

2020 IL App (2d) 190486-U
No. 2-19-0486
Order filed November 24, 2020

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 18-CF-435
)	
AYDENE MILITELLO,)	Honorable
)	Philip G. Montgomery,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BRIDGES delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was proved guilty beyond a reasonable doubt of a hate crime based on disorderly conduct where she stopped her and blocked the victim's car as it was parked in a fire lane, walked up to the car in a threatening manner, and yelled profanity and racially-charged invectives.
- ¶ 2 Following a bench trial, defendant, Aydene Militello, was convicted of a hate crime (720 ILCS 5/12-7.1 (West 2018)) predicated on disorderly conduct (*id.* § 26-1), and she was sentenced to 18 months of conditional discharge. On appeal, she claims that she was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 Evidence presented at trial revealed that, at around noon on July 22, 2018, defendant, a 79-year old white woman, was driving her car when a car driven by Chavonis Black, a black college-aged student, came close to defendant's car. Defendant swerved and hit a curb. Both women continued driving, and at a subsequent traffic light, defendant exited her car, approached Black's car, and began yelling and pointing at Black. Black, who had her windows rolled up, air conditioner on, and music playing, could not hear what defendant was saying. When the light turned green, defendant returned to her car and began driving "[e]rratically." Black explained that, while defendant followed her at various distances, defendant flashed her car's lights, honked her car's horn, and yelled at Black, which all made Black feel scared, intimidated, nervous, and anxious. Defendant denied at trial that she did any of this.

¶ 4 Black, who was driving to Walmart to drop off food for her boyfriend who worked there, called her boyfriend and asked him to meet her outside Walmart. Black pulled into the fire lane at the front of Walmart, her boyfriend got in Black's car, and defendant pulled in front of Black's car at an angle, preventing Black from "pull[ing] off or really back[ing] up." Defendant approached Black's car, Black lowered her window slightly, and defendant stood "really, really close to [Black's] window and was yelling." Black "felt like [defendant was going to] come in the car or something or get in the window." A discussion ensued about whether Black's car had hit defendant's car, and after defendant accused Black of breaking the "fucking rim" of defendant's car, defendant threatened to sue Black, telling Black that "[Black] and [her] fucking people don't take responsibility for shit you all do in this country, and you guys don't pay for anything." A crowd of Walmart employees and shoppers gathered around Black's car, and for the next one to two minutes, defendant continued to yell things at Black that were directed at Black's race,

including that “this is why we don’t allow you and your people in this country.” Defendant denied at trial that she made any of these types of statements.

¶ 5 Because all of this made Black feel “really, really, really unsafe,” she had her boyfriend call the police. According to an officer who spoke to defendant after the incident, defendant admitted yelling “your fucking people don’t take responsibility for your actions.” When the officer explained that Black may have felt threatened by defendant, defendant denied that that was true, explaining to the officer that “she didn’t believe it was wrong because she only sees them as a color.”

¶ 6 The court, which determined that Black and the officer were more credible than defendant, found defendant guilty. Defendant timely appealed.

¶ 7 On appeal, defendant argues that she was not proved guilty beyond a reasonable doubt. When a reviewing court considers the sufficiency of the evidence to support a conviction, the relevant question is “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.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the role of the reviewing court to reweigh the evidence or reassess the witnesses’ credibility. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). A defendant’s conviction will be set aside only if the evidence against her is so improbable or unsatisfactory that it creates a reasonable doubt of her guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 8 Defendant argues she was not proved guilty beyond a reasonable doubt of either disorderly conduct or a hate crime. We address each contention in turn.

¶ 9 First, we consider whether defendant was proved guilty beyond a reasonable doubt of disorderly conduct. To prove a defendant guilty of disorderly conduct, the State must establish that

defendant knowingly engaged in conduct that (1) was unreasonable, (2) alarmed or disturbed another, and (3) provoked a breach of the peace. 720 ILCS 5/26-1(a)(1) (West 2018); *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 29. Defendant argues that lacking in this case is evidence that she provoked a breach of the peace. A defendant provokes a breach of the peace if her conduct (a) threatens another or (b) affects the surrounding crowd. *McLennon*, 2011 IL App (2d) 091299, ¶ 31. At a minimum, defendant's conduct threatened Black. The evidence, when viewed in a light most favorable to the State, revealed that, after defendant's car was damaged, defendant followed Black to Walmart. Defendant blocked Black's car in the fire lane, approached Black's car, and stood so close to Black's car that Black thought defendant was going to get in it. Defendant yelled profanities and racially-charged intimidations at Black while Walmart employees and shoppers converged around Black's car. This established beyond a reasonable doubt that defendant provoked a breach of the peace. See *id.* ¶ 35 (the defendant's act of yelling at victim and preventing her from performing her duties constituted a threat for purposes of disorderly conduct, as such conduct unreasonably invaded victim's right not to be harassed). Defendant argues that it did not, because she never threatened an act of physical violence. That is not required. *People v. Allen*, 288 Ill. App. 3d 502, 508 (1997) (threats constituting mental harassment enough to establish breach-of-the-peace element of disorderly conduct); see also *In re Vladimir P.*, 283 Ill. App. 3d 1068, 1076 (1996) ("It has been widely documented that victims of bias-motivated crimes suffer harmful psychological effects.").

¶ 10 Second, we address whether the evidence established that defendant committed disorderly conduct because of Black's race. To prove a defendant guilty of a hate crime, the State must establish that the defendant committed one of the predicate offenses enumerated in the statute, such as disorderly conduct, "by reason of the actual or perceived race *** of another individual

*** *regardless of the existence of any other motivating factor or factors.*” (Emphasis added.) 720 ILCS 5/12-7.1(a) (West 2018). Here, the evidence, viewed in a light most favorable to the State, established that defendant was motivated to harass Black at least partly because she is black. Specifically, after threatening to sue Black because she denied damaging defendant’s car, defendant denounced the irresponsibility of Black’s “people”—evidently, black people—and implied that Black would not pay for the damage to defendant’s car because black people never pay for anything. Defendant admitted to the officer that she yelled to Black that black people are irresponsible. Defendant also professed to the officer that she did not believe that her verbal assault was wrong, because she “only sees them as a color.”

¶ 11 Defendant argues that missing in this case is evidence that she was motivated to commit disorderly conduct solely because of Black’s race. Although Black’s race may not have been the initial reason for why defendant confronted Black at Walmart, it became readily apparent that defendant continued to berate and intimidate Black precisely because she is black. As long as race is one of the motivating factors for defendant’s actions, a defendant’s conviction for a hate crime may stand. *Id.*; see also *Vladimir P.*, 283 Ill. App. 3d at 1077 (trial court found crime motivated by victim’s religion even though some evidence suggested that the defendant committed the crime because he was bored).

¶ 12 For these reasons, the judgment of the circuit court of De Kalb County is affirmed.

¶ 13 Affirmed.