2016 IL App (2d) 151202-U
No. 2-15-1202
Order filed May 3, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MICHAEL G., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JD-270
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Michael G.,	)	K. Patrick Yarbrough
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved respondent minor guilty beyond a reasonable doubt of disorderly conduct and aggravated assault, and the trial court did not err in denying his motion to dismiss and motion for a directed finding.

¶ 2 The trial court found respondent, Michael G., guilty of disorderly conduct (see 720 ILCS 5/26-1(a)(1) (West 2014)) and aggravated assault (see 720 ILCS 5/12-2(a) (West 2014)) and adjudicated him a delinquent minor. The court merged the disorderly conduct charge into the aggravated assault charge, sentenced respondent to 1 year of probation, and ordered him to complete 30 hours of public service work and pay attendant costs. Respondent appeals from the

convictions, arguing that the charging instruments were defective and that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 30, 2014, the State filed a petition to adjudicate respondent a delinquent minor. The petition alleged that, on May 2, 2014, respondent, who was then 16 years old, chased and yelled at Richard Vital. Respondent was charged with one count each of disorderly conduct (count 1) (720 ILCS 5/26-1(a)(1) (West 2014)) and reckless conduct (count 2) (720 ILCS 5/12-5(a) (West 2014)), and two counts of aggravated assault (counts 3 and 4) (720 ILCS 5/12-2(a), (c)(1) (West 2014)).

¶ 5 Vital testified that about 10 p.m. on the night of the incident, he was walking his dog along Palau Parkway in his neighborhood. Three unknown young males, later identified as respondent and two other minors, Ethan R. and Noah C., approached Vital from the opposite direction. They were walking down the middle of the street. At a distance of five feet, Vital could see their faces and clothing. As the group passed by, Vital heard the three talking among themselves, and then he heard footsteps and shouting behind him. The three males began chasing him and making animal noises. The yelling and noises alarmed Vital, so he ran.

¶ 6 Vital turned back, heard some popping noises coming in his direction, and continued to run. Vital could not see any of the males carrying a weapon, but he described the popping noises as sounding like gunshots from a carbon dioxide-powered BB gun. Vital testified that he could identify the popping as gunshots because he owned several BB guns and knew what they sounded like. Vital testified that he believed that the gunshots were fired in his direction because he had been shot at by a BB gun before. Because he was running, Vital did not see the gun or know which of the three was firing.

¶ 7 Vital testified there was no reason for anyone to be chasing or shooting at him while he walked his dog. Vital called the police when he found some shelter. While hidden behind trees, Vital saw the three males circling the houses and backyards of the neighborhood, looking for him. Vital followed the individuals to keep sight of them until they were apprehended.

¶ 8 Winnebago County sheriff's deputy Joseph Broullard testified that he went to 1096 Palau Parkway at 9:56 p.m. He saw three males, including respondent, who matched the description given by Vital. Broullard and another officer approached the group and advised that they believed they were armed. The officers drew their guns and ordered the three to the ground. The officers handcuffed and searched the individuals, picked them up, identified them, and placed them in squad cars.

¶ 9 Broullard testified that, when the officers told the suspects that they believed they were armed, respondent "advised us specifically that it was a BB gun." Respondent said that the gun was in his home. At the house, respondent's sister consented to a search, which disclosed a BB gun in respondent's bedroom. Broullard noted that nothing on the gun distinguished it from looking like a regular firearm. One had to look closely to see the serial make and model to determine it was a BB gun.

¶ 10 Broullard testified that, when he encountered Vital, he was shaking and stuttering, and he appeared very scared. Broullard presented the three suspects to Vital in a show-up. Relying on the street lights, porch lights, and squad car headlights, Vital identified respondent and the two other suspects.

¶ 11 At the close of the State's case, respondent moved for a directed finding, which was granted as to the charge of reckless conduct (count 2) and one charge of aggravated assault

(count 4) brought under section 12-2(c)(1) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/12-2(c)(1) (West 2014)). The court denied a directed finding on counts 1 and 3.

¶ 12 Respondent moved to dismiss the remaining charge of aggravated assault (count 3) brought under section 12-2(a), arguing that it failed to state a claim because it did not allege that the victim was in reasonable apprehension of receiving a battery. The trial court denied the motion to dismiss, and respondent presented a defense.

¶ 13 Winnebago County sheriff's deputy Mario Rutiaga testified that the weapon was an air rifle that expelled a projectile when the trigger was pulled. Rutiaga could not identify whether the gun was powered by carbon dioxide. Respondent called Broullard to testify again, and the officer identified the weapon as a pump-action air rifle, which did not use a carbon dioxide canister. Broullard explained that, on a pump-action BB gun, a lever is pumped several times and a round is charged and fired. Broullard was unfamiliar with respondent's gun, so he did not know how many times it needed to be pumped before it could be fired. The effect of air moving through either a pump or a cartridge has a similar effect of expelling the pellet from the barrel. Broullard indicated the sound of a fired carbon dioxide BB gun was not substantially different from the sound of a fired pump action BB gun.

¶ 14 Ethan testified that, on the night of the incident, he was outside respondent's home and saw someone walking his dog. Ethan did not see a BB gun, and he denied "running in the general direction of [Vital]." When the group was arrested, the officers told them that they had "assaulted a gay man walking his dog." At trial, Ethan denied doing so. Ethan testified that he and Noah had gone to respondent's house to ask if he wanted to spend the night at Ethan's or Noah's house. Respondent declined, and Ethan and Noah left the house and began walking away. Then Ethan and Noah saw respondent running outside and began running down the street,

themselves. Noah screamed, and the three stopped in the street and laughed, catching their breath.

¶ 15 Catching sight of a flashlight, Ethan saw a man walking his dog down the street, and he commented that it was a nice dog. As the man passed, Ethan ran to respondent's house. Noah and respondent returned to the house too, but they walked. Ethan generally denied the allegations of chasing and yelling at Vital and shooting a BB gun.

¶ 16 On cross-examination, Ethan testified that he, Noah, and respondent were "running the streets" that night, but he denied that they ran toward the man with the dog. Noah was "screaming basically" and the three were running around the neighborhood, but Ethan denied that he or respondent yelled anything.

¶ 17 Before the trial court rendered its findings, respondent filed another motion to dismiss count 3, this time on the ground that it failed to allege that he acted "without legal authority." Respondent also filed a motion to reconsider the denial of a directed finding on counts 1 and 3 on the ground that the acts of running and yelling were not unreasonable and did not actually breach the peace. The trial court denied the motions and found respondent guilty of counts 1 and 3. The court found sufficient evidence of disorderly conduct and aggravated assault through respondent's unreasonable acts of yelling, chasing someone down the street, and shooting a BB gun. The court adjudicated respondent a delinquent minor, merged the convictions, and accepted the parties' agreement as to a disposition order. The court sentenced respondent to 1 year of probation and ordered him to complete 30 hours of public service work and pay the court costs and probation fees. This timely appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Delinquency Petition

¶ 20 On appeal, respondent argues that the delinquency petition was defective. First, he claims that the disorderly conduct charge failed to allege with sufficient particularity what acts he committed that constitute the offense, and that the allegation of merely chasing and yelling cannot prove the offense. Second, he claims that the aggravated assault charge failed to allege that he acted "without lawful authority," and that chasing and yelling cannot satisfy the element of placing another in reasonable apprehension of receiving a battery.

¶ 21 An accused has a fundamental right to notice of the elements of the charged offense. *People v. Rowell*, 229 Ill. 2d 82, 92-93 (2008). The nature and cause of the accusation refers to the crime committed rather than the manner in which it was committed. *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). Under section 111-3 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure), the charging instrument must set forth the nature and elements of the offense so a respondent can prepare a defense and prevent subsequent prosecution arising from the same conduct. 725 ILCS 5/111-3 (West 2014). Where the statute defining the offense specifies the type of conduct that is prohibited, the requirement is satisfied if the instrument states the offense in the language of the statute. *People v. Nash*, 173 Ill. 2d 423, 429 (1996). However, if the statute does not specifically define or describe the act or acts constituting the offense, the charge must also include facts that constitute the crime. *Nash*, 173 Ill. 2d at 429.

¶ 22 Although a charging instrument may be attacked at any time for failure to charge an offense, the timing of the challenge determines which standard applies. Where the accused challenges an indictment prior to trial, the indictment must strictly comply with the requirements set forth in section 111-3 of the Code of Criminal Procedure, and the proper remedy for noncompliance is dismissal of the charge. *DiLorenzo*, 169 Ill. 2d at 321-22. When the accused attacks the sufficiency of an indictment after the State presents its evidence (*People v. Cuadrado*,

214 Ill. 2d 79, 87 (2005)) or for the first time on appeal (*DiLorenzo*, 169 Ill. 2d at 322), the charging instrument is construed more liberally, and we must determine whether the indictment provided him with sufficient specificity as to the crime that was charged so he could adequately prepare his defense and to prevent double jeopardy.

¶ 23 1. Disorderly Conduct

¶ 24 A person commits disorderly conduct when he or she knowingly does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2014). Section 26-1(a)(1) does not specifically define or describe the act or acts constituting the offense, so the charge must go beyond the words of the statute and include facts that constitute the crime. See *Nash*, 173 Ill. 2d at 429. Accordingly, count 1 alleged that respondent committed disorderly conduct in that, on May 2, 2014, he "knowingly acted in such an unreasonable manner as to alarm and disturb Richard Vital, and provoke a breach of the peace, in that [respondent] yelled at Richard Vital and chased Richard Vital."

¶ 25 Respondent argues that the allegation that he "knowingly acted in such an unreasonable manner as to alarm and disturb [Vital], and provoke a breach of the peace, in that [respondent] yelled at [Vital] and chased [Vital]" is not specific enough to give notice of the charged offense. Similarly, he asserts that "[s]imply to allege that the minor chased and yelled at someone is not sufficient to prove beyond a reasonable doubt that the minor respondent either (1) acted in an unreasonable manner, or that (2) he provoked a breach of the peace."

¶ 26 Respondent made an oral motion for a directed finding on the disorderly conduct charge at the close of the State's case. Respondent argued that the evidence did not support a conviction. Following the close of all the evidence, defense counsel filed a written motion for

reconsideration of the earlier denial, arguing that the State failed to present evidence that respondent's conduct actually breached the peace.

¶ 27 As the State points out, neither the motion for a directed finding nor the motion for reconsideration attacked the sufficiency of count 1. The sufficiency of the disorderly conduct charge was never raised in the trial court, and therefore, our review of the sufficiency of count 1 is limited to whether it provided respondent with sufficient specificity that he had notice to adequately prepare his defense.

¶ 28 Respondent contends that chasing and yelling cannot support a finding that he acted unreasonably or provoked a breach of the peace. However, he does not explain how the charge did not give him notice of the offense or how it hindered his preparation for trial. Count 1 specified the date of the incident and identified the victim. Chasing and yelling at another person can substantiate a disorderly conduct charge.

¶ 29 Respondent frames the issue in terms of the sufficiency of the charging instrument. However, to the extent that he claims the State should have alleged something more serious than chasing and yelling, he actually is challenging the sufficiency of the evidence presented at trial.

¶ 30 2. Aggravated Assault

¶ 31 "A person commits aggravated assault when he or she commits an assault against an individual who is on or about a public way, public property, a public place of accommodation or amusement, or a sports venue." 720 ILCS 5/12-2(a) (West 2014). In turn, "[a] person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS 5/12-1(a) (West 2014).

¶ 32 Like section 26-1(a)(1), section 12-2(a) does not specifically define or describe the act or acts constituting the offense, so the charge must go beyond the words of the statute and include

facts that constitute the crime. See *Nash*, 173 Ill. 2d at 429. Count 3 alleged that respondent committed aggravated assault in that, on May 2, 2014, he "knowingly committed and [*sic*] assault against Richard Vital who is [*sic*] on or about a public way near Palau Pkwy and Olympia Street, in that [respondent] chased and yelled at Richard Vital."

¶ 33 On appeal, respondent argues that count 3 is defective because it fails to allege that he acted "without legal authority" and the allegation of chasing and yelling does not satisfy the element of placing Vital in reasonable apprehension of receiving a battery.

¶ 34 At the close of the State's case, respondent filed a motion to dismiss count 3 on the ground that it failed to set forth the essential elements of the offense. Specifically, he argued that, because count 3 only alleged chasing and yelling, he was not adequately charged with placing Vital in reasonable apprehension of receiving a battery. The court denied the motion to dismiss count 3.

¶ 35 In a written motion following closing arguments but before the court made its guilty finding, respondent cited *People v. McCaughan*, 3 Ill. App. 3d 720 (1971), in arguing that count 3 was defective for failing to allege that he acted "without lawful authority." The trial court ruled that *McCaughan* does not apply because it addressed an earlier version of the aggravated assault statute and that the phrase "without legal authority" must be included only when the accused raises an affirmative defense, which respondent had not done.

¶ 36 In this case, respondent did not challenge the sufficiency of count 3 until the State had presented its evidence, and therefore, our review of count 3 is limited to whether it provided him with sufficient specificity that he had notice to adequately prepare his defense and to prevent double jeopardy. See *Cuadrado*, 214 Ill. 2d at 87.

¶ 37 Respondent contends that the aggravated assault charge was defective because it failed to allege that he acted "without lawful authority" and that "another was placed in reasonable apprehension of receiving a battery." Like in his argument concerning the disorderly conduct charge, he does not explain how the allegation did not give him notice of the offense or how it hindered his preparation for trial. Count 3 specified the date of the incident, the location, and the victim. Depending on the surrounding circumstances, chasing and yelling at another person can place another in reasonable apprehension of receiving a battery. We conclude that the petition adequately informed respondent of the nature of the offenses of aggravated assault and disorderly conduct.

¶ 38 B. Sufficiency of the Evidence

¶ 39 Respondent next argues that his motion to dismiss and motion for a directed finding on the aggravated assault charge should have been granted because the State failed to prove beyond a reasonable doubt that any acts occurred on a public way. Respondent also contends, generally, that the evidence does not support the convictions of disorderly conduct and aggravated assault.

¶ 40 When a defendant challenges the sufficiency of the evidence supporting a criminal conviction, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). "When reviewing the sufficiency of the evidence, 'the relevant question is whether, after viewing 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.' (Emphasis in original.)" *People v. Bishop*, 218 Ill. 2d 232, 249 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v.*

Cunningham, 212 Ill. 2d 274, 280 (2004). Our duty is to carefully examine the evidence while giving due consideration to the fact that the trial court saw and heard the witnesses. The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. The credibility of a witness is within the province of the trier of fact, and the finding of the court on such matters is entitled to great weight, but the fact finder's determination is not conclusive. We will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 41 1. Disorderly Conduct

¶ 42 In arguing that the State failed to prove him guilty beyond a reasonable doubt of disorderly conduct, respondent focuses on the evidence related to the gun to show that Vital was not credible. He emphasizes Vital's admission that he did not see respondent holding the gun on the night of the incident. He also points out inconsistencies in the testimony as to whether the gun was powered by carbon dioxide or pump action.

¶ 43 The trial court was in the best position to assess the witnesses' credibility, and the testimony of a single witness is sufficient to convict. The court was free to believe Vital's testimony that he was familiar with the sound made when such a weapon is discharged. Broullard offered corroboration when he testified that respondent "advised us specifically that it was a BB gun" and that it was in his home. Such a gun was recovered from respondent's bedroom that night.

¶ 44 Even disregarding the evidence of the gun, the trial court heard overwhelming evidence of respondent's guilt. A person commits disorderly conduct when he or she knowingly does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the

peace. 720 ILCS 5/26-1(a)(1) (West 2014). Vital testified that, at 10 p.m., respondent and his two friends chased and yelled at him, making animal noises. Vital ran away because he was alarmed and scared. Vital testified there was no reason for anyone to be chasing him while he walked his dog. Broullard testified that, when he responded to the scene, Vital was shaking and stuttering, and he appeared very scared. Vital identified the three suspects, including respondent. When considering all of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of disorderly conduct beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 278.

¶ 45 2. Aggravated Assault

¶ 46 Respondent was found guilty of committing aggravated assault in that he, while on a public way, placed another in reasonable apprehension of receiving a battery. See 720 ILCS 5/12-1(a), 12-2(a) (West 2014). Respondent argues that the State failed to prove that he committed the acts on a public way, and therefore, the trial court should have dismissed the charge, entered a directed finding following the close of the State's case, or found him not guilty at the end of the trial. He also argues that the State failed to prove that Vital was placed in reasonable apprehension of receiving a battery and that Vital was not credible in general.

¶ 47 Respondent challenges three rulings regarding the sufficiency of the evidence, but he does not develop his arguments. By disregarding the procedural differences between the three rulings, respondent has left it to this court to assist him by reviewing the context of the rulings and constructing rational arguments for their reversal. A reviewing court is not a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by

citation to relevant authority fails to satisfy the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule"). Failure to comply with the rule's requirements results in forfeiture. *E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 48 To the extent that respondent argues generally that he was not proved guilty beyond a reasonable doubt, the rules of forfeiture do not apply. See *People v. Alsup*, 241 Ill. 2d 266, 275 (2011) (a challenge to the sufficiency of the evidence to support a conviction is exempt from forfeiture). That said, we conclude that the State presented sufficient evidence that respondent committed the acts on a public way and that he placed Vital in reasonable apprehension of receiving a battery.

¶ 49 Vital testified that he was walking his dog in his neighborhood along Palau Parkway at 10 p.m. when he encountered respondent and his two friends walking down the middle of the street. The trio passed Vital, turned and ran up behind him, began yelling, and then chased him down the street, making animal noises. Vital heard popping sounds like a pellet gun firing, and he was afraid of being struck. Vital was running and did not see a gun, but he recognized the sound because he owned such a weapon. Vital knew the gunshots were fired in his direction because he had been shot at by a BB gun before. Broullard testified that he responded to the call at 1096 Palau Parkway, where respondent "advised us specifically that it was a BB gun."

¶ 50 A court has broad discretion in determining whether a criminal offense occurred on a public way. *People v. Lowe*, 202 Ill. App. 3d 648, 654 (1990). Vital and Broullard testified consistently that the events took place on the streets of Vital's neighborhood, including Palau

Parkway, which was enough for a rational finder of fact to conclude that respondent committed the acts on a public way. See *People v. Dexter*, 328 Ill. App. 3d 583, 591 (2002) ("public way" includes passageways that are controlled or maintained by the government for the general use of the public as a matter of right, but not privately owned and maintained areas). From the testimony that Vital and respondent and his friends walked down a residential street, the trial court could conclude that the incident occurred in an area of general use for the public that was not private property. See *People v. Brooks*, 271 Ill. App. 3d 570, 571 (1995).

¶ 51 Moreover, Vital gave ample testimony that he was placed in reasonable apprehension of receiving a battery. Vital was chased and yelled at by respondent and his friends, one of whom he believed was firing a weapon in his direction. Even without the testimony regarding the weapon, the chasing and yelling support the conviction under the circumstances. When considering all of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of aggravated assault beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 278.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the adjudication of delinquency based on the convictions of disorderly conduct and aggravated assault. As part of our judgment, we grant the State's request that defendant be assessed the State's attorney fee of $50 under section 4-2002(a) of the Counties Code (55 ILCS 5/4-2002(a) (West 2014)) for the cost of this appeal. See *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 54 Affirmed.