2018 IL App (2d) 170415-U
No. 2-17-0415
Order filed October 29, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. HENRY JACKSON-STEFANIAK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 16-CF-1595 Honorable James C. Hallock, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant not not guilty beyond a reasonable doubt of two counts of aggravated battery against a peace officer: the trial court properly found that, given defendant's combative course of conduct, his acts of grabbing an officer's vest and kicking another officer were provoking, despite his mental and physical disabilities.

¶ 2 Defendant, Henry Jackson-Stefaniak, appeals from a judgment of the circuit court of Kane County finding him not not guilty of two counts of aggravated battery against a peace officer involving contact of an insulting or provoking nature (720 ILCS 5/12-3(b), 12-3.05(d)(4)

(West 2016)). Because the evidence was sufficient to prove beyond a reasonable doubt that defendant's contact was provoking, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on one count of attempting to disarm a peace officer (720 ILCS 5/31-1a(b) (West 2016)) and two counts of aggravated battery against a peace officer involving contact of an insulting or provoking nature (720 ILCS 5/12-3(b), 12-3.05(d)(4) (West 2016)).

¶ 5 Following a fitness evaluation, the trial court found defendant unfit to stand trial. See 725 ILCS 5/104-16 (West 2016). Accordingly, defendant was remanded to the Department of Human Services (DHS) for an assessment. See 725 ILCS 5/104-17 (West 2016). DHS determined that defendant, who was 29 years old, had an IQ of 42, had a moderate intellectual disability, and suffered partial paralysis from cerebral palsy as a youngster. According to the assessment, defendant was unaware of the current date, his birthday, or his age. He was impervious to repeated instructions, confused about the purpose of the proceeding against him, and unable to rationally communicate the facts surrounding his arrest. Because of defendant's cognitive limitations and his inability to understand the legal process and the context of his arrest, the assessment team considered defendant unfit to stand trial.

¶ 6 The trial court thereafter conducted a discharge hearing. See 725 ILCS 5/104-23(a) (West 2016). The following facts were established at the hearing. At about 7:45 p.m. on September 11, 2016, Deputy Ryan Monaghan and Deputy Frantzen of the Kane County sheriff's department were dispatched to a group home in Aurora. Both deputies were in uniform, including a utility belt that held, among other items, a firearm, and each wore an external bulletproof vest.

¶ 7 According to Deputy Monaghan, a staff person reported that defendant, who resided there, had threatened her and that she did not feel safe. She indicated that she was willing to sign a complaint for disorderly conduct.

¶ 8 Deputy Monaghan knew that defendant had intellectual and physical disabilities. Deputy Monaghan was also advised that defendant had a "mental status" but had been taking his medication. Deputy Monaghan believed that defendant understood his questions and responded clearly. Defendant did not seem confused.

¶ 9 When the deputies first encountered defendant, he was sitting in a chair in the dining area. The deputies informed defendant that he was being arrested for disorderly conduct. As defendant sat in the chair, the deputies handcuffed him behind his back. Because of defendant's size and their concern about injuring him, they used three sets of handcuffs linked together.

¶ 10 After defendant was handcuffed, he ignored their commands to stand up. Instead, defendant allowed his body to go limp. As the deputies stood defendant up, he began kicking chairs and tables.

¶ 11 As the deputies moved defendant toward a door, he continued kicking chairs and tables. Defendant ignored their repeated commands to comply. When they attempted to move him through the door, defendant threw his body weight against Deputy Monaghan, pinning him against a wall.

¶ 12 Once defendant pinned Deputy Monaghan against the wall, defendant grabbed Deputy Monaghan's firearm and tried to pull it out of the holster. When defendant refused to comply with his command to stop, Deputy Monaghan forcibly removed defendant's hand from the gun.

¶ 13 After his hand was removed from the gun, defendant grabbed the Velcro fastener on Deputy Frantzen's bulletproof vest. He pulled on it hard enough to loosen the Velcro and nearly

remove the vest. Defendant ignored the deputies' commands to let go of the vest. Deputy Frantzen finally was able to force defendant to release his grip on her vest.

¶ 14 As they escorted defendant down a stairwell, defendant indicated that he was going to spit on the deputies. They then pulled defendant's shirt over his head to prevent him from spitting on them.

¶ 15 The deputies were able to get defendant into the rear seat of a squad car. As they did, defendant began kicking at the deputies. Defendant ignored their commands to stop and kicked Deputy Monaghan in the leg. According to Deputy Monaghan, the kick did not injure him.

¶ 16 The trial court found Deputy Monaghan to be very credible. The court found that defendant had attempted to disarm Deputy Monaghan. The court further found that defendant, in pulling on Deputy Frantzen's vest, did so in an insulting or provoking manner. The court also found that, when defendant kicked Deputy Monaghan, he did so in an insulting or provoking manner. Thus, the court found defendant not not guilty of all three offenses. Defendant, in turn, filed a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant challenges the finding of not not guilty only as to the two counts of aggravated battery, contending that, because his contact with the deputies was minimal and he had "unique personality characteristics," the contact was neither insulting nor provoking.

¶ 19 A discharge hearing is not a criminal proceeding. *People v. Mayo*, 2017 IL App (2d) 150390, ¶ 3. It takes place only after a defendant has been found unfit to stand trial, and it determines only whether to enter a judgment of acquittal, not to make a determination of guilt. *Mayo*, 2017 IL App (2d) 150390, ¶ 3. The question of guilt is deferred until the defendant is fit. *Mayo*, 2017 IL App (2d) 150390, ¶ 3. If the evidence presented at a discharge hearing is

sufficient to establish that the defendant committed the offense, no conviction results; instead the defendant is found not not guilty. *Mayo*, 2017 IL App (2d) 150390, ¶ 3. The defendant is then subject to further treatment, ranging from one to five years depending on the offense. *Mayo*, 2017 IL App (2d) 150390, ¶ 3. If, at the expiration of the treatment period, the defendant remains unfit, the court must determine whether the defendant is subject to involuntary commitment. *Mayo*, 2017 IL App (2d) 150390, ¶ 3. If so, the commitment period cannot exceed the maximum sentence to which the defendant would have been subjected had he been convicted. 725 ILCS 5/104-25(g) (West 2016).

¶ 20 Although a finding of not not guilty does not result in a conviction, the standard of proof is the same. *Mayo*, 2017 IL App (2d) 150390, ¶ 29. Thus, the applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Mayo*, 2017 IL App (2d) 150390, ¶ 29.

¶ 21 Here, defendant contends that the evidence was insufficient to prove that his grabbing of Deputy Frantzen's vest and his kicking of Deputy Monaghan's leg were insulting or provoking. We disagree.

¶ 22 Defendant was charged with battery based on knowingly making contact of an insulting or provoking nature. See 720 ILCS 5/12-3(a)(2) (West 2016). A particular contact may be deemed insulting or provoking depending upon the factual context in which it occurs. *People v. DeRosario*, 397 Ill. App. 3d 332, 333 (2009) (citing *People v. Peck*, 260 Ill. App. 3d 812, 814 (1994)). No injury is required. *DeRosario*, 397 Ill. App. 3d at 334. Lastly, the trier of fact may infer from the victim's contemporaneous reaction to the contact that it was insulting or provoking. *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55.

¶ 23 In this case, the evidence established that, once he was handcuffed, defendant engaged in a course of recalcitrant conduct. He ignored the commands to stand up, and he passively resisted by allowing his body to go limp. He also kicked chairs and tables as the deputies tried to remove him from the dining room. As they moved him through a doorway, he used his weight to pin Deputy Monaghan against a wall. After doing so, he grabbed Deputy Monaghan's sidearm and tried to pull it from the holster. When he refused to heed the commands to let go, the deputies physically forced him to do so. Once he did, he grabbed the Velcro on Deputy Frantzen's vest with such force that he nearly removed the vest. Again, when defendant refused to let go, the deputies forced him to release his grip on the vest. Then, because defendant indicated that he was going to spit on the deputies, they pulled his shirt over his head. When they placed him in the squad car, defendant continued to kick, striking Deputy Monaghan in the leg.

¶ 24 The acts of grabbing Deputy Frantzen's vest and kicking Deputy Monaghan were part of a course of conduct that clearly was provoking under the circumstances. Grabbing a police officer's gun is likely to provoke the officer to take action. Indeed, the deputies promptly reacted by preventing defendant from doing so. Defendant also threatened to spit on the deputies, another provoking act. *Peck*, 260 Ill. App. 3d at 814-15. Again, they reacted by pulling defendant's shirt over his head. Because defendant grabbed Deputy Frantzen's vest and kicked Deputy Monaghan in the leg as part of a course of conduct that clearly was provoking, the finding that those two acts were also provoking was supported by the evidence.

¶ 25 Defendant maintains that, because of his severe mental and physical disabilities, his contact with the deputies should not be considered insulting or provoking. We disagree.

¶ 26 There is no indication in the record that the deputies knew of the precise nature or extent of defendant's disabilities. The mere fact that he lived in a group home would not indicate the

specific nature or extent of his disabilities. Although Deputy Monaghan testified that he knew that defendant had intellectual and physical disabilities, he did not testify that he knew the nature or extent of those disabilities. Further, he testified that when he spoke with defendant he believed that defendant understood his questions and answered clearly. Thus, the record does not support defendant's assertion that his disabilities showed that the contacts with the deputies were not insulting or provoking.

¶ 27 Defendant further asserts that the deputies knew of his disabilities, because they used three sets of handcuffs "in an attempt to accommodate [his] disabilities." That assertion, however, is belied by the record. Deputy Monaghan testified unequivocally that they used three handcuffs because of defendant's "larger size" and to avoid causing him any discomfort or injury.

¶ 28 Even if the deputies were fully aware of defendant's mental and physical disabilities, that did not preclude the trial court from finding that the contacts were provoking. As discussed, defendant, irrespective of his disabilities, clearly expressed his displeasure with being arrested and removed from the home. As part of that displeasure, defendant engaged in conduct that resulted in both verbal and physical responses by the deputies. The evidence of defendant's contact of Deputy Frantzen's vest and Deputy Monaghan's leg, when viewed in the light most favorable to the prosecution, overwhelmingly established that such contacts were, under the circumstances, provoking. Thus, the trial court did not err in finding defendant not not guilty of both counts of aggravated battery.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Kane County. 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).

¶ 31 Affirmed.