2014 IL App (2d) 121230-U
No. 2-12-1230
Order filed June 17, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court for the Twenty Third Judicial Circuit. De Kalb County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-598
DUSTIN K. ANDERSON,	)	Honorable Robin Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: State proved beyond a reasonable doubt that the battery committed by defendant occurred on or about a public place of accommodation.

¶ 2 A jury convicted defendant, Dustin Anderson, of aggravated criminal sexual assault based on bodily harm (720 ILCS 5/12-14(a)(2) (2010)) and aggravated battery (720 ILCS 5/12-4(b)(8) (2010)). The court sentenced defendant to serve consecutive sentences of six years in prison for the aggravated criminal sexual assault and two years in prison for the aggravated battery. Defendant appeals his conviction for aggravated battery, challenging the sufficiency of

the evidence that the battery occurred on or about a public place of accommodation. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The victim, Laura Nash, testified that, on September 15, 2010, she went to a party at Justin Doak's house in De Kalb with her sister and one other friend. At the party, Nash got into a fight with her boyfriend, Walter Hale, and, as a result, she left the party around midnight to go to a different friend's house. Nash returned to Doak's house to find her sister. When Nash returned, Hale and Doak were sitting on the porch and they told her that her sister had left. Defendant, whom Nash had never seen, came out of the house and offered Nash a ride home. Nash accepted and started walking with defendant toward Prairie Park. Nash said she knew of the park because she lived in the area and had been there in the past with her mother and nieces.

¶ 5 After stepping off of the sidewalk onto the grass, Nash told defendant that she did not want to walk in the park and asked him to get his car. Defendant punched Nash in the face and broke some of her teeth. She fell on the grass, screamed, and cried. Defendant told Nash to "shut up" and take her pants off. After she continued to struggle, defendant told her he would break her neck and throw her in the river. Defendant then penetrated Nash orally and vaginally. Nash testified that the assault and battery happened in the park. When defendant stopped, Nash put her pants on and began walking home. Defendant followed her home and asked for her phone number. Nash gave him her phone number and got defendant's phone number before going into the house. She told her parents that she was raped, and they took her to the hospital. Nash submitted to a sexual assault examination and was treated in the emergency room.

¶ 6 During cross-examination, Nash was shown two photos of the scene, exhibit Nos. 4I and 4L. Nash marked the exhibits to indicate where defendant punched and knocked her to the

ground before penetrating her. Exhibit No. 4I is taken facing the park and includes the sidewalk on the left, a fountain on the right, and a bush between them. Nash marked an "X" behind the bush and to the left, indicating that the assault and battery took place in that area. The bush was in front of a De Kalb placard marking the Kishwakee Kiwanis Pathway. Nash stated that the spot was "a few feet away" from the placard. Exhibit No. 4L shows an alternative view of the bush and is taken from behind the bush facing a neighboring residence. There, Nash marked an "X" to the right of the bush. (If one imagined a circle around the bush, the second mark would be ninety degrees from the first). Nash could not point to the dividing line between the residential property and the park property. However, Nash stated that she knew she was in the park because she knew "where it happened." She was not in the yard of the residence that abutted the park. Nash said she heard the river that runs through the park, and she was next to the sidewalk next to the bush.

¶ 7 Detective Michael Stewart testified that he interviewed Nash after she got out of the hospital. The police found defendant after Nash described him and gave Stewart his phone number. Stewart and Nash went to the crime scene, which, according to Stewart, was at the far southeast corner of Prairie Park. Nash told him the incident happened next to the small bush depicted in exhibit No. 4I, right by the park district placard. During cross-examination, Stewart was shown exhibit No. 4J, a photo. He marked the spot where Nash told him the assault and battery took place. Similar to the "X" Nash marked on exhibit No. 4I, Stewart's "X" on exhibit No. 4J was in front of the placard, behind the bush, and slightly to the left. Like Nash, Stewart did not know where the property line was between the residential property and the park.

¶ 8 Stewart questioned defendant, who told him that Nash asked him for a ride while he was leaving Doak's party. He and Nash started walking toward his car, but, when they got to the

park, they started kissing on the ground and in the grass. Defendant said Nash performed oral sex on him, but there was no vaginal penetration. The two walked away from the spot in the grass, and defendant punched Nash in the face because she said she was a Latin Queen gang member and threw a gang sign in his face.

¶ 9 Six witnesses, Hale, Adrian Doak, Caelyn Kidd, Erica Garcia, Justin Doak, and Denise Doak, testified for the defense. Two of these witnesses, who are convicted felons, testified that they saw Nash and defendant walk toward the park.

¶ 10 In closing, the State argued that the jury should find defendant guilty of aggravated battery because the defendant knowingly caused bodily harm to Nash, and, as to the aggravating factor, the bodily harm occurred while Nash was on or about a public place of accommodation. (720 ILCS 5/12-4(b)(8) (2010)). The State pointed out that both Nash and Stewart testified that the incident happened in Prairie Park. The defense argued that the State did not prove the location of the battery because there was no testimony presented concerning the boundaries of the park.

¶ 11 The jury found defendant guilty of aggravated criminal sexual assault and aggravated battery. The court sentenced defendant to serve consecutive sentences of six years in prison for the aggravated criminal sexual assault and two years in prison for the aggravated battery. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant challenges only his conviction for aggravated battery. Defendant argues that the State failed to demonstrate beyond a reasonable doubt that the battery occurred on or about a public place of accommodation. Therefore, defendant argues that we should reduce the conviction from aggravated battery to battery. Defendant also contends that, by reducing the

conviction to battery, the conviction for battery must be vacated altogether because it is a lesser offense of aggravated criminal sexual assault based on bodily harm.

¶ 14 To determine whether evidence is sufficient to sustain a conviction, the court must find that any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the prosecution. *People v. Thomas*, 178 Ill. 2d 215, 231 (1997). Rather than retry the case, a reviewing court will defer to the trier of fact on findings of witness credibility, the weight to be afforded to the evidence, and the reasonable inferences to be drawn from the evidence. *People v. Taylor*, 186 Ill. 2d 439, 445 (1999). A criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Tuduj*, 2014 IL App. (1st) 092536, ¶ 72.

¶ 15 To establish the crime of aggravated battery in this case, the State must prove beyond a reasonable doubt that: (1) the defendant committed a battery; and (2) the battery occurred "on or about" a public place of accommodation. 720 ILCS 5/12-4(b)(8) (2010). Defendant concedes that the park is a public place of accommodation, but he contends that the State did not prove that the battery occurred "in" the park.

¶ 16 Initially, we note that one problem with defendant's argument is that the statute requires the battery to have occurred "on or about," rather than "in," a public place of accommodation. *Id.* Acceptable definitions of "on or about" include "reasonably nearby or convenient [] access," and "in the immediate neighborhood or near." *People v. Lowe*, 202 Ill. App. 3d 648, 657 (1990); *People v. Clark*, 70 Ill. App. 3d at 700 (1979). The inclusion of the words "or about" to the statute effectively "negatives the idea that exact precision is intended ***." *Lowe*, 202 Ill. App. 3d at 654 (*citing* 1 C.J.S. *About*, at 329 (1985); see also Black's Law Dictionary 7 (5th ed.

1979)). As a result, "on or about" is not limited to precise boundary lines. *Id.* Additionally, this interpretation is consistent with legislative intent. *Id.*

¶ 17 Other courts have noted that the legislative intent reflects that the legislature believed that a battery occurring on or about a public place of accommodation is a more serious threat to the community than a plain battery. *Id.* at 652-53 (*citing* Ill. Ann. Stat., ch. 38, par. 12-4, Committee Comments 1961, at 465 (Smith-Hurd 1979)). Hence, the "on or about" requirement in the statute is written broadly to protect the health and safety of individuals accessing public places of accommodation. *Lowe*, 202 Ill. App. 3d at 653; *People v. Handley*, 177 Ill. App. 3d 949, 952 (1983); *Cole*, 47 Ill. App. 3d 775, 779-80 (1977). Therefore, the "on or about" language negates the need to establish an exact boundary of where the battery should occur, because it aims to fulfill this police-power purpose. *Clark*, 70 Ill. App. 3d at 700.

¶ 18 In this case, evidence of the location of the battery was proven through testimony of Nash, Stewart, eye witnesses, and photographs of the crime scene. First, Nash testified that she knew she was in Prairie Park when defendant punched her to the ground, because she lived in the immediate area and had been to the park in the past with her mother and nieces. Thus, Nash was familiar with this particular location and maintained that it provided access to and was part of Prairie Park. Further, Nash testified that, after stepping on the grass, she asked defendant to go get his car because she did not want to walk through the park. Perhaps most critically, Nash said she was a few feet from the park placard and heard the river, which runs through the park, when the assault took place.

¶ 19 Detective Stewart testified that Nash showed him a spot at the far southeast corner of Prairie Park, behind a bush, that was directly in front of the park placard. Stewart marked the spot and testified that the location is in the park. Both Nash and Stewart testified that neither of

them knew where the private residence's property ended and the park property began. But, whether or not the battery occurred "in" the physical boundary of the park is not dispositive. The issue is whether or not the battery occurred "on or about" Prairie Park. *Lowe*, 202 Ill. App. 3d at 654. Nash was familiar with the location of the battery as a point of access to the park and testified that she was in the park. As a local detective, Stewart was familiar with the area and testified that the particular location comprised the far southeast corner of Prairie Park.

¶ 20 Additionally, two witnesses for the defense testified that Nash was walking with defendant towards the park when they last saw the two together. In combination with the other evidence, this testimony supports the jury's finding that Nash was on or about Prairie Park at the time of the battery.

¶ 21 Further, Nash marked locations on the grass where she fell to the ground and was sexually assaulted after defendant punched her. Exhibit No. 4I shows where the battery and sexual assault occurred in relation to the park and the private residence. The "X" on No. 4I indicates that the battery occurred behind a bush that was merely a few feet in front of the park district placard. Nash marked another location on exhibit No. 4L with a circled "X" about ninety degrees to the right of the "X" on exhibit No. 4I, which provides a view of the private residence from behind the bush. Each exhibit depicts the scene in relation to Prairie Park and the private residence. Both marks identify locations on the grass that are in front of the placard next to the bush. Defendant argues that the State failed to prove that the spots marked on the grass in exhibit Nos. 4I, 4J, and 4L were a public place of accommodation. To the extent that defendant argues the jury should have discounted Nash's testimony as inconsistent because she placed the "X's" in slightly different locations, we do not find this inconsistency to be meaningful. It is the province of the jury to weigh inconsistencies in testimony. Further, all of her marks were within

feet of one another and within feet of the placard depicted in the exhibits. The offenses at issue involved movement and struggle. There is nothing in the record to support a conclusion that the assault and battery occurred at one precise and static location.

¶ 22 Defendant also argues that the State failed to establish a clear boundary between the park and the private property. But, the State is not required to prove the boundary lines, and, even if the battery took place on private property, Illinois case law provides that the lawn of a neighboring residence may be "on or about" a public place of accommodation. *Lowe*, 202 Ill. App. 3d at 650. Defendant attempts to distinguish *Lowe*, noting that, in *Lowe*, the State established a clear boundary line between the private property and the public way. Defendant's argument is misplaced. The public way in *Lowe* was a roadway, which, by its nature, establishes a clear boundary. *Id.* at 650.

¶ 23 Further, as noted in *Lowe,* the court explained that the intent of the legislature when adding the "or about" language was not to draw a clear line but, rather, to protect the health and safety of individuals accessing public spaces. *Id.* at 654. Similarly, in this case, the Kishwaukee Kiwanis Pathway sign in front of which the battery happened clearly marked a public access point to the park. Any crime committed on or about a park puts, in addition to the victim, any passerby accessing that park in direct danger, and that sort of danger is exactly the kind of danger that the legislature meant to protect against. *Lowe*, 202 Ill. App. 3d at 653; *Handley*, 177 Ill. App. 3d at 952; *Cole*, 47 Ill. App. 3d at 779-80.

¶ 24 When viewed in the light most favorable to the State, the jury had sufficient evidence upon which to find that the battery occurred "on or about" a public place of accommodation. Thus, we affirm defendant's conviction of aggravated battery. Because there was sufficient

evidence to convict for aggravated battery, we need not address whether simple battery is a lesser-included offense of aggravated criminal sexual assault based on bodily harm.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm defendant's aggravated battery conviction.

¶ 27 Affirmed.