

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-042

AUGUST TERM, 2008

In re P.S., Jr.

} APPEALED FROM:
}
} Franklin Family Court
}
} DOCKET NO. 201-11-07 FrJv

Trial Judge: Howard E. Van
Benthuyesen

In the above-entitled cause, the Clerk will enter:

P.S. appeals from the trial court's order adjudicating him delinquent for acts constituting unlawful mischief. He argues that the evidence does not support the court's decision. We agree, and we therefore reverse.

In November 2007, the State filed a delinquency petition, alleging that P.S. engaged in disorderly conduct and unlawful mischief. The latter charge was based on an allegation that P.S. broke a picture frame in violation of 13 V.S.A. § 3701(c). After a merits hearing, the court found P.S. delinquent based on the unlawful mischief charge. The following evidence was presented at the hearing. An employee of the Northeastern Family Institute (NFI) testified that on the day in question, he was working with P.S. P.S. was angry, and yelling at NFI employees. P.S. was being verbally aggressive and throwing an inflatable rubber ball above their heads. The employee asked P.S. to stop because he did not want a ball being thrown at his head, and because he considered it a safety issue. P.S. did not comply. P.S. asked the employee to bring P.S. outside for a walk, but the employee indicated that he did not feel comfortable doing so because of the way in which P.S. was acting, again indicating that it was a safety issue. P.S. replied, "I'll give you a safety issue," and kicked the rubber ball toward the wall opposite the employee. The ball hit a small picture frame and knocked it off the wall. The picture frame had glass in it, and it hit a photocopy machine when it fell. The employee testified that he did not believe that the picture frame had been repaired or replaced.

Based on this evidence, the court found beyond a reasonable doubt that P.S. intentionally damaged the picture frame and that the frame had some value. The court also found beyond a reasonable doubt that P.S. did not have any right to break the picture frame but did so intentionally as evidenced by P.S.'s comment that P.S. would demonstrate a safety issue to the employee. The court thus found P.S. delinquent on count two. It found P.S. not delinquent on the disorderly conduct count. The court placed P.S. on probation, and imposed ten hours of

community service. The court also ordered P.S. to write a letter of apology, but it did not order any restitution. This appeal followed.

P.S. argues that the evidence was insufficient to show beyond a reasonable doubt that P.S. committed unlawful mischief. Specifically, P.S. asserts that: (1) P.S. lacked the necessary intent; (2) there was no evidence that the picture framed was damaged; and (3) there was no evidence that the damaged frame had any value. Viewing the evidence in the light most favorable to the State, see State v. Bessette, 129 Vt. 87, 89 (1970) (noting that challenges to the sufficiency of evidence are viewed in the light most favorable to the State), we agree with P.S. that the State failed to meet its burden of proof.

To prove that P.S. committed unlawful mischief, the State needed to show that P.S. was someone “who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does any damage to property of any value not exceeding \$250.00” 13 V.S.A. § 3701(c). The State presented no evidence that the picture frame was actually damaged by P.S.’s behavior. The NFI employee testified that the picture frame was knocked off the wall and fell onto the copier machine, but he did not indicate if the picture frame or the glass inside the frame was broken as a result. He did not testify to the value of any damage, and in fact, he stated that the frame had not been repaired or replaced. While “proof of facts includes reasonable inferences properly drawn therefrom,” State v. Kerr, 143 Vt. 597, 603 (1983), one cannot reasonably infer from the evidence presented here that the small frame necessarily broke or was damaged in its fall. It is equally plausible that the frame did not break when it fell onto the copier machine. We note that the State does not argue otherwise. Because the State failed to prove beyond a reasonable doubt that P.S. caused any damage to property, a necessary element of the charged misconduct, the court erred in concluding that P.S. committed unlawful mischief. We therefore reverse the family court’s order adjudicating him delinquent on this basis. Given our conclusion, we do not address P.S.’s remaining arguments.

Reversed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice