STATE V. GERARDO A.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GERARDO A.,
Child-Appellant.

No. 33,762

COURT OF APPEALS OF NEW MEXICO

December 3, 2014

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, Karen L. Parsons, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

L. Helen Bennett PC, Helen Bennett, Albuquerque, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, M. MONICA ZAMORA, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Child appeals from a judgment entered after the district court found that he had committed four delinquent acts. We issued a calendar notice proposing to affirm. Child has responded with a memorandum in opposition. We affirm.

Issue 1

{2} Child continues to claim that the State failed to prove jurisdiction. [MIO 1] Child argues that proof of venue was a mandatory precondition to the exercise of the district court's jurisdiction. However, as we stated in our calendar notice, the district court was permitted to take judicial notice of the location of the incident, as indicated by the information in the petition and as described by witness testimony. [RP 1 (Ruidoso), 60-61, 62 (3:01:37)] *See* Rule 11-201(B) NMRA.

Issue 2

{3} Child continues to claim that his arrest was unlawful because there was no probable cause at the time he was arrested. [MIO 3] However, Child's argument is predicated on the assertion that the arrest occurred at the time he was initially detained. The district court properly concluded that at this point the officer had merely detained Child to prevent him from fleeing and that the officer was effectuating an investigatory detention. [RP 62 (2:56:15 to 3:02:27)] *See State v. Gutierrez*, 2007-NMSC-033, ¶¶ 28-31, 142 N.M. 1, 162 P.3d 156 (discussing right to prevent individual from fleeing during investigatory detention). The officer testified his initial restraint of Child was to allow him to investigate what was going on. [MIO 3-4] To the extent that Child is also arguing that none of the suspected crimes is considered a delinquent act, based on the list set forth NMSA 1978, Section 32A-2-3 (2009), his argument misreads that statute. The list of enumerated crimes is not exclusive; to the contrary, "delinquent acts" include "an act committed by a child that would be designated as a crime under the law if committed by an adult[.]" Section 32A-2-3(A).

Issue 3

{4} Child continues to claim that the evidence was insufficient that he battered his brother. [MIO 4] A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of "whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt." *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation marks and citation omitted).

{5} "Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent[,] or angry manner." NMSA 1978, § 30-3-4 (1963). Here, the State presented evidence that Child had bitten his younger brother, causing him to cry. [RP 60] In addition, the fact-finder could reasonably infer that Child intended to harm his brother, in that this would be consistent with Child's violent conduct upon the arrival of the officers. [RP 60] *See State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656, 964 P.2d 820 (noting that "[a] defendant's knowledge or intent generally presents a question of fact for a jury to decide").

{6} To the extent that Child's testimony conflicted with the other evidence, the judge, sitting as fact-finder in this bench trial, was free to reject the credibility of this testimony. *See State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to reject a defendant's version of events). Finally, in light of the fact that there was sufficient evidence to support the allegations in the petition, we are not persuaded by Child's argument [MIO 5] that this matter should have been resolved in an informal, extra-judicial manner. *Cf. State v. Southworth*, 2002-NMCA-091, ¶ 48, 132 N.M. 615, 52 P.3d 987 (discussing prosecutorial charging discretion).

{7} For the foregoing reasons, we affirm.

{8} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

M. MONICA ZAMORA, Judge