

No. 1-09-2735

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FOURTH DIVISION
April 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 MC4 11936
)	
LOZARO CORRAL,)	Honorable
)	Noreen Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Gallagher and Justice Salone concurred in the judgment.

ORDER

HELD: Judgment on domestic battery conviction affirmed on evidence found sufficient to prove defendant is guilty beyond a reasonable doubt.

Following a bench trial, defendant Lozaro Corral was found guilty of domestic battery and sentenced to 120 days in the Human Resources Development Institute program. On appeal, he contends that the State failed to identify him as the perpetrator of the offense beyond a reasonable doubt.

Defendant was arrested for the domestic battery of his girlfriend, Jessica Chhoun, on November 27, 2008. At trial, the victim testified that she has been living with defendant for three years and has a child with him. At 12:30 a.m. on November 27, 2008, she and defendant went to two bars where they had several alcoholic beverages. After that, they went to the house of defendant's father in Melrose Park, Illinois, and shortly after arriving there, she went outside to have a cigarette. She began walking in the street near Grand and Roberta Avenues, and as she attempted to cross, she was hit by a car near her knees, fell forward, then blacked out. The victim stated that she does not remember if the car hit her more than once or dragged her, but she had road rash and skid marks all over her body, a line mark on her face, two broken teeth, and many scrapes and bruises.

The victim further testified that she does not recall going to the hospital, but remembers being there and talking to the nurse, Jennifer Johnson Reifsnnyder. She asked her if she had a boyfriend, his name, and where the incident occurred. The victim stated that she never told the nurse that defendant hit her or that he promised that he would never hit her again. She also stated that she never told the nurse or police that she was hit by a car because no one asked her what happened

While she was at the hospital, police and the nurse pressured her to say that defendant hit her. She testified that

the police told her that they knew defendant, did not like him, and if she said that he did this, they would get rid of him. She told them that defendant never touched her.

The victim further testified that when defendant came to the hospital, the officers were in the room with her. They took a picture of defendant's hand, which had marks on it, and arrested him. She told police that defendant got into a fight at a bar earlier that night before he picked her up.

Nurse Reifsnnyder testified that when she first approached the victim in the emergency room, she was crying in a fetal position and would not talk to anyone. The victim's face was swollen, her front teeth were cracked, and she had multiple abrasions. The nurse stated that she has treated people who have been in car accidents, and that the victim did not appear to have been hit by a car. She stated that her injuries could be consistent with road rash, but that anything is possible and that she would not characterize the victim's injuries as such. The nurse added that someone hit by a car has one-sided injuries, but the victim had abrasions in various places, and she did not state that she had been hit by a car.

The nurse further testified that the victim told her that she was scared. The nurse believed that this was a domestic battery situation because the victim's injuries and demeanor were similar to other domestic battery cases she had seen. She

explained to the victim that if she was a victim of domestic battery, it was safe to talk to the emergency personnel. The victim then told her that her boyfriend, defendant, had beaten her up and promised that he would not beat her up again, and she wrote down defendant's name and address on a piece of paper.

When defendant arrived at the hospital, he went right up to the victim. The nurse asked the victim if this was the boyfriend she was talking about, and the victim said yes, but wanted him to stay. The nurse explained that typically in domestic battery cases, the offender arrives at the hospital to talk to his victim, who is afraid to have the offender leave.

Nurse Reifsnnyder further testified that she could not recall if the Franklin Park police arrived before or after defendant. She told an officer what the victim had told her, and gave him the piece of paper the victim had written on, but never coerced the victim into saying that defendant hit her.

Franklin Park police officer Thomas Henniger testified that when he arrived at the emergency room, there was a Cook County officer handling the incident, and defendant was in the room with the victim. When the officer asked the victim what happened, she was crying, and reluctant to respond to his questions. The officer asked defendant if he would leave, so he could speak to the victim alone, but defendant would not initially do so. He was aggravated, was raising his voice, and concerned that Officer

Henniger assumed that he had beaten the victim up based on a prior encounter he had with the officer. Defendant finally left the room, but then kept returning after being told to leave. The victim eventually told the officer that she only remembered verbally fighting with defendant at a bar, then running away frightened about something that she could not recall. The victim never stated that she was hit by a car.

The officer further testified that he noticed abrasions and cuts to the knuckles of defendant's right hand. The officer arrested defendant based on his injuries and obstructive behavior and the nurse's statements. When defendant arrived at the police station, he stated that he would not do this to the victim on Thanksgiving Day.

Officer Henniger further testified that he was a certified traffic crash reconstructionist, and that based on this experience, the victim's injuries were not consistent with being hit by a car. The officer also stated that he has had opportunities to observe people after they have been punched in the face, and that the victim's injuries were consistent with being hit in the face with a fist.

Defendant testified that he has never hit the victim, and on the night in question, he was involved in a fist fight with a man at a bar, which caused his fist to swell. After that fight, defendant picked up the victim, went to two bars with her, then

went to his father's house where the victim went outside for a cigarette. When defendant went to go look for the victim, he could not find her, but when he saw an ambulance, he thought she was probably hit and went to one hospital and was told that the victim was at Elmhurst Hospital. When defendant arrived there, the victim was in shock.

Defendant further testified that when Officer Henniger entered the room, he told defendant that he needed to talk to the victim. Defendant left the room, but when he heard the officer tell the victim to accuse him, he went back in there. Defendant yelled and told the officer that he got into a fight earlier at a bar, and the victim told the officer that, "[i]t wasn't him." Defendant further testified that Officer Henniger had arrested him many times when he was a minor for curfew violations.

At the close of evidence, the court found defendant guilty of domestic battery beyond a reasonable doubt. In doing so, the court found that the nurse, who testified that the victim did not tell her right away what happened, was "very credible." The court also observed that the victim never indicated at the hospital that she was hit by a car, and found her and defendant "incredible." The court also noted that domestic violence offenders often go to the hospital as part of the power and control aspects of domestic violence.

As an initial matter, we must address defendant's motion to strike the portion of the State's brief referring to a law review article on domestic violence studies, which we ordered to be taken with the case. Defendant contends that this evidence should be stricken because it was inadmissible hearsay, was not admitted at trial, and the State is improperly using it to bolster the victim's statement to the nurse. The State responds that it is not presenting the article as substantive evidence, but to acquaint this court with the unique dynamics of domestic violence.

We observe that, in its brief, the State has cited to the law review article in support of its claim that victims' statements made in close proximity to domestic abuse incidents are more truthful than their trial testimony. We find, however, that this evidence, which was not subject to cross-examination or considered by the trial court, is being presented to interject expert-opinion evidence into the record to impeach the testimony of the victim. *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993). Evidence that is not made a part of the trial record will not be considered by the reviewing court (*People v. Magee*, 374 Ill. App. 3d 1024, 1029-20 (2007)), and, accordingly, we strike that portion of the State's brief referring to the said secondary material and will not consider it in our ruling (*Mehlberg*, 249 Ill. App. 3d at 532).

Substantively, defendant claims that the State failed to identify him as the perpetrator of the domestic battery beyond a reasonable doubt. He maintains that his conviction should be reversed because the State's only incriminating evidence against him, namely, the victim's statement to the nurse that defendant hit her, was extremely weak and underwhelming proof of his guilt.

When defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

To sustain defendant's conviction of domestic battery in this case, the State was required to prove that defendant intentionally or knowingly without legal justification caused bodily harm to a family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2008). Defendant maintains that the State's only evidence of his guilt, *i.e.*, the victim's statement, was weak and

underwhelming evidence, especially in light of the victim's continual insistence that he never hit her.

The record reveals that when the emergency room nurse met the victim, she was crying in a fetal position and would not talk to anyone. The nurse also observed her multiple injuries and abrasions which she found similar to those she had encountered in other domestic battery cases. The victim told her that she was afraid and when the nurse asked if she was abused, the victim responded that defendant had beaten her up. However, after defendant spoke with the victim, she told Officer Henniger that she could not recall what happened to her. The officer tried to interview the victim without defendant, but he kept coming into the room after being asked to leave, and the officer observed that defendant had cuts and abrasions on his knuckles. Officer Henniger also testified that he was a traffic crash reconstructionist, and that the victim's injuries were consistent with being punched and not with being hit by a car as the victim claimed at trial.

The testimony regarding the victim's condition in the emergency room and the injuries she sustained, were consistent with her initial statement to the nurse that defendant had beaten her. In addition, defendant's behavior in the hospital and the correlating injury to his knuckles provided additional evidence to support the conclusion that he was the perpetrator.

Defendant, however, claims that it is dangerous precedent to pick and choose which inconsistent hearsay statements to believe, and that the State's evidence against him was weak where the victim testified that he never hit her, she never told police that he hit her, and the nurse was impeached regarding whether she heard him ask the victim where she was and did not record the victim's statement. Defendant, however, overlooks the difference in her demeanor and response before and after he arrived at the hospital and interjected himself into the ongoing investigation.

Prior to his arrival, the victim told the nurse that defendant hit her, but after she spoke to defendant, she changed her story twice, first telling Officer Henniger that she could not recall what happened and then testifying at trial that she was hit by a car. We find that the trier of fact could reasonably conclude that the victim's initial statement to the nurse was more credible than her subsequent inconsistent statements (*People v. Dominguez*, 382 Ill. App. 3d 757, 772 (2008)), especially where her injuries were consistent with being punched and not being hit by a car, and because she did not tell anyone at the hospital that she had been hit by a car. Credibility determinations, as well as conflicts in the testimony, are within the purview of the trier of fact which had the superior opportunity to observe the witnesses as they testified. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978).

Here, we find no reason to disturb the court's credibility determination (*People v. Campbell*, 146 Ill. 2d 363, 375 (1992)), or its finding of guilt where the evidence, and the reasonable inferences therefrom, was sufficient to allow the trial court to conclude that defendant was proved guilty of domestic battery beyond a reasonable doubt (*Dominquez*, 382 Ill. App. 3d at 772).

In reaching this conclusion, we have also examined the cases cited by defendant where the convictions were reversed in light of recanted statements by the State's witnesses. In citing these cases, defendant maintains that mistaken identification is the most common reason for imprisoning the innocent, that the credibility of the evidence is greatly reduced where the sole evidence of guilt are prior statements that are disavowed at trial, that suspicious conduct or probabilities cannot substitute for proof, and that a trial court's findings are not conclusive.

We observe that none of the cases cited involve a conviction for domestic battery and are thus factually inapposite to the case at bar. Furthermore, this was not a mistaken identity case, nor mere suspicious conduct or probabilities, and the evidence of guilt was not based solely on the victim's statement. Further, the evidence of the victim's injuries were consistent with being punched and not being struck by a car, defendant had a correlating injury to his hand, and the victim's demeanor and story changed only after defendant appeared at the hospital.

Moreover, defendant's argument relates directly to the credibility determination by the trial court, and, as explained above, this matter is within the purview of the trial court, and we will not second guess its determination. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000).

Defendant also claims that the trial court and the State improperly relied on the nurse as an expert in domestic violence. Defendant has raised this issue for the first time in his reply brief in violation of Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which prohibits new arguments from being raised in reply. We also observe that defendant did not object at trial or raise the issue in a post-trial motion, and that he questioned the nurse at trial regarding her experience in domestic violence cases and what was typical in those situations. Under these circumstances, we find that defendant has waived this issue for review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

Affirmed.