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FIRST DIVISION
March 3, 2014

No. 1-12-1994
2014 IL App (1st) 121994-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF JACKSON C.,)	Appeal from the
)	Circuit Court of
(People of the State of Illinois,)	Cook County
)	
Petitioner-Appellee,)	
)	
v.)	No. 11 JD 04779
)	
Jackson C., a minor,)	Honorable
)	Patricia Mendoza,
Respondent-Appellant.))	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Delort concurred with the judgment.

ORDER

Held: Where no evidence was presented at trial that either respondent's actions or actions that he was accountable for resulted in great bodily harm to the victim, respondent's conviction for aggravated battery must be reduced to simple battery.

¶ 1 The State filed a two-count petition for adjudication of wardship against respondent Jackson C. based on his involvement in an attack on another minor,

Marcelo C. The circuit court found respondent delinquent on one count of aggravated battery and sentenced respondent to five years' probation. We affirm as modified and remand for a new dispositional hearing.

¶ 2 In the summer of 2011, respondent and his brothers came across the victim while he was walking through the neighborhood with two friends. Respondent and his brothers approached the victim and demanded to know his gang affiliation. The situation escalated and respondent and his brothers attacked the victim. The testimony of the various witnesses differed in some details, but it was generally agreed that respondent and his brothers began throwing small rocks at the victim, which struck him at various places on his head and body. Either respondent or his brother Miguel C. then threw a bottle at the victim, which struck his hand and shattered, inflicting a small laceration. Respondent's brother Justin C. then struck the victim over the head with a board. When the board broke in half, Justin pulled a knife from his pocket and stabbed the victim in the left shoulder or upper arm. Police arrived soon afterward and the brothers fled. The responding officer found the victim on the ground, bleeding profusely from the wound to his shoulder area. The victim was taken to a nearby hospital, where he received twelve stitches for the stab wound. The wound healed but left a scar about four to five inches long.

¶ 3 The State charged respondent and his brothers with two counts of aggravated battery. Count I was based on injuries to the victim caused by the thrown objects, while count II was based on the wound sustained in the knife attack. Given the conflicting testimony about the actions of each brother during the attack, the State

argued for liability under an accountability theory. After hearing the evidence, the circuit court found Justin guilty on both counts, but found both respondent and Miguel guilty on only count I. The circuit court stated:

“I – With respect to Justin C[,] there will be a finding of guilty on both counts. With respect; however, to Miguel and [respondent], I know that the State is arguing for an accountability theory, I will find them guilty on Count I. Since what I do believe – there was no testimony that they were all involved in this knife incident. There was testimony that they were involved in the throwing items that hit the minor. So with [respondent] and Miguel there is a finding of guilty on Count I, with Justin there’s a finding of guilty on both counts.”

At a later dispositional hearing, the circuit court sentenced respondent to five years’ probation.

¶ 4 Respondent raises two issues on appeal, but we need only reach the first one. Noting that the circuit court acquitted respondent of involvement in the knife attack, respondent argues that there was no evidence that the thrown objects caused great bodily harm to the victim. Respondent concedes that the evidence presented at trial on that count is sufficient to support a conviction for simple battery, and he therefore contends that his conviction for aggravated battery should be reduced to simple battery.

¶ 5 When a defendant challenges the sufficiency of the evidence, we “must view the evidence in the light most favorable to the prosecution and determine whether

any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. Marin*, 342 Ill. App. 3d 716, 729 (2003). It is, however, “the function of the trier of fact to determine the credibility of the witnesses, decide the weight to be given their testimony, and draw reasonable inferences from the evidence.” *Id.* at 729-30.

¶ 6 Count I charged respondent with aggravated battery in violation of section 12-4(a) of the Criminal Code of 1961 (720 ILCS 5/12-4(a) (West 2010)), which as relevant here is defined as a battery that “[c]auses great bodily harm or permanent disability or disfigurement.” 720 ILCS 5/12-4(a)(1) (West 2010). The State contends that the knife attack against the victim was sufficient to constitute great bodily harm because it resulted in severe bleeding, required 12 stitches, and left a permanent scar.

¶ 7 The problem with the State’s argument is that it fails to recognize that the circuit court expressly found that respondent had no involvement, and thus is not accountable for, Justin’s stabbing of the victim. The State ignores the fact that the circuit court acquitted respondent of count II, finding that “there was no testimony that they were all involved in this knife incident.” Respondent is therefore not legally accountable for the wound suffered by the victim from the knife attack.

¶ 8 Respondent’s conviction instead rests on his involvement in throwing rocks and a bottle at the victim, so the dispositive question is whether the rocks and bottle resulted in great bodily harm. Yet there is no evidence in the record that the rocks caused any injury to the victim at all. The only evidence of any injury is that

the bottle inflicted a small laceration on the victim's hand when it shattered, but respondent contends that this injury is not sufficient to constitute great bodily harm.

¶ 9 The State seems to concede the point. The State rests its entire argument on the proposition that the wound that the victim suffered from the knife attack constitutes a great bodily injury, and so the State urges us to find that there was sufficient evidence to support a conviction for aggravated battery on count I. Yet the record is clear that the circuit court acquitted respondent of involvement in the knife attack as charged in count II, and so the severity of the victim's injuries caused by the knife attack are irrelevant to the sufficiency of the evidence supporting his conviction for aggravated battery on count I. Despite this, the State relies solely on the injuries from the knife attack to sustain its argument and does not even attempt to argue that the injuries from the rock-and-bottle attack constitute great bodily harm. As points not argued are forfeit, we would be entitled end our analysis here. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 10 But even had the State argued that there was sufficient evidence of great bodily harm due to the rock-and-bottle attack, we considered a similar scenario in *In re J.A.*, 336 Ill. App. 3d 814 (2003). That case dealt with a minor who had been convicted of aggravated battery based on a stabbing that required nothing more than a few stitches (which the victim declined) and pain medication. Noting that precedent has long been clear that “ ‘great bodily harm’ is more serious or grave than lacerations, bruises, or abrasions that characterize ‘bodily harm,’ ” we held that

the State had failed to prove that the stabbing resulted in great bodily harm, and we reduced the respondent's conviction to simple battery. The evidence of great bodily harm in this case is far less than was present in *J.A.* The only injury that the victim here incurred as a result of the rock-and-bottle attack was a small laceration on his hand that apparently did not require any treatment at all. That injury is much less severe than the injury that we found to be insufficient to support a conviction for aggravated battery in *J.A.*

¶ 11 There is no evidence in the record of any other injury to the victim from the rocks and bottle, so we must find that there is insufficient evidence that the rock-and-bottle attack inflicted great bodily harm. We accordingly modify the adjudication of delinquency from aggravated battery to simple battery, and we remand for a new dispositional hearing.

¶ 12 Affirmed as modified; caused remanded with directions.