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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CM-4529
)	
ALEXANDER BAILEY,)	Honorable
)	Brian J. Diamond,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of assault: where defendant verbally threatened the victim while driving slowly past him and periodically stopping, the trial court could infer that the victim, not knowing whether defendant might produce a weapon, was placed in reasonable apprehension of a battery.

¶ 1 Following a bench trial, defendant, Alexander Bailey, was found guilty of assault (720 ILCS 5/12-1 (West 2010)) and sentenced to 14 days in jail and 12 months of conditional discharge. Following the denial of his motion for a new trial, defendant timely appealed. Defendant argues that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 2

I. BACKGROUND

¶ 3 At defendant's bench trial, Village of Bloomingdale police officer Tom Anzelmo testified that, at about 7 p.m. on August 30, 2010, he was off duty and standing on the driveway of his Bartlett home, when he heard someone yelling swear words. When he turned to look, he saw a car traveling east past his house. He stated: "It was like crawling very slowly. Probably less than five miles an hour. Then it stopped. Then it crawled again about five miles an hour and stopped. So, it was like a stop, go, stop, go." According to Anzelmo, defendant, who was driving the car, yelled, "[F]uck you, fuck you, jag-off. I'll kick your ass. Fuck you." Defendant had his hands out the window and was "flipping [Anzelmo] off." Anzelmo testified: "[Defendant would] stop. He'd make the threats. Make the hand gestures. Then he'd go. Then he'd stop again. Do it again. It was like a—like a stop-go motion until, finally, I walked a little bit closer to see what the problem was." According to Anzelmo, he walked "a couple steps toward the street," while remaining on his driveway, to see the driver. He did not want to step off of his driveway "for fear that [defendant] had some kind of weapon with him." He recognized defendant from two "prior contacts" in his capacity as an officer and because defendant was dating his neighbor's daughter. When Anzelmo walked toward the car, defendant "took off." Anzelmo described defendant's demeanor as "agitated, aggressive, confrontational." He felt threatened by defendant's actions. He stated: "I didn't know if he was coming out with his fists or a bat or possibly a gun. I had no idea what his intentions were." He continued: "I was alarmed and disturbed from that. Kind of caught off guard." The entire incident lasted about 30 seconds. After defendant drove off, Anzelmo went inside his home and called the police.

¶ 4 Sharon Borkowicz, Anzelmo's girlfriend, testified that she lived with Anzelmo and was in the garage when she heard somebody yell something. When she turned to look, she recognized defendant driving by in his black Jaguar. She heard him say, "[H]ey, jag-off, fuck you, fuck you. I'm going to kick your ass." While defendant was speaking, she saw him "making fists and flipping [Anzelmo] off and [he] just kept repeating himself." The car was "just creeping by slowly. It stopped periodically for a second or two and then just kept on inching its way forward." Borkowicz remained in the garage, because she did not know if defendant had a gun or a bat. Anzelmo was on the driveway, about 20 feet from defendant. After defendant drove off, she and Anzelmo went inside and called the police.

¶ 5 Village of Bartlett police officer Jason Amore testified that he responded to the call from Anzelmo. Anzelmo reported the incident to Amore and provided him with the license plate number from defendant's vehicle. Anzelmo and Borkowicz were both "shocked," "alarmed," and "disturbed." Amore did not write in his report that defendant's vehicle was "stopping and going" as it drove past. He did not recall Anzelmo giving him that information; if he had, then Amore would have put it in his report. Amore called defendant to question him, but defendant hung up on Amore and refused to discuss the incident.

¶ 6 Following Amore's testimony, the State rested. Defendant moved for a directed finding, and the trial court denied the motion.

¶ 7 For the defense, defendant testified that, on the evening of August 30, 2010, he drove his black Jaguar to pick up his girlfriend from her home, which was located next door to Anzelmo's home. After his girlfriend entered his car, they fastened their seatbelts, and defendant proceeded to drive past Anzelmo's home. As defendant did so, he saw Anzelmo, who was about 30 feet away,

and he “flipped [Anzelmo] off” and said, “[F]uck you, jag-off.” According to defendant, Anzelmo smiled at defendant, stuck his index finger in the air, and walked toward defendant’s car, saying: “[C]ome here.” Defendant proceeded on his way. Defendant testified that his hand was not out of his vehicle in any way. Defendant never threatened to beat up Anzelmo and he never stopped his vehicle as he drove past; he drove at “idle speed.”

¶ 8 Anzelmo testified next for the defense. Anzelmo testified that he had a home surveillance system and that part of the incident was caught on video. The video was played for the court. The video showed the time just after defendant had passed Anzelmo’s house. It did not show the portion of the incident where defendant was yelling at Anzelmo. In the video, Anzelmo can be seen motioning for defendant to come to him. Defendant was about one house away. At that time, Anzelmo did not feel that he was in imminent danger.

¶ 9 Following closing arguments, the court found defendant guilty. The court specifically noted that it found the testimony of the State’s witnesses to be more credible than defendant’s concerning what was said and that defendant threatened to “kick the officer’s ass.” The court credited Anzelmo’s testimony that he was in fear of a battery due to the fact that he did know whether defendant might get out of the car or whether he had a weapon in the car. Further, the court noted that the parties knew each other and that the incident took place at Anzelmo’s home. Thereafter, the court sentenced defendant to 14 days in jail and 12 months of conditional discharge.

¶ 10 Following the denial of his posttrial motion, defendant timely appealed.

¶ 11 **II. ANALYSIS**

¶ 12 The issue is whether defendant was proved guilty beyond a reasonable doubt of assault. “A person commits an assault when, without lawful authority, he or she knowingly engages in conduct

which places another in reasonable apprehension of receiving a battery.” 720 ILCS 5/12-1(a) (West 2010). According to defendant, the State failed to prove beyond a reasonable doubt that Anzelmo’s apprehension of receiving a battery was reasonable.

¶ 13 Before reaching the merits, we note that the parties disagree about the applicable standard of review. Citing *People v. Krueger*, 175 Ill. 2d 60, 64 (1996), and *People v. Mattis*, 367 Ill. App. 3d 432, 435-36 (2006), defendant argues that our review is *de novo*, because the issue is whether the undisputed material facts are sufficient to prove the statutory elements of the charged crime. In contrast, the State submits that we should consider whether, after viewing the evidence in a light most favorable to the prosecution, any rational fact finder could have found defendant guilty beyond a reasonable doubt. See *People v. Collins*, 106 Ill. 2d 237, 261 (1985). We agree with the State.

¶ 14 Although defendant argues that the facts are undisputed, he also argues that the State failed to prove that Anzelmo’s apprehension of receiving a battery was reasonable. As noted by defendant, whether an assault victim was reasonably apprehensive is a question of fact. See *People v. Enerson*, 202 Ill. App. 3d 748, 749 (1990). The victim’s apprehension can be established inferentially based on the conduct of the defendant and the victim. *Enerson*, 202 Ill. App. 3d at 749-50. Thus, defendant’s argument challenges the inference that the trial court drew from the evidence. “Determinations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact.” *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 35. Because defendant challenges the inferences to be drawn from the evidence, we decline defendant’s request to apply a *de novo* standard of review. See *Lattimore*, 2011 IL App (1st) 093238, ¶¶ 35-36.

¶ 15 Turning to the merits, defendant argues that his conduct was insufficient to constitute an assault. According to defendant, his conduct consisted of yelling threats and obscenities and making an obscene gesture from a distance of 20 to 30 feet while simultaneously retreating. Defendant maintains that “no reasonable person would believe they were in danger of a battery from a person who makes verbal threats and gestures, but simultaneously retreats” and that “[w]ords alone are insufficient to establish the offense of assault.” Defendant also argues that it was error for the court to consider the fact that Anzelmo knew defendant, where there was no testimony presented as to the nature of the parties’ relationship.

¶ 16 First, while we agree with defendant’s general assertion that words alone are insufficient to establish the offense of assault (see *People v. Floyd*, 278 Ill. App. 3d 568 (1996)), we note that defendant’s conduct here included more than mere words. Indeed, defendant’s argument does not accurately reflect the totality of the circumstances that occurred. The evidence established that, when defendant yelled threats and obscenities at Anzelmo, defendant’s car was moving very slowly (at idle speed, according to defendant) and stopping periodically. Anzelmo testified that defendant’s demeanor was “agitated, aggressive, confrontational.” He stated that he “didn’t know if [defendant] was coming out with his fist or a bat or possibly a gun.” Given the nature of defendant’s threats, his aggressive demeanor, and the fact that he periodically stopped his car, a rational trier of fact could have found that Anzelmo’s fear that defendant might pull out a bat or a gun was reasonable.

¶ 17 The circumstances here are much different from the circumstances in *Floyd*. There, the defendant, who was on a bicycle, approached the victim from across the street, after staring at the victim for a few minutes, and said “ ‘[y]ou come here, you.’ ” *Floyd*, 278 Ill. App. 3d at 570. The reviewing court reversed the defendant’s assault conviction, stating: “[W]e do not believe that the

words used by defendant, even coupled with the fact that he rode his bicycle toward her, rise to the level of assault or that the degree of her apprehension was reasonable.” *Floyd*, 278 Ill. App. 3d at 571. Unlike in this case, in *Floyd*, there was no evidence that the defendant made any physical or verbal threats to the victim. Where defendant aggressively yelled, “I’ll kick your ass,” within 20 to 30 feet of Anzelmo, while driving slowly and periodically stopping his vehicle, a rational trier of fact could find that Anzelmo’s apprehension that defendant might pull out a weapon was reasonable.

¶ 18 Defendant argues that “the mere possibility that a person might pull a gun does not mean they are guilty of assault.” He claims that if that were the case then every police officer who deals with an angry motorist could make the same claim. However, defendant overlooks the other facts present here, specifically that he yelled “I’ll kick your ass,” along with other obscenities, and that he stopped his car, even momentarily. With respect to his threat to “kick [Anzelmo’s] ass,” defendant maintains that it was “too ambiguous for a reasonable person to attach any significant meaning.” Relying on *People v. Kettler*, 121 Ill. App. 3d 1 (1984), defendant maintains that his threat did not amount to assault, because it was a “mere verbal threat of indefinite action in the future.” We reject this argument. In *Kettler*, the defendant was strapped down to a hospital bed and about to have his stomach pumped, when he threatened officers who were stationed in the defendant’s hospital room. The reviewing court reversed the defendant’s assault conviction, finding that a threat of future violence is insufficient to constitute an assault. *Kettler* is distinguishable because in that case, unlike here, the defendant was incapable of presently carrying out his threat. Defendant also argues that any claim by Anzelmo that he felt threatened was refuted by Anzelmo’s act of “fearlessly approach[ing] Defendant.” We disagree with defendant’s view of the testimony. Anzelmo testified

only that he walked “a couple steps toward the street” to identify the driver but that he remained on his driveway “for fear that [defendant] has some kind of weapon with him.”

¶ 19 Defendant maintains that, if he had pointed a weapon toward Anzelmo, then Anzelmo’s apprehension of harm would have been reasonable. Defendant cites several cases where the court found the facts sufficient to support an assault conviction. See *People v. Chrisopulos*, 82 Ill. App. 3d 581, 585 (1980) (where defendant exchanged profane and angry words with the victim, threatened to use his gun, and moved to the trunk of his car, where he could indeed have a gun, and the victim heard a noise that sounded like a gun being loaded, the trier of fact could have reasonably concluded that the victim was placed in a position of reasonable apprehension); *People v. Harkey*, 69 Ill. App. 3d 94, 96 (1979) (evidence that the defendant was hostile to the victim and pointed a gun at him was sufficient to establish that the victim was in reasonable apprehension of receiving a battery); *People v. Holverson*, 32 Ill. App. 3d 459, 460 (1975) (evidence that the defendant threatened to blow the complainant’s head off and showed the complainant what appeared to be a gun but later proved to be a piece of cable was sufficient to establish that the victim was in reasonable apprehension of receiving a battery); *People v. Brown*, 14 Ill. App. 3d 196, 199 (1973) (where the defendant fired a gun at the officers, they were in reasonable apprehension that the defendant would shoot again). While those are examples of cases where a gun (or an item reasonably thought to be a gun) was involved, no case cited by defendant holds that being threatened with a weapon is necessary to prove the offense of assault.

¶ 20 Last, defendant argues that it was error for the court, in finding defendant guilty, to rely on the fact that defendant and Anzelmo knew each other. “If a victim has prior knowledge of the violent propensities of the aggressor, conduct which by itself would not allow a finding of reasonable

apprehension of danger may be inferred to cause the kind of response in the complainant to bring the matter within the penumbra of the statute.” *Floyd*, 278 Ill. App. 3d at 571. Here, while there was testimony that Anzelmo recognized defendant from two “prior contacts” in his capacity as an officer and because defendant was dating his neighbor’s daughter, there was no testimony concerning the specific nature of that relationship. Indeed, the “prior contacts” could have involved the issuance of traffic tickets. Thus, without more, this testimony did not lend support to the reasonableness of Anzelmo’s apprehension of a battery. Nevertheless, any error in relying on this evidence was harmless, as the remaining evidence was sufficient to establish defendant’s guilt beyond a reasonable doubt. See *People v. Crum*, 183 Ill. App. 3d 473, 485 (1989) (any error made by the trial court was harmless because there was sufficient evidence to convict the defendant beyond a reasonable doubt).

¶ 21

III. CONCLUSION

¶ 22 In light of the foregoing, we affirm the judgment of the circuit court of Du Page County.

¶ 23 Affirmed.