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2012 IL App (3d) 100721-U

Order filed April 23, 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 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0721
)	Circuit No. 10-CM-945
)	
THEODORE SHORTER,)	Honorable
)	Raymond A. Bolden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Wright specially concurred.

ORDER

¶ 1 *Held:* Defendant's conviction for disorderly conduct was proved beyond a reasonable doubt.

¶ 2 Defendant, Theodore Shorter, was convicted of disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2010)) and was sentenced to 12 months of conditional discharge. On appeal, defendant argues that his conviction must be reversed because his use of mere words did not alarm or disturb the victim or breach the peace. We affirm.

FACTS

¶ 3

¶ 4 Defendant was charged by information with disorderly conduct. The information alleged that defendant touched a minor about her shoulder and asked if she was on her period while he was at the Crest Hill Public Library.

¶ 5 At trial, the victim testified that she was 12 years old. On the afternoon of March 10, 2010, the victim was using a computer at the library when the 47-year-old defendant approached her and tapped her on the shoulder. Defendant asked for the victim's name and the school that she attended. The victim told defendant her name, but she gave him the name of a school that she did not attend. The victim then put her earphones on, thinking that defendant would "take the hint that [she] didn't want to talk *** because it was getting uncomfortable." Nevertheless, defendant tapped on the victim's shoulder a second time and asked her to read a story he had written. The victim testified that the story was about a man who was avenging his mother and had killed someone. The victim felt very uncomfortable and wanted defendant to leave. Defendant then asked the victim if anybody had talked to her about her menstrual cycle. Defendant proceeded to tell the victim a story about how his grandmother did not know about her menstrual cycle until her sister explained it. This made the victim feel extremely uncomfortable, to the point that she wanted to go home to her mother. Defendant said nothing else and left the library before the victim did. Afterwards, the victim went home and told her mother about her encounter with defendant.

¶ 6 On cross-examination, the victim stated that she had never talked to defendant before or after this incident. Defendant did not follow her or come to her school. Defendant had only made her feel uncomfortable during their interaction at the library.

¶ 7 At the close of the State's case, defense counsel made a motion for a directed finding. The trial court denied the motion, stating that the case would be different if defendant had not been talking to a minor child, whom he did not know and was not related to, about a subject as personal as her menstrual cycle. The court reasoned that the combination of these factors was "so inappropriate that it certainly would alarm and disturb a minor child" who was at the library, "a place where she expects to be safe and secure."

¶ 8 Defendant did not testify, and the case proceeded to closing arguments. The trial court found defendant guilty of disorderly conduct and sentenced him to 12 months' conditional discharge.

¶ 9 ANALYSIS

¶ 10 Defendant argues that his conviction must be reversed because his use of mere words did not alarm or disturb the victim or breach the peace. Defendant further argues that the appropriate standard of review is *de novo* because the only issue on appeal is legal, *i.e.*, whether an uncontested set of facts meets the State's burden of proof. *In re Ryan B.*, 212 Ill. 2d 226 (2004).

¶ 11 Although the facts in the present case are undisputed, defendant's argument requires that we consider the divergent inferences that could be drawn from these facts. The divergent inferences thus create questions of fact that we review in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Moore*, 365 Ill. App. 3d 53 (2006), see also *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 12 A person commits the crime of disorderly conduct when he knowingly does any act in such an unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.

720 ILCS 5/26-1(a)(1) (West 2010). Disorderly conduct is a highly fact-specific inquiry that embraces a wide variety of conduct that serves to destroy or menace public order and tranquility. *In re B.C.*, 176 Ill. 2d 536 (1997). The reasonableness of a defendant's conduct is determined by an objective standard that considers the facts and circumstances of the situation. *Biddle v. Martin*, 992 F.2d 673 (7th Cir. 1993). It is appropriate to consider the status of the victim when determining whether a defendant's conduct breached the peace. *People v. Allen*, 288 Ill. App. 3d 502 (1997).

¶ 13 Reviewing the facts of the present case, we find that defendant's conduct alarmed and disturbed the victim and breached the peace. The 47-year-old defendant was a stranger to the 12-year old victim. Defendant's actions were bizarre, and his conversation and writing touched on intimate and violent matters that would be upsetting to a young girl. The victim testified that she felt increasingly uncomfortable with the defendant's conduct. She first attempted to ignore defendant in the hopes that he would leave her alone, but defendant continued to speak to her until she ultimately wanted to go home to her mother. In considering the surrounding circumstances and the status of the victim, we find that defendant's conduct was unreasonable. *Allen*, 288 Ill. App. 3d 502. A public library is not a place where an older male, who is a stranger, would engage in a discussion with a minor female about her menstrual cycle.

¶ 14 We affirm the trial court's conviction, but we note that our decision does not imply that every interaction between adults and minors in a public library would rise to the level of disorderly conduct, and our decision is limited to the specific facts and circumstances of the present case.

¶ 15

CONCLUSION

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

¶ 17 Affirmed.

¶ 18 JUSTICE WRIGHT, specially concurring:

¶ 19 I concur but write separately to emphasize the location where the offense occurred is particularly relevant to the analysis of the sufficiency of the evidence in this case. The case law provides that whether a particular act constitutes a breach of the peace depends on the prior relationship of the parties, the status of the victim, the surroundings, and any accompanying circumstances. *People v. Davis*, 291 Ill. App. 3d 552 (3rd Dist. 1997). *People v. Allen*, 288 Ill. App. 3d 502, 506 (4th Dist. 1997) ("it is essential that the setting be considered in deciding whether the act offends the mores of the community"). Here, the 12-year old victim was quietly enjoying the tranquil and secure atmosphere of a public library when approached by an adult stranger. Obviously, defendant interrupted the minor's peaceful enjoyment of the public setting by touching her on the shoulder on two separate occasions, without first requesting permission to speak to the minor.

¶ 20 After tapping the young girl on the shoulder, each time defendant initiated unwanted, unnecessary, and unsolicited conversations with the minor. These interactions were inappropriate because 47-year old defendant was not related to the victim nor did he have a justifiable reason to approach the victim or to initiate a conversation concerning topics which would make a reasonable, 12-year old female child very uncomfortable.

¶ 21 The fact the minor did not react violently thereby creating a disturbance in the library for

all to see does not weaken the state's case in my view. I note the topics involving personal and violent matters initiated by the defendant could have provoked a more exaggerated response from a confident, adult victim. The fact that the victim was upset by the conversation but did not react in an exaggerated fashion, does not mean a breach of the peace did not occur in a library setting.