2016 IL App (4th) 140476-U

NO. 4-14-0476

FILED
November 8, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
NEVALLE BOOKER,	)	No. 14CF41
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held*: The evidence was sufficient for the circuit court to find by a preponderance of the evidence defendant committed the offense of mob action, warranting the revocation of the stay of his adult sentence in extended jurisdiction juvenile prosecutions proceedings.

¶ 2 Pursuant to a plea agreement, the Champaign County circuit court adjudicated defendant, Nevalle Booker, delinquent under the extended jurisdiction juvenile prosecutions provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-810 (West 2012)) and sentenced him to five years' imprisonment for aggravated battery, subject to a mandatory stay until the completion of his juvenile probation sentence. In November 2013, the State filed a petition to revoke the stay of defendant's adult criminal sentence, contending defendant willfully violated the conditions of his juvenile probation by committing the offenses of mob action and battery and associating with members of a street gang. After a hearing, the

court found defendant committed the offense of mob action. In May 2014, the court terminated the stay of defendant's adult sentence.

¶ 3 Defendant appeals, asserting (1) the State failed to prove by a preponderance of the evidence he committed mob action and (2) prosecuting a minor for reckless conduct without judging that conduct against a reasonable juvenile standard violates due process. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In Champaign County circuit court case No. 13-JD-142, the State filed a September 2013 petition for an adjudication of delinquency and wardship as to defendant (born in 1998). The petition alleged that on August 17, 2013, defendant committed the offenses of (1) armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)), (2) aggravated battery against Aaron N. (720 ILCS 5/12-3.05(a)(1) (West 2012)), (3) mob action (720 ILCS 5/25-1(a)(1) (West 2012)), and (4) aggravated battery against P.B. (720 ILCS 5/12-3.05(c) (West 2012)). Under section 5-805(2)(a) of the Juvenile Court Act (705 ILCS 405/5-805(2)(a) (West 2012)), the State filed a motion to permit prosecution under the criminal laws. Thereafter, the parties entered into a plea agreement, under which (1) the State would seek to withdraw its motion to permit prosecution under the criminal laws, (2) the State would request the proceedings to be under the extended jurisdiction juvenile prosecutions statute, (3) defendant would plead guilty to the offense of aggravated battery against Aaron N., (4) the State would recommend a sentence of 36 months' probation with a stayed adult sentence of 5 years' imprisonment, and (5) the State would seek dismissal of the other counts in this case and defendant's probation would be terminated as unsuccessful in another case (In re N.B., No. 12-JD-155 (Cir. Ct. Champaign Co.)). At an October 10, 2013, hearing, the circuit court extensively admonished defendant and heard a factual basis for the offense of aggravated battery against Aaron N. Thereafter, the court

accepted the parties' agreement, designated the case as an extended jurisdiction juvenile prosecutions proceeding, adjudicated defendant delinquent, made defendant a ward of the court, and sentenced defendant to 36 months of juvenile probation with a stayed adult sentence of 5 years' imprisonment.

¶ 6 On November 12, 2013, the State filed a petition to revoke the stay of defendant's adult sentence. The petition alleged defendant had willfully violated the conditions of his juvenile probation in that on October 27, 2013, defendant (1) committed the offense of mob action when he, along with M.J., Johnny H., and others, engaged in a physical fight with A.B. and James Buford; (2) committed the offense of battery by striking Buford in the face; and (3) associated with members of a street gang known as Norff Bang. The circuit court commenced a hearing on the State's petition in January 2014. At that point, the circuit court opened the adult criminal case from which defendant appeals. At the hearing, the State presented the testimony of (1) Ryan Cowell, assistant principal at Centennial High School; (2) Buford; (3) A.B.; and (4) Damion J., who was with Buford and others during the incident. The State also presented a letter from defendant to the court, in which defendant admitted hanging out with gang members. Defendant testified on his own behalf and presented the testimony of Champaign police officer Ed Wachala and T.G., an eyewitness. The evidence relevant to the issues on appeal is set forth below.

¶ 7 Cowell testified he was at Centennial High School around 7:45 p.m. on October 27, 2013, supervising a haunted house. At that time, he got a call over his radio that a fight was going on in the school parking lot. When he got outside, he saw a large group of people yelling, moving, and looking aggressively at each other. Cowell got his body in between A.B. and the people around him and started yelling the police had been called. After that, the group dispersed.

¶ 8 Buford, who was 19 years old, testified he went to the haunted house on the night of the incident with A.B., Andrew W., and Isaiah P. At the haunted house, they saw another group of boys with whom they had fought a couple of weeks earlier. The other group of boys went by the name Norff Bang. The two groups stared at each other inside the school. Buford's group left the haunted house first and went outside to wait for their ride. When Norff Bang left the haunted house, one of its members, M.J., started yelling such things as "f the ops" and "y'all ain't on nothing" at Buford's group. Buford understood those words to mean the two groups were going to fight. The groups started walking toward each other and met each other at the end of the parking lot. Both groups were acting aggressively toward each other. At the end of the parking lot, the groups "squared up with each other" and began to fight. Buford and M.J. started fighting first, and then the rest of the people in the two groups joined in. The fight ended when the deans approached the fight. Buford knew defendant was involved because he heard his name, but he did not know what defendant looked like until the hearing.

¶ 9 A.B., who was 17 years old, testified he went to the haunted house with Buford, Isaiah, Andrew, and Damion. Damion did not arrive with the group but later joined them. In the parking lot of the haunted house, his group had contact with another group of boys known as Norff Bang. The only boys in Norff Bang whom A.B. knew were defendant and M.J. A.B. testified both groups had five boys. He understood Norff Bang's yelling to mean a fight was about to happen. M.J. and Buford charged at each other and started fighting. Buford turned his back and the rest of Norff Bang, including defendant, tried to jump on Buford. When asked if defendant joined the fight, A.B. testified, "Yes, he tried to." A.B. admitted he joined the fight at that point too. A.B. testified multiple people were fighting. After the "deans and AP's" came

outside, the fight ended and everyone went their separate ways. Sometime after the fight, A.B. talked to a police officer and mentioned defendant's name to the officer.

¶ 10 Damion, who was 16 years old, testified he was at the haunted house with Buford, A.B., Isaiah, and Andrew. That night, in the parking lot, they encountered another group of boys, which included defendant and M.J. Buford and M.J. were the first to start fighting. Damion testified he lied to Officer Wachala when he said M.J. came up to his group and yelled, "f**k you guys." According to Damion, defendant was involved in the fight and ended up on the ground. Damion neither knew how defendant was involved in the fight nor how he ended up on the ground. Damion testified defendant could have been trying to break up the fight.

¶ 11 Officer Wachala testified he did not believe A.B. mentioned defendant's name to him when he talked with A.B. about the fight.

¶ 12 T.G., who was currently on probation, testified he pulled into the parking lot of the high school on the evening in question and saw a group of people standing outside. He estimated that group had 10 or more people. He then saw defendant's group, which was about four people, exit the haunted house and the other group tried to fight them. Defendant and his group tried to walk back and avoid the fight. Defendant's group did not approach the other group but were just walking to the parking lot. According to T.G., the other group “just run up on” defendant's group and started striking defendant's group. T.G. never saw defendant involved in any physical altercation. T.G. knew people in both groups.

¶ 13 Defendant testified his father drove him; his eight-year-old brother; M.J., who was his cousin; and Johnnie H., who was his best friend, to the haunted house. Defendant knew he was not supposed to be “hanging around” with gang members. However, since they were going to a school event and he was with his father, he did not think much of it. His father stayed

in the car at the haunted house. When they got in line for the haunted house, another group of boys was staring at them. Defendant estimated their group had 10 to 15 people. Defendant only knew Isaiah and A.B. in the other group. Defendant's group started looking back at them. The other group responded by yelling gang names. Defendant's group cut to the front of the line and went through the haunted house. After defendant's group left the haunted house, they started walking through the parking lot toward defendant's father's car. The other group of boys ran up to them with their hands up and trying to fight. Defendant testified he did not know the other group was going to fight until they ran up to his group. He also stated he was in jail during the prior fight between M.J. and Buford. When the other group came up, defendant told his little brother to run to the car because he knew they were trying to fight. Defendant's brother was in the car before the fight started.

¶ 14 According to defendant, M.J. and Buford were the first to start fighting. Buford threw the first punch. Defendant then saw people from the other group trying to "jump in" the fight. At that point, defendant tried to break up the fight by standing between them and telling them to stop fighting. Someone came up to him and hit him. Someone also tried to grab his book bag. Defendant then took his book bag off, swung it, and ran toward the car. Defendant never swung back, except for when he swung his book bag. Someone hit defendant again and he fell. Defendant's father jumped out of the car and put him in the car.

¶ 15 At the conclusion of the hearing, the circuit court took the matter under advisement. On April 7, 2014, the court entered a written order, finding the State had proved defendant had committed the offense of mob action on October 27, 2013, and thus violated a condition of his probation. The court further found the evidence did not establish defendant committed the offense of battery as charged and its finding on the mob action charge rendered

moot the allegation regarding the association with gang members. On May 30, 2014, the court declared defendant's adult sentencing order effective as of that date and terminated defendant's juvenile case. See 705 ILCS 405/5-810(6) (West 2012).

¶ 16 On June 4, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, this court has jurisdiction of this cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 17 II. ANALYSIS

¶ 18 A. Sufficiency of the Evidence

¶ 19 Defendant first asserts the State failed to prove by a preponderance of the evidence he committed the offense of mob action because (1) no evidence was presented he personally used force or violence to disturb the public peace and (2) his conduct was not reckless under a reasonable juvenile standard. The State asserts the evidence was sufficient and defendant's second argument is irrelevant.

¶ 20 Under the extended jurisdiction juvenile prosecutions statute, the State, before trial, may file a petition to designate the respondent's case as an extended jurisdiction juvenile prosecution, and the juvenile court will so designate the case if probable cause exists to believe the allegations in the petition and motion are true and the designation is appropriate for the minor. 705 ILCS 405/5-810(1) (West 2012). "If the trial results in a guilty verdict, the court must impose a juvenile sentence and an adult criminal sentence, staying the adult sentence on the condition that the minor not violate the provisions of the juvenile sentence." *In re Jaime P.*, 223 Ill. 2d 526, 538, 861 N.E.2d 958, 966 (2006) (citing 705 ILCS 405/5-810(4) (West 1998)). When the respondent successfully completes the juvenile sentence, the court vacates the adult criminal sentence. 705 ILCS 405/5-810(4) (West 2012).

¶ 21 However, if it appears the respondent has violated the conditions of his or her juvenile sentence or is alleged to have committed a new offense, the court must hold a hearing on the allegations. 705 ILCS 405/5-810(6) (West 2012). If, as in this case, the court finds by a preponderance of the evidence the minor committed a new offense, then the court must order the execution of the previously imposed adult criminal sentence. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006). This court will not disturb a circuit court's ruling on a petition to revoke the stay of an adult criminal sentence unless it is against the manifest weight of the evidence. See *In re Seth S.*, 396 Ill. App. 3d 260, 272, 917 N.E.2d 1182, 1192 (2009) (addressing a revocation of probation where the State must prove the violation of probation by a preponderance of the evidence). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 22 A person commits mob action when he engages in "the knowing or reckless use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law." 720 ILCS 5/25-1(a)(1) (West 2012). Defendant argues the State failed to prove he (1) engaged in force or violence and (2) did so recklessly. The State disagrees.

¶ 23 1. *Use of Force or Violence*

¶ 24 As to defendant's use of force or violence, the evidence was undisputed a fight took place between the group of people defendant was with at the haunted house and the group of people Buford was with. Buford and A.B. both testified members of defendant's group were yelling certain phrases at them, and both of them understood the other group’s words meant a fight was going to happen. Defendant himself testified he knew a fight was going to ensue and

sent his little brother to the car before it started. According to Buford, the two groups squared up with each other in the parking lot. The fight began with Buford and M.J. After those two began fighting, the rest of both groups joined in the fight. The evidence was undisputed defendant was in M.J.'s group. A.B. testified the other group, including defendant, tried to jump on Buford. When asked if defendant joined in the fight, A.B. testified, "Yes, he tried to." Damion testified defendant was involved in the fight in some manner and ended up on the ground.

¶ 25 Defendant notes he testified he was trying to break up the fight. However, a circuit court is not required to accept a defendant's exculpatory testimony. *People v. Ellis*, 269 Ill. App. 3d 784, 789, 646 N.E.2d 1321, 1324 (1995). The court considers the defendant's testimony along with all of the evidence in the case to assess the plausibility of the defendant's testimony. *Ellis*, 269 Ill. App. 3d at 789, 646 N.E.2d at 1324-25. The court's findings in its written order indicate it did just that and found defendant was an active participant in the group fight.

¶ 26 We find the facts of the case were sufficient for the circuit court to find it was more likely than not defendant engaged in force or violence during the group fight in the parking lot of Centennial High School. We note the court's finding defendant did not commit battery as charged in the State's petition is not inconsistent with its finding defendant committed mob action. The State's petition alleged defendant struck Buford in the face. While evidence was presented defendant participated in the group fight, no evidence was presented he specifically struck Buford in the face during the fight. This case is distinguishable from *In re Kirby*, 50 Ill. App. 3d 915, 917-18, 365 N.E.2d 1376, 1377 (1977), cited by defendant, where the reviewing court reversed a guilty finding for mob action where it was inconsistent with the court's finding of not guilty of battery charges involving the only two victims.

¶ 27 2. *Reckless*

¶ 28 Here, the circuit court found defendant and his group acted recklessly by entering the parking lot and approaching Buford's group in a provoking and aggressive manner. Defendant argues the State's evidence was insufficient to prove he acted recklessly because (1) the reasonable juvenile standard is inherent in the statutory definition of recklessness and (2) defendant's actions were not unreasonable under a reasonable juvenile standard. The State asserts that, while the court found the actions of defendant's group were initially reckless, the court found defendant was a willing participant in the mutual combat, indicating the court found defendant acted with a knowing state of mind.

¶ 29 Under section 4-5 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/4-5 (West 2012)), a person acts knowingly if he or she is consciously aware that (1) his or her conduct is of the nature described by the statute defining the offense or (2) the result of his or her conduct described by the statute defining the offense is practically certain to be caused his or her conduct. Section 4-6 of the Criminal Code (720 ILCS 5/4-6 (West 2012)) provides "[a] person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation." Citing a case addressing when an individual is seized for purposes of the fourth amendment (*People v. Lopez*, 229 Ill. 2d 322, 346, 892 N.E.2d 1047, 1061 (2008)), defendant notes a reasonable person standard is modified for individual characteristics such as age. Even if we were to agree with defendant's argument and apply the reasonable juvenile standard, the State's evidence was sufficient to prove the *mens rea* requirement of mob action. Thus, we decline to address both whether (1) the court found

defendant acted knowingly in engaging in the mutual combat and (2) a reasonable juvenile standard is inherent in the statutory definition of recklessness.

¶ 30 Specifically, in applying the reasonable juvenile standard, defendant contends juveniles should not be held to an adult standard of care to anticipate the crimes of others based on mere words. However, both Buford and A.B., who were close in age to defendant, testified the words being said by defendant's group meant a fight was going to take place. The circuit court did not have to believe defendant's testimony he did not know a fight was going to take place because of words being said by the other group. In fact, defendant sent his little brother to the car because he knew a fight was going to begin. His brother was in the car before the fight even started. Despite knowing a fight was going to ensue, defendant remained with his group instead of going to his father's car with his brother. Accordingly, his conduct of remaining in the parking lot with his group was reckless under a reasonable juvenile standard.

¶ 31 Additionally, defendant also claims he acted under a reasonable juvenile standard based on his testimony he tried to break up the fight and continue to his father's car. However, the circuit court did not find that testimony credible. The other evidence showed defendant remained with his group in the parking lot instead of going to his father's car and joined in the fight with the other members of the two groups. The fight did not disperse until school officials came to the parking lot and yelled the police had been called. At that point, the two groups went their separate ways. Again, the court did not have to believe defendant's testimony he was en route to his father's car the entire time he was in the parking lot.

¶ 32 Accordingly, we find the circuit court's finding defendant acted recklessly was not against the manifest weight of the evidence even when applying a reasonable juvenile standard.

¶ 33 B. Due Process

¶ 34 Defendant last argues prosecuting a minor for reckless conduct without judging the conduct against a reasonable juvenile standard constitutes a due process violation. Since we concluded a determination of whether a reasonable juvenile standard is inherent in the definition of recklessness was not warranted on the facts of this case, we decline to address defendant's due process argument. See *People v. Lee*, 214 Ill. 2d 476, 482, 828 N.E.2d 237, 243 (2005) (a reviewing court "will not consider a constitutional question if the case can be decided on other grounds").

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the Champaign County circuit court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 37 Affirmed.

¶ 38 JUSTICE APPLETON, dissenting.

¶ 39 I respectfully dissent from the majority's decision. I find that, at best, defendant's actions were defensive in nature. Defendant told the group of boys to stop fighting, indicating he was a peacemaker, not a combatant.