2017 IL App (1st) 141906-U

Fifth Division
March 24, 2017

No. 1-14-1906

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6264
	)	
SHONTAEYA SIMMONS,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for harassment of a witness is affirmed as none of the State's evidence was so improbable, unsatisfactory, or inconclusive that it created reasonable doubt of defendant's guilt. A rational trier of fact could have found that defendant intended to harass the victim and that defendant's statements caused the victim mental anguish or emotional distress.

¶ 2 Following a bench trial, defendant Shontaeya Simmons was convicted of three counts of harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2012)) and was sentenced to 30 months' probation with 6 months of home confinement. Defendant appeals her conviction, arguing that

the State failed to prove beyond a reasonable doubt that she intended to harass or annoy the victim or that her statements produced mental anguish or emotional distress to the victim. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged with three counts of harassment of a witness (720 ILCS 5/32-4a(a)(2) (West 2012)) and one count of intimidation (720 ILCS 5/12-6(a)(1) (West 2012)). The first count of harassment of a witness alleged that defendant communicated with the victim "in such a manner to produce mental anguish." The second count of harassment of a witness alleged that defendant communicated with the victim "in such a manner to produce emotional distress." The remaining count of harassment of a witness alleged that defendant communicated a threat of injury to the victim. Defendant waived her right to a jury trial and the case proceeded to a bench trial.[1]

¶ 4 At trial, Michael Wright testified that he was a witness to a murder that occurred in the early morning hours of June 20, 2008. On that morning, he observed James Hobson, defendant's uncle, shoot and kill Michael Tyner. The State subpoenaed Wright to testify in the trial of James Hobson. On March 7, 2012, in open court, Wright identified James Hobson as the man who had shot Michael Tyner. During his testimony, Wright mentioned that defendant, who had been present during some portion of the events surrounding the shooting, had grabbed the shoulder of an individual named "Monica." After testifying, Wright left the courthouse and returned to his home on 6400 South Justine Street. There, he sat on the porch and socialized with his brother

[1] Codefendant was simultaneously tried by a jury and acquitted of multiple charges of attempt first degree murder and aggravated discharge of a weapon.

Ronald Wright and his friends Charles Ousley, Tanika Carpenter, Rosa Smith, and Chenelle Boss.

¶ 5 As the group was sitting on the porch, defendant drove southbound on South Justine Street in a grey vehicle and stopped in front of Wright's house. Defendant asked Wright to come to the vehicle and talk to her. When Wright did not approach the vehicle, defendant told him "I'm not on that, we are better than that." Defendant was upset that Wright testified that she "grabbed Monica's shoulder" the night that Michael Tyner was killed. She told Wright that it was ok, because Wright "got to answer to nobody but God in one minute." Defendant said this in a "demeaning" tone of voice, and Wright interpreted her statement as a threat which placed him in fear. After she said this, defendant drove away from the house.

¶ 6 About three to four minutes after defendant left, co-defendant drove a vehicle southbound on Justine Street, traveling at five to ten miles an hour, and watched the group on the porch. A few minutes after co-defendant drove by, a red van drove northbound past the house. Wright observed that defendant was a passenger in this van, but he was unable to identify the driver. Defendant appeared to be angry and was talking in an animated manner, though Wright could not hear was she was saying. The van then turned left on to 64th Street. As the group watched the van round the corner at 64th Street, Wright heard two gunshots ring out from south of the house. He did not see who fired the gunshots. The bullets hit Wright's porch and a bottle of alcohol that Rosa Smith had been holding.

¶ 7 After the shooting, Wright called the police. He travelled to the police station, where he spoke to an assistant State's Attorney. The State's Attorney's office paid for Wright to stay in a

hotel for 22 nights, and assisted him in securing a new apartment. Wright never returned to his house on Justine Street because he was scared, and "felt threatened."

¶ 8 On cross-examination, Wright admitted that he did not call the police after defendant told him he would not have to "answer to [anyone] but god in one minute." He stated that, as he sat it court, he was in fear for his life, but that he was not scared of defendant. Wright knew that defendant's grandmother lived at 6500 South Justine Street, and that defendant was frequently in the neighborhood.

¶ 9 Chenelle Boss testified that on March 7, 2012, she left the courthouse with Michael Wright, Charles Ousley, Tanika Carpenter, and Rosa Smith and travelled to 6400 South Justine Street. The group started to socialize on the porch at that location when defendant rode up in a car and called Wright over to speak with her. When Wright told her that he was not going to come to the car, defendant told him "forget it, you don't have to come to the car. We supposed to be better than that." She was upset about something Wright had testified to at the trial of her uncle, James Hobson. When Wright did not approach the car, defendant said "that's okay, when you do bad things, bad things happen" and "you're going to have to answer to God in a minute." After she made these statements, defendant drove away.

¶ 10 After defendant left, Boss went inside of the house. A few minutes later, she returned to the porch and observed a red van drive northbound on Justine Street. Defendant was a passenger in the van, and Boss noted that defendant looked upset. Boss watched the van as it turned left on to 64th Street and heard two or three gunshots. Upon hearing the gunshots, she dropped to the ground and crawled toward the front door. On-cross examination, Boss stated that nobody called the police after defendant made her statements to Wright.

¶ 11 Charles Ousley testified that, on March 7, 2012, he watched Michael Wright testify in the murder trial of James Hobson. Ousley observed that a man named "Chucky" was inside the courtroom. Ousley believed that "Chucky" was a relative of defendant and co-defendant. After the trial recessed for the night, Ousley went to Wright's house at 6400 South Justine Street. There, Ousley, Wright, Tanika Carpenter, Rosa Smith, and Chenelle Boss began to socialize on the front porch.

¶ 12 Defendant drove a car southbound on Justine Street and stopped the car in front of Wright's house. She asked Wright to approach the vehicle and talk to her, but Wright did not approach the vehicle. Defendant then started to drive away, and Ousley heard her tell Wright "when you do wrong, you're going to have to answer to God." Ousley believed that defendant's statement to Wright had been a threat.

¶ 13 After defendant drove away, Ousley observed co-defendant drive slowly southbound on Justine Street in a green car while looking at the group of people on the porch. A few minutes later, defendant rode northbound past the porch in a red van. Ousley stated that defendant looked upset. He watched the red van turn left on to 64th Street. He then looked back toward the south, and saw co-defendant standing two houses down from the porch. Co-defendant was holding a gun, and shot toward the porch two times, hitting a bottle of tequila that Rosa Smith was holding.

¶ 14 Rosa Smith testified that on March 7, 2012, she had gone to Michael Wright's house at 6400 South Justine Street to help watch the family's children. That night, Wright, Charles Ousley, Tanika Carpenter, and Chenelle Boss returned from the courthouse, where Wright had testified in a murder trial. The group congregated on the front porch, where Smith met them with a bottle of tequila. Defendant pulled up to the house in a grey car and called out for Wright to

come speak with her. Smith could not hear the entire conversation, but heard defendant say "something about lying and answering to God." Defendant then drove southbound on South Justine Street.

¶ 15 After defendant left, co-defendant drove a green car southbound past the house. He was driving slowly and looking toward the porch. After co-defendant was out of sight, a red van containing defendant drove northbound on South Justine Street and turned left on to 64th street. As Smith watched the van turn the corner, she heard a gunshot, looked southbound, and observed co-defendant standing on the sidewalk with a gun in his hand. Co-defendant fired another shot, which struck the bottle of tequila that was in Smith's hand. The group then ran inside and called the police.

¶ 16 On cross-examination, Smith admitted that nobody in the group called the police when defendant made her statements to Wright.

¶ 17 Charles Walker testified that he was a cousin of defendant and co-defendant and that, in March of 2012, he was living at 6500 South Justine Street with his grandmother, mother, aunts, and both defendants. On March 7, 2012, Walker attended the trial of James Hobson, where he watched Michael Wright testify. When he left the courthouse, defendant gave Walker a ride home in her car. While in the car, defendant called James Hobson's attorney, and he told her what happened in court that day. Defendant appeared to be upset about the conversation. Walker claimed that when they arrived back at his grandmother's house neither he nor defendant left the house again that night. The State then impeached Walker with a signed, typewritten statement that he had given to police which stated that defendant left the house again sometime after they arrived at the house.

¶ 18 After the State rested, defendant moved for a directed finding, arguing that the State's evidence failed to show that defendant intended to harass Michael Wright, and failed to prove she caused him any mental anguish. The trial court granted the motion in regard to the intimidation count, but denied it in regard to the remaining harassment of a witness counts.

¶ 19 Willie Ingram testified that he is the father of defendant's child and was her boyfriend in March of 2012. On March 7, 2012, Ingram drove to defendant's grandmother's house at 6500 South Justine Street and waited for defendant to return home. At 7:50 p.m., defendant arrived at the house and told Ingram that she wanted to go to the store. Ingram and defendant got in to his red van, and drove northbound on South Justine Street toward the Family Dollar store located at the intersection of 63rd Street and Ashland Avenue. When Ingram saw that the Family Dollar was closed, he drove to a nearby Walgreens store and waited in the van while defendant entered the store. Defendant was crying when she exited the store, so Ingram drove her back to her grandmother's house. He travelled southbound on Justine Street, but did not observe any people standing on the porch at 6400 South Justine Street.

¶ 20 After closing argument, the trial court found defendant guilty of all three counts of harassment of a witness. The trial court noted that the purpose of the harassment of a witness statute is to protect witnesses from being harassed because of their testimony in court room proceedings, and that this was a classic case of witness harassment. He believed that defendant's statement of "we're not about that" was self-serving, and that Wright watched the red van so intently "because of what she said before."

¶ 21 Defendant filed a motion for a new trial, arguing that Michael Wright was not placed in mental anguish by defendant's statements and that defendant did not intend to harass him. The

trial court denied the motion, stating that "[i]f that's not disconcerting to someone, came [sic] from court as a witness in a murder, someone telling him you do bad things, bad thing happen, I don't know what else would be." The court also noted that defendant could have driven past Wright's house without stopping, and that "[a]ll she had to do was leave it alone." The trial court subsequently sentenced defendant to 30 months of probation with six month of home confinement.

¶ 22 Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that her statements caused Michael Wright mental anguish and emotional stress. She also contends that the State failed to prove beyond a reasonable doubt that she had the specific intent to harass or annoy Michael Wright.

¶ 23 Defendant argues that her challenge to the first two counts of harassment of a witness, based on the theory that defendant caused Michael Wright mental anguish or distress, relies solely upon a settled version of the facts and that we should, therefore, conduct a *de novo* review of the trial court's findings. However, in *People v. Cardamone,* 232 Ill.2d 504 (2009), our supreme court evaluated a similar sufficiency of the evidence claim. After conducting a *de novo* review of the level of distress that the harassment of a witness statute requires, the court evaluated the defendant's claim that the victim did not feel mental anguish or distress under the familiar *Jackson v. Virginia* standard. *Cardamone* at 521-22 ("Therefore, the evidence, when viewed in the light most favorable to the State, is clearly sufficient to find that [victim] suffered the requisite level of emotional distress***").

¶ 24 When considering a challenge to the sufficiency of the evidence in a criminal case, a reviewing court's function is not to retry the defendant. *People v. Lloyd,* 2013 IL 113510, ¶ 42.

Rather, a reviewing court must decide " '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 offense beyond a reasonable doubt.' " (Emphasis in original.) *Cardamone* at 511 (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)).

¶ 25 This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). In reviewing a trial court's decision, we must give proper deference to the trier of fact who observed the witnesses testify, because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 26 Defendant claims that her convictions for the first two counts of harassment of a witness, which were based on the theory that defendant caused Michael Wright mental anguish or distress, should be reversed because the State failed to prove beyond a reasonable doubt that Michael Wright suffered from mental anguish or emotional distress. Specifically, defendant points to the fact that right Wright returned to his porch and did not call the police after she made her statements to him as evidence that State failed to meet its burden.

¶ 27 As relevant here, the harassment of a witness statute makes it a Class 2 felony for a person, with intent to harass or annoy one who has served as a witness, to communicate directly or indirectly with the witness in such manner as to produce mental anguish or emotional distress. 720 ILCS 5/32-4a(a) (West 2012). The purpose of the statute is to protect witnesses from "

'being hassled because of their assistance with daily court room proceedings.' " *Cardamone*, 232 Ill.2d at 512 (quoting *People v. Butler*, 375 Ill. App. 3d 269, 274 (2007)). The requirement of mental anguish or emotional distress "appears to be a subjective one, based on whether the communication in fact produced mental anguish or emotional distress in the mind of the victim." *People v. Berg*, 224 Ill. App. 3d. 859, 863-64 (1991).

¶ 28 In *Cardamone*, our supreme court analyzed the level of mental anguish or emotional distress that the harassment of a witness statute requires. *Cardamone,* 232 Ill.2d 504, 511 (2009). On appeal to the Illinois supreme court, the defendant argued that the harassment of a witness statute required a level of distress "akin to a threat of injury or damage to her person or property." *Id.* The Court rejected defendant's argument, and affirmed his conviction. *Id.* at 522.

¶ 29 Initially, the court noted that the harassment of a witness statute makes no reference to a requisite level of emotional distress and does not contain adjectives that qualify or quantify the level of mental anguish or emotional distress that is required to violate the statute. *Id.* at 513. The purpose of the statute, the court remarked, was to protect witnesses and jurors from being mistreated because of their involvement in courtroom proceedings. *Id.* at 12. Stating that courts should " 'not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent,' " the court declined to impose the defendant's proposed requirement that distress be akin threat of physical injury or damage to person or property. *Id.* at 516 (quoting *People v. Perry*, 224 Ill.2d 312, 323–24 (2007)). Having found that that the statute incorporates "a more expansive definition" of emotional distress than defendant contended, the court held that evidence that the victim experienced "quite a bit of

anger," felt her "stomach drop," and described the incident as "nerve-racking," was sufficient to prove that the victim felt the requisite level of emotional distress. *Id.* at 521.

¶ 30 Following the court's reasoning in *Cardamone*, and noting that the statute's requirement of mental anguish or mental distress "appears to be a subjective one," we hold that the State's evidence was sufficient for a rational trier of fact to determine that defendant's statements to Michael Wright caused him mental anguish or emotional distress. Wright testified that he interpreted defendant's statement as threat, and that her words placed him in fear. We note that the testimony of a single credible witness is sufficient to convict. *People v. Smith*, 185 Ill.2d 532, 541 (1999).

¶ 31 As we must view the evidence in the light most favorable to the state, and draw all reasonable inferences in favor of the prosecution, we reject defendant's argument that Wright did not suffer mental anguish or emotional distress because he returned to the porch without calling after defendant drove away. No case that defendant cites requires an immediate, outward manifestation of emotional distress to support a conviction. In fact, in *Cardamone*, the only evidence of the victim's mental anguish or emotional distress was her own testimony. *Cardamone*, 232 Ill.2d at 508. While her testimony regarding the level of her emotional distress was somewhat more descriptive than Wright's, we find that Wright's testimony was not so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. As such, we will not disturb the trial court's determination that defendant's statements caused Michael Wright mental anguish or emotional distress.

¶ 32 Defendant also contends that all three of her convictions for harassment of a witness should be reversed because the State failed to prove beyond a reasonable doubt that she specifically intended to harass or annoy Michael Wright.

¶ 33 The plain language of the statute indicates that harassment of a witness is a specific intent crime. 720 ILCS 5/32-4a(a) (West 2012). Intent to harass or annoy can be inferred from the surrounding circumstances. *People v. Berg*, 224 Ill. App. 3d 859, 862 (1991).

¶ 34 Defendant cites *People v. Nix*, 131 Ill. App. 3d 973 (1985), in support of her argument that she did not intend to harass Wright. In *Nix*, the defendant was charged with battery, aggravated battery, and harassment of a witness. The victim testified that she and the defendant came in to contact in a secluded restaurant hallway that led to the restaurant's bathrooms. *Id.* at 974. In the hallway, the defendant grabbed the victim's arm and asked her "[h]ow's it going?" *Id.* The victim then entered the restroom and locked the door. *Id.* When the victim came out of the restroom, the defendant again grabbed her arm and said "I want to talk to you." *Id.* Based on this evidence, a jury acquitted the defendant of battery and aggravated battery but found him guilty of harassment of a witness. *Id.*

¶ 35 The appellate court reversed the defendant's conviction, finding that the State failed to prove that defendant acted with the intent to harass or annoy the victim. *Id.* at 975. The court reasoned that the fact that the jury acquitted the defendant of battery meant that it gave little weight the victims claims that defendant grabbed her arm. *Id.* Therefore, the issue was whether defendant's statements to the victim were sufficient to prove that defendant intended to harass her. *Id.* The court found that the defendant's statements of "[h]ow's it going" and "I want to talk to you" were innocuous in nature, and standing alone, did not suggest intent to harass. *Id.* The

court also noted that the encounter with the victim was "purely coincidental," and there was no evidence of advanced planning on the defendant's part which would demonstrate intent. *Id.*

¶ 36 We find that, in the light most favorable to the state, the evidence here was sufficient for a rational trier of fact to find beyond a reasonable doubt that defendant intended to annoy or harass Michael Wright. Unlike the defendant's words in *Nix*, we do not believe that defendant's statements to Wright were innocuous in nature. It seems clear that defendant's statements such as "when you do bad things, bad things happen" and "you got to answer to nobody but God in one minute" were made with the purpose of inciting an emotional response. Likewise, while defendant lived on the same street as Wright and he was driving on a public road, the fact that defendant stopped directly in front of his house for a period of a few minutes suggests that this was not a "purely coincidental" encounter. These facts taken together suggest that defendant intended to annoy or harass Wright. As the State's evidence was not so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt, and because the trial court was in a "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom," we will not disturb the trial court's determination that defendant intended to harass or annoy Michael Wright.

¶ 37 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 38 Affirmed.