2014 IL App (2d) 120757-U
No. 2-12-0757
Order filed April 4, 2014



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 11-CF-2863 |
| MYLES BURTON, | ) | Honorable George J. Bakalis, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of a hate crime: defendant's words themselves suggested a biased motivation, and, despite defendant's inference from an isolated comment by the trial judge, the record showed that the judge found that defendant acted with that motivation.

¶ 2 After a bench trial, defendant, Myles Burton, was convicted of committing a hate crime (720 ILCS 5/12-7.1(b-5)(3) (West 2010)) based on criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)). The trial court denied his posttrial motion and sentenced him to two years' probation. On appeal, defendant concedes that he was proved guilty beyond a reasonable doubt

of criminal damage to property, but he contends that the State failed to prove the criminal intent necessary to elevate the offense to a hate crime. We affirm.

¶ 3 The hate crime statute reads:

> "A person commits hate crime when, by reason of the actual or perceived race *** of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he commits *** criminal damage to property ***." 720 ILCS 5/12-7.1(a) (West 2010).

¶ 4 The charge against defendant alleged that, on November 11, 2011, he committed a hate crime in that he knowingly damaged property belonging to Elmhurst College (EC), a windowsill ledge into which he carved "KKK," "Negro," and "We hate Blak [*sic*] people." We turn to the trial evidence.

¶ 5 Sam Ficker testified for the State as follows. On November 11, 2011, at about 9 p.m. he, defendant, and Mike McCurdy, all students at EC, went to a party, where they drank heavily. After about two hours, they walked to the area of Stanger Hall, a dormitory, so that defendant and McCurdy could get cigarettes. Defendant and McCurdy walked around the corner and returned a minute later. Defendant picked up a rock and used it to write a "racial slur" on a concrete windowsill. The three men then walked away. They had not planned or discussed "writing on a wall" or doing what defendant had done.

¶ 6 Ficker testified that, on December 7 or 8, 2011, he spoke with Elmhurst police detectives. Initially, he told them that he could not recall the events of November 11, 2011. After viewing security footage, he told the officers that he remembered "bits and pieces." Ficker testified that he had never met or seen Shavonn Nowlin, the resident life coordinator at Stanger Hall, and did not know where she lived.

¶ 7 Shavonn Nowlin testified for the State as follows. Nowlin, an African-American, was "residence life coordinator" at Stanger Hall. Her apartment was on the right side of the first floor of Stanger Hall. On the afternoon of December 7, 2011, she was walking back to her apartment. She glanced over to one of the apartment's windowsills and saw that something had been etched onto the concrete ledge that went around it. Nowlin approached and read the words, "We hate black people, KKK, Negro." Nowlin was "taken aback" and became "afraid." Nowlin identified a photograph as depicting the writing on the ledge. Nowlin testified that, shortly after discovering the writing, she contacted campus security. A detective told her that the inscription had been made about a month earlier. Nowlin had never met or seen defendant and did not know his friends. He did not live in her building.

¶ 8 Joseph Kovacic, who worked for EC campus security, testified that, in December 2011, he learned of the damage and spoke to Nowlin at Stanger Hall. Nowlin was "shook up and near tears." Kovacic looked at the writing on the ledge and took two photographs. Jeff Kedrowski, executive director of security for EC, testified that, on December 7, 2011, he went to Stanger Hall, where he observed the writing on the windowsill ledge and spoke to Nowlin. Nowlin was "very upset." On December 7, 2011, the security cameras outside Stanger Hall were functioning.

¶ 9 Caroline Krause, EC's assistant director of campus security, testified as follows. Stanger Hall was separated from the sidewalk by several feet of gravel. On December 7, 2011, Krause viewed security videotapes of the area. She observed that, on November 11, 2011, at 11:16 p.m., three white males approached Stanger Hall and started drinking and walking around. One, whom Krause recognized as defendant, picked up a rock from the gravel, approached the ledge, and began to write on it with the rock. A copy of the footage was played at trial. Krause testified that the writing was "very faint in the stone." Because the ledge was set off from the

sidewalk, students would not likely look at it as they walked by. In the daylight hours, the writing would be "faint," but "you would see it if you were looking for it." Nobody reported the writing to campus security until December 7, 2011.

¶ 10 Kenneth Lafin, an Elmhurst police officer, testified that, on December 8, 2011, he interviewed defendant. The interview was recorded and played at trial. Defendant explained that he had been angry at his basketball coach, who had unjustly called him racist. Defendant actually believed, "Everybody love [*sic*] everybody." He wrote the words on the ledge in order to show his coach "what a real racist does" and because he had been under the influence of alcohol.

¶ 11 Lafin testified that defendant explained that neither he, Ficker, nor McCurdy lived in Stanger Hall; defendant had not lived on campus in two years. He did not know Nowlin, although he had "probably seen her around." As of November 11, 2011, he believed that the resident assistant was "Tony," a white man who had held the job when defendant lived on campus. Defendant and his friends chose to walk to the area of Stanger Hall so that he and McCurdy could get cigarettes. Ficker and McCurdy did not know that defendant was going to deface the ledge. Defendant conceded that the words he wrote were demeaning and that an African-American would probably get "really mad" or "really scared" upon reading them, but he had not intended to make anyone feel that way.

¶ 12 The trial court admitted the photographs of defendant's inscriptions on the concrete windowsill ledge. They read, "KKK," "NEGRO," and "WE HATE BLAK [*sic*] PEOPLE." The letters are almost as high as the face of the ledge.

¶ 13 In closing argument, the State stressed defendant's concession that Nowlin, or any African-American, would be scared by reading what he had written. Further, it could not have

been a coincidence that defendant had chosen the apartment of an African-American whom he had probably seen on campus. In response, defendant contended in part that the State had not proved the intent needed for a hate crime. He noted that he and Nowlin did not know each other and had never met. Further, defendant had acted not out of racial hatred but out of anger at his coach, plus alcohol consumption. He had wanted to show his coach "what a real racist does," but he had not wanted to offend or scare anyone. In rebuttal, the State argued that the language was "self-explanatory." Further, defendant had known that his words were offensive and that they would scare a black person. Finally, the words did not have to be directed toward a specific victim as long as they were motivated by bias.

¶ 14 In finding defendant guilty of a hate crime, the trial judge explained that the State had to prove that defendant had acted by reason of the race or perceived race of another individual or group of individuals. He continued:

> "The *** evidence *** clearly establishes that he wrote these words; that he wrote them *he says* because he was angered at his coach who thought he was a racist and that he was doing this to show what a racist would do. But the fact of the matter—even though *that might have been his motivation for doing it*, the fact of the matter is that he wrote the words in question; that he knew the words that he wrote would cause someone to be afraid, to *** feel demeaned." (Emphases added.)

The judge continued that, under *In re B.C.*, 197 Ill. 2d 536 (1997), the issue was whether defendant's bias toward a particular group motivated his criminal act, regardless of the alleged victim's status. Indeed, the State needed to prove not that the act was directed against a specific person but only that "*it was bias-motivated. I think the evidence is sufficient to establish that*." (Emphasis added.) In denying defendant's posttrial motion, the judge noted that the predicate

offense had to be "motivated by racial bias or prejudice," and he concluded that the State had proved a hate crime. Defendant was sentenced to two years' probation and appealed.

¶ 15 On appeal, defendant contends that he was not proved guilty of a hate crime, because the State did not prove beyond a reasonable doubt that he acted "by reason of the actual or perceived race *** of another individual or group of individuals." 720 ILCS 5/12-7.1(a) (West 2010). Defendant asserts, first, that the evidence itself, even construed most favorably to the State, left a reasonable doubt of his motivation. He asserts, second, that the trial court specifically found that his motivation had been nonracial, so that, whatever the court *could* have found, it actually *did* find facts inconsistent with guilt. We address each argument in turn.

¶ 16 In considering a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The fact finder is responsible for determining the witnesses' credibility, weighing their testimony, and deciding what reasonable inferences to draw from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 17 Here, the State had to prove that defendant acted by reason of the actual or perceived race of another individual or group of individuals. The State did not need to prove that there was a specific victim. *B.C.*, 176 Ill. 2d at 550. What was required was only "a biased motivation for the conduct." *Id.* Thus, whether or not defendant knew of Nowlin, he was proved guilty if the State proved that he acted at least in part out of bias toward African-Americans.

¶ 18 We hold that the evidence satisfied the State's burden. Defendant could hardly have chosen words more suggestive of a biased motivation than "WE HATE BLAK [*sic*] PEOPLE,"

"KKK," or "Negro." Thus, the words themselves allowed the finding that racial bias was one reason for defendant's act.

¶ 19 That leads us to defendant's second attack on the sufficiency of the evidence: that, whatever the apparent import of his words, the trial court rejected the inference that he acted out of racial bias. Defendant notes that he told Lafin that he acted not out of animosity toward African-Americans, but out of anger toward his basketball coach for accusing him of being a racist; defendant wanted to show the coach "what a real racist does." Defendant contends that the trial court accepted his explanation. Defendant emphasizes the statement that he

> "wrote [the words] *he says* because he was angered at his coach who thought he was a racist and that he was doing this to show what a racist would do. But the fact of the matter—even though *that might have been his motivation for doing it*; the fact of the matter is that he wrote the words in question; that he knew the words that he wrote would cause someone to be afraid, to *** feel demeaned." (Emphases added.)

¶ 20 According to defendant, this excerpt shows that the trial judge accepted defendant's explanation of his motivation. The first portion of the excerpt does not quite support defendant; the judge did not find that he acted in order to show his coach "what a racist would do," but only that defendant had *said* that he had acted for that reason. Further, importantly, defendant's assertion does not square with the rest of the record. The judge, who was familiar with *B.C.*, stated that the evidence was sufficient "to prove that [the offense] was bias-motivated." Moreover, in denying defendant's posttrial motion, the judge stated that the State had to prove that defendant's act had been motivated by racial bias and that the State had done so. Thus, defendant has not persuaded us that the judge did not find the needed intent for a hate crime.

¶ 21 The judgment of the circuit court of Du Page County is affirmed.

¶ 22 Affirmed.