2014 IL App (4th) 131006-U

NO. 4-13-1006

FILED
March 18, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: NATASHA J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 13JD64
NATASHA J.,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State's failure to serve respondent's father with summons in minor's adjudication proceedings did not constitute plain error so as to warrant remand for new proceedings.

(2) Where respondent's convictions for mob action and aggravated battery were based on separate acts and aggravated battery is not a lesser-included offense of mob action, we find no violation of the one-act, one-crime rule.

¶ 2 In October 2013, the State sufficiently proved respondent, Natasha J., had committed aggravated battery and mob action so as to adjudicate her a ward of the court. The trial court sentenced respondent to 24 months' probation. Respondent appeals, arguing the State violated her statutory right to parental notice and her due-process rights when it failed to serve respondent's father with notice of the petition for adjudication of wardship. She also claims her adjudication for mob action must be vacated under the one-act, one-crime rule because it was

predicated on the same act that formed the basis for her adjudication for aggravated battery. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 13, 2013, the State filed a petition for adjudication of wardship, alleging respondent, who was born April 2, 1998, was a delinquent minor because she committed aggravated battery (counts I and II) and mob action (count III). The petition named respondent's mother as respondent's custodial parent, noting they resided together in Danville. It also named respondent's father by name but listed his address as "unknown" in Chicago. Summonses were issued for respondent and her mother only.

¶ 5 On June 25, 2013, respondent appeared before the trial court with her mother. The court appointed counsel for respondent and admonished her of the charges against her, the possible sentences, and her rights. Throughout the proceedings, no one mentioned service or notice to respondent's father; nor did anyone, in fact, mention him at all.

¶ 6 On October 1, 2013, the trial court conducted the dispositional hearing. There, the testimony revealed that, on March 30, 2013, respondent and several other females attacked the female victim over a previous dispute. Apparently, a few weeks prior to the incident, the victim went to respondent's home to confront her about something she had said to one of the victim's friends. Respondent was not at home, but the victim and respondent's mother got into "a screaming match." On the day of the incident, the victim walked to a convenience store in Danville. On the way, she met a friend of hers. Respondent and the group followed them to the convenience store. The victim went into the restroom to avoid the group. When her friend gave her the "all clear notice," the victim left the store and walked down the alley, where the group attacked her.

¶ 7 After considering the evidence, including respondent's mother's testimony about the earlier incident, the trial court found the State had sufficiently proved respondent had committed one count of aggravated battery (causing bodily harm to the victim) (count I) and mob action (count III). The social investigation report listed respondent's father as residing in Chicago, but there was no further mention of him in terms of the status of a relationship between him and respondent. The court sentenced respondent to 24 months' probation. Before imposing the sentence, the trial court commented on the apparent attitudes of respondent and her mother. The court stated: "So obviously the apple doesn't fall far from the tree. It's unfortunate cause sometimes apples lay on the ground too long and they rot. You ever notice that rotten one. I wonder why that is."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. Failure To Serve Noncustodial Parent

¶ 11 Respondent argues the State violated her statutory right to parental notice and her due-process rights when it failed to serve her father with notice of the petition for adjudication of wardship. She acknowledges she forfeited her challenge by failing to object in the trial court. However, she insists the plain-error rule applies to justify a remand. She distinguishes her circumstances from those cases which have held that forfeiture was fatal and not subject to a plain-error analysis by arguing that her mother was "indirectly involved in the events" supporting the State's charges. She claims: "The presence of another adult, one totally uninvolved in the events surrounding the alleged altercation, surely would have been helpful to the minor."

¶ 12 To satisfy the requirements of due process, the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2012)) requires the parents' names and addresses be set forth in

a delinquency petition. 705 ILCS 405/5-520(2) (West 2012). The State must also serve the minor and his parents with a summons and a copy of the petition (705 ILCS 405/5-525(1)(a) (West 2012)) and must use diligence in notifying the minor's parents of pending proceedings (*In re C.H.*, 277 Ill. App. 3d 32, 35 (1995)). Service of summons on a parent is excused if the parent does not reside with the minor, does not make regular support payments, and has not communicated with the minor on a regular basis. 705 ILCS 405/5-525(1)(a)(ii) (West 2012).

¶ 13 Our supreme court held that personal service or notice to a parent is not a prerequisite to the trial court's subject-matter jurisdiction. *In re M.W.*, 232 Ill. 2d 408, 426 (2009). Rather, the only jurisdictional question raised by a lack of service or notice is whether the court has personal jurisdiction over that party. *M.W.*, 232 Ill. 2d at 429. Respondent does not attempt to raise a personal-jurisdiction issue on behalf of her father, but she does claim that her statutory and due-process rights were violated by the State's failure to notify her father. However, the supreme court also held that a minor forfeits the lack of notice to a noncustodial parent unless the minor brings the issue before the trial court. *M.W.*, 232 Ill. 2d at 430; *In re .L.*, 299 Ill. App. 3d 269, 272 (1998).

¶ 14 The supreme court has said:

> "A continuing, significant relationship between a minor and a noncustodial parent may well increase the likelihood of identifying and locating the parent, but it does not guarantee success. That counsel, the minor, and the custodial parent stand silent on the matter during the proceedings in the circuit court may be mute acknowledgment of the difficulty of the task. With these considerations in mind, we conclude that unless some question is

> raised in the circuit court regarding the failure to identify or locate a noncustodial parent whose identity or address is not known to the State at the outset of the proceedings, the matter is waived and diligence may be assumed. To be sure, inquiry by the circuit judge, on his own motion, into the identity or whereabouts of an absent parent would be appropriate, but it is not required. The minor in each of these cases failed to raise in the circuit court any question regarding the State's diligence in attempting to locate the noncustodial parent, and, therefore, the matter has been waived, and we shall inquire no further." *In re J.P.J.*, 109 Ill. 2d 129, 136-37 (1985).

¶ 15 Here, it is undisputed that respondent's father was not served with summons or otherwise notified of the delinquency petition, nor is there any indication that the State made an attempt during the proceedings to serve the father or inquire as to his whereabouts. Without the notice to the natural father, who was a necessary party to the proceedings, the trial court erred in conducting the delinquency hearing before determining whether service was excused under the Act. See 705 ILCS 405/5-525(1)(a)(ii) (West 2012).

¶ 16 However, neither respondent nor respondent's mother raised the issue of service upon the father before the trial court. By failing to object, respondent has forfeited consideration of this error on appeal unless she can demonstrate plain error. See *M.W.*, 232 Ill. 2d at 430-31 (plain-error doctrine also applies in proceedings under the Act). Relief will be granted under a plain-error analysis (1) when the evidence is closely balanced or (2) where "the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the

judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *M.W.*, 232 Ill. 2d at 431.

¶ 17 Respondent claims the error here meets the second prong of the plain-error rule. She insists the error was "so serious that [it] affected the fairness of the proceedings and challenged the integrity of the judicial process." She claims the trial court had a conflict with her mother as evidenced by the court's comments at sentencing about their attitudes. Respondent claims the presence of another uninvolved adult "surely would have been helpful to the minor."

¶ 18 We conclude the error in this case does not rise to the level of plain error pursuant to a plain-error analysis. See *M.W.*, 232 Ill. 2d at 439 (failure to notify the respondent's father of an amended petition did not affect the fairness or outcome of the proceedings when her mother was present and she was represented by counsel); *cf. In re Marcus W.*, 389 Ill. App. 3d 1113, 1126-27 (2009) (failing to notify any parent or guardian of the proceedings was error and constituted plain error when no parent or guardian participated in the proceedings). In this case, respondent was represented by counsel throughout the proceedings and her custodial parent attended each hearing. Respondent does not argue that, had her father been present, the juvenile proceeding would have been conducted differently, nor does she suggest how the fairness of the proceedings was undermined by his absence. Presumably, respondent and her mother knew respondent's father had not been served. They apparently were not concerned that he was not at the hearings; therefore, they cannot now claim respondent was deprived of a potential benefit due to his absence. Neither respondent nor her mother even mentioned his name in the circuit court.

¶ 19 Because respondent failed to raise the issue she raises in this appeal, namely, whether the State's failure to conduct a diligent search of her father's whereabouts violated her

rights to due process, she cannot raise it here, since we have determined the issue under the particular circumstances of this case does not rise to the level of an error so serious as to jeopardize the fundamental fairness of the proceedings. We therefore conclude respondent is not entitled to a new delinquency proceeding on the basis of plain error.

¶ 20 B. One-Act, One-Crime

¶ 21 Respondent next contends her adjudication of delinquency for mob action must be vacated under the one-act, one-crime rule because it was predicated on the same physical act as the other charged offense of aggravated battery. Respondent admits she failed to raise this issue in the trial court. However, a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis. See *People v. Harvey*, 211 Ill. 2d 368, 389 (2004).

¶ 22 In *People v. King*, 66 Ill. 2d 551, 566 (1977), our supreme court declared a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act. Respondent contends she was charged with identical conduct and received multiple convictions for the same act in violation of the one-act, one-crime rule. See *In re Samantha V.*, 234 Ill. 2d 359 (2009), and *People v. Crespo*, 203 Ill. 2d 335 (2001). In *Samantha V.*, the minor was charged with two counts of aggravated battery based upon allegations that the minor struck the victim multiple times in the head, causing lacerations, and that it occurred on a public way. *Samantha V.*, 234 Ill. 2d at 376-77. The charges were based on a fight involving one victim and multiple assailants. The victim identified the minor as one of the assailants. *Samantha V.*, 234 Ill. 2d at 362-63. The court found the State had not charged the minor in such a way as to differentiate between the multiple blows. Rather, the State charged the

minor with the same conduct under different theories of criminal culpability. *Samantha V.*, 234 Ill. 2d at 377.

¶ 23 Similarly, in *Crespo*, the State had charged the defendant with armed violence and aggravated battery but had not differentiated between the stab wounds suffered by the victim. Rather, the State charged the defendant for the same conduct under different theories of criminal culpability. *Crespo*, 203 Ill. 2d at 342. The supreme court found the State had made no attempt to apportion the stab wounds until the appeal, as the State's theory at trial was "to portray defendant's conduct as a single attack." *Crespo*, 203 Ill. 2d at 343-44. The *Crespo* court held to sustain multiple convictions for closely related separate blows, the State had to apportion those blows at the trial level. *Crespo*, 203 Ill. 2d at 345.

¶ 24 As this court has stated, a one-act, one-crime analysis involves two steps: (1) the reviewing court must determine whether the defendant's conduct consisted of one physical act or separate physical acts, and if separate acts, (2) the court must determine whether any of those offenses are lesser-included offenses. *In re Rodney S.*, 402 Ill. App. 3d 272, 281-82 (2010). An "act" is an " 'overt or outward manifestation which will support a different offense.' " *Rodney S.*, 402 Ill. App. 3d at 282 (quoting *People v. King*, 66 Ill. 2d at 566).

¶ 25 In *People v. Dixon*, 91 Ill. 2d 346, 349 (1982), the defendant and at least one codefendant repeatedly struck another jail inmate with broom or mop handles, causing multiple contusions, abrasions, and a groin injury to the victim. The supreme court denied the defendant's claim that his convictions for aggravated battery, mob action, and disorderly conduct were predicated upon a single act. *Dixon*, 91 Ill. 2d at 355-56. The court concluded the evidence indicated the defendant struck the victim at least four or five times, and "the separate blows, even though closely related, were not one physical act." *Dixon*, 91 Ill. 2d at 356.

¶ 26 We find *Dixon* is applicable and the concerns of *Crespo* are not present. The State charged respondent with aggravated battery, alleging respondent knowingly caused bodily harm to the victim while on a public way (count I). The State also charged respondent with mob action, alleging respondent acted together with two or more people, without authority of law, and used force or violence which disturbed the public peace (count III). The evidence presented at trial demonstrated that respondent, along with three other females, circled the victim, hit her, and then hit and kicked her repeatedly as she lay on the ground. The victim testified she believed each one of the girls struck her. The victim's friend, who witnessed the incident, said respondent and three other girls "swarmed" the victim and then kicked and punched her while she was on the ground. The State proceeded under a theory of accountability.

¶ 27 Applying the applicable legal principles, we conclude the offense of mob action, as charged by the State, involved a separate criminal act from that supporting the offense of aggravated battery. Multiple punches and kicks were administered by respondent and those for whose actions respondent was accountable. As in *Dixon*, the multiple strikes constituted separate acts. Unlike in *Crespo*, the State did not attempt to change its position on appeal to respondent's detriment. Accordingly, multiple convictions were proper as they were based on separate acts. Mob action occurred when respondent acted together with three or more individuals and used force or violence. Aggravated battery occurred when respondent caused injury to the victim.

¶ 28 In interpreting the definition of an "act," our supreme court has held separate blows, although closely related, constituted separate acts that could properly support multiple convictions with concurrent sentences. *Dixon*, 91 Ill. 2d at 355-56. A person can be guilty of two offenses even when a common act is part of both offenses. *People v. Rodriguez*, 169 Ill. 2d

183, 188 (1996). " 'As long as there are multiple acts as defined in *King*, their interrelationship does not preclude multiple convictions ***.' " (Emphasis omitted.) *Rodriguez*, 169 Ill. 2d at 189 (quoting *People v. Myers*, 85 Ill. 2d 281, 288 (1981)). In this case, respondent not only battered the victim but was also a part of the mob that used force or violence which disturbed the peace. Accordingly, multiple convictions were proper as they were based on separate acts.

¶ 29 Having found respondent's conduct involved multiple acts, we must now determine whether aggravated battery is a lesser-included offense of mob action. A comparison of the two charged offenses indicates mob action does not require the defendant to cause bodily harm as aggravated battery does. A person commits mob action when he, acting together with two or more persons and without authority of law, uses force or violence to disturb the public peace. 720 ILCS 5/25-1(a)(1) (West 2012). A person commits battery when he intentionally or knowingly without legal justification and by any means causes bodily harm to an individual. 720 ILCS 5/12-3(a) (West 2012). The charge was upgraded to aggravated battery because the battery occurred on a public way. 720 ILCS 5/12-3.05(c) (West 2012). All of the elements of aggravated battery are not included within the offense of mob action. It is possible to commit mob action without committing aggravated battery. Therefore, aggravated battery is not a lesser-included offense of mob action. Accordingly, we conclude respondent was properly convicted of both aggravated battery and mob action.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against respondent as costs of this appeal.

¶ 32 Affirmed.