2016 IL App (3d) 160002-U

Order filed October 17, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0002 Circuit No. 14-CF-130
PEDRO RAMOS,	)	Honorable John L. Hauptman,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The State failed to prove beyond a reasonable doubt that the battery committed by defendant occurred at a public place of accommodation.

¶ 2 Defendant, Pedro Ramos, appeals his conviction for aggravated battery, arguing that his conviction should be reduced to battery because the State did not prove that the battery took place at a public place of accommodation. We vacate the aggravated battery conviction and remand for the trial court to enter a conviction and sentence on the lesser included offense of battery.

¶ 3 FACTS

¶ 4 Defendant was charged by information with aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), alleging that, on April 1, 2014, defendant committed a battery "without legal justification and while Deivid Godinez was on or about a public place of accommodation, being the Latin American Social Club parking lot *** knowingly caused bodily harm to Deivid Godinez, in that said defendant struck Deivid Godinez with closed fists about the face."

¶ 5 The cause proceeded to a joint bench trial of defendant and his son, Noel Ramos (Noel).[1] In the State's case in chief, only three witnesses testified. Michelle Riesselman testified that she was a volunteer at the Latin American Social Club. Her responsibilities included, "Whatever need[ed to be] done. [She would] buy stock, bartend, sweep, clean." She did not remember whether she was working on April 1, 2014, but stated that she was "the one usually there." She recognized both defendant and Noel by what they drank at the club, but did not know their names.

¶ 6 Godinez testified through a Spanish interpreter. He testified that he exited the Latin American Social Club. While in the parking lot of the Latin American Social Club, he heard Noel yell insults at his girlfriend. Godinez asked, "Why are you yelling at my girlfriend?" Defendant then approached and struck Godinez several times in the face with his fist. Godinez stated that he did not remember how many times he had been struck. He initially tried to push them away but then started hitting back.

¶ 7 Officer Joshua Weber testified that he responded to the Latin American Social Club after the incident and spoke with Riesselman and Godinez. Weber photographed Godinez's injuries.

[1]Noel is not party to this appeal.

After defendant and Noel were arrested, Weber recorded a statement from Noel about the incident. The State rested after Weber's testimony.

¶ 8 Noel and defendant were the only witnesses for the defense, and they testified that on the date in question they were at the Latin American Social Club. Noel had about six beers and a shot. Defendant said he had three beers and a shot. Defendant and Noel acknowledged that defendant punched Godinez in the face, but stated defendant only did so after Godinez pushed him three times.

¶ 9 In closing arguments defense counsel argued that the State had not proven that the "parking lot of the Latin American Social Club [was] a public place of accommodation as opposed to members only." The State asked that the court take judicial notice of the location of the club and that it was a public place of accommodation.

¶ 10 The court found defendant guilty of battery, and then turned to the question of aggravated battery. The court did not expressly rule on the State's initial request for judicial notice, but said:

> "Well, public place takes a number of different, has a number of different, uhm, I'm not going to call them definitions, but a number of different places can constitute a public place. Frankly, anywhere where the public has, has gathered is a public place.
>
> A public place of accommodation, the statute goes one step further, an accommodation is, can very easily be, uhm, well the Latin American Social Club can very easily be defined as a place of accommodation because, because of the fact that they, it is a place where people gather for social activities. And I, as a result I find that, that the Latin American Social Club and its parking lot is a public place of accommodation."

The court then found defendant guilty of aggravated battery. Defendant was sentenced to a term of 18 months' conditional discharge.

¶ 11 Defendant filed a motion to reconsider arguing that the State presented no evidence to prove that the battery occurred at a public place of accommodation. Specifically, defendant argued the Latin American Social Club could be a private club, stating, "What is relevant is, you are looking at a thing called the Latin American Social Club. That easily could be private membership only. It may be, well it may even be racially divided, but the fact is that there was no evidence at all ***." The State again asked the court to take judicial notice that the Latin American Social Club was a place of public accommodation. In denying the motion the court said:

> "I'm not taking judicial notice of anything. I'm considering all of the evidence that was presented at the trial, including the circumstantial evidence that was presented at the trial and all of the circumstances surrounding this particular incident in the parking lot which *** can be considered as a place of public accommodation.
>
> Whether this is privately owned property, uhm, frankly, *** is irrelevant. It is a place where people can, can congregate, and the evidence clearly showed that people were congregating because they were exiting that building at the time of the incident, and, and it in fact occurred in the parking lot."

¶ 12 ANALYSIS

¶ 13 On appeal, defendant challenges his aggravated battery conviction. To establish aggravated battery in this case, the State had to prove: (1) defendant committed a battery; and (2) the battery took place at a public place of accommodation. See 720 ILCS 5/12-3.05(c) (West

2012); see also *People v. Ojeda*, 397 Ill. App. 3d 285, 286 (2009). Defendant admits that he committed a battery, but solely argues that the State failed to establish the aggravating factor, that it occurred at a public place of accommodation. Even when viewing the evidence in the light most favorable to the State, we agree with defendant.

¶ 14 The State carries the burden of proving beyond a reasonable doubt each element of the offense and the defendant's guilt. *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). In reviewing the sufficiency of the evidence, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31.

¶ 15 At the outset, we note that, in arguing that the Latin American Social Club was a public place of accommodation, the State relies on a series of case law finding that the various parking lots outside venues have been considered public places of accommodation. *People v. Lee*, 158 Ill. App. 3d 1032, 1036 (1987); *People v. Pergeson*, 347 Ill. App. 3d 991, 994 (2004); *People v. Ward*, 95 Ill. App. 3d 283, 288 (1981). The key to each of these cases was that it was a parking lot outside of a public place of accommodation. In other words, it was necessary that the venue be considered a public place of accommodation before its parking lot would be so considered. See *Lee*, 158 Ill. App. 3d at 1036. Therefore, we must determine whether the State met its burden of proving beyond a reasonable doubt that the Latin American Social Club itself was a public place of accommodation.

¶ 16 Here, the State provided minimal evidence that the Latin American Social Club was a public place of accommodation. The only evidence the State presented about the Latin American Social Club was: (1) Riesselman's testimony that she was a volunteer at the club, would sometimes bartend there, and knew defendant and Noel by what they drank at the club; and (2)

defendant and Noel's testimony that they had been drinking. There was no testimony that the Latin American Social Club was open to the public, as opposed to a private club. See *People v. Logston*, 196 Ill. App. 3d 96, 100 (1990) ("A 'tavern' is 'an establishment where alcoholic beverages are sold to be drunk on the premises.' [Citation.] Such an establishment does not necessarily give the necessary access to the public to qualify as 'a place of public amusement.' It could be a very private, exclusive club house."). Though name alone is not enough (see *People v. Sims*, 2014 IL App (4th) 130568, ¶108), the Latin American Social Club could be, as defendant argued at the hearing on the motion to reconsider, a private members-only club to celebrate those of similar heritage. Further, there was no testimony that the club was a regular public bar or tavern. No one testified that alcohol was actually bought or sold at the club, and the only "employee" (Riesselman) testified that she was a volunteer, which would be unusual for an ordinary public tavern. Therefore, we find that the State did not meet its burden of proving beyond a reasonable doubt that the Latin American Social Club was a public place of accommodation, and, therefore, we cannot find that the parking lot outside the club would be considered as such.

¶ 17 In coming to this conclusion, we reject the State's argument that "[t]here was no mention that it was a members-only establishment or that there was a private event occurring that evening." It was the State's burden to prove that it was a public place of accommodation; it was not the defendant's burden to show that the establishment was members-only. See *Maggette*, 195 Ill. 2d at 353.

¶ 18 We also note that we agree with the trial court's decision denying the State's request to take judicial notice that the Latin American Social Club was a public place of accommodation. The standing of this establishment was not a fact "capable of immediate and accurate

demonstration by resort to easily accessible sources of indisputable accuracy." *People v. Davis*, 65 Ill. 2d 157, 165 (1976); see also Ill. R. Evid. 201 (eff. Jan. 1, 2011). Moreover, even though a "court may take judicial notice of a fact even if it constitutes an element of the offense" (see *People v. Hill*, 409 Ill. App. 3d 451, 456 (2011)), the question of whether an establishment is a public place of accommodation is not solely a question of fact so as to fall under the purview of judicial notice. Determining whether an establishment like the Latin American Social Club is a public place of accommodation requires the consideration and weighing of several facts. It is not as simple as concluding, for example, that a county jail is public property (see *People v. Messenger*, 2015 IL App (3d) 130581, ¶ 16), a crime took place during daylight savings time (see *People v. Cain*, 14 Ill. App. 3d 1003, 1006 (1973)), a park is north of a certain intersection (see *People v. Clark*, 406 Ill. App. 3d 622, 632-33 (2010)), or a large tractor and trailer would be worth more than $150 (see *People v. Tassone*, 41 Ill. 2d 7, 12 (1968)).

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Whiteside County is vacated and remanded for the court to: (1) enter a conviction on the lesser included offense of battery; and (2) sentence defendant on the battery conviction.

¶ 21 Vacated and remanded with directions.