2012 IL App (3d) 110688-U

Order filed December 5, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Whiteside County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0688
v.	)	Circuit No. 09-CF-87
	)	
JUSTIN M. HABBEN,	)	Honorable
	)	Stanley B. Steines,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove the defendant's guilt of aggravated battery beyond a reasonable doubt.

¶ 2 The defendant, Justin M. Habben, was convicted of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) and sentenced to a term of 30 months' probation, conditioned on serving 18 months' periodic imprisonment. On appeal, the defendant argues that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 FACTS

¶ 4 On July 22, 2009, the defendant was charged by amended information with one count of aggravated battery. On September 27, 2010, the case was called for a bench trial.

¶ 5 Michael Henry testified that he was a Sterling police officer. For the last three years, he was assigned as a school resource officer at Sterling High School. On February 26, 2009, Henry observed the defendant and Darel Young confront two other students. Henry called out the defendant's name approximately three times, and the defendant looked up. Henry waved for the defendant and Young to come into the office. The students complied, but both individuals refused to speak about the incident. Eventually, the defendant put the hood up on his sweatshirt and laid his head on the table. After a few minutes with his head down, the defendant became angry. The defendant stood up, said to Henry "you're a bitch," and walked out of the office. Henry followed the defendant out of the office and into the stairwell. The defendant stopped on the stairs, purportedly said "man, get out of my face," and struck Henry in the chest with his left shoulder. Henry placed the defendant in handcuffs, and said "[y]ou know you can't hit a police officer."

¶ 6 On cross-examination, Henry agreed that he told the defendant that due to his lack of cooperation he was going to have "a squad car patrol his house *** to make sure there [were] no parties."

¶ 7 Jordan Cater testified for the defense. Cater stated that he was delivering lunches on February 26, 2009, when he saw the defendant "walking down the stairs and Officer Henry following him." Cater stated that he did not see the defendant push Henry, but he watched as Henry placed the defendant under arrest.

¶ 8 Zachary Gallentine testified that he was a senior at Sterling High School in February 2009. On the date of the incident, he was delivering lunches with Cater when he heard "Officer Henry" say "man up" and "you shouldn't have pushed me." Gallentine did not observe the altercation between the defendant and Henry, but watched as Henry arrested the defendant.

¶ 9 The defendant elected not to testify. Following closing arguments, the trial court stated "[t]he evidence is clear that [the defendant] was familiar with Officer Henry" even though there was no testimony regarding the uniform that Henry wore. The court concluded that the State had proved beyond a reasonable doubt that the defendant was aware that Henry was a police officer either as a school resource officer or as an officer for the Sterling police department. The court found the defendant guilty of aggravated battery and later sentenced the defendant, as aforesaid. The defendant appeals.

¶ 10 ANALYSIS

¶ 11 The defendant argues that the State failed to prove his guilt beyond a reasonable doubt because it did not prove that the defendant knew that the complaining witness was a peace officer.

¶ 12 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 omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). On appeal, it is not the function of the reviewing court to retry a defendant, and the weight to be given to a witness' testimony and the reasonable inferences to be drawn from the evidence are for the trier of fact. *People v. Steidl*, 142 Ill. 2d 204 (1991).

¶ 13 To convict a defendant of aggravated battery, the State must prove beyond a reasonable doubt that the defendant committed battery knowing that the individual harmed was an officer or employee of the State of Illinois, a unit of local government, or school district engaged in the performance of his authorized duties as such officer or employee. 720 ILCS 5/12-4(b)(18) (West 2008).

¶ 14 On appeal, the defendant solely argues that the State failed to prove beyond a reasonable doubt that he knew that Henry was a peace officer. After reviewing the record, we agree with the trial court's determination that the evidence was sufficient to prove the defendant's guilt. Henry testified that he was a Sterling police officer and he was assigned as the school resource officer at Sterling High School. On the day of the incident, Henry called the defendant by name as the defendant confronted two other students. The defendant responded to this call and acknowledged Henry's authority when he followed Henry into the office. Additionally, Cater and Gallentine referred to Henry as "officer" during their testimony. Consequently, after viewing this evidence in the light most favorable to the State, we find that the trial court could reasonably infer that the defendant knew that Henry was a peace officer.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 17 Affirmed.