

NOT DESIGNATED FOR PUBLICATION
STATE OF LOUISIANA IN * **NO. 2014-CA-0627**
THE INTEREST OF A.J.
*
COURT OF APPEAL
*
FOURTH CIRCUIT
*
STATE OF LOUISIANA
* * * * *

APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2013-364-02-DQ-C, SECTION "C"
Honorable Candice Bates Anderson, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Paul A. Bonin, Judge Rosemary Ledet)

BONIN, J., CONCURS WITH REASONS.

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AFFIRMED

JANUARY 21, 2015

This is a juvenile delinquency matter. The juvenile, A.J.,¹ appeals his adjudication of delinquency arising out of battery of a school teacher, a violation of La. R.S. 14:34.3. For the reasons that follow, we affirm the adjudication.

FACTS/PROCEDURAL HISTORY

At the time of the incident complained of herein, the juvenile was a student at John Diebert Community School. The teacher/victim, Dana Dequair, was the school disciplinarian. Ms. Dequair testified that the juvenile had been placed in detention because of an incident on a school bus with another student. After she viewed a video of the incident, the other student was allowed to return to his regular classroom. She surmised that A.J. became “disrespectful” upon the realization that the school was going to hold him accountable for the incident. Ms. Dequair said that as she was allowing other students to leave detention, A.J. came towards the exit. She blocked his exit, asked A.J. to sit down, and advised that she would talk to him later. A.J. then turned over two desks and threw a stool. A.J.

¹ Because the appellant is a juvenile, we reference him by the use of his initials.

tried to leave again and attempted to push Ms. Dequair to get out of his way.

When he was unable to move Ms. Dequair, he then picked up another stool and threw it towards Ms. Dequair. Ms. Dequair blocked the stool; and it hit her right hand. Ms. Dequair took A.J. to another room, identified as Room 300, to “de-escalate.” A.J. remained somewhat irate. At that time, the police were called, and A.J. was ultimately arrested.

Ms. Dequair verified that the school has A.J. in a behavior intervention plan to help calm him when he becomes “excitable.” She acknowledged that in her capacity as the school disciplinarian, she often interacted with A.J. With reference to the present incident, Ms. Dequair said that A.J. had actually calmed down by the time the officer arrived. She added that she did not believe that A.J. intended to hit her; however, he was angry and the stool was thrown in her direction. She also noted that the room was relatively small.

At the conclusion of Ms. Dequair’s testimony, the trial court adjudicated A.J. to be delinquent. After a waiver of delays, the trial court entered a disposition of six months in secure detention, suspended the imposition of that disposition, and placed A.J. on active probation for six months.

The present appeal was then filed.

LAW/DISCUSSION

The juvenile contends that the trial court erred because the State failed to prove beyond a reasonable doubt that he committed a battery upon a school teacher acting in the performance of her employment duties. In support, he argues that the

State failed to show he had the requisite intent to commit a battery, and that Ms. Dequair consented to any touching by A.J. based on her status as the school disciplinarian and knowledge of A.J.'s behavioral issues.

Battery is the intentional use of force or violence upon the person of another. *See* La. R.S. 14:33. The elements required to prove the offense of battery of a school teacher as set forth in La. R.S. 14:34.3 include: 1) an intentional use of force or violence by the offender; 2) that the use of force or violence was without the victim's consent; 3) that the offender has reasonable grounds to believe the victim is a school teacher; and 4) the school teacher was in the performance of her employment duties as a teacher.

The juvenile does not contest that the State introduced sufficient evidence at trial to prove elements three and four; that is, he concedes that he knew Ms. Dequair was a teacher and that she was in the performance of her duties at the time of the incident. Therefore, this Court need only address whether the State sufficiently proved that the juvenile's use of force was intentional and that his use of force was without Ms. Dequair's consent. Upon review, we answer both questions in the affirmative.

Intentional Use of Force

The Louisiana Supreme Court explained in *State v. Schenck*² that:

Simple battery, as defined in La. Rev. Stat. Ann. §14:35 (West 1986) is "a battery committed without the consent of the victim." An essential element of battery is "physical contact whether injurious or merely offensive",

² 513 So.2d 1159, 1165 (La. 1987).

and it may be committed by touching another through clothing. *State v. Dauzat*, 392 So.2d 393, 396 (La. 1980). *See also, State v. Mitchell*, 466 So.2d 514, 517 (La. App. 3d Cir. 1985), *writ denied*, 467 So.2d 1121 (La. 1985).

The facts are uncontroverted that A.J. shoved Ms. Dequair and that he threw a stool at her that struck her right hand. Accordingly, notwithstanding the degree of injury that resulted from the shove or the throw, both acts meet the legal definition of “use of force or violence” as defined herein.

The juvenile also claims if indeed it is determined that he used force, his use of force was not intentional. La. R.S. 14:10(2) provides: “General criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.” To support that he lacked intent, the juvenile explains that he has been recognized as a child with behavioral disabilities. Consequently, he avers that he did not have the capacity to form the requisite intent to advert to the prescribed criminal consequences as reasonably certain to result from his actions.

We find no merit to this argument. Our review of the trial record shows that the juvenile did not present any evidence to document that his behavioral disabilities precluded him from knowing the criminal consequences of shoving and throwing a stool at another person. Therefore, we conclude that the juvenile’s actions meet the first element for simple battery of a school teacher - an intentional use of force or violence by the offender. We next determine whether his use of force was without the victim’s consent.

Victim’s Consent

The juvenile argues that as school disciplinarian, Ms. Dequair was aware of his behavioral issues, in particular, that he might lash out and throw things if he became agitated. Accordingly, he maintains that Ms. Dequair “consented” to his shoving and tossing of the stool when she elected to block the exit of an agitated child. We also reject this argument. Although Ms. Dequair, and teachers in general, know that one of the hazards of the profession includes the possibility of battery by students, the acknowledgement of this hazard does not equate to giving consent to the receipt of a battery. In fact, this Court reaches the opposite conclusion. La. R.S. 14:34.3 was specially created to impose punishment for batteries upon school teachers in acknowledgment of the risks that teachers, such as Ms. Dequair, face in their profession.

In the present matter, the evidence shows that Ms. Dequair did not agree to be shoved or to have a stool thrown at her. Accordingly, the State proved that the juvenile’s use of force was without the victim’s consent.

CONCLUSION

In evaluating the sufficiency of evidence to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The *Jackson* standard specifically requires that the appellate court determine that the evidence was sufficient to convince a rational trier of fact “that all of the elements of the crime had been proved beyond a reasonable doubt.” *See State ex rel. C.N.*, 11-0074, p. 5 (La. App. 4 Cir. 6/29/11), 69 So.3d 711, 714.

The record before us demonstrates that the State presented sufficient evidence to meet the elements for the offense of battery upon a school teacher. Both the shoving of the teacher and the throwing of the stool which hit the teacher's hand constitute a battery; moreover, the juvenile's use of force was intentional and without the victim's consent.

Accordingly, based on the foregoing reasons, we affirm the judgment of the juvenile court and the disposition of sentence.

AFFIRMED