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2021 IL App (3d) 210049-U

Order filed December 30, 2021

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-21-0049
	)	Circuit No. 19-CM-817
	)	
GREGORY HAGER,	)	Honorable
	)	Kenneth L. Zelazo,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.  
Justices Hauptman and O'Brien concurred in the judgment.

## ORDER

¶ 1 *Held:* The State proved defendant guilty of assault beyond a reasonable doubt.

¶ 2 Defendant, Gregory Hager, appeals his conviction for assault arguing that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

3 I. BACKGROUND

¶ 4 The State charged defendant with aggravated assault (720 ILCS 5/12-2(b)(4)<sup>1</sup> (West 2018)) stemming from an interaction between defendant and Bolingbrook Police Officer Cody Cammack. The matter proceeded to a bench trial.

¶ 5 Cammack testified that he was dispatched to a parking lot for illegal truck parking enforcement. Cammack observed two semitrucks parked in the parking lot, which is not allowed. Defendant was sitting in one of the trucks. Cammack wrote defendant a citation and approached his truck. Defendant opened his door and Cammack explained why he was issuing the citation. Defendant responded “No, I am good. I am not taking that ticket. Have a nice day.” Defendant sounded frustrated. Cammack then set the citation in a compartment in defendant’s door and began walking back to his squad car. At that time, there was no reason to believe that a confrontation would take place.

¶ 6 As Cammack was walking, he heard “the sound of loose gravel or stones on a hard surface of somebody walking on them” and believed someone was walking behind him. It sounded like a “brisk walk.” Cammack turned around and defendant was within arm’s reach of him. This was concerning to Cammack, and he explained that “[f]or someone to walk up behind a police officer and not give any warning and to come in that close proximity to me, yes, I find that very alarming.” Defendant was standing in an aggressive manner. Defendant’s stature was larger than Cammack’s and defendant was holding the citation out. Cammack did not know if defendant had a weapon but only that defendant had approached him from behind. Defendant told Cammack he was not taking the citation.

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<sup>1</sup>The criminal complaint cited to subsection (4), which is a Class A misdemeanor; however, based upon the allegations contained in the complaint, it should have cited to subsection (4.1) which is a felony. See 720 ILCS 5/12-2(b)(4), (b)(4.1), (d) (West 2018).

¶ 7 Cammack believed defendant was going to commit a battery against him because of “everything that led up to [defendant] coming within arm’s distance of [Cammack], not making any voice contact with [Cammack], coming out of his truck, and the proximity that he was to [Cammack].” Defendant had an angry demeanor at that time. Cammack then pushed defendant due to his fear that defendant would commit a battery against him. Cammack pulled out his taser in case defendant came back toward him. Defendant did not make any other movements toward Cammack and complied with Cammack’s orders. Cammack called for backup and defendant was arrested.

¶ 8 After the parties were finished questioning Cammack, the court asked him questions. It questioned what Cammack actually took into consideration that led him to believe defendant was going to commit a battery against him and Cammack stated

“I knew that the defendant wasn’t happy with receiving the citation. I had my back turned and was walking to my police car when I heard somebody coming up at a brisk pace behind me. It does not happen on a regular basis. It hasn’t happened.

\*\*\* When you turn around and you see somebody who is the size of the defendant within two feet of me in a fully marked squad car and a full uniform coming up behind a police officer going to his car and I turn around and I see somebody standing there within arm’s reach of me, yes, I believe without any warning that they were coming up, I believe that there is nothing but ill intent.”

¶ 9 Defendant testified. His testimony contradicted Cammack’s on various points. Defendant indicated that he did exit his truck and approach Cammack; however, he stated that he said “Excuse me, sir” as he approached and that is what prompted Cammack to turn around.

¶ 10 During closing argument, the court attempted to clarify defense counsel's argument and went back and forth with defense counsel. During this discussion, the court commented on defendant's credibility, stating "Help me understand that because I have got a problem with what your client said he did as being anything, anything close to being reasonable and believable." After defense counsel noted that defendant gave his version of events, the court stated, "I understand that, and it is suspect, to say the least, at this point." In providing its findings, the court noted that it heard Cammack's testimony and that the evidence clearly involved a significant issue as to the credibility of the witnesses. The court did not outright say defendant's version was incredible, but indicated it had a "difficult time understanding" certain circumstances defendant testified to and noted it had to determine defendant's credibility. Following this, the court noted a specific portion of defendant's testimony and stated "[t]hat doesn't fly in this Court's opinion as well as the reaction." The court found defendant guilty. In doing so, it noted that defendant exited his truck, approached Cammack who was walking away, and that when Cammack turned around he saw defendant within arm's reach holding the citation in an aggressive manner making comments. Based on that, the court determined Cammack had a reasonable apprehension of receiving a battery. The court sentenced defendant to six months' court supervision.

¶ 11 Defendant filed a motion and amended motion for new trial arguing the State failed to prove him guilty beyond a reasonable doubt. The court determined that sufficient evidence existed to find defendant guilty beyond a reasonable doubt and reaffirmed its finding that Cammack had an objectively reasonable apprehension of receiving a battery. The court then determined that "because the crime of Aggravated Assault as charged is a felony but was charged as a misdemeanor in this case, the only charge it could have found Defendant guilty of at trial is Assault, a Class C

misdemeanor.” It then modified its finding of guilt and the sentencing order to indicate defendant was guilty of the Class C misdemeanor, assault. Defendant appeals.

¶ 12

## II. ANALYSIS

¶ 13

Defendant argues that the State failed to prove him guilty beyond a reasonable doubt because the evidence presented would not support a finding that a reasonable person in Cammack’s position would perceive that defendant was going to commit a battery against him.

¶ 14

When assessing the sufficiency of the evidence, this court must determine whether the evidence, when viewed in the light most favorable to the State, would permit any rational trier of fact to find that the State proved the elements of the offense beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). “This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.” *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). “[I]t is the function of the trier of fact to determine the credibility of the witnesses, the weight to be given to their testimony and the inferences to be drawn from the evidence.” *People v. Akis*, 63 Ill. 2d 296, 298 (1976).

¶ 15

To sustain an assault conviction, the State needed to prove beyond a reasonable doubt that defendant, without lawful authority, knowingly engaged in conduct which placed Cammack in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a) (West 2018). “Whether the victim was in reasonable apprehension of a battery is a question of fact.” *People v. Enerson*, 202 Ill. App. 3d 748, 749 (1990). “[R]easonable apprehension is an objective standard.” *In re Gino W.*, 354 Ill. App. 3d 775, 779 (2005).

¶ 16

Here, based on the court’s comments during its discussion with defense counsel and in setting forth its findings, the court did not find defendant credible and such credibility

determinations are left to the finder of fact. Additionally, the court determined that Cammack had a reasonable apprehension of receiving a battery. This determination is supported by the evidence. Specifically, evidence was presented that defendant was frustrated by receiving the citation, he approached Cammack, who had just issued the citation, without warning, and was within arm's reach of Cammack when Cammack turned around and saw him. Based upon this evidence, a rational trier of fact could find that a reasonable person in Cammack's position would be in apprehension of receiving a battery. We conclude that the State proved defendant guilty of assault beyond a reasonable doubt.

¶ 17

### III. CONCLUSION

¶ 18

The judgment of the circuit court of Will County is affirmed.

¶ 19

Affirmed.