UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1490

September Term, 2015

IN RE: A.S.

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: May 25, 2016

Following his involvement in a fight at the Wicomico Middle School in Salisbury, Maryland, A.S., appellant, was found by the Circuit Court for Wicomico County, sitting as a juvenile court, to have violated Maryland Code (1978, 2014 Repl. Vol.), Education Article ("Educ."), § 26-101(a), by disturbing school activities.

BACKGROUND

On April 22, 2015, during school hours, Jamal M. was leaving gym class when his friends informed him, "it's about to go down, [appellant] is about to try to jump you or whatever." A crowd then boxed appellant and Jamal in, and appellant punched Jamal on the cheek. Some of Jamal's friends then stepped in and broke up the fight.

Deputy Bonnie Dolgos, the school resource officer from the Wicomico County Sheriff's Office, was called to the breezeway of the school in response to the altercation. Before she got to the breezeway, however, she encountered Jamal, who had a "large goose egg" on his forehead,[1] and escorted him to the school nurse's office. At the proceedings below, Deputy Dolgos testified that her response to the fight was consistent with her normal assigned role at Wicomico Middle.

The State subsequently charged appellant with second-degree assault, affray, and a violation of Educ. § 26-101(a), by disturbing school activities. The juvenile court found appellant involved solely in the last offense.

[1] Deputy Dolgos testified that the "goose egg" was an area of "swelling" that was "large, the size of a tennis ball on [Jamal's] forehead."

STANDARD OF REVIEW

We review the evidence to determine "'whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt when the evidence is presented in the light most favorable to the State.'" *In re Landon G.*, 214 Md. App. 483, 491 (2013) (emphasis omitted) (quoting *Bible v. State*, 411 Md. 138, 156 (2009). A "'delinquent act, like [a] criminal act, must be proven beyond a reasonable doubt.'" *Id.* (quoting *In re Timothy F.*, 343 Md. 371, 380 (1996)). In other words, "'[t]he appropriate inquiry is not whether the reviewing court believes that the evidence establishes guilt beyond a reasonable doubt, but rather, whether after reviewing 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.'" *Elrich S.*, 416 Md. at 30 (quoting *In re Anthony W.*, 388 Md. 251, 261 (2005)).

DISCUSSION

Appellant contends that the State presented insufficient evidence to find him "involved" in disturbing school activities because there was no evidence of a significant disruption of the school day, nor was there evidence of the length of the fight. Furthermore, in finding appellant not involved in the charge of affray, the court must have necessarily concluded, appellant points out, that observers were not "disturbed" by the altercation. Finally, appellant contends that Educ. § 26-101(a) contains a scienter requirement, which the State did not establish.

The State responds that there was sufficient evidence to find appellant involved in violation of Educ. § 26-101(a) because appellant punched Jamal and because of the size of

the crowd that observed the altercation. Moreover, the State asserts that the statute does not contain a scienter requirement, and that in any event, appellant failed to make this claim in the juvenile court.

Section 26-101(a) provides 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." The General Assembly enacted and modified this statute in the 1970s in response to riots and vandalism at schools in Prince George's County and Annapolis. Thus, the "focus" of that enactment, was, as the Court of Appeals has observed, "on riots and organized demonstrations and disturbances that **actually impeded the schools from carrying out their administrative and educational functions**." *In re Jason W.*, 378 Md. 596, 601-04 (2003) (emphasis added).

Consequently, "[t]he words 'disturb or otherwise willfully prevent,' as used in [Educ.] § 26-101(a), cannot be read too broadly or too literally." *Id.* at 606. Indeed, as the Court of Appeals has avowed that, "[t]he only sensible reading of the statute 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**." *Id.* (emphasis added).

The statute must be read this way, reasoned the Court, because "[a] typical public school deals on a daily basis with hundreds – perhaps thousands – of pupils in varying age ranges and with a variety of needs, problems, and abilities, scores of teachers, also with varying needs, problems, and abilities, and a host of other employees, visitors, and occasional trespassers," and "[d]isruptions of one kind or another no doubt occur every day

in the schools[.]" "[M]ost of which," the Court noted, "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." *Id.* at 604-05. But, "[a]lthough, undoubtedly, some conduct is serious or disruptive enough to warrant not only school discipline but criminal, juvenile, or mental health intervention as well, there is a level of disturbance," declared the Court, "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.*

Viewing the evidence that is before us, in the light most favorable to the State, we are persuaded that the State has not produced sufficient evidence to find appellant involved in disturbing school activities. Although the evidence establishes that appellant engaged in an altercation with Jamal, it does not indicate how long the fight lasted, nor what normal school activities, if any, were disturbed. In fact, it appears that the juvenile court found appellant involved based on the size of the crowd observing the altercation:

> As to the third count, which is disturbing school operations, however, the Court finds that the State has met their burden beyond a reasonable doubt. I find that the testimony, specifically as [appellant's counsel] pointed out, [the witness] who in effect doesn't have – is the neutral party here, testified about having to wade through a crowd to try to get to the front to witness the fight. Anytime you're having a fight of that – [Jamal's] testimony was that they were boxed in by groups of people, the Court determines that that meets the burden of disturbing the orderly conduct of the activities of the school and finds [appellant] guilty of disturbing school operations, a violation of Education Section 26-101.

Although the presence of a large crowd may indicate a disruption of the normal school day, there was no testimony as to the length of this disruption, or what, in fact, this occurrence disrupted. In fact, it appears that the fight took place between classes, not during class time. Although a student eyewitness did testify that, at some point in the day, "everybody was just talking about fighting[,]" and "everybody ran to like the gym" to observe the fight, the only adult witness to testify, Deputy Dolgos, stated that her response to the fight was "consistent with [her] assigned purpose in the school" and was, therefore, routine.

Moreover, no witness indicated that classes were postponed or cancelled, nor was there any testimony that the students were distracted for any significant period of time, or that Wicomico Middle ceased operating normally on that day or ceased to function as an institution of learning for any period of time.

In sum, the State did not adduce sufficient evidence that appellant's conduct rose to the level of a delinquent act, by creating a disturbance "that significantly interfere[d] with the orderly activities, administration, or classes at the school." *Jason W.*, 378 Md. at 606. As such, there is insufficient evidence that appellant violated Educ. § 26-101(a).

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY, SITTING AS A JUVENILE COURT, REVERSED. COSTS TO BE PAID BY WICOMICO COUNTY.