

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: B.M., A MINOR,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: B.M., A MINOR,

Appellant

No. 1191 WDA 2013

Appeal from the Order June 4, 2013
In the Court of Common Pleas of Allegheny County
Juvenile Division at No(s): JID No. 67922-A, Docket No. 1907-01

BEFORE: BOWES, JENKINS, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.:

FILED APRIL 15, 2014

B.M. appeals from the dispositional order entered after he was adjudicated delinquent for commission of an act constituting aggravated assault. We affirm.

The facts giving rise to the delinquency charge in question involved an incident at South Brook Middle School, in Pittsburgh, Pennsylvania. B.M. was a student and was in the school gymnasium during recess. Several other individuals began to call him obscene names and antagonize him. B.M. became angry and began to scream. Accordingly, Bonnie Mauro, a school security guard, attempted to escort B.M. out of the gym. B.M. resisted and Ms. Mauro attempted to physically remove him. B.M. began to

* Former Justice specially assigned to the Superior Court.

scream at Ms. Mauro, and, upon reaching the exit door, turned completely around and forcefully shoved Ms. Mauro with both of his hands. As a result of the push, Ms. Mauro went backward, and fell onto her back, bruising her tailbone. Video surveillance captured the incident and the juvenile court had an opportunity to view the recording. The juvenile court adjudicated B.M. delinquent of aggravated assault under 18 Pa.C.S. § 2702(a)(5).¹ Thereafter, the court entered a dispositional order.

B.M. filed a motion for reconsideration *nunc pro tunc*, seeking to contest the sufficiency and the weight of the evidence. The juvenile court granted the request to entertain the motion and denied it. This appeal ensued. The court directed B.M. to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. B.M. complied, and

¹ 18 Pa.C.S. § 2702(a)(5) reads,

(a) Offense defined.--A person is guilty of aggravated assault if he:

. . . .

(5) attempts to cause or intentionally or knowingly causes bodily injury to a teaching staff member, school board member or other employee, including a student employee, of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school;

the juvenile court authored its Pa.R.A.P. 1925(a) decision. The matter is now ready for our review. B.M. presents two issues for this Court's consideration.

- I. Was the adjudication of delinquency for aggravated assault not support by sufficient evidence where the Commonwealth failed to prove beyond a reasonable doubt that B.M. intended to inflict or knowingly inflicted bodily injury to a member of a protected class?
- II. Was the verdict of adjudicated delinquent for aggravated assault against the weight of the evidence where B.M. reacted to the complainant's physical restraints and attempted to avoid the bullying of his classmates?

Juvenile's brief at 5.

B.M.'s initial issue is a sufficiency of the evidence claim. In analyzing such a challenge, we view all the evidence admitted during the juvenile proceeding, "together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth[.]" ***In re C.S.***, 63 A.3d 351, 354 (Pa.Super. 2013). Where the juvenile court could find each element of the delinquent act charged is supported by evidence and inferences sufficient in law beyond a reasonable doubt, the sufficiency claim must fail. "This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the [delinquent act] beyond a reasonable doubt." ***Id.***

It is the role of the juvenile court "to pass upon the credibility of witnesses and the weight to be accorded the evidence produced." ***Id.*** "The factfinder is free to believe all, part or none of the evidence." ***Id.*** When the

evidence is “so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances” a sufficiency claim can succeed. ***Id.***

B.M. does not dispute that Ms. Mauro is accorded special protection pursuant to 18 Pa.C.S. § 2702(a)(5), as a school employee, nor does he deny that he pushed her. Rather, he argues that the evidence was insufficient to establish that he “attempted to cause or intentionally or knowingly caused bodily injury to Ms. Mauro.” Juvenile’s brief at 12. We disagree.

B.M.’s position relies largely on inferences viewed in a light most favorable to him. Viewing the evidence in a light most favorable to the Commonwealth, B.M. forcefully pushed a school employee, causing her to fall. The juvenile court could infer from these circumstances both an intent to cause bodily injury as well as B.M. knowingly causing such an injury. Indeed, B.M. acknowledges that intent “may be shown by circumstances which reasonably suggest that a defendant intended to cause bodily injury.” Appellant’s brief at 13 (citing ***Commonwealth v. Polston***, 616 A.2d 669 (Pa.Super. 1992)). Forcefully pushing a school employee to the extent that she is knocked down is sufficient to show intent to cause bodily injury. For these reasons, B.M.’s sufficiency claim is without merit.

B.M.’s second issue is that his adjudication of delinquency was against the weight of the evidence. “Appellate review of a weight claim *is a review of the exercise of discretion, not of the underlying question of whether the*

verdict is against the weight of the evidence.” **Commonwealth v. Clay**, 64 A.3d 1049, 1055 (Pa. 2013) (italics in original). Accordingly, “[o]ne of the least assailable reasons for granting or denying a new [adjudicatory hearing] is the lower court's conviction that the verdict was or was not against the weight of the evidence[.]” **Id.**

A juvenile judge should not grant a new hearing due to “a mere conflict in the testimony[.]” **Id.** Instead, the juvenile court must examine whether “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.” **Id.** Only where the juvenile court’s finding “is so contrary to the evidence as to shock one's sense of justice” should a juvenile be afforded a new delinquency hearing. **Id.**

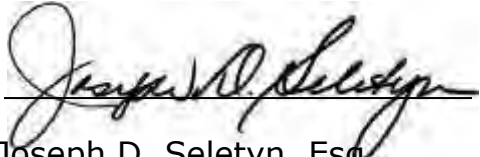
Here, the juvenile court found that its own decision did not shock its conscience. We find no abuse of discretion in this conclusion. The court viewed a video tape of the incident and heard the testimony of both the victim and B.M. It was free to reject B.M.’s testimony. This case does not involve certain facts that tend to exculpate B.M. that are clearly of greater weight than facts demonstrating his commission of aggravated assault. For these reasons, we affirm.

Order affirmed.

Justice Fitzgerald Concurrs in the Result.

J-S24011-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014