2013 IL App (1st) 130240-U

FIFTH DIVISION
SEPTEMBER 6, 2013

No. 1-13-0240

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ABDULLAH A.Q., a Minor (THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. ABDULLAH A.Q., a minor, Respondent-Appellant).	))))))))))	Appeal from the Circuit Court of Cook County. No. 12 JD 4294 Honorable Stuart F. Lubin, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Respondent's adjudication of delinquency for battery was affirmed where the factual context in which respondent pushed a security officer who was attempting to arrest him established beyond a reasonable doubt that the physical contact was insulting or provoking.

¶ 2 Following a bench trial, respondent Abdullah A.Q., a minor, was adjudicated delinquent based on the commission of battery and placed on one year of probation. On appeal, respondent asserts the State failed to establish beyond a reasonable doubt that the physical contact he made

with the battery victim, a high school security guard, was insulting or provoking conduct. We affirm.

¶ 3 The State charged respondent in a delinquency petition with one count of battery and one count of aggravated assault against Daniel Bernal, a Chicago police officer working as a school security guard. Respondent's brother Ramadan[1] was also charged in a separate delinquency petition, and a joint adjudicatory hearing was held. The prosecution of both minors arose from an incident on Wednesday, October 10, 2012, at Taft High School in Chicago where respondent was a student. The State's case against respondent consisted of the testimony of two Chicago police officers who were working on that day as part-time security guards at the high school.

¶ 4 Officer Daniel Bernal testified that at the time of the incident he was wearing a uniform identifying him as a member of "Taft Security." At about 11:20 a.m., Bernal and about five other security officers were escorting from the school a student who had requested their protection after being beaten by other students. The officers encountered a group of about 15 to 20 students in the school parking lot. When the student in the officers' protection told Bernal that students in that group had beaten him up, Bernal approached the group and told them several times that they needed to leave the school grounds. They refused to do so and began to scream and yell. Bernal walked up to respondent and asked him to leave, but he refused. The group became louder and more angry. Respondent stepped up to Bernal with his fists clenched. For his own safety, Bernal pushed respondent about two or three feet away from him. Bernal felt threatened by respondent's size and felt he had to protect the gun he carried on him. Respondent approached again and pushed Bernal back. Bernal tried to restrain respondent in an attempt to arrest him, but he resisted. The officers had a difficult time controlling respondent because he refused to follow

[1] Ramadan was found guilty of battery and criminal trespass to real property, and he was sentenced to one year of probation. He appealed, and we affirmed the judgment of the trial court in *In re Ramadan A.Q.*, 2013 IL App (1st) 130239-U.

verbal commands so they could handcuff him. Bernal testified, "We had to use several emergency takedowns to safely put him in custody, which he refused to do." As Bernal was trying to handcuff respondent, Ramadan, respondent's brother, jumped on Bernal's back. Officer Staszel, another security guard, took Ramadan down and placed him under arrest.

¶ 5 Officer Daniel Kolocziejski testified that on the date of the incident, school security had been informed that there had been a battery at the school that might spill out onto the school grounds at the 11 a.m. early dismissal. As he and the other security guards were escorting a student from the main entrance, a group of about 15 to 20 students approached and surrounded the student being escorted. To avoid a second battery of that student, Kolocziejski and Bernal approached the group, and Bernal told everyone in the group to disperse. Some of the students obeyed the dispersal order; respondent did not. Respondent approached Bernal with both of his fists clenched in a threatening manner. Bernal pushed the respondent, who then pushed Bernal in the chest. As Bernal attempted to arrest respondent, Ramadan jumped on Bernal's back. Kolocziejski assisted in grabbing respondent to place him in handcuffs and detain him. As they were attempting to place respondent under arrest, he was pushing off on Bernal, resisting arrest, and attempting to separate himself from Bernal.

¶ 6 The defense presented the testimony of Taft High School students Marie Chew and Gavreel Shoumanov. Chew testified she observed a security guard approach respondent and accuse him of being in a fight the previous Monday. She did not observe respondent try to attack or surround anybody. The guard cursed respondent and grabbed him by the neck and lapels. Before that, respondent had not touched the guard or made a motion as if to attack him. Respondent's fists were not clenched. Then the guard pushed respondent, who told the guard not to push him. The guard and respondent started yelling or swearing at each other. Ramadan

stepped in and pushed them apart with his hands but did not jump on the security guard's back. She never observed respondent try to hit the guard.

¶ 7 Shoumanov testified she was standing next to a group that included respondent and Ramadan. Respondent had not been in school the previous Monday; he was in Florida. A security guard approached respondent and accused him of beating up another youth in a fight on Monday. Respondent tried to explain that he had been in Florida, but the guard did not believe him. The guard was calling respondent names, and they became engaged in an argument. Then the guard pushed respondent. Respondent had not approached the guard with clenched fists. They continued to argue and the guard grabbed respondent's clothing close to his neck.

¶ 8 At the close of trial, the court announced its factual findings. The court found that after Officer Bernal told the group to leave the area, respondent and others refused to do so. Respondent approached the officer with clenched fists. Bernal felt threatened and pushed respondent back two or three feet. Then respondent pushed Bernal back. Bernal attempted to place respondent under arrest, but respondent resisted, pushing Bernal in an attempt to resist the arrest. The court found respondent not guilty on Count 2, aggravated assault, upon determining that merely approaching a peace officer with a clenched fist does not place the officer in reasonable apprehension of receiving a battery. However, the court found respondent guilty of battery under Count 1, not for pushing Bernal initially but continuing to push away from him while resisting arrest. The court placed respondent on probation for one year with a six-month progress report date for possible early termination of probation, with 20 hours of community service and other conditions of probation.

¶ 9 On appeal, respondent argues that his conduct was not proven to be insulting or provoking and, consequently, the State did not establish beyond a reasonable doubt that his conduct constituted the offense of battery. Respondent contends that a *de novo* standard of

review applies because he does not dispute the trial court's factual findings but argues that, as a matter of law, his conduct did not constitute physical contact of an insulting or provoking nature. We disagree. *De novo* review is inappropriate here where respondent is ultimately challenging the trial court's findings. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893-94 (2007). The constitutional safeguard of proof beyond a reasonable doubt applies during the adjudicatory stage of juvenile delinquency proceedings. *Id.* at 893, citing *In re Winship*, 397 U.S. 358, 368 (1976). Under that standard, when presented with a claim of insufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *Malcolm H.*, 373 Ill. App. 3d at 893-94, citing *In re W.C.*, 167 Ill. 2d 307, 336 (1995).

¶ 10 Count 1 of the State's petition for adjudication of wardship charged respondent with battery. To sustain that determination, the evidence must show that respondent intentionally or knowingly, without legal justification and by any means, made physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a)(2) (West 2012); *In re Gregory G.*, 396 Ill. App. 3d 923, 926 (2009). Given the factual context in which the contact with Bernal occurred, the trial evidence established that respondent's conduct did constitute "physical contact of an insulting or provoking nature" within the meaning of section 12-3(a)(2) of the Code.

¶ 11 Despite the fact that respondent's trial witnesses testified he did not approach Bernal with clenched fists and they did not observe him push Bernal, respondent's position on appeal is that he does not dispute the State's version of the incident. That version established all of the elements of battery. This included the testimony of Officer Bernal that defendant physically resisted Bernal when being placed under arrest, as well as the testimony of Officer Kolocziejski that when Bernal tried to arrest respondent, he pushed off in an attempt to separate himself from Bernal.

¶ 12 Respondent argues that Bernal did not testify he was insulted or provoked by him and that his conduct supports only resisting arrest, with which he was not charged, and not battery. When courts evaluate whether physical contact was insulting or provoking, they consider the factual context in which it occurred. *People v. Peck*, 260 Ill. App. 3d 812, 814 (1994), citing *People v. d'Avis*, 250 Ill. App. 3d 649, 651 (1993). Even if the victim did not explicitly testify that he felt provoked or insulted by the physical conduct, the trier of fact may take into account the context in which the contact occurred to determine whether it was insulting or provoking. *People v. Fultz*, 2012 IL App (2nd) 101101, ¶ 49, citing *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55.

¶ 13 In the instant case, as in *Peck*, we examine the factual context of the physical contact. The trial court found that the initial action of approaching the officer with clenched fists was insufficient to constitute aggravated assault on a peace officer under Count 2, and that the initial push to Bernal, standing alone, was insufficient to establish a battery. However, the court found him guilty of battery for pushing Bernal while being arrested. In a different context, an accused's act of pushing might not constitute insulting or provoking behavior. See *Peck*, 260 Ill. App. 3d at 814. In the factual context in which respondent's aggressive physical conduct with Bernal occurred, beginning with his approaching the officer with clenched fists after disobeying an order to leave, then pushing Bernal after the officer had pushed him, the trial court could find that respondent's ultimate conduct in pushing Bernal while being placed under arrest was insulting or provoking in defiance of Bernal's authority. We conclude that the trial court's finding was not contrary to the facts presented at trial, and we decline to disturb the trial court's judgment.

¶ 14 For the reasons stated above, we affirm the judgment of the trial court.

¶ 15 Affirmed.