2017 IL App (1st) 143557-U

SIXTH DIVISION
FEBRUARY 24, 2017

No. 1-14-3557

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 MC2 004225
	)	
MICHAEL WILLIAMS,	)	Honorable
	)	Michael J. Hood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated assault is affirmed, as defendant's statements and actions, coupled with the circumstances surrounding the incident with the victim, were sufficient for a rational trier of fact to determine that victim's apprehension of an imminent battery was reasonable.

¶ 2 Following a bench trial, defendant Michael Williams was convicted of aggravated assault (720 ILCS 5/12-2(b)(4)(i) (West 2012)) and sentenced to 250 days in jail. Defendant appeals his conviction, arguing that the State failed to prove beyond a reasonable doubt that his statements

and actions put the victim in reasonable apprehension of an imminent battery. For the reasons set forth herein, we affirm the judgment of the circuit court of Cook County.

¶ 3 On November 15, 2013, Lincolnwood police officers Meister and Gordon arrested defendant after stopping a vehicle in which he was a passenger and noticing an open container of alcohol at defendant's feet. The officers transported defendant to the Lincolnwood Police Department, where an incident between defendant and Officer Gordon led the officer to cite defendant for aggravated assault. Defendant was charged with one count of transportation or possession of alcoholic liquor in a motor vehicle (625 ILCS 5/11-502(b) (West 2012)), and one count of aggravated assault (720 ILCS 5/12-2 (b)(4)(i) (West 2012). Defendant waived his right to a jury trial, and, on October 7, 2014, the case proceeded to a bench trial.

¶ 4 At trial, Officer Gordon testified that he was assigned to general patrol in the early morning hours of November 15, 2013. At 12:30 a.m., Gordon was called to assist Officer Meister with a traffic stop. When Gordon arrived on the scene, Meister was conducting a traffic investigation and talking to the driver of the stopped vehicle. Gordon approached the passenger side of the vehicle and observed defendant sitting in the front passenger seat. Gordon noticed that defendant was intoxicated; he had a strong odor of alcohol on his breath, his speech was slurred, and his eyes were bloodshot and glassed over.

¶ 5 Defendant asked Officer Gordon why he had been pulled over, and Gordon responded that the driver of the vehicle had been stopped for speeding. Defendant protested, saying that he had not been speeding and that police had no reason to stop him. Gordon testified that it was his impression that defendant was so intoxicated that defendant believed that he had actually been driving the vehicle, when he was in fact a passenger.

¶ 6 After Officer Meister arrested the driver of the vehicle, Gordon and Meister ordered defendant to exit the vehicle. Due to defendant's level of intoxication, he fell back on the car and needed the officers' help to stand up. As the officers directed defendant away from the vehicle, Gordon noticed an open can of malt alcohol on the passenger floorboard. After Gordon determined that there was still alcohol in the can, the officers placed defendant under arrest.

¶ 7 As defendant was being handcuffed, he yelled at the officers, saying that he was going to sue them and that they "didn't know what he could do" to them. The officers told defendant to sit on the curb and assisted him in sitting down. Defendant repeatedly attempted to get up from the curb, and the officers had to hold defendant in place to prevent him from standing up and walking around.

¶ 8 Defendant was transported to the Lincolnwood Police Department, where officers placed him in an open-air holding area while Officer Meister conducted a DUI investigation regarding the driver of the vehicle. Defendant continuously yelled and screamed at the officers, who decided to move him to a holding cell to prevent from further disrupting the DUI investigation. Pursuant to department policy, the officers needed to search defendant before he could be moved.

¶ 9 Officer Gordon instructed defendant to put his hands on the wall so that he could be searched. In response, defendant turned toward Gordon, looked at him with "a fixed gaze," clenched his fists, and told him "you better watch out, man, you don't know what I could do to you." Gordon testified that he and defendant were standing two feet away from each other, and that defendant was "very tensed." Gordon stated that he was in fear of receiving a battery, so he and Officer Meister held defendant against the wall in order to search him. Gordon testified that "[i]f we didn't take the action that we took, I felt that I was going to get battered."

¶ 10 On-cross examination, Gordon conceded that, although defendant had told the officers "you better watch out" at the scene of the traffic stop, defendant had not attempted to strike them. He also clarified that, although defendant had been too intoxicated to get up on his own at the scene of the traffic stop, defendant was able to stand on his own.

¶ 11 Defendant made a motion for a directed finding, arguing that defendant's words were not necessarily threatening, that defendant did not make any movements toward Officer Gordon, and that defendant was too intoxicated to have put Gordon in fear of receiving an imminent battery. The trial court denied the motion.

¶ 12 Defendant testified that, on November 15, 2013, he was in a vehicle that was stopped by police. Police asked defendant for his identification, and he complied. When the officers discovered that defendant was on parole, they removed him from the vehicle and handcuffed him. Without direction from the officers, defendant sat on the curb and "didn't say a word" to them. Before he was placed in a police vehicle, officers kicked defendant and slammed his head against the vehicle. He was then placed in a police vehicle and transported to the police station.

¶ 13 Defendant stated that, when he got to the police station, he asked to be taken to the hospital, as he was coughing up blood. Officers placed defendant in a cell, where defendant said he spent the entire night. The next morning, an ambulance drove him to the hospital, where he was given an MRI and treated for a head injury. Defendant stated that he never threatened the officers or clenched his fists while in the police station.

¶ 14 On cross examination, defendant stated that he was not drunk or high on November 15, 2013, and that there was not an open container of alcohol in the vehicle. Defendant stated that he had been kicked by a police lieutenant who was wearing a white shirt. This lieutenant also slammed defendant's head on the hood of the vehicle. As a result, he was knocked unconscious,

and he did not wake up until he was in the police station. He did not know the lieutenant's name, and he did not report the abuse to the Lincolnwood Police Department.

¶ 15 Defendant introduced dash cam video of the stop from Officer Meister's police cruiser. The trial court commented that the footage appeared to show that defendant was intoxicated. After viewing the video and hearing closing arguments, the trial court found defendant guilty of aggravated assault. The trial court noted that the fact that defendant was intoxicated made it "perfectly rational" for Officer Gordon to fear that a battery was imminent. Defendant was sentenced to 250 days confinement.

¶ 16 On appeal, defendant argues that the State failed to prove him guilty of aggravated assault as his actions and statements were insufficient to place Officer Gordon in reasonable apprehension of an imminent battery.

¶ 17 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16. When a court reviews the sufficiency of evidence, it must ask " 'whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318.) A reviewing court must decide 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. Lloyd*, 2013 IL 113510, ¶ 42. This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that

it creates a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 18 As relevant to this case, a person commits aggravated assault when, in committing an assault, he or she knows the individual assaulted to be a peace officer performing his or her official duties. 720 ILCS 5/12-2(b)(4)(i) (West 2012). 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 2012). Words alone are not usually enough to constitute an assault, and some action or condition must accompany those words for the conduct to be an assault. *People v. Taylor*, 2015 IL App (1st) 131290, ¶ 15. This court has held that a victim's apprehension must be of an immediate or imminent battery, not of future harm. *People v. Kettler*, 121 Ill. App. 3d 1, 11 (1984).

¶ 19 Defendant does not dispute that Officer Gordon was a peace officer who was performing his duties. Nor does he challenge the trial court's credibility determinations. Rather, he argues that his words and actions were insufficient to place Officer Gordon in reasonable apprehension of an imminent battery. The reasonableness of a victim's apprehension is assessed under an objective standard, and a trier of fact must determine if the victim's apprehension is one which would normally be aroused in the mind of a reasonable person. *Taylor*, 2015 IL App (1st) 131290 at ¶ 14.

¶ 20 Defendant argues that the statement "you better watch out, man, you don't know what I could do to you" was too vague to place Officer Gordon in a reasonable apprehension of imminent battery, especially considering that defendant made similar statements at the scene of the traffic stop and he had not attempted to strike the officers. Defendant also argues that the fact that he never raised his clenched fists, as if in preparation to strike Officer Gordon, made it

unreasonable for Gordon to believe that a battery was imminent. These arguments, if viewed in a vacuum, seem to strike at the heart of what constitutes reasonable apprehension of an imminent battery. However, the circumstances surrounding an alleged assault are always relevant in determining the reasonableness of a victim's apprehension. *In re C.L.*, 180 Ill. App. 3d 173 (1989).

¶ 21 Here, the evidence shows that defendant's yelling and screaming caused Officer Gordon to attempt to move him from the open holding area to a holding cell. When Gordon ordered defendant to put his hands on the wall and submit to a search, defendant, who was intoxicated and obviously disgruntled given his disruptive behavior, turned toward Gordon so that the two were standing two feet away from each other. Defendant then fixed his gaze on Gordon, clenched his fists, and said "you better watch out, man, you don't know what I could do to you." Further, Officer Gordon testified that he then enlisted the assistance of Officer Meister in order to search defendant, because of defendant's behavior. Obviously, defendant was not being cooperative with Officer Gordon in addition to making the threat and staring down the officer. We find that the evidence, viewed in light most favorable to the State, was sufficient for a rational trier of fact to determine that Officer Gordon's apprehension of an imminent battery was objectively reasonable.

¶ 22 In making this determination, we consider the proximity of defendant and Officer Gordon to be especially relevant. In *People v. Taylor*, 2015 IL App 131290, this court had to determine whether a victim was placed in apprehension of an imminent battery. The defendant in *Taylor* was escorted out of the courthouse by a deputy sheriff after a disruption in the courtroom. *Id*. at ¶3. After the defendant walked through a set of "automatic airlock doors," she turned back toward the deputy, who was on the other side of the doors, and threatened to harm her. *Id*. The

deputy testified that the defendant's threats made her feel that she was "going to receive a battery." *Id*. Following a bench trial, the trial court found the defendant guilty of aggravated assault. *Id*. at ¶ 1.

¶ 23 The defendant appealed, arguing that the deputy was not in apprehension of an imminent battery. *Id.* at ¶ 10. This court reversed the conviction, noting that it was not reasonable for the deputy to fear that a battery was imminent, because the defendant was 7 to 10 feet away from the deputy when she threatened her, and the defendant made no physical gestures to the deputy. *Id*. at ¶17. "In light of the spatial differences, and the other circumstances reflected in the record" this court concluded that the deputy's apprehension of an imminent battery was not objectively reasonable. *Id*. at ¶ 18.

¶ 24 Here, instead of being seven to ten feet away and separated by an airlock door, defendant and Officer Gordon were separated by a mere two feet with nothing between them. Following our reasoning in *Taylor*, we find that the close proximity of defendant and Officer Gordon makes Gordon's apprehension of an imminent battery reasonable. While a different trier of fact may have come to another conclusion, when this evidence is viewed in the light most favorable to the State, a rational trier of fact could have and did find defendant guilty beyond a reasonable doubt. Accordingly, we will not disturb the trial court's finding of guilt.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.