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2015 IL App (3d) 130428-U

Order filed July 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0428
)	Circuit No. 12-CM-2121
DERRICK A. COLEMAN,)	
Defendant-Appellant.)	Honorable Cory D. Lund, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt of battery, but was not proven guilty beyond a reasonable doubt of disorderly conduct.
- ¶ 2 Defendant, Derrick A. Coleman, was convicted after a bench trial of battery (720 ILCS 5/12-3(a)(2) (West 2012)) and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2012)) and sentenced to 24 months' court supervision. Defendant appeals both convictions contending that he was not proved guilty beyond a reasonable doubt. We affirm in part and vacate in part.

FACTS

¶ 3

¶ 4

The charging information alleged defendant committed battery in that he “knowingly, without legal justification, made physical contact of an insulting or provoking nature with Michelle Weinart, in that said defendant stepped upon the feet of Michelle Weinart[.]” The information also alleged defendant committed disorderly conduct in that he “knowingly yelled profanities at Michelle Weinart *** in such an unreasonable manner as to alarm and disturb Michelle Weinart, and provoke a breach of the peace[.]”

¶ 5

At trial, Weinart testified she and defendant had been neighbors for around eight years. Weinart lived across the street and four houses away from defendant. Weinart and defendant shared a history of animosity, which began shortly after defendant moved into his home. Defendant had called the police with complaints against Weinart on several occasions. On one occasion, defendant called to complain about oil that had been spilled in the road in front of his home by laborers who had been installing a new patio at Weinart’s home. On more than one occasion, defendant called the police with complaints against Weinart and her children for playing football and bags.

¶ 6

At the time of the occurrence, defendant lived next door to Weinart’s close friend, Ericka Williams. Williams also had a history of animosity with defendant. Defendant called the police and the Department of Children and Family Services with complaints against Williams.

¶ 7

On May 23, 2012, Weinart and Williams were walking toward Williams’ home on a sidewalk. Weinart observed defendant visiting a neighbor across the street and defendant called out, “[Y]ou bitches better watch your back.”

¶ 8

Weinart responded by advancing to the middle of the road and telling defendant if he had something to say, he should say it to her face. At this point, defendant began waving his hands

in the air and referred to Weinart as “white trash,” and a “good for nothing housewife” with “two baby daddies.” When this occurred, Weinart testified she was shaking, frightened, and told defendant to back away from her. During this argument, defendant stepped on Weinart’s feet three times. This conduct caused Weinart to back away because Weinart was wearing flip-flops and defendant was wearing shoes similar to “Doc Martins.” According to Weinart, defendant’s actions left red marks on her feet. Once Weinart’s daughter intervened, Weinart left the area and reported the incident to the police.

¶ 9 Williams testified, that on the night of the occurrence, she and Weinart were walking to Williams’ home. When defendant saw them walking, defendant told the two women to watch their backs. After hearing defendant’s comment, Weinart walked into the middle of the street and began to argue with defendant. At some point during the argument, defendant began “stomp[ing]” on Weinart’s feet. Williams heard Weinart tell defendant to stop stepping on her feet because defendant was hurting her. Williams confirmed Weinart did not leave the area when defendant began stepping on her feet.

¶ 10 Defendant testified he had not met Weinart prior to the night of the incident, but defendant’s mother had problems with Weinart on a previous occasion involving an illegal cable hookup which ran across defendant’s yard. On the night of the incident, defendant was walking home after visiting a neighbor. By the time he reached his garage door, Weinart appeared on defendant’s driveway and began yelling at defendant, calling him a “pedophile” and making comments regarding defendant’s sexuality. Defendant responded by telling Weinart to get off his property. Defendant testified he went directly into his garage when Weinart approached him on his driveway and Weinart followed him. Shortly thereafter, Weinart’s daughter came onto defendant’s property screaming and yelling, which caused Weinart to leave and call the police.

Defendant denied threatening Weinart, telling Weinart and Williams to watch their backs, and stepping on Weinart's feet.

¶ 11 Officer Michael Kljaich, Jr., testified he was dispatched to the scene on the night in question. Weinart and Williams informed Kljaich that defendant had been using profanities directed toward Weinart. Neither Weinart nor Williams informed Kljaich that defendant had told the women to watch their backs. Kljaich also observed Weinart's feet, but he did not see any injury or redness. Kljaich asked defendant if he had stepped on Weinart's feet, and defendant did not deny stepping on Weinart's feet, but responded by stating he was "on his property."

¶ 12 The trial court found defendant guilty of battery (720 ILCS 5/12-3(a)(2) (West 2012)) and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2012)). The trial court sentenced defendant to a 24-month term of court supervision.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant contends there was insufficient evidence to convict him of battery and disorderly conduct. When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Id.* at 225; *Beauchamp*, 241 Ill. 2d at 8.

¶ 15 Under section 12-3(a)(2) of the Criminal Code, a person commits battery if he or she knowingly, without legal justification, by any means makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a)(2) (West 2012). To be found guilty of

battery under this section, the State need not prove physical injury. *Id.* In this case, looking at the evidence in a light most favorable to the State, the testimony of both Weinart and Williams was sufficient to sustain defendant's conviction for battery.

¶ 16 Although defendant contends Weinart and Williams' testimony was biased and not worthy of belief, the record reveals defendant cross-examined the State's witnesses and had the opportunity to expose this possible bias. In a bench trial, the trial court remains responsible for determining the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Siguenza-Brito*, 235 Ill. 2d at 224-25. It is not this court's function to retry a defendant who challenges the sufficiency of the evidence or to substitute its judgment for that of the trier of fact. *Id.* at 224. Further, even the testimony of a single witness, if positive and credible, is sufficient to convict, even if that testimony is contradicted by the defendant. *Id.* at 228.

¶ 17 Here, the testimony of Weinart and Williams was consistent. Both testified when Weinart met defendant face-to-face in the street where a verbal exchange ensued, defendant stepped on Weinart's feet. Even though the officer did not observe an injury to Weinart's feet, the testimony of the victim and her friend, when viewed in the light most favorable to the State, established defendant knowingly, rather than unintentionally, stepped on Weinart's feet in an insulting or provoking nature. Therefore, we conclude the evidence was sufficient to sustain defendant's battery conviction and affirm this conviction.

¶ 18 Defendant next contends the State failed to prove he was guilty beyond a reasonable doubt of the offense of disorderly conduct. A person commits disorderly conduct if he or she knowingly did any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2012).

¶ 19 Generally, the State may prove a breach of the peace took place by showing that either the defendant threatened another or that defendant's actions had an effect on the crowd. *People v. Bradshaw*, 116 Ill. App. 3d 421, 422 (1983). Case law recognizes that "[t]he offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others." *People v. Allen*, 288 Ill. App. 3d 502, 506 (1997). Whether or not a defendant's particular act provokes a breach of the peace depends upon the accompanying circumstances, and therefore, the setting must be considered in deciding whether the act offends the mores of the community. *Id.* In order to prove a breach of the peace existed, defendant's conduct must actually bring about a breach of the peace, not merely tend to do so. *In re D.W.*, 150 Ill. App. 3d 729, 731 (1986) (citing *People v. Trester*, 96 Ill. App. 3d 553 (1981)).

¶ 20 In the instant case, Weinart testified she felt threatened by defendant's comment that she should "watch her back" which defendant uttered while some distance from Weinart as he stood across the street from her. However, after hearing this comment from defendant, Weinart chose to advance towards defendant in order to engage him in further conversation. The fact that Weinart did not remain across the street from defendant or retreat from her location contradicts her assertion that she interpreted defendant's comment as an immediate threat.

¶ 21 Further, after confronting defendant in the street, Weinart remained near defendant throughout the argument and, when asked why she did not just leave, Weinart responded, "Why didn't he go home?" The physical closeness of both defendant and Weinart as they stood toe-to-toe was a direct result of Weinart's decision to cross the street and approach defendant. At best, the State's evidence proved the defendant's comment upset Weinart enough to come forward and verbally confront defendant. However, the nature of defendant's comment was not likely to

incite violence and did not warrant the confrontational response from Weinart, who escalated the conversation on her own accord. After carefully reviewing the record, we conclude the State's evidence did not establish defendant committed the offense of disorderly conduct beyond a reasonable doubt and reverse the conviction for disorderly conduct.

¶ 22

CONCLUSION

¶ 23

In summary, we affirm defendant's conviction for battery. Additionally, we reverse and vacate defendant's conviction for disorderly conduct based on the insufficiency of the evidence.

¶ 24

Affirmed in part and vacated in part.