2018 IL App (2d) 160215-U
Nos. 2-16-0215 & 2-16-0216 cons.
Order filed December 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MYESHA T. SAWYER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 14-CF-256 Honorable Daniel B. Shanes, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MYESHA T. SAWYER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 15-CF-1335 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of aggravated battery, specifically that defendant committed insulting or provoking contact: in

> light of the contentious context in which defendant kicked the victim, as well as the victim's aggressive reaction, the jury could infer that defendant's contact was insulting or provoking.

¶ 2 Defendant, Myesha T. Sawyer, was convicted of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2014)) and sentenced to probation. On September 10, 2015, the State petitioned to revoke her probation, alleging that she had committed the offense of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(G) (West 2014)). On October 23, 2015, an amended petition added two counts of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2014)). Defendant was charged with these same offenses in a new criminal case. A jury found defendant guilty of aggravated battery and aggravated DUI. The court then revoked her probation and imposed concurrent 30-month probation terms for the original conviction as well as the new convictions, which included 18 months of periodic imprisonment. Defendant appeals, contending that she was not proved guilty beyond a reasonable doubt of aggravated battery. We affirm.

¶ 3 Evidence at trial established that a 911 caller reported a Suzuki driving erratically. Gurnee police officer Kelly Hansen responded to the call. She found the Suzuki with defendant in the driver's seat, her speech slurred, her eyes red and glassy, and her breath smelling of alcohol.

¶ 4 Officer Thomas Yencich arrived to assist. He administered field sobriety tests, which, in his opinion, defendant failed. Accordingly, defendant was arrested and placed in Hansen's squad car to be taken to the station for booking. Yencich did an inventory search of defendant's vehicle and found two open bottles of liquor. While in the squad car, defendant was arguing with a passenger in her vehicle.

¶ 5 In the booking room, defendant remained uncooperative and, at one point, Yencich's supervisor called and advised him to handcuff her to a bench. She was released so that she could be offered a Breathalyzer test, but she refused it. When she was taken back to the booking room, she refused to be handcuffed and told Hansen, "I'm going to pop you."

¶ 6 Defendant asked for a phone call, but Yencich told her she could not make one then. She picked up a phone on the desk and began dialing anyway. After she accidentally dialed 911, Yencich dialed for her. However, defendant hung up and began arguing with Yencich about her bond. She picked up the phone again and Yencich said that he had to dial for her. Yencich testified that defendant told Hansen, "Bitch, sit your ass down, ho" or "[s]omething along those lines." Defendant dropped the phone and "aggressively" walked around the desk toward Hansen. Yencich grabbed defendant's arm from behind, pushed her face against the wall, and told her to put her arm behind her back. Instead, she brought her right leg up behind her and kicked Yencich in the left thigh. Yencich trapped her leg between his legs so she could not kick him again. After telling her again to put her arm behind her back, he slammed her face against a chair and took her to the ground. When asked if the kick hurt, Yencich testified, "Yes. It didn't feel good." Later, Yencich reported to his supervisor that no injuries occurred.

¶ 7 The parties stipulated that defendant's driver's license was suspended on the day in question. The jury found defendant guilty of aggravated DUI and aggravated battery based on insulting or provoking contact. It found her not guilty of a second count of aggravated battery based on bodily harm. The court then found that defendant had violated her probation. It subsequently sentenced her to 30 months of intensive probation in each case. Defendant timely appealed from both judgments and this court consolidated the appeals.

¶ 8 We note that defendant challenges only her conviction of aggravated battery. She does not challenge her aggravated DUI conviction and she concedes that the court could properly revoke her probation based on that conviction alone. Our analysis is therefore confined to the issue of whether the evidence was sufficient to convict defendant of aggravated battery based on insulting or provoking contact.

¶ 9 Defendant contends that the State failed to prove that the kick was "insulting or provoking." 720 ILCS 5/12-3(a)(2) (West 2014). She argues that Yencich did not testify that he felt insulted or provoked, he claimed not to be injured, and his immediate response to the kick did not show that he was particularly provoked. We disagree.

¶ 10 Generally, in reviewing the sufficiency of the evidence to support a criminal conviction, we ask 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 crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18. However, where a challenge to the sufficiency of the evidence does not involve witness credibility, but questions only whether the uncontested facts were sufficient to prove the elements of the offense, our review is *de novo*. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004).

¶ 11 Here, defendant was convicted of battery by making contact of an insulting or provoking nature. The battery was aggravated because defendant knew that the victim was a police officer, an element that defendant does not contest. " '[A] particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs.' " *People v. Peck*, 260 Ill. App. 3d 812, 814 (1994) (quoting *People v. d'Avis*, 250 Ill. App. 3d 649, 651 (1993)). As defendant acknowledges, the victim need not testify explicitly that he or she was insulted or provoked. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49 (citing *People v. Wrencher*, 2011 IL

App (4th) 080619, ¶ 55 ("[t]he victim does not have to testify he or she was provoked; the trier of fact can make that inference from the victim's reaction at the time"), and *People v. DeRosario*, 397 Ill. App. 3d 332, 333-34 (2009) (contact can be insulting or provoking depending on the context, including the parties' relationship)).

¶ 12 These cases establish, as defendant concedes, that the victim need not testify that he or she felt insulted or provoked by the defendant's conduct. They further establish that the contact need not be especially severe—pushing, poking, or spitting on the victim may suffice—and that the context is critical to deciding whether it was insulting or provoking.

¶ 13 *Peck*, in particular, is very similar to this case, in that a combative defendant struck an officer. There, police were called to investigate a disturbance at the defendant's home. The belligerent defendant spat on an officer's face, glasses, and cheek. *Peck*, 260 Ill. App. 3d at 813. The court held that the defendant's conduct "easily" reached the threshold for insulting or provoking contact. *Id.* at 815.

¶ 14 *Wrencher* also involved a defendant spitting on a police officer. There, the court held that the officer's reaction, pushing the defendant's head onto the trunk of the squad car, proved the insulting or provoking nature of the defendant's act. *Wrencher*, 2011 IL App (4th) 080619, ¶ 55.

¶ 15 In *Fultz*, the defendant put his hands on the chest of an officer who was attempting to arrest the defendant's mother. The defendant used sufficient force to stop momentarily the movement of the officer, who pushed the defendant out of the way and proceeded with the arrest. Although we reversed the defendant's conviction on other grounds, we held that the evidence was sufficient to prove him guilty of aggravated battery based on insulting or provoking contact. *Fultz*, 2012 IL App (2d) 101101, ¶¶ 49-51.

¶ 16 In *People v. Dunker*, 217 Ill. App. 3d 410 (1991), the defendant poked his son's teacher in the chest. *Id.* at 412. Noting evidence that the victim left the scene in tears and felt shocked by the defendant's behavior, the court affirmed the conviction. *Id.* at 415.

¶ 17 In *DeRosario*, the defendant sat next to a coworker so that his right knee touched her back through a mesh chair and his left knee touched her hip. The victim testified that she and the defendant had formerly been friends but that the relationship soured. The defendant had been stalking the victim and often sat staring at her for long periods, forcing her to alter her work schedule. *DeRosario*, 397 Ill. App. 3d at 333. We held that, in the context of the parties' failed relationship, the trial court had reasonably concluded that the defendant's conduct amounted to insulting or provoking contact. *Id.* at 334-35.

¶ 18 Here, the overall context was that the relationship between defendant and the officers was contentious. Defendant was belligerent and had been handcuffed to a bench because of her outbursts. After she refused a breath test, she threatened and insulted Yencich's partner, ignored his orders not to use the phone, and moved "aggressively" toward Hansen, causing Yencich to grab defendant's arm and push her against a wall. Defendant responded by kicking him. Yencich in turn held defendant's leg to prevent further kicks and ultimately took her to the ground.

¶ 19 Defendant's kick was at least as severe as the contact in the cases cited above. In the context of the contentious relationship between Yencich and defendant, and in light of Yencich's reaction, the jury reasonably concluded that defendant was guilty of making insulting or provoking contact with Yencich.

¶ 20 The judgments of the circuit court of Lake County are affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 21 Affirmed.