

STATE OF MICHIGAN
COURT OF APPEALS

In re AMALIA L. KENDALL, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

AMALIA L. KENDALL,

Respondent-Appellant.

UNPUBLISHED

January 28, 2021

No. 353231

Wayne Circuit Court

Family Division

LC No. 19-001316-DL

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right her bench trial adjudication finding her responsible of aggravated assault, MCL 750.81a. The trial court placed respondent on level one in-home probation. We affirm.

On May 17, 2019, respondent was a student at Noble Academy for Detroit Public Schools Community District (“Noble”). On that date, she and Kevin Hall, the assistant principle at Noble became in engaged in what was initially a verbal dispute. During the dispute, respondent struck Hall numerous times and pushed him, which consequently caused him to sustain an injury to his Achilles tendon that necessitated surgery.

A petition was subsequently filed against respondent alleging one count of aggravated assault, MCL 750.81a. At the conclusion of a bench trial, the trial court adjudicated respondent responsible for the aggravated assault charge. This appeal followed.

On appeal, respondent argues that the evidence was insufficient to adjudicate her responsible for aggravated assault because respondent neither tried to physically injure nor intended to injure Hall. We disagree.

“Claims of insufficient evidence are reviewed de novo.” *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012). “In determining whether the prosecutor has presented

sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). “[C]onflicts in the evidence are resolved in favor of the prosecution.” *People v Carll*, 322 Mich App 690, 696; 915 NW2d 387 (2018). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The ultimate question on appeal is whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

Aggravated assault occurs when a person (1) assaults an individual, (2) without a weapon, (3) inflicting a serious or aggravated injury, and (4) without the intent to commit murder or to inflict great bodily harm less than murder. MCL 750.81a(1). As to the first element, “[a]n assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). “[W]hen one attempts an intentional, unconsented, and harmful or offensive touching of a person, one has committed an assault.” *Id.*

As to the third element of aggravated assault,¹ a serious or aggravated injury is “a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.” *People v Norris*, 236 Mich App 411, 415 n. 3; 600 NW2d 658 (1999). See also M Crim JI 17.6(4). Finally, with respect to the fourth element, “[t]o determine the intent element required to commit a criminal offense, this Court must evaluate the mental state set forth in the relevant statute.” *People v Zitka*, 325 Mich App 38, 48; 922 NW2d 696 (2018). If a crime requires a particular intent beyond the act done, it is generally considered a specific intent crime whereas if a criminal statute requires only the intent to perform the physical act itself, it is a general intent crime. *Id.* (citations omitted). Because the language of the aggravated assault statute does not include any plain language about what intent a person must have in order to be guilty of the crime, the fourth element of aggravated assault requires only the general intent to commit the assault. And, an accused, by completing a criminal act, is presumed to intend the natural consequences of his actions. *People v Kowalski*, 489 Mich 488, 500; 803 NW2d 200 (2011) (quotations marks and citation omitted).

Respondent argues that she did not try to physically injure or intend to cause Hall any physical injury; rather, respondent’s “contact with [Hall] was centered around her defensively trying to pull away from his grasp.” Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that respondent intended to assault Hall, and that the assault resulted in the infliction of a serious or aggravated injury.

Hall testified that on May 17, 2019, respondent was in the hallway when she was supposed to be in class. Hall directed respondent back to class, but she refused and walked away from Hall. Hall caught up with respondent in the hallway and she verbally threatened him. According to Hall, respondent attempted to run into a restroom, but he blocked the bathroom door to prevent her from doing so. At that time, respondent pushed Hall, causing him to step back and injure his Achilles

¹ There is no allegation that respondent used a weapon. This element has thus been established.

tendon and additionally punched him. Hall testified that he and security were eventually able to escort respondent to the front office, but that it was painful for him to walk to the front office. Hall further testified that he had to undergo surgery to repair his Achilles tendon.

Hestia Mayes, a teacher at Noble, testified that on May 17, 2019, she was standing in a hallway at the school with another teacher, near a restroom, when respondent came down the hallway, yelling and trying to go into the restroom. The teacher with Mayes stepped into the entry of the restroom, stopping respondent from entering. At that point Hall, who had been following respondent and asking her to stop, caught up to the respondent, who then began threatening Hall. Mayes testified that Hall put his hands on respondent's shoulders to move her and respondent then began kicking and pushing Hall.

Hall and Mayes' testimony establishes that respondent assaulted Hall, by conducting an intentional, unconsented to, offensive touching of him. MCL750.81a(1); *Starks*, 473 Mich at 234; 701 NW2d 136 (2005). Their testimony further establishes that respondent did so without a weapon and without the intent to murder him or inflict upon him great bodily harm less than murder. MCL 750.81a(1). Hall's testimony also establishes that, in assaulting Hall, respondent inflicted the serious injury of damaging his Achilles tendon. *Id.* Respondent's own testimony confirms that she pushed Hall after trying to pull away from him. The natural and probable consequence of assaulting someone by pushing them is that the person would fall or step back, potentially incurring injury. While respondent testified differently to how the disagreement between herself and Hall began,² she affirmatively testified that she tried to go into the restroom after Hall told her not to, that Hall grabbed her arms and she yanked her arm away from him and pushed him.

While respondent indicates that M Crim JI 17.6, applicable to an aggravated assault charge, requires a specific intent to injure, respondent misreads that instruction. M Crim JI 17.6 provides:

- (1) [The defendant is charged with the crime of _____ / You may also consider the lesser charge of assault and infliction of serious injury. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant tried to physically injure another person.
- (3) Second, that the defendant intended to injure [name complainant] [or intended to make (name complainant) reasonably fear an immediate battery].
- (4) Third, that the assault caused a serious or aggravated injury. A serious or aggravated injury is a physical injury that requires immediate medical treatment or

² "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Head*, 323 Mich App 526, 531; 917 NW2d 752 (2018).

that causes disfigurement, impairment of health, or impairment of a part of the body.

As can be seen above, the jury instruction indicates that a defendant only “try” to physically injure a person—not “intend” to physically injure a person. The intent element is set forth in (3), above, and requires *either* that the defendant intended to injure the person *or*, alternatively, the defendant intended to make the person reasonably fear an immediate battery. A push could be deemed to make a person reasonably fear an immediate battery, especially where, as here, respondent did, in fact, punch Hall as well as push him. The evidence was sufficient to enable the trier of fact to find beyond a reasonable doubt that respondent assaulted Hall resulting in a serious or aggravated injury.

Respondent also claims that, despite that the school handbook strictly prohibits district employees from using corporal punishment, Hall was “so hardened on personally keeping [respondent] in physical tow while escorting her to the [front office],” that he “put his hands” on respondent instead of using an alternative discipline approach. However, the handbook allows for “incidental, minor, or reasonable physical contact (reasonable physical force) as necessary to maintain order and control in a school or school-related setting for the purpose of providing an environment conducive to safety and learning” under circumstances when, “after requesting that the student refrain from further disruptive acts,” a student’s behavior “is interfering with the orderly exercise and performance of school district functions.”

Here, Hall testified that, before having to personally redirect respondent back to class, Noble’s principal had already directed respondent to return to her class, but respondent dismissed the principal’s request and proceeded to leave her classroom a second time. It was only after at least two verbal directions to return to class and after respondent continued walking down the hall that Hall used reasonable physical contact as necessary to guide respondent to the front office for the purpose of maintaining order and control at Noble while classes were in session. There is no indication that Hall used corporal punishment.

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Riordan