UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2500

September Term, 2014

IN RE: RYAN H.

Kehoe,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 10, 2016

Seventeen-year-old Ryan H., appellant, was tried in the Circuit Court for Wicomico County, sitting as a juvenile court, on allegations stemming from an altercation in his high school cafeteria. Citing equivocal testimony, the juvenile court had reasonable doubt as to whether Ryan was involved in an assault on a younger student. But the court found beyond a reasonable doubt that Ryan was involved in assaulting an instructor, disrupting the orderly conduct of the school, and threatening the school principal.[1] Ryan contends that the evidence was insufficient to support the "involved" findings. We agree with Ryan, but only as to one of the three findings of involvement. We will affirm the judgment in part, reverse it in part, and remand this case for a new disposition hearing.

Factual Background

On September 16, 2014, Ryan was a junior at Wicomico High School in Salisbury. Fifteen-year-old Daniel K. knew who Ryan was, but had never met him. At lunch that day, as Daniel K. prepared to leave the school cafeteria, he "tossed an orange" about 20 feet, toward a trash can. Daniel testified that the orange "missed and hit" Ryan.

Ryan approached, and the two began to fight. Ryan hit Daniel in the head and pinned his back to the ground. As Ryan "was going . . . toward him again," Gerald Keen, an instructor, "stepped in between both students." Deputy Bratten, the School Resource Officer, pulled the two apart. Daniel suffered a bloody nose and an eye injury, for which

1. Ryan was sentenced to local placement, with a suspended commitment, probation, and restitution in the amount of $73.

medical attention was not required. He described the altercation as "a blur," but acknowledged that when Ryan approached him, he may have shoved Ryan first and that he struck Ryan during the fight.

Mr. Keen testified that he was stationed in the doorway, preparing to let 200 to 300 students out of the cafeteria for their afternoon classes. After hearing "a commotion," he saw Daniel K. on the floor with Ryan on top of him. Mr. Keen ran over and "got in between" the students, intending to separate them. While Mr. Keen was trying to separate the two, Ryan swung at Daniel, missed him, and struck Mr. Keen in the side of the head. Mr. Keen did not believe that Ryan intended to hit him. Deputy Bratten eventually separated the two students.

Principal Don Brady went to the cafeteria immediately upon learning of the fight. When he arrived, "there was a large commotion" and "students were being separated." As Deputy Bratten took Ryan from the cafeteria, Daniel K. was being held back but continued to lunge toward Ryan. When Mr. Brady returned to his office to talk with Ryan, he became "agitated and upset." He "started making threats," stating that he "would F" up Mr. Brady and describing "what he was going to do." Disobeying the principal's instruction to remain, Ryan left the office.

Assistant Principal David Miles was in the cafeteria during the altercation. When asked "[w]hat effect did this incident have on the students in the cafeteria?", Mr. Miles described "the commotion going on," recounting that while some "students move[d]

toward the door[,]" other "[s]tudents were on tables, they were just doing a little bit of everything." As students reacted to the fight, Mr. Miles "was knocked down to the ground."

Later, in the administrative offices, Mr. Miles heard Ryan yell at Mr. Brady, "I'll f--- you up, get your hands off me." When Ryan left Mr. Brady's office, Ryan was "very upset." Mr. Miles attempted to calm him down, but Ryan responded that he did not "want to calm down," then stated, "I just want to go home. I got to leave." According to Mr. Miles, they "went out and sat on a bench outside of the building and he was able to bring his affect down." Ryan then agreed to return to Mr. Brady's office, and his parents were contacted.

Ryan testified that after the orange hit him in the head, he walked over to Daniel K., "grabbed him," and said, "if you do that again we have a problem." As Ryan turned to "go back to class," Daniel K. swung at him. Ryan "ducked," "started fighting," and continued until Deputy Bratten pulled him away. Daniel kept lunging toward him until Mr. Brady stopped him. Ryan admitted that when he was in the principal's office, he was "mad" at Mr. Brady and said that he would "f--- him up." On cross-examination, Ryan admitted that he intended the statement to be a threat.

The juvenile court found reasonable doubt that Ryan assaulted Daniel K., based on "the testimony of Mr. K., which was . . . filled with a lot of I don't knows and I don't

remembers as it related to how this incident started." On the remaining allegations in the delinquency petition, the court found that Ryan was involved, ruling as follows:

> As to count two, assault in the second degree against Mr. Keen, the Court finds beyond a reasonable doubt that Mr. H. assaulted Mr. Keen in the second degree, I think the intent can transfer. I think that Mr. Keen came in to break up a fight, at that point [Ryan] had intended and was fighting with Mr. K., intended to hit Mr. K. and Mr. Keen ended up taking that blow to the side of his head.
>
> As to count three, the Court finds, this is dealing with the threat to the principal, specifically the Court finds beyond a reasonable doubt, I think even from [Ryan's] own testimony he admitted that he threatened Mr. Brady. Therefore I find him beyond a reasonable doubt involved as to that count.
>
> As to count four, disturbing school operations, I also find beyond a reasonable doubt that that was proven by the State. I think specifically the testimony of Mr. Miles talking about being knocked to the floor by the students and . . . also Mr. Brady, they talked about the students jumping on tables. They are lucky that this didn't escalate more than it did at the time.

Analysis

Ryan contends that "[i]n light of the court's determination that the evidence failed to establish [he] assaulted Daniel, the court's finding of 'involved' on the remaining counts – all of which stemmed from the alleged assault – must be vacated." The State responds that, to the extent Ryan's arguments are preserved, there is sufficient evidence to support the juvenile court's adjudication. After reviewing the applicable law, we shall consider Ryan's challenges to each of the three "involved" findings.

I. Appellate Review of Juvenile Delinquency Adjudication

A delinquent act is one that "would be a crime if committed by an adult." Md. Code (2013 Repl. Vol.), § 3-8A-01(l) of the Courts & Judicial Proceedings Article ("CJP"). The State must prove beyond a reasonable doubt any allegation that a juvenile committed a delinquent act. *See* CJP § 3-8A-18(c); Md. Rule 11-114(e)(1).

When "reviewing the sufficiency of the evidence that a juvenile has committed a delinquent act," this Court "must determine [whether] the evidence, adduced either directly or by rational inference, enabled the trier of fact to be convinced beyond a reasonable doubt that the juvenile committed the act." *In re Eric F.*, 116 Md. App. 509, 519 (1997). *See In re Elrich S.*, 416 Md. at 30; CJP § 3–8A–18(c); Md. Rule 11–114(e)(1). We evaluate the evidence supporting a juvenile court's findings in the same manner as the evidence supporting a criminal conviction, that is, we view the record in the light most favorable to the prosecution and recognize "that the fact-finder 'possesses the ability to choose among differing inferences that might possibly be made from a factual situation,'" so that we "'give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *In re Landon G.*, 214 Md. App. 483, 491-92 (2006) (citations omitted). *See In re Timothy F.*, 343 Md. at 380.

II. The Second Degree Assault on Mr. Keen

Ryan mounts a multi-pronged challenge to the juvenile court's determination that he was involved in conduct that, if committed by an adult, would constitute second degree assault on Mr. Keen. He argues that the court erred when it ruled that he committed an assault on Mr. Keen because his intent to strike Daniel transferred to Mr. Keen. Ryan contends that the doctrine of transferred intent does not apply to the crime of assault. Even if it did, Ryan continues, the doctrine "would not have been applicable" in this instance, because "the evidence was insufficient to establish that [Ryan] assaulted Daniel, [and thus] there was . . . no 'intent to assault' to transfer." For the same reason, Ryan asserts, the court's finding that he assaulted Mr. Keen erroneously "constitutes both a factually and legally inconsistent verdict."

The offense of second degree assault is prohibited by Md. Code (2012 Repl. Vol.) § 3–203(a) of the Criminal Law Article ("Crim."), providing: "a person may not commit an assault." A battery is one form of assault. *See* Crim. § 3–201(b). The Court of Appeals has recognized that

> *[a] criminal battery may be intentional or unintentional*; there are two methods of proving the commission of the crime. More traditional is the intentional battery, described . . . as "[a]ny unlawful injury whatsoever, however slight, actually done to the person of another, directly or indirectly, in an angry, revengeful, rude, or insolent manner." We said in *State v. Duckett*, 306 Md. 503, 510 (1986), that "intent is an element of the crime of battery, [but] the intent need only be for the touching itself; there is no requirement of intent to cause a specific injury." Accordingly, to be convicted of committing an intentional battery requires legally sufficient

> proof that the perpetrator intended to cause harmful or offensive contact against a person without that person's consent and without legal justification.
>
> *An unintentional battery can arise from contact that is the result of a person's criminal negligence that legally causes injury to another.* We have recognized that "[a] criminal battery is committed, in accordance with the prevailing view . . . if the contact was the result of [the defendant's] recklessness or criminal negligence[.]"
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> * * *
>
> It is therefore clear that the presence of a specific intent *or criminal negligence* is a necessary component of the crime of battery and *it is the State's burden to prove one or the other of these elements*, and that the contact was non-consensual, to justify a conviction.

Elias v. State, 339 Md. 169, 183–85 (1995) (emphasis added) (internal citations omitted). Criminal negligence is gross negligence. *See Pagotto v. State*, 127 Md. App. 271, 279 (1999), *aff'd*, 361 Md. 528 (2000).

Ryan's first two challenges stem from the juvenile court's remark that although Ryan did not deliberately hit Mr. Keen, "the intent can transfer." Ryan maintains that "the intent to assault one person cannot be transferred to establish the *mens rea* for an alleged assault on a third person who was struck by accident." Ryan also asserts that even if intent could transfer, the evidence was insufficient to establish that he intended to assault Mr. Keen, because the court found that the evidence presented by the State was insufficient to prove that he assaulted, or intended to assault, Daniel.

The legal doctrine of transferred intent is a "pure legal fiction"[2] that has only been "used to impose criminal liability for unintended deaths." *Poe v. State*, 341 Md. 523, 529 (1996); *see also Pettigrew v. State*, 175 Md. App. 296, 316 (2007) ("[T]he doctrine of transferred intent is inapplicable to inchoate offenses and, specifically, to instances where the unintended victim is injured, but not killed."). The juvenile court was incorrect when it framed its analysis in terms of transferred intent.

In its brief, the State suggests that the juvenile court's remark was "a reference to *mens rea* generally, not to the doctrine of transferred intent." Although the State uses different terminology, it argues that the juvenile court used the phrase "transferred

2. Although it was first articulated in the mid-16th Century, the Court of Appeals did not explicitly adopt the doctrine of transferred intent until *Gladden v. State*, 273 Md. 383, 405 (1974). The rule has been a recurring source of difficulty. One problem is the name itself. In his concurring opinion in *People v. Scott*, 14 Cal. 4th 544, 555–56 (1996), Justice Mosk suggested that courts jettison the term "transferred intent" because it is inherently misleading:

> The reports demonstrate that such an intent [to unlawfully kill another] is rarely possessed as to everyone in general or no one in particular. But there is no requirement of an unlawful intent to kill an intended victim. The law speaks in terms of an unlawful intent to kill a person, not the person intended to be killed.

In a similar vein, Judge Moylan noted "the unintended consequences of [the doctrine of transferred intent's] metaphorically inapt label." Charles E. Moylan, Jr., CRIMINAL HOMICIDE LAW 84 (2002).

It isn't necessary for us to delve further into this issue. For our purposes, it is sufficient to note that the term "transferred intent" can be a source of confusion, as this case demonstrates.

intent" as a shorthand way of explaining that Ryan, intending to commit an assault against his intended victim (Daniel K.), acted with gross negligence by striking an unintended victim (Mr. Keen). Had the juvenile court framed its analysis in those terms, we would be confronted with a different problem. But the juvenile court did not. Under the circumstances, it is appropriate to reverse the court's finding that Ryan was involved in a second degree assault on Mr. Keen.

III. Disturbing School Operations

Ryan next challenges the adjudication that he was involved in a violation of Md. Code (2014 Repl. Vol.), § 26-101(a) of the Education Article, providing that "[a] person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education." He asserts that his conduct did not cause a "disturbance," as that concept has been defined by this Court and the Court of Appeals in other cases dealing with § 26-101, and, further, that his conduct was not willful. We will discuss the issues separately.

A.

Citing the testimony of Mr. Miles "about being knocked to the floor by the students"and "the students jumping on tables[,]" the juvenile court found that the State proved beyond a reasonable doubt that Ryan was involved in "disturbing school operations[.]" The Court of Appeals has held that "[t]he only sensible reading of [§ 26-101] is that there must not only be an 'actual disturbance,' but that the disturbance must

be more than a minimal, routine one. It must be one that significantly interferes with the orderly activities, administration, or classes at the school." *In re Jason W.*, 378 Md. 596, 606 (2003). Moreover, "[t]he words 'disturb or otherwise willfully prevent,' as used in § 26–101(a), cannot be read too broadly or too literally[.]" The Court continued:

> [a] child who speaks disrespectfully or out of turn, who refuses to sit down or pay attention when told to do so, who gets into an argument with another student, who throws a rolled-up napkin across the room, who comes to class late, or even one who violates the local dress code in some way, may well disturb the class and, if sent to the principal, may divert the teacher or the principal from other duties for a time, but surely that conduct cannot be regarded as criminal [merely] because it is temporarily disruptive.

Id.

In *Jason W.,* 378 Md. at 600–04, the Court of Appeals examined the legislative history of what is now § 26-101. It noted that the statute took its present shape in 1970, in response a series of "riots and organized demonstrations and disturbances that actually impeded the schools from carrying out their administrative and educational functions." *Id.* at 604. There have been two significant and instructive reported appellate decisions interpreting what is now § 26-101: *Jason W.* and *In re Nahif A.,* 123 Md. App. 193 (1998), *overruled in part on other grounds by In re Antoine M.*, 394 Md. 491 (2006).

In *Jason W.*, a teacher caught a middle school student in the act of penciling on a school wall, "there is a bomb." 378 Md. at 598. The student quickly erased the word "bomb" with his hand. *Id.* No other students were present, and he was taken without resistance to the principal's office. *Id.* School administrators did not treat the graffiti as

an actual threat, and the school was not evacuated. *Id.* at 598-99. Although the juvenile court found that Jason W.'s conduct violated Educ. § 26–101(a), the Court of Appeals reversed. *Id.* at 606. Construing the statute to require an "actual disturbance" that "significantly interferes with the orderly activities, administration, or classes at the school[,]" the Court explained that the statute should not be applied to every type of

> conduct or circumstances that may momentarily divert attention from the planned classroom activity and that may require some intervention by a school official. Disruptions of one kind or another no doubt occur every day in the schools, most of which, we assume, are routinely dealt with in the school setting by principals, assistant principals, pupil personnel workers, guidance counselors, school psychologists, and others, as part of their jobs and as an aspect of school administration. . . . [T]here is a level of disturbance that is simply part of the school activity, that is intended to be dealt with in the context of school administration, and that is necessarily outside the ambit of [Educ.] § 26–101(a).

Id. at 605 (citation omitted).

The Court held that Jason W.'s conduct did not create the required level of disruption, explaining that

> [t]he juvenile court's reading of [Educ.] § 26–101(a) would make criminal any unauthorized conduct that requires even a minimal response by a school official, and that would, indeed, raise the specter of a young child being haled into juvenile court and found delinquent for throwing a temper tantrum in school. As we have so often said, statutes must be given a reasonable interpretation, not one that is illogical, incompatible with common sense, or that would reach an absurd result that could not possibly have been intended by the Legislature.

Id. at 604 (citations omitted).

In reaching that decision, the *Jason W.* Court cited our decision in *Nahif A.*, as an example of student misconduct that "is serious or disruptive enough to warrant not only school discipline but criminal, juvenile, or mental health intervention as well[.]" 378 Md. at 605. In that case, Nahif A. left his assigned lunchroom to exchange his school-provided lunch for a different lunch, in violation of school rules and over the opposition of cafeteria workers. *Nahif A*., 123 Md. App. at 199. The assistant principal, Mr. Baker,

> asked Nahif to accompany him back to his office. Nahif did walk out of the cafeteria and into a hallway but, according to Baker, "there was a lot of disruption" at that point. Nahif "used lots of profanity in the hallway" and was "being loud, so that other students c[ould not] learn." The police were called to the scene but Nahif "continued to disrupt." Baker testified that Nahif "threaten[ed] both the staff and the police officers. Threaten[ed] to kill us." Dawson, who was present throughout the confrontation, confirmed that Nahif "became loud and started cursing," and that he "was not following staff requests."

Id. at 200. The *Jason W.* Court distinguished the significant level of disruption caused by Nahif A., from the routine minor disturbances that may be expected to occur during the course of a school day, such as Jason W.'s graffiti.

Applying these precedents to the juvenile record before us, we conclude that the evidence was sufficient to support the court's determination that Ryan was involved in an actual disturbance that significantly interfered with the orderly activities and classes at the school. As in *Nahif A*., this disturbance was more disruptive than the type of minor diversions that can and should be handled in the school system rather than the juvenile justice system, such as Jason W.'s graffiti. The brawl occurred in the presence of 200 to

300 students who were prevented from leaving the cafeteria for their afternoon classes. The assistant principal, David Miles, recounted that "[s]tudents were on tables, they were just doing a little bit of everything." Mr. Miles, who described himself as "a fairly large man," testified that for first time in his 21-year career, he "was knocked down to the ground" as students responded to the fight. The principal, Don Brady, testified that when he arrived in the cafeteria, "there was a large commotion" and "students were being separated." When asked if "there was a substantial disruption of the activities of the cafeteria at that point," Mr. Brady answered:

> When you think you have a third of the school who is coming out of the cafeteria, out of the double doors at that time, so the majority, quite a few students are there and they are all pushing and attempting to get through each other to see what was happening and/or get away from it, so you have a bit of chaos at double doors. And you also have a situations where they are kind of enclosed by doors and tables, there's a lot of position to get away even if you want to get away, so if you're a student stuck in the middle you're in a difficult situation.

These accounts of the fight indicate that the cafeteria "commotion" impeded approximately one-third of the student body from proceeding to their afternoon classes. It prompted some students to climb on tables and others to flee, resulting in a school administrator being knocked to the ground. Certainly, the affray between Ryan and Daniel K. went well beyond the level of routine horseplay and everyday misbehavior. Instead, it "significantly interfere[d] with the orderly activities, administration, or classes at the school." *Jason W.*, 378 Md. at 606. We turn now to whether the State

demonstrated that the evidence satisfied the separate statutory requirement that the act in question was willful.

B.

In our view, the term "willfully" in Educ. § 26–101(a) does not require a specific intent to disturb school functions. The State satisfies its burden of proof if it presents evidence that the defendant voluntarily engaged in the sort of conduct under circumstances that the defendant knew, or should have known, would likely cause a disturbance in the normal operations of the school.

When we apply this standard to the case before us, the juvenile court could have reasonably concluded that, when a student engages in a fistfight in the doorway of the school cafeteria during lunchtime, the student is aware that his or her conduct is likely to cause a disturbance to school functions. The court could have also concluded that Ryan voluntarily continued the physical altercation that was initiated when Daniel K. threw the orange at him.[3]

IV. Threatening the Principal

In his final challenge, Ryan contends that the evidence was insufficient to establish that he threatened the school principal, in violation of Educ. § 26-101(b), which

[3]We think that it is inarguable that students in Maryland high schools know, or should know, that: (1) fighting is not permitted in the schools; (2) that the no fighting rule is a reasonable rule; and (3) that the rule is for the safety and protection of everyone at the school. Ryan does not argue that he was acting in self-defense.

provides that "[a] person may not . . . threaten with bodily harm any . . . administrator . . . who is lawfully" on school grounds. Echoing his argument that his conduct did not rise to the level of a significant disturbance within the scope of Educ. § 26-101(a), Ryan contends that even though he "admitted that he intended his words as a threat," they were merely "inappropriate" but did not "fall within the confines of Educ. § 26-101(b)." In support, Ryan cites the testimony of Mr. Miles and Mr. Brady that they perceived Ryan's threats as a mere manifestation of his frustration, did not believe his words to be "bona fide threats," and did not take any "precautionary measures." Ryan further points to the fact that his statements to the principal did not elicit further safety measures, and that, therefore, the court should have treated those statements as the Court of Appeals treated Jason W.'s graffiti, that is, as failing to show that he actually intended his statements as a real threat of harm.

What Ryan notably disregards is his own testimony that he intended to threaten Mr. Brady. On cross-examination, Ryan confirmed that when he got to Mr. Brady's office, he "got mad at him and . . . [was] telling him that [he] was going to f--- him up[.]" The prosecutor's next question to Ryan was also clear: "And you intended him to consider that a threat, right?" Ryan's response was clear: "Yeah, a threat." The juvenile court expressly credited that testimony and did not err in doing so. We are not persuaded otherwise by the testimony that Mr. Brady and Mr. Miles did not treat Ryan's words as a threat to personal or school safety. The court was entitled to consider the countervailing

evidence that Ryan meant what he said, which included the undisputed evidence that Ryan already had struck another student, that he had to be physically restrained to prevent him from throwing more punches, that he then struck an instructor, that he was "very upset" and noncompliant at the time he threatened Mr. Brady, and that Mr. Miles found it necessary to intervene in an effort to divert and defuse Ryan's anger. Collectively, this evidence is sufficient to affirm the finding that Ryan was involved in threatening a school administrator, in violation of Educ. § 26-101(b).

V. Appellate Remedy

For the reasons set out previously, we have reversed the juvenile court's finding as to an assault on Mr. Keen. As for disposition, Ryan has the right to argue for a different course of guidance, treatment, and rehabilitation in light of the acts actually proven by the State. We remand this matter to the juvenile court for that purpose.

THE ADJUDICATION ORDER DATED DECEMBER 23, 2014, IS AFFIRMED IN PART AND REVERSED IN PART. THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY WICOMICO COUNTY.