

NOTICE

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2015 IL App (4th) 140163-U

NO. 4-14-0163

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 15, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RONALD A. STEWART,)	No. 13CM744
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Because the sentence is not an abuse of discretion, it is affirmed.

¶ 2 Defendant, Ronald A. Stewart, appeals the sentence he received for two counts of misdemeanor battery (720 ILCS 5/12-3(a)(2) (West 2012)). Because we are unable to say the sentence is an abuse of discretion, we affirm it.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 The information had two counts.

¶ 6 Count I charged that on July 14, 2013, defendant committed battery (720 ILCS 5/12-3(a)(2) (West 2012)) in that he "knowingly made physical contact of an insulting or provoking nature with Kohle Anderson, in that *** defendant grazed Kohle Anderson with a fist."

¶ 7 Count II alleged that, on the same date, defendant "knowingly made physical contact of an insulting or provoking nature with Hassab [*sic*] Ozeir, in that *** defendant scratched Hassan [*sic*] Ozeir."

¶ 8 B. The Jury Trial

¶ 9 1. *The State's Case in Chief*

¶ 10 In the jury trial, which was held in December 2013, the State called four witnesses, all of them employees of Red Lion, a bar in Champaign: Ron Hausman, Kohle Anderson, Christopher D. Decker, and Hasson Ozeir. They testified substantially as follows.

¶ 11 a. Ron Hausman

¶ 12 From the late evening of July 13, 2013, and into the early morning, the "cover," or the fee to get into Red Lion, was \$5. Ron Hausman collected it at a desk in the foyer of the bar. As soon as the customer paid, another employee stamped the customer's hand with a dark blue X or smiley face (whichever symbol was in use that night) so that if the customer wished to leave the bar and then return, the customer had proof, right there on his or her hand, of having already paid the cover and thus would not have to pay again.

¶ 13 It was around 12:30 a.m. on July 14, 2014, and the foyer was filling up with people waiting to pay the cover. The line went out the door. Music was blaring inside the bar.

¶ 14 Defendant, who appeared to be unaccompanied, approached the desk and told Hausman he already had been in the building and that he was not going to pay the cover. Hausman asked to see the stamp on his hand. There was no stamp. Consequently, he told defendant he would have to pay \$5.

¶ 15 The prosecutor asked Hausman:

"A. And what did he say to you?"

Q. He told me he wasn't going to pay cover. That I didn't know who he was, and he wasn't going to deal with paying cover, and that was pretty much the gist of it.

Q. What did he do next?

A. He tried to walk past me, and I put my hand up, and stopped him, and told him he couldn't come in.

Q. And then what did he do?

A. At that point he smacked my hand away from him, and told me not to put my hands on him."

¶ 16 A doorman, Hasson Ozeir, approached defendant from behind and asked what was going on. Ozeir "went to grab the defendant by the shoulders, to kind of find out what was going on[] [and to] make sure there wasn't any kind of problem." Defendant "immediately tried to remove [Ozeir's] hands from him," saying, "[D]on't touch me, *** don't mess with me, you don't know who I am,['] et cetera." Ozeir again tried to grab defendant by the shoulders, whereupon "defendant threw an elbow back," "mak[ing] contact" with Ozeir.

¶ 17 As soon as the struggle between Ozeir and defendant began, another doorman, Kohle Anderson, approached. Ozeir put defendant in a bear hug from behind, and Anderson held defendant's arms and legs, deflecting or pushing down the punches and kicks that defendant was trying to deliver, as the two of them forcibly maneuvered him outside. Hausman could not tell if any of these punches and kicks were connecting. Customers were in the foyer, "very close" by. As Ozeir and Anderson carried defendant, kicking and fighting, out the door, he kept telling them, "[D]on't touch me, get off of me, you don't know who I am.['] "

¶ 18 The whole incident lasted "maybe over 30 seconds," but "it wasn't anything that took minutes."

¶ 19 b. Kohle Anderson

¶ 20 Kohle Anderson testified he was 21 and that his job, as a door manager at Red Lion, was to "run the front door" and "mak[e] sure the line stay[ed] orderly."

¶ 21 The evening of July 13, 2013, and the early morning of July 14, 2013, he was on duty, wearing a yellow shirt with the Red Lion emblem on the front and the word "STAFF" and an identifying number on the back.

¶ 22 Around 12:40 a.m. on July 14, 2013, he was standing outside the bar, watching the line of people waiting to pay cover. From where he stood, he could see into the foyer. He saw Ozeir, who had been watching the exit, come over to where Hausman was collecting the cover. Defendant appeared to be arguing with Hausman, and he pushed Ozeir. This prompted Anderson to go into the foyer, and he heard defendant say, " ['G]et your hands off of me, don't touch me.['] "

¶ 23 Defendant "[w]as *** asked to leave"; he refused to do so. Anderson had authority to remove people from the bar. So, he placed his hand on defendant's arm, to escort him out the door, but defendant slapped his hand away, saying, " ['G]et your [fucking] hand off of me.['] " Defendant then pushed Ozeir back and started flailing with his fists at Anderson and Ozeir. Anderson closed the distance so he would not get hit in the face; the blows landed instead on his shoulders and back. Ozeir wrapped his arms around defendant's upper torso, Anderson grabbed him by the legs, and with the help of a third doorman, who did not get struck, they carried defendant out the door. All the while, defendant was flailing his arms and kicking, and

he was saying, " [I]t takes three of you [mother-fuckers] to carry me out. I would beat all of your [asses.] I'll [fucking] kill you[] [mother-fuckers]". "

¶ 24 The prosecutor asked Anderson:

"Q. Well, when the defendant started swinging his arms, you and [Ozeir] were close to him at that time?

A. Yeah, we were right up next to each other, yes.

Q. And were there other people around this area at that time.

A. There was other patrons trying to get in for cover. There was Mike Carter, everybody. There was other employees, yes.

Q. Were they close to the defendant at this time when he was swinging his arms?

* * *

A. Yes."

¶ 25 Outside, the police put defendant under arrest.

¶ 26 c. Christopher D. Decker

¶ 27 Christopher D. Decker was the head of security for Red Lion. He was on duty at 12:30 a.m. on July 14, 2013, standing outside, near the front entrance. At the time, he had on a black sweatshirt with the word "SECURITY" on it. Anderson or another of the doormen called him inside. When he entered the foyer, defendant was there. He was by himself in the sense that he was unaccompanied, and he was "just being belligerent," saying, "[D]on't you know who I am? I don't pay cover. I've been in earlier, and I'm not paying.[]" "

¶ 28 Hausman "stated that the gentleman needed to be removed from the bar." Accordingly, Decker told Anderson and Ozeir "to escort him out." When Anderson and Ozeir approached defendant, he "started flailing his arms back and forth in a striking motion." He hit Anderson on the left shoulder. Anderson and Ozeir then "got him *** by his legs and by his arms[] and just basically picked him up and carried him out the door." As defendant was being carried out, he still was flailing his arms at them, and Decker "grabbed ahold of his left arm and stopped him from using that arm."

¶ 29 Although there was a long line out front, Decker did not think there were any customers in the foyer at that moment. But he was not "sure" about that. He just did not remember anyone's having to move out of the way as they carried defendant out. Presumably, "they held the line until he got removed from the foyer area of the bar."

¶ 30 d. Hasson Ozeir

¶ 31 At 12:30 a.m. on July 14, 2013, Hasson Ozeir, age 21, was on duty as a doorman at Red Lion. He had on a yellow shirt with the Red Lion name and emblem on the front and the word "STAFF" on the back. He was standing by the exit door, in the foyer, making sure the line was orderly and that no one left with an alcoholic beverage.

¶ 32 As he was standing there, a verbal altercation arose in the foyer between defendant and the cashier, the man who was collecting the cover. A light was shone on defendant's hand, and he had no stamp. The cashier raised his arm between two tables to keep defendant from coming into the bar, but defendant pushed his arm down. Defendant said he already paid the cover, that he would not pay it again, and that he was going in.

¶ 33 Ozeir himself checked defendant's hand for a stamp, and there was none. He raised his arm, trying to come between the cashier and defendant, but defendant pushed down

his arm, saying, " 'Don't put your hands on me.' " When Ozeir tried to step between defendant and the cashier, defendant pushed him. Then he swung at Ozeir, striking him on the left shoulder with his fist. Kohle Anderson came over to help remove defendant from the building.

¶ 34 It was a "big struggle." Ozeir wrapped his arms around defendant, and Anderson grabbed him, too. Defendant was flailing his arms and was screaming that it took two of them to get him out and that once they let him go, he was going to " 'f[uck] [them] up.' " About 10 other people were in the foyer, waiting to pay cover, and there was a line of 50 to 100 people outside. Ozeir and Anderson finally got defendant outside, where he was arrested.

¶ 35 *2. Defendant's Case*

¶ 36 a. Arien Melton

¶ 37 Arien Melton was a friend of defendant's, having known him for 10 years.

¶ 38 Around 10 p.m. on July 13, 2013, he, defendant, and Corey Lewis went to Red Lion, but they stayed only 10 minutes. Upon their departure, the staff at Red Lion stamped their hands so they would not have to pay to get back in and gave them wristbands, signifying they were of drinking age.

¶ 39 From Red Lion, the three of them went to Joe's, where Melton had a couple of beers. They stayed at Joe's only 20 minutes "because it wasn't that packed."

¶ 40 They then returned to Red Lion. They all were admitted without any difficulty. After an hour and a half inside Red Lion, they went outside to get some fresh air. Twenty minutes later, they decided to go back into Red Lion. Lewis got back in. Melton got back in. But defendant could not get back in unless he paid. Melton did not know if defendant still had his hand stamp; Melton never saw him remove it.

¶ 41 Defense counsel asked Melton:

"Q. Did you see what happened when [defendant] went to get into the Red Lion?

A. Yes.

Q. Why don't you tell the ladies and gentlemen of the jury what happened at that point?

A. When [defendant] tried to get back in, they asked him for a handstamp, then they asked him for a cover fee. So I guess to him—I mean he didn't have a handstamp. So, [defendant] said, [N]o, I don't have a handstamp.[']

MR. SULLIVAN [(prosecutor)]: Objection. Hearsay.

THE COURT: Overruled.

BY MY ALLEGRETTI [(defense counsel)]:

Q. When he told them those things, what did security do?

A. The three of them grabbed him.

Q. Before they grabbed him, did they check for anything on him?

A. No.

Q. Did they check for a handstamp?

A. I can't remember.

Q. Did you see them—how would you describe—

A. It was very aggressive toward him.

Q. Can you describe how they removed him?

A. One grabbed him from behind, the other one grabbed his foot[,] and the third one was helping them move on out the club, I mean out the bar."

¶ 42 Melton denied that defendant threatened any of the staff members or that he used any profanities. He denied that defendant remarked, " [I]t takes three of you to remove me from this bar.['] " He denied that defendant swung at any of the staff, started any fights, or tried to force his way into the bar. He denied that defendant hit anyone. According to Melton, all defendant said was that he had a hand stamp—whereupon security "just grabbed him."

¶ 43 From the time of defendant's arrest to the present moment, Melton never talked to the police. He never approached the police and offered to tell them what really had happened. He was afraid to do so. He did not want to be locked up like defendant.

¶ 44 b. Defendant

¶ 45 When the three of them—defendant, Melton, and Lewis—left Red Lion the first time, they received hand stamps and wristbands at the exit door.

¶ 46 They went to Joe's, where defendant had one beer, and then they returned to Red Lion. By that time, there was a long line to get into Red Lion. Defendant went to the front of the line and spoke with Christopher Decker. He knew Decker, and Decker knew him, and the three of them were allowed to jump the line and get back into Red Lion.

¶ 47 They danced inside the bar for an hour or so and had a good time. Defendant drank a beer. Because it was hot and sweaty inside the bar, the three of them decided to step outside for a while and cool off. They stood about 10 to 15 feet outside the door, talking and getting some air. Then they were ready to go back in.

Lewis showed his hand stamp and was admitted. Melton showed his hand stamp and was admitted. Then it was defendant's turn. He testified:

"A. They said, ['H]ey, do you have a handstamp?['] I said yes.

Q. Did they allow you in?

A. No.

Q. At that point.

A. They said pay \$5.

Q. At that point did you say anything to—

A. I said I had a handstamp. I've been in before.

Q. What happened after you told them that you had a handstamp?

A. They said, ['W]ell you have a handstamp—

MR. SULLIVAN: Objection. Hearsay.

THE COURT: Overruled.

A. —show your handstamp,['] I showed my hand again. He said[,] ['Y]ou don't have one,['] And they wouldn't allow me inside the bar.

Q. What did the security staff do to you at that point?

A. Well, one pushed me. I said[,] ['D]on't touch me,['] because I don't like being touched. And I said[,] [']I am not—[']

Q. What happened after that? Excuse me.

A. Well, we went outside, out through the bar, from them pushing me and told me to pay \$5. I was attacked by them.

Q. When you say you were attacked [*sic*], can you describe how—

A. Somebody grabbed me from behind, in like a bear hug I guess. And then as they were trying to move me out of the bar, the other guy grabbed me, from my legs, so he could carry me out faster."

¶ 49 Defendant denied he was intoxicated when they removed him from the bar. Between the hours of 10 p.m. and midnight, he consumed only two beers. He denied trying to force his way into the bar. He denied starting a fight. He denied pushing anyone or putting his hands on anyone. He denied swinging his fist at anyone, flailing his arms, or kicking his feet. He denied using profanities. He denied threatening anyone or saying they did not know who he was. He denied saying he would beat anyone's ass.

¶ 50 *3. The Verdicts*

¶ 51 The jury found defendant guilty of misdemeanor battery to Anderson. The jury also found him guilty of misdemeanor battery to Ozeir.

¶ 52 *C. The Sentencing Hearing*

¶ 53 In February 2013, there was a sentencing hearing, in which defendant was the only witness to testify. He had no prior criminal history (except for three speeding tickets). He had grown up in Englewood, which he described as a "[v]iolent" place. He had played on the football team while attending the University of Illinois. He worked for IsoTech Laboratories as a chemist, and he hoped to become a veterinarian one day. He lived in Champaign with his

girlfriend and her son. Although the boy was not his own son, he provided for him. He volunteered for the Humane Society of Champaign, and he was a recreation leader for the Urbana School District. One of his duties as a recreation leader was to get children interested in science.

¶ 54 Letters from defendant's professors and supervisors described him as "well-liked," "good-natured," "hard-working," "excellent" in character, and "deserving of public trust."

¶ 55 Because defendant was convicted, however, of battering two different people and because he had "[swung] his arms wildly while there were other people in close proximity waiting to get into the bar," the prosecutor recommended 12 months' conditional discharge, 180 days in jail with credit for 1 day, and completion of an anger-management program within 60 days after release from jail. The prosecutor summed up:

"There are numerous bars and taverns in the Champaign-Urbana area, and this sentence would be a deterrence for others by letting them know that when security staff asks you to leave[,] [y]ou don't argue with them, and you certainly don't hit them[,] placing staff and patrons of that place at risk."

¶ 56 Defense counsel began with the observation that defendant was 24 years old and that he was from "the Englewood neighborhood[,] which [defendant] has described as being rough and violent." The trial court interjected that he had been in the Englewood neighborhood. Defense counsel responded that the court was aware, then, of the "hurdles" that someone from that neighborhood would have had to surmount to "get to a position where [defendant was] today." This was "merely a misunderstanding and a scuffle at a bar," and prospective employers,

seeing only the conviction of battery, would not "get the whole story." Defense counsel summed up:

"I believe based on what [defendant] has been able to accomplish as a person coming from a tough neighborhood and continues to accomplish today working at a place like Isotech, it's a full-time job, he receives benefits, he's bettering himself, he's been able to better himself through the university that's here in Champaign, and he's a productive member of society, I believe he deserves a chance to serve out a community-based sentence that would not end up as a conviction on his record[,] and I would ask that the Court sentence him to some period of court supervision."

¶ 57 The trial court was "inclined to believe that a sentence somewhere in the middle [was] the much more appropriate one." The court explained:

"I do not believe that a 24 year old tax-paying citizen who has nothing but petty offenses on his record should be incarcerated for behavior that I heard in the trial. Someone was hurt. Perhaps that would be something of a different character; and, frankly, if it had been officers that he engaged in such a fashion, it would probably be of a different character and result.

I do not believe that court supervision is the appropriate sentence either. I do not believe that is justified by the facts. I believe that it would deprecate the seriousness of the offense. It's one thing to talk about having a tussle, if you will, with a couple of

bouncers at a campus bar and it's another thing as [the prosecutor] points out to engage in that in a crowded vestibule where people face the possibility of getting hurt and dealing with that issue."

¶ 58 The trial court sentenced defendant to 12 months' conditional discharge, fines and fees, 100 hours of public service, and completion of an anger-management program.

¶ 59 Afterward, the trial court denied a motion to reduce the sentence.

¶ 60 This appeal followed.

¶ 61 **II. ANALYSIS**

¶ 62 Defendant argues that instead of sentencing him to 12 month's conditional discharge, the trial court should have sentenced him merely to court supervision so as to avoid giving him a criminal record, which could threaten his part-time position with the Urbana School District and impair his future employability. See 730 ILCS 5/5-6-3.1(e) (West 2012); *People v. Bushnell*, 101 Ill. 2d 261, 266 (1984) (a sentence of supervision, if successfully completed, does not result in a conviction). He argues that his "commitment to education, demonstrated capacity for gainful employment, and his positive contributions to society weighed strongly in favor of a lesser sentence" and that if he himself were not an fitting candidate for court supervision, it is hard to imagine how anyone could be. He admits he "reacted poorly to being physically touched by bar security," but he reminds us that he inflicted no injury on anyone. He suggests that the danger to bystanders was exaggerated; the bouncers promptly subdued him and removed him. His professors and supervisors gave him glowing recommendations. Despite coming from a rough neighborhood, he has no prior criminal record, and he argues that because his likelihood of reoffending is low (see 730 ILCS 5/5-6-1(c)(1) (West 2012)), there is no reason to blight his

prospects by giving him a criminal record now because of a trivial scuffle in which no one was hurt.

¶ 63 Defendant makes some valid points. On the negative side of the ledger, however, it took three men to remove him from the vestibule, and he threatened to kill these men, who simply were doing their jobs. Judging by what witnesses quoted him as having said, he seemed to regard himself as special. On top of that, if Hausman, Anderson, Decker, and Ozeir were to be believed—and evidently the jury believed them—it is difficult to avoid the conclusion that defendant lied on the stand when he denied pushing, hitting, or threatening anyone at Red Lion. See *People v. Ward*, 113 Ill. 2d 516, 528 (1986).

¶ 64 Our standard of review is deferential. We should modify the sentence only if it is an abuse of discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36. Under this standard of review—the most deferential standard of review known to the law (*People v. Bean*, 389 Ill. App. 3d 579, 590 (2009))—the question is not whether we agree with the sentence (*People v. Covington*, 395 Ill. App. 3d 996, 1002-03 (2009)). Rather, the question is whether the trial court arrived at the sentence "arbitrarily," without using "conscientious judgment." (Internal quotation marks omitted.) *Id.* Reasonable minds could differ whether defendant deserves a criminal conviction. Therefore, we will defer to the trial court's sentence. See *People v. Abraham*, 324 Ill. App. 3d 26, 36 (2001).

¶ 65 III. CONCLUSION

¶ 66 For the foregoing reasons, we affirm the trial court's judgment. We award the State \$50 in costs. See 55 ILCS 5/4-2002(a) (West 2014).

¶ 67 Affirmed.