

No. 1-11-1516

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> Donnell B., a Minor,	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 10 JD 4138
	)	
Donnell B., a minor,	)	Honorable
	)	Patricia Mendoza,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Karnezis and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* Viewing the evidence as a whole and in a light most favorable to the State, the evidence was sufficient to prove beyond a reasonable doubt that respondent committed aggravated battery.

¶ 2 Respondent Donnell B., a minor, was found delinquent based on his commission of aggravated battery, and was placed on probation for two years. On appeal, Donnell B. challenges the sufficiency of the evidence. Donnell B. was jointly tried with two co-respondents who are not involved in this appeal. We affirm the judgment of the circuit court of Cook County.

¶ 3 The incident occurred at approximately 5 p.m. on September 4, 2010, in the parking lot of a grocery store at 6100 West 63rd Street in Chicago. The victim, Luis Sanjuanero, testified through a Spanish language interpreter that he was the victim of an unprovoked attack by five teenagers, and Donnell B. testified that he acted in self-defense against Sanjuanero after the latter threw a piece of fruit at the teenagers.

¶ 4 Sanjuanero's testimony disclosed that he was disabled, relied on a crutch for mobility, and was on probation for drunken driving at the time of the incident. The teenagers surrounded him and started hitting him as he leaned against a car in the parking lot. One of the teenagers took his crutch and hit him with it. All five of the offenders simultaneously hit Sanjuanero's body for "[l]ike ten or fifteen minutes" or "about fifteen minutes," but did not hit him on the face because Sanjuanero had covered it. When asked if he had any injuries from the beating, he testified that his whole body hurt for about a week after the incident. Sanjuanero testified further that the owners of a nearby restaurant called the police.

¶ 5 On cross-examination, Sanjuanero testified that he thought that he had accidentally hit one of the teenagers with his car, but that he applied the brakes right away, rolled down the window, and said, "[W]hat's the problem?" That was when the teenagers approached him. Sanjuanero parked in front of the store and got out of the car. The teenagers approached him and started hitting him. Sanjuanero testified that he had not been drinking that day, and that he did not throw a mango at the teenagers.

¶ 6 In addition to conducting the foregoing cross-examination, Donnell B.'s attorney adopted the cross-examinations conducted by co-respondents' attorneys, which essentially reflected how

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Sanjuanero held up his fists to protect his face during the entire attack. The trial court observed that "it was a defensive blocking motion."

¶ 7 Chicago police officer Lance Handzel (Officer Handzel) testified that when he responded to the scene at approximately 6 p.m., he saw a Hispanic man lying with a crutch on the ground of the store's parking lot near the 63rd Street sidewalk.

¶ 8 During cross-examination, Officer Handzel testified that he offered medical assistance to Sanjuanero, which he refused. Donnell B.'s attorney also adopted the cross-examination of Officer Handzel conducted by counsel for one of the co-respondents, which reflected that Sanjuanero told Officer Handzel he had been pushed down and hit with a crutch. When asked, "And did you observe--You did not observe any injuries on him; is that correct?," Officer Handzel testified, "I did not make any physical observations."

¶ 9 Donnell B. testified that he was 15 years old. On September 4, 2010, he was on the sidewalk at 63rd Street and Meade Avenue with his brother Andre, his friends Matthew and Brian, and a girl named Ashley. Andre and Matthew were present in court as co-respondents. As the teenagers walked toward the entrance to the parking lot of the grocery store on 63rd Street, Sanjuanero's car pulled in "real fast." Sanjuanero rolled down the window and asked, "What are you guys doing?" He seemed kind of "tipsy, drunk." He opened the car door, which hit Andre on the leg. He then jumped out of the car with a melon or a mango from the back of the car and threw it. The fruit did not hit anyone and Donnell B. had no idea what happened to it. Sanjuanero then hurried back into the car and parked. The teenagers walked up to him because Donnell B. wanted to know what happened. Donnell B. said, "[D]o we have a problem," and he demonstrated in court how he lifted

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up his pants by forming "both of his hands [into] a fist motion and [grabbing] the waist on his pants on both sides and hitched them up." When Donnell B. and Sanjuanero were face to face, Donnell B. smelled "[k]ind of like some, like, Malibu Rum" on Sanjuanero's breath. Sanjuanero punched Donnell B. on the lip "and busted it." Donnell B. then "looked away in, like, a mean gesture and said, did this person just hit me?" Donnell B. then hit Sanjuanero four or five times on the body, and Sanjuanero dropped his crutch. One of Donnell B.'s friends, who was not in court, picked up the crutch and repeatedly hit Sanjuanero with it.

¶ 10 The trial court explicitly found that Sanjuanero's testimony was credible. The court also found it "interesting" that Donnell B. confirmed "that the victim was beat[en] up with a crutch, but it was done by the guy who isn't here today. How convenient is that testimony?"

¶ 11 On appeal, Donnell B. contends that he was not proven delinquent beyond a reasonable doubt because he acted in self-defense, and that Sanjuanero's testimony was not credible, was "fanciful," and contained inconsistencies. He argues that Sanjuanero's testimony that the teenagers beat him for 10 to 15 minutes was not credible because that would have been a long time, that Sanjuanero sustained no injuries except that he felt "hurt," that Officer Handzel did not notice any injuries on Sanjuanero, and that Sanjuanero refused medical attention. Donnell B. maintains that, if Sanjuanero's testimony were true, someone would have intervened to help him. He further maintains that Sanjuanero had a strong motive to minimize his own criminal behavior and to cooperate with the State because he had been driving while on probation for drunken driving, while his license was suspended, and had the odor of alcohol on his breath. Donnell B. contends that he acted in self-defense after Sanjuanero sped into the parking lot in his car, struck Andre with the car door, and

threw a piece of fruit at Donnell B. Donnell B. argues that he did not become the aggressor given that all of the events occurred within a short period of time. He also argues that the trial court improperly convicted him based on weaknesses in his case.

¶ 12 The reasonable doubt standard of proof applies to an adjudicatory hearing on a delinquency petition. See 705 ILCS 405/5-605(3)(a) (West 2010). The State must prove a charge of delinquency beyond a reasonable doubt where the alleged conduct would constitute a crime if charged against an adult. *In re Urbasek*, 38 Ill. 2d 535, 540 (1967). Pursuant to the reasonable doubt standard, a conviction will not be reversed for insufficiency of proof unless the evidence was so improbable or unsatisfactory as to create a reasonable doubt regarding the respondent's guilt. See *People v. Slim*, 127 Ill. 2d 302, 307 (1989). "[T]he 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." *In re A.J.H.*, 210 Ill. App. 3d 65, 70-71 (1991); see also *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *People v. Dunker*, 217 Ill. App. 3d 410, 415 (1991). When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007); *People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt). It was the trial court's function as the trier of fact to evaluate the credibility of the witnesses and to resolve conflicts in the evidence. See *Slim*, 127 Ill. 2d at 307. A court of review must not retry the respondent. *Cunningham*, 212 Ill. 2d at 279.

¶ 13 To prove that Donnell B. was guilty of battery beyond a reasonable doubt, the State is

required to prove that he intentionally or knowingly and without legal justification caused bodily harm to the victim. 720 ILCS 5/12-3(a) (West 2010). The aggravating factor here was that the location of the crime, a parking lot of a privately owned business, was equivalent to a public way because it was accessible to the public. 720 ILCS 5/12-4(b)(8) (2010); *see People v. Lee*, 158 Ill. App. 3d 1032, 1034-36 (1987) (parking lot of a convenience store, a public place of accommodation, was a public way within the meaning of the aggravated battery statute); *People v. Ward*, 95 Ill. App. 3d 283, 287-88 (1981) (Holiday Inn parking lot was a public place within the meaning of the aggravated battery statute).

¶ 14 Here, the credibility of the witnesses and the weight accorded to their testimony were determinations within the province of the trial court, which observed the witnesses and listened to their testimony. The trial court explicitly found that Sanjuanero's testimony was credible. We cannot second-guess those credibility determinations. *In re J.C.*, 260 Ill. App. 3d 872, 883 (1994).

¶ 15 Furthermore, the State's evidence, separate and apart from any weaknesses in Donnell B.'s case, established that he participated in the aggravated battery. We are unimpressed by Donnell B.'s arguments. With regard to his argument that Sanjuanero was motivated to cooperate with the State because he had violated the Illinois Vehicle Code, we believe this hypothesis to be speculative and "fanciful," to use Donnell B.'s word. The trial court was not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *Wheeler*, 226 Ill. 2d at 117; *Digirolamo*, 179 Ill. 2d at 45; *see also Slinkard*, 362 Ill. App. 3d at 858. With regard to the alleged inconsistencies in Sanjuanero's testimony, we note that he testified through an interpreter and at first did not understand some of the questions. Even if he was not confused about

the questions, it is easily understandable if he subjectively believed that such a traumatic incident lasted longer than it may actually have lasted. It is appalling that Donnell B.'s counsel on appeal uses language such as "mere" and "allegedly traumatized" to minimize the harm that Donnell B. and his cohorts inflicted on the handicapped victim. It is again easily understandable that there were no visible injuries. Sanjuanero shielded his face with his arms and hands, which exposed his body to the barrage of punches inflicted by Donnell B. and his cohorts. Sanjuanero suffered physical pain for a week after the beating. Therefore, Sanjuanero suffered bodily harm within the meaning of the battery statute. See *People v. Johnson*, 231 Ill. App. 3d 412, 422 (1992) (physical pain can constitute bodily harm within the meaning of the aggravated battery statute). Donnell B. further argues that if Sanjuanero's testimony were true other people would have intervened to help him. Once again, it is easily understandable that they did not intervene physically because they reasonably could have feared physical retaliation from Donnell B. and his group, a total of five, all of whom were beating a man who used a crutch. Moreover, the restaurant owners did intervene by calling the police. Donnell B. did not act in self-defense given that he and his cohorts followed Sanjuanero into the parking lot, and started punching him when he was alone and leaning against a car with his crutch. Sanjuanero defensively positioned his fists and arms in such a manner as to protect his face from the blows. The trial court reasonably believed that Donnell B. was the aggressor, and it is not the function of this court to retry the case. The evidence strongly established that Donnell B. intentionally or knowingly inflicted bodily harm on Sanjuanero without legal justification. Thus, the evidence was not so improbable as to raise a reasonable doubt regarding his guilt. We are not relying on Donnell B.'s own testimony, or any weaknesses in his case, in concluding that the

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evidence supported the finding of delinquency.

¶ 16 Finally, we have considered and rejected all of Donnell B.'s arguments on appeal.

¶ 17 The judgment of the circuit court of Cook County is affirmed. Pursuant to *In re W.W.*, 97 Ill. 2d 53, 58 (1983), we deny the State's request to assess \$100 as costs for this appeal.

¶ 18 Affirmed.