2015 IL App (3d) 150155-U

Order filed August 3, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re M.R.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. 3-15-0155
	)	Circuit No. 14-JD-312
v.	)	
	)	
M.R.S.,	)	Honorable
	)	Timothy J. Cusack,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Presiding Justice McDade dissented.

ORDER

¶ 1 *Held*: Evidence was sufficient to prove beyond a reasonable doubt that the minor knowingly made contact of an insulting or provoking nature.

¶ 2 The State charged the minor, M.R.S., in a delinquency petition with two counts of aggravated battery (720 ILCS 5/12-3.05(d)(3) (West 2014)). The trial court found the minor guilty on both counts and sentenced him to 12 months' probation. On appeal, the minor argues

the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 FACTS

¶ 4 On September 4, 2014, the State filed a petition alleging that the minor, then 17 years old, was delinquent. The petition alleged the minor committed two counts of aggravated battery in that he knowingly made contact of an insulting or provoking nature with Kristin Joseph (count 1) and Rhonda Oestmann (count 2), knowing each to be school personnel engaged in the performance of her authorized duties as an employee of a school district. A bench trial commenced on January 13, 2015.

¶ 5 At trial, Oestmann testified she was a teacher at Trewyn Day Treatment School. On September 3, 2014, as school was beginning, the minor entered her classroom without permission. When Oestmann asked the minor to leave, he went to Tina Stokes' classroom. Stokes asked for help, so Oestmann went to that classroom. The minor refused to leave Stokes' classroom; Oestmann and Stokes told the minor that if he did not leave, they would have to physically remove him. The teachers each grabbed one of the minor's arms and began to lead him to the door. When Stokes released the minor at the doorway, the minor pushed Oestmann in the chest, straight-armed. As he pushed Oestmann, the minor said, "[d]on't touch me." The push caused Oestmann to trip over her own feet and fall against a wall.

¶ 6 Stokes testified to the same series of events, including that the minor pushed Oestmann in the chest. She described Trewyn as "a therapeutic day school for emotionally disturbed students." She and the other teachers were allowed to put their hands on the students and were trained in restraint.

¶ 7 Joseph testified she was a social worker at Trewyn. On the morning of September 3, 2014, she left her office because she heard loud noises in the hallway. Joseph saw Stokes, Oestmann, and another teacher standing in the hall. The teachers told her the minor needed to go to the time-out room. Joseph approached the minor to give him the choice between the time-out room or the "safe room." The minor took a step toward Joseph, pushed her in the chest, and said, "[d]on't touch me." Joseph then moved to the minor's side, put her hand behind him, and encouraged him to calm down. The minor then attempted to swing his fist at her. The punch missed, and Joseph was able to grab the minor's hand and escort him into the safe room.

¶ 8 The minor testified in his own defense. He testified that Stokes and Oestmann twisted his arms behind his back as they tried to remove him from Stokes' classroom. He denied pushing Oestmann. He denied swinging his fist at Joseph, and opined that Joseph was lying when she testified that he pushed her. The minor testified he had not taken his medication that day and had not done so for the previous couple of weeks because the school had run out of his prescriptions. The minor's mother testified she was unaware the minor had not taken his medication for two weeks.

¶ 9 The trial court found the minor guilty on both counts. In so finding, the court stated as follows:

> "I do believe that if you were in a heightened state or if you were agitated, for whatever reason, that that would have then caused you to push out.
>
> I don't think you did it with any harmful intent, but these petitions don't look to that. This just states that you made contact of an insulting or provoking nature with them. You didn't do any bodily harm. That's not been suggested. And I don't find that you did.

But insulting and provoking contact is putting your hands on somebody else when they don't want you to put their hands on them in that manner."

The court sentenced the minor to 12 months' probation and ordered him to complete anger management classes.

¶ 10 ANALYSIS

¶ 11 On appeal, the minor argues the State failed to prove beyond a reasonable doubt that he committed the offense of aggravated battery. Specifically, the minor contends the State did not prove he acted knowingly or that the contact he made with Oestmann and Joseph was of an insulting or provoking nature. Upon review, we affirm the trial court's adjudication of delinquency on the grounds that a rational trier of fact could find the State proved each of those elements beyond a reasonable doubt.

¶ 12 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 13 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). The weight to be given to witnesses' testimony, the witnesses' credibility, and the reasonable inferences to be drawn from the evidence, are all the responsibility of the fact finder. *Milka*, 211 Ill. 2d at 178. The trier of fact is not required to

accept or otherwise seek out or accept any explanations of the evidence that are consistent with a defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 14 We note the minor argues we should review this issue *de novo*. The minor—citing *People v. Smith*, 191 Ill. 2d 408, 411 (2000)—contends that because the facts in the case are uncontested, the question of the minor's guilt is purely a question of law, for which *de novo* review is appropriate. However, the facts of this case were very much in dispute at the trial level, as the minor denied the very conduct that would sustain a conviction. Furthermore, proof of the minor's mental state or of the insulting or provoking nature of his conduct require that factual inferences be made by the trier of fact. See *People v. Funches*, 212 Ill. 2d 334, 340 (2004) ("An inference is a factual conclusion that can rationally be drawn by considering other facts."). Based on the evidence presented and rational inferences drawn therefrom, the court, as trier of fact, made the factual determination that the elements of aggravated battery were satisfied. Because the minor disputes these factual findings on appeal, the issue presented is a question of fact, and the *Collins* standard is appropriate. *People v. Rizzo*, 362 Ill. App. 3d 444, 449 (2005).

¶ 15 I. The Minor's Mental State

¶ 16 Under section 12-3.05(d)(3) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.05(d)(3) (West 2014)), a person commits aggravated battery when, in committing a battery, he knows the individual battered to be a teacher or school employee upon school grounds. A person commits a battery when he knowingly, and without legal justification, makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a) (West 2014). The

minor first contends the State failed to prove beyond a reasonable doubt that he acted knowingly. We disagree.

¶ 17 A defendant's mental state can rarely be proven through direct evidence. *People v. Williams*, 165 Ill. 2d 51, 64 (1995). A defendant's mental state may instead be inferred from the surrounding circumstances, including the character of the defendant's acts themselves. *Id*.; *People v. Jones*, 404 Ill. App. 3d 734, 744 (2010).

¶ 18 In the present case, the trial court rationally inferred that the minor knowingly made physical contact with the school employees. Oestmann and Joseph each testified the minor pushed them in the chest. Although the minor denied pushing either Oestmann or Joseph, the trial court—as finder of fact—is the ultimate arbiter of witness credibility. *Milka*, 211 Ill. 2d at 178. Further, Oestmann and Joseph each testified the minor exclaimed "[d]on't touch me" when pushing them. A rational trier of fact could infer from this evidence the minor knew exactly what he was doing.

¶ 19 On appeal, the minor argues the push may have been instinctual, the product of his lack of medication at the time. While the minor posits that his behavior is more erratic when he is off his medication, he does not explain how that equates to not *knowing* he was pushing the school employees. Regardless, the trier of fact is not required to accept or otherwise seek out or accept any explanations of the evidence that are consistent with a defendant's innocence. *Campbell*, 146 Ill. 2d at 380. The evidence adduced at trial was sufficient to allow a rational trier of fact to infer the minor acted knowingly.

¶ 20 II. Contact of an Insulting or Provoking Nature

¶ 21 The element of contact of an insulting or provoking nature does not require proof by, for example, the victim's testimony that the contact was insulting or provoking. *People v. Nichols*,

2012 IL App (4th) 110519. Rather, proof that the contact was of such a nature may be inferred from the surrounding circumstances. See *id.*

¶ 22 In the present case, the insulting or provoking nature of the minor's contact may be inferred from the act itself. That is, a two-armed shove by a student into the chest of a school employee without that employee's consent is, *per se*, contact of an insulting or provoking nature. The minor fails to cite any case in which a court has held violent contact such as a push to *not* be of an insulting or provoking nature. Moreover, the minor acknowledges that even "[n]onviolent physical contact *** may be deemed insulting or provoking based upon the factual context in which the contact occurs." We find that a reasonable trier of fact could infer that the minor's pushes insulted or provoked Oestmann and Joseph.

¶ 23 In coming to this conclusion, we reject the minor's argument that the contact was not insulting or provoking because the teachers would expect such outbursts from students at a school for students with behavioral problems. The teachers, the minor suggests, "were prepared for the possibility of a child losing control." However, an expectation of unruly behavior does not allow a child to elevate noncompliant behavior to the point of directing an intentional physical violence towards the teacher.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Peoria County is affirmed.

¶ 26 Affirmed.

¶ 27 JUSTICE McDADE, dissenting.

¶ 28 The majority affirms the juvenile felony convictions of M.R.S. of two counts of aggravated battery and his sentences of 12 months' probation. For the reasons that follow, I respectfully dissent.

¶ 29 Although the respondent disputed the fact of the touching at trial, the circuit court found that the events recounted by the teachers and the social worker were true and accurate. Pursuant to the standard of review articulated in People v. Baskerville, 2012 IL 111056, ¶ 31, and People v. Collins, 106 Ill. 2d 237, 281 (1985), I accept those findings as correct and consider solely whether, as a matter of law, the respondent's actions were done "knowingly." As to that issue, the major facts are undisputed.

¶ 30 Seventeen-year-old M.R.S. was attending Trewyn Day Treatment program as a 12th grader in special education on the day the alleged felonies occurred. Trewyn is an "alternative" school—a "therapeutic day school for emotionally disturbed students." M.R.S.'s placement in that program was necessary because his inability to control his emotional outbursts without training and medication made his attendance in a regular high school inappropriate. In this alternative setting with controlled behavior, M.R.S. had earned a 3.83 grade point average, presumably on a 4.00 scale, and was reportedly an "excellent student" who "loves to learn."

¶ 31 Pertinent to his emotional issues, M.R.S. had been diagnosed with bi-polar disorder and attention deficit hyperactivity disorder (ADHD). He was prescribed three medications (Concerta, Depakote, and Seroquel) which were to be administered to him each school morning by school personnel. Testimony showed that M.R.S. only exhibited behavioral problems in the morning so his normal routine was to go to the office in the mornings, take his medication and stay in the office until the medication took effect. One report in his record described his behavior before the medication kicks in as acting out, acting silly and talkative. There is no indication of physical aggression before the daily medication takes effect. Indeed, each of the staff people with whom M.R.S. interacted that morning experienced and expressed shock and

surprise at his conduct. Each testified to having known him for an extended period of time and opined that his behavior that morning was "not [M.R.S.]."

¶ 32 Respondent testified that he went to the office to get medicine on the morning of the incidents with which he was charged, but it had run out and none was available for him to take. He further testified that the medicine had not been there for an indeterminate time—he thought maybe two weeks—before that day. The school does not appear to dispute that he had not been given his medication for several days.

¶ 33 Because the purpose of the medication is to ensure M.R.S. can maintain control of his behavior, a compelling inference can be drawn that multiple days without medication would result in a reduction or loss of behavioral control and could explain the aberrant physicality of his outbursts with the staff members and in the time-out room. It is also a fair conclusion that a loss of control over one's behavior is tantamount to a loss of the ability to exercise conscious choice and to act with conscious awareness of the probable consequences of those actions.

¶ 34 Conscious awareness of the nature and probable effect of one's action is required by the relevant statutes. Battery is described at 720 ILCS 5/12-3 (West 2014) as follows:

> "(a) A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.
>
> "(b) Battery is a Class A misdemeanor."

¶ 35 Battery is elevated to an aggravated status as to this respondent pursuant to 720 ILCS 5/12-3.05(d)(3) (West 2014), which provides:

"(d) Offense based on status of victim. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be any of the following:

* * *

"(a) A teacher or school employee * * * in any part of a building used for school purposes.

* * *

"(h) Sentence. Unless otherwise provided, aggravated battery is a Class 3 felony."

¶ 36 As can be seen from the foregoing, the mental states required for conviction of aggravated battery is knowledge. "Knowledge" in the context of the Criminal Code of 1961 is defined as follows:

"A person knows, or acts knowingly or with knowledge of:

(a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is *consciously aware* that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

(b) The result of his or her conduct, described by the statute defining the offense, when he or she is *consciously aware* that

that result is practically certain to be caused by his conduct."

(Emphases added.) 720 ILCS 5/4-6(a) (West 2014)

¶ 37 It is certainly true that M.R.S. was generally aware that Ms. Oestmann and Ms. Joseph were school personnel and that they were a teacher and a social worker, respectively, at the school. It does, however, seem highly unlikely that he was "consciously" aware of their positions at the time of the incident, such that he was "knowingly" making contact of an insulting or provoking nature against them as a teacher and a social worker. They were, by all accounts, two people he otherwise knew, liked and respected when he was properly medicated. This was established by their testimony as well as by his. It is also unlikely that he would, unmedicated, have been aware that his actions were provoking or insulting to these educators of whom he was so fond.

¶ 38 Under the facts of this case, I cannot agree M.R.S. had the proper mental state to commit aggravated battery and I would reverse his adjudications/convictions on this basis.

¶ 39 M.R.S. has also argued on appeal that, because these teachers worked at a school "specifically geared towards children with emotional and behavioral disorders" and because they were "train[ed] for restraint and de-escalation strategies" and were "prepared for the possibility of a child losing control;" his conduct could not have been properly considered insulting or provoking to them. Indeed, they did not testify that they were insulted or provoked. The respondent also points out that the reaction of the school was to issue a one day out-of-school suspension, which does not suggest that the administration viewed M.R.S.'s conduct as criminal. I agree with the respondent that there was neither testimony nor objective evidence that the school or the involved personnel considered his behavior to have been insulting or provoking or

criminal. The felony charges and convictions in this case came at the instigation of the police and the State's Attorney.

¶ 40 Because this is a dissent, I would further observe that this is just one more example of a national phenomenon that the United States Department of Education Office of Civil Rights has called the "school-to-prison pipeline" that results when behavior that is best dealt with in the schools is criminalized.[1] This young man, who has now successfully graduated, faces a future saddled not only with two mental deficits but also two gratuitous, and in my opinion, totally unwarranted felony convictions.

[1] United States Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12. See http://www2/ed.gov/about/offices/list/ocr/docs/crdc-discipline Data collected in this study showed that of the 260,000 students nationwide who were referred to law enforcement, 65,000 (25%) were students with disabilities (IDEA) and of the 92,000 school-related arrests, 23,000 (25%) were similarly classified. The Department of Education's data was analyzed by the Center for Public Integrity which found that Illinois was 17th in the nation in referring minority and disabled children for police and court intervention. See http://www.publicintegrity.org/2015/04/10/17089/virginia-tops-nation-sending-students-cops-courts:Where does your state rank?