendant's gate. According to Johnson, defendant approached him later in the day, pointing a gun and saying, "I will kill you, motherfucker," from about five or six feet away. The video shows defendant holding a handgun to his side, and defendant acknowledged bringing a firearm outside. Johnson testified that when defendant pointed the weapon at him, he feared for his life. The foregoing evidence was sufficient to establish Johnson was placed in reasonable apprehension of receiving a battery. See *People v. Harkey*, 69 Ill. App. 3d 94, 96 (1979) (evidence that the defendant acted hostile and pointed his gun at the victim while shouting that he was going to shoot out the victim's car's spotlight was sufficient to establish the victim was in reasonable apprehension of receiving a battery); see also *People v. Holverson*, 32 Ill. App. 3d 459, 460 (1975) (evidence that the defendant threatened to blow the victim's head off and displayed from his car what the victim thought was a large gun was sufficient to establish the victim's reasonable apprehension of receiving a battery).

¶ 22 The video footage does not lead us to reach a different conclusion. Defendant correctly observes the video depicts Johnson following him along the fence line, recording the incident with his wife instead of calling the police, and antagonizing him by telling him to "bring his a** out the gate." However, the trial court explicitly acknowledged Johnson's behavior, stating that he engaged in "some coaching" and possibly wanted "to get more action of this as well." Nonetheless, based on its guilty finding, the court evidently found Johnson credible. We will not substitute our judgment for that of the trier of fact on questions involving the credibility of

witnesses. *Siguenza-Brito,* 235 Ill. 2d at 224-25. Further, although the video does not show defendant threatening Johnson's life or pointing his handgun, Johnson testified that defendant engaged in such behavior, and the testimony of a single credible witness is sufficient to establish the commission of an offense. See *Siguenza-Brito,* 235 Ill. 2d at 228. In addition, Johnson explained that he did not capture defendant's holding of the weapon because he "was more concerned with [his] life" than recording at that point. Moreover, the trial court found that whether defendant pointed the handgun at Johnson or not, defendant's possession of the firearm sent the message that he intended to inflict bodily harm and threaten defendant.

¶ 23 We also find unpersuasive defendant's assertion that reversal is warranted because Johnson had a motive to testify falsely against him and because portions of Johnson's testimony were contradicted by the video and Rhodes' testimony. It is well-established that a trier of fact can accept or reject any portion of a witness' testimony as it chooses. *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 46; *People v. Logan*, 352 Ill. App. 3d 73, 80-81 (2004). Moreover, it is for the trier of fact to determine the credibility of witnesses and resolve any conflicts in the evidence. *Siguenza-Brito,* 235 Ill. 2d at 228. Thus, despite portions of Johnson's testimony being contradicted, the trial court could still have found the other portions of his testimony to be credible.

¶ 24 In sum, viewing the evidence in the light most favorable to the prosecution, we cannot say the trial court's decision was so improbable, unsatisfactory, or inconclusive as to warrant reversal of defendant's conviction.

¶ 25 Defendant next contends the trial court erred when it sentenced him to conditional discharge instead of supervision. He observes he had no criminal history, was honorably

discharged from the Army, worked for the government until becoming disabled, and had completed his GED and bachelor's degree and was pursuing a master's degree. He also notes he was not convicted of a violent, heinous, or brutal crime; nobody sustained any injuries from his actions; and his unloaded gun posed no threat or danger to Johnson.

¶ 26 A trial court has broad discretion in imposing a defendant's sentence, and its sentencing decision is entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Such deference is due because the trial judge, having observed the defendant and the proceedings, has a far better opportunity than this court to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* at 213. Accordingly, we will not alter a defendant's sentence absent an abuse of the trial court's discretion. *Id.* at 212. A court abuses its discretion when the sentence " 'is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Id.* (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)).

¶ 27 Defendant was convicted of aggravated assault, a Class A misdemeanor carrying a possible sentence of up to two years' conditional discharge. 720 ILCS 5/12-2(c)(1), (d) (West 2012); 730 ILCS 5/5-4.5-55(d) (West 2012). He was also eligible for a sentence of supervision. 730 ILCS 5/5-4.5-70 (West 2012).

¶ 28 The trial court acted within its discretion when it sentenced defendant to 12 months' conditional discharge. At defendant's sentencing hearing, counsel pointed out the presence of the same mitigating factors that he notes on appeal, such as defendant's education, military service, and lack of criminal history. The court is presumed to have considered all the mitigating evidence before it. *People v. McKinney*, 2011 IL App (1st) 100317, ¶ 50. Nonetheless, the court

found conditional discharge to be the appropriate sentence. The court's comments at both sentencing and at the hearing on defendant's motion to reconsider sentence make clear that the court was particularly concerned that defendant took the law into his own hands by using a weapon instead of calling the police. Moreover, in denying defendant's motion to reconsider, the court explicitly stated that it found nothing in the facts or law that would warrant imposing supervision instead of conditional discharge. Thus, the record reflects that the trial court weighed the factors in mitigation and aggravation and determined a sentence of conditional discharge was appropriate. It is not our function to reweigh the factors involved in the court's sentencing decision. *Alexander*, 239 Ill. 2d at 214.

¶ 29 For the reasons stated, we affirm the trial court's judgment.

¶ 30 Affirmed.