

No. 1-09-2871

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 MC1 293582
	)	
RALPH LOPEZ,	)	Honorable
	)	Thomas More Donnelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE SALONE delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

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**ORDER**

*Held:* Where the evidence was sufficient to convict defendant beyond a reasonable doubt, and where trial counsel did not labor under a conflict of interest, the trial court's judgment was affirmed.

¶ 1 Following a bench trial, defendant Ralph Lopez was found guilty of battery and sentenced to one year of supervision. On appeal, defendant contests the sufficiency of the evidence, asserting that the trial court made inconsistent findings about the credibility of the complaining witness and discounted the witness' history of drug use. Defendant also contends that where trial

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counsel alleged her own ineffectiveness in a posttrial motion, she was laboring under a conflict of interest and the trial court should have appointed independent counsel to represent defendant on this claim. We affirm.

¶ 2 At trial, Joyce Lang, who was 44 years old, testified that she and defendant were supposed to paint several rooms of a house located on the 2900 block of North Moody Avenue in Chicago on December 15 and 16, 2008. On December 15, Lang painted two rooms and defendant paid her \$100. That evening, Lang went to defendant's house where she drank alcohol and smoked cocaine. On December 16, Lang was not under the influence of drugs and returned to the job site expecting to receive another \$100 upon completion of the remaining two rooms. As Lang prepared the third room to be painted, defendant started complaining about "things in general." After about 20 minutes of complaining, Lang quit the job because she did not want to listen to defendant.

¶ 3 When Lang had one foot out of the front door, defendant grabbed the back of her jacket. Lang then felt paint being poured over her head. As defendant poured the paint on her, he pushed Lang out of the doorway. Lang slipped because there was ice on the platform, and she landed on the ground with her knees and left ankle hitting one of the steps. Defendant then grabbed her head and pushed it into the ground. When Lang tried to scream for help, he moved his hands, which were full of paint, all over Lang's face in an attempt to stop her from screaming. Defendant got paint in Lang's mouth, hair, face, and glasses, which were knocked off of her face. Photographs were entered into evidence showing the scrape on Lang's left ankle, and paint on her right leg, face, and jacket. The complaint which Lang completed did not indicate an injury to her ankle, but she testified that she told police about the injury and they observed it.

¶ 4 Officer Thomas Connors testified on behalf of defendant that on December 16, 2008, he interviewed Lang who told him that she sustained numerous injuries on her body that were caused by defendant, but she did not specifically tell him that she injured her ankle.

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¶ 5 Defendant, who was 68 years old, testified that he remodeled homes and, after completing work on December 15, he and Lang went to his house where Lang asked him for \$200. Defendant gave Lang the money, which she used to purchase cocaine. Defendant advanced Lang money before, and she owed him over \$500. She stayed awake all night smoking the cocaine she purchased, and, the next morning, she tried to buy \$20 more of cocaine but was unsuccessful. Lang asked defendant to advance her more money so she could buy more cocaine, but defendant refused and Lang left the job site.

¶ 6 As Lang was leaving, defendant, who was carrying a can of paint and a paint brush, attempted to close the door behind her. Lang, however, grabbed the can of paint out of defendant's hand and dumped it over his head. Defendant blocked the paint can with his hand and pushed it over Lang's head. Lang then attempted to grab defendant's right arm and pull him down the stairs, but she fell over backwards scraping her right ankle. Defendant did not push Lang, nor did he intend to dump any paint on her. Defense counsel presented "Defendant's Exhibit Number 1," which was the sweatshirt defendant was wearing on the day in question. The sweatshirt, which had paint on it, accurately depicted how defendant appeared after Lang poured paint on him. Defense counsel never entered this exhibit into evidence.

¶ 7 Following argument, the trial court found defendant guilty of battery. In doing so, the trial court found that defendant had the motive to commit the crime because Lang borrowed \$500 from him, and then she "ripped him off" because she left the job site after he advanced her \$100. The court also found that defendant pursued Lang with the paint can, followed her outside rather than simply closing the door, and intended to punish her for walking out on the job. The photographs corroborated Lang's account of the incident, and the court further stated that, "notwithstanding that [Lang] admitted to illegal conduct which is impeaching, \*\*\* she testified clearly and creditably [*sic*] as to these events, and that her account was largely corroborated by the defendant's account."

¶ 8 Defense counsel filed a motion for a new trial which stated, in pertinent part, that defendant was denied due process of law and effective assistance of counsel because she was not properly prepared for defendant's trial. Counsel stated that she was "coming off a particularly heavy, understaffed, three weeks of one trial after another and was not properly prepared for Mr. Lopez's trial." Counsel indicated that she made numerous legal mistakes including failure to cross examine Lang on certain factual issues, *i.e.*, the lack of paint on her clothing in relation to the large amount on defendant's clothes, properly move into evidence defendant's sweatshirt, adequately re-direct defendant regarding key issues the court had questions about, *i.e.*, why defendant brought the paint can to the door, and describe, through defendant's testimony, the layout of the front door and the sequence of events.

¶ 9 At the hearing on the motion, defense counsel argued that the evidence presented at trial was insufficient to convict defendant of battery, and that defendant's sentence should be modified. Counsel did not, however, mention her alleged ineffectiveness. The trial court subsequently denied the motion for a new trial without mentioning or inquiring into the ineffective assistance of counsel claims.

¶ 10 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. He specifically claims that the trial court made inconsistent findings about the credibility of Lang, and discounted her history of drug use.

¶ 11 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so

unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 12 As relevant to this appeal, a defendant commits battery if he intentionally or knowingly without legal justification causes bodily harm to an individual. 720 ILCS 5/12-3(a)(1) (West 2008).

¶ 13 Here, we find defendant was proven guilty of battery beyond a reasonable doubt. The evidence, when viewed in the light most favorable to the State, showed that Lang and defendant were supposed to paint several rooms of a house in Chicago on December 15 and 16, 2008. The evidence also showed that although Lang owed defendant money, she decided to quit the job on December 16. When Lang started to exit the house, defendant grabbed the back of her jacket, poured paint over her head, and pushed her through the doorway. Lang slid because there was ice on the platform, and she landed on the ground with her knees and left ankle hitting one of the steps. Lang tried to get up, but defendant grabbed her head, pushed it into the ground, and, when Lang tried to scream for help, he shoved paint in her face and mouth.

¶ 14 Defendant maintains, however, that Lang's testimony was incredible because she was a drug user and admitted to smoking crack cocaine the night before the incident. Defendant contends that the trial court discounted her history of drug abuse in finding her credible, and solely relied on her testimony in finding him guilty. In contrast, defendant asserts that his testimony was credible and unimpeached.

¶ 15 We initially note that it is the responsibility of the trier of fact to resolve conflicts in testimony (*Campbell*, 146 Ill. 2d at 375), and we will not set aside a conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt (*Hall*, 194 Ill. 2d at 330). Furthermore, although defendant correctly indicates that the use of narcotics negatively affects the credibility of a witness (*People v. Adams*, 259 Ill. App. 3d 995, 1004 (1993)), it is not dispositive of a witness' credibility. Despite defendant's assertions to the

contrary, the record clearly shows that the trial court considered Lang's drug abuse in evaluating her credibility. The court specifically stated that it found her credible, "notwithstanding that she admitted to illegal conduct which is impeaching," and, in turn, found that defendant had a motive to commit the alleged acts. Therefore, the court found Lang credible and defendant incredible, and we see no reason to upset that determination. See *People v. Zazzetti*, 69 Ill. App. 3d 588, 592-93 (1979) (finding that the testimony of an eyewitness was sufficient to convict even when the defendant provided contradicting evidence).

¶ 16 In reaching this conclusion, we find *People v. Herman*, 407 Ill. App. 3d 688 (2011), relied on by defendant, distinguishable from the case at bar. In *Herman*, the defendant was found guilty of multiple offenses relating to criminal sexual assault, official misconduct, and kidnaping. This court reversed the defendant's convictions because "the flaws in the [complainant's] testimony made it impossible for any fact finder reasonably to accept any part of it." *Herman*, 407 Ill. App. 3d at 707. This court noted that the complainant was an admitted crack cocaine addict, used cocaine prior to the alleged incident, testified inconsistently to the time line of events, lacked corroboration for her testimony, and gave inconsistent descriptions of the defendant's police car and on which side she was seated. *Herman*, 407 Ill. App. 3d at 705-07. When viewed together, this court found these inconsistencies seriously undermined her testimony and raised questions about the whole of her testimony. *Herman*, 407 Ill. App. 3d at 707.

¶ 17 Despite defendant's contentions to the contrary, the only similarity between *Herman* and the case at bar is the fact that both complaining witnesses were drug addicts, and this fact, "does not necessarily render [the complainant's] testimony unworthy of belief." *Herman*, 407 Ill. App. 3d at 705. Lang's testimony did not have the abundant inconsistencies of the testimony of the complaining witness in *Hermann*, and, unlike *Herman*, 407 Ill. App. 3d at 706, there was corroborating evidence of Lang's version of events, *i.e.*, the photographs taken of Lang after the incident.

¶ 18 In challenging the sufficiency of the evidence, defendant also contends that despite stating that it found Lang to be credible, the trial court "relied primarily on facts that were *inconsistent* with Lang's testimony," *i.e.*, that Lang had "ripped off" defendant and left the job after he paid her for the work in advance, a claim which was disputed by Lang. The trial court, however, did not primarily rely on facts that were inconsistent with Lang's testimony. In fact, the court even found that Lang's testimony was "largely corroborated by the defendant's account." In addition, the fact that the trial court believed defendant's testimony that Lang owed him money does not show that the trial court made an inconsistent finding. The court simply indicated that defendant testified to his own motive for his actions during the incident in question.

¶ 19 Next, defendant contends that a *per se* conflict of interest existed at the posttrial hearing because trial counsel could not advocate, on behalf of defendant, that trial counsel was ineffective as alleged in the posttrial motion. Thus, defendant seeks a remand to the trial court for a new hearing on the posttrial motion with the appointment of new counsel to represent defendant on the self-proclaimed ineffectiveness claim of trial counsel. Defendant bases this position on *People v. Moore*, 207 Ill. 2d 68, 77 (2003). *Moore* held that in situations where a defendant filed a *pro se* motion alleging trial counsel's ineffectiveness, the court is required to appoint independent counsel *if* the court determines that the allegations in the *pro se* petition have possible merit. *Moore*, 207 Ill. 2d at 77-78.

¶ 20 There are two distinct types of conflict of interest: (1) *per se*, where there is no need to demonstrate the conflict affected counsel's actual performance, and (2) actual. *People v. Taylor*, 237 Ill. 2d 356, 374 (2010); *People v. Spreitzer*, 123 Ill. 2d 1, 13-19 (1988). A *per se* conflict of interest exists in three situations: (1) where defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution; (2) where defense counsel contemporaneously represents a prosecution witness; and (3) where defense

counsel was a former prosecutor who had been personally involved in the prosecution of defendant. *Taylor*, 237 Ill. 2d at 374.

¶ 21 In his opening brief, defendant contended that trial counsel was laboring under a *per se* conflict of interest. However, in his reply brief, defendant acknowledges this court recently held that a *per se* conflict of interest does not exist where trial counsel alleged his own ineffectiveness. *People v. Perkins*, 408 Ill. App. 3d 752, 762 (2011).

¶ 22 In his reply brief, defendant argues that notwithstanding the holding, "*Perkins* does not defeat [defendant's] claim that counsel was placed in a conflict of interest because this Court continued to recognize that a trial court is still required to consider the underlying allegations of incompetence in the petition to determine whether an actual conflict of interest exists."

Defendant, however, has not, and indeed cannot, present any evidence that the court did not consider the allegation. Defendant essentially faults the posttrial proceedings on the basis that trial counsel did not verbalize the written allegations contained in her written posttrial motion, which contended in pertinent part that she provided ineffective assistance of counsel by making different trial strategy decisions on matters such as cross-examination. Defendant assumes that the absence of *oral* argument by trial counsel and the absence of *oral* acknowledgment of the claim by the trial court rendered the proceedings defective or noncompliant under *Moore*. This argument is disingenuous because the court may dismiss claims addressing only matters of trial strategy without further inquiry. See *People v. Ward*, 371 Ill. App. 3d 382, 433-34 (2007). Here, there is absolutely no support for defendant's claim that the trial court did not consider the underlying allegations. They were contained in a posttrial motion and presented to the trial court.

¶ 23 In addition, defendant provides no argument on appeal that defendant actually received ineffective assistance of counsel. In *Perkins*, this court observed that the defendant, like the present defendant, did not make a *pro se* complaint against his trial counsel but, rather, his trial counsel voluntarily asserted the claim on his behalf. *Perkins*, 408 Ill. App. 3d at 762. Also, like

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the present defendant, the defendant in *Perkins* was "represented by new counsel on appeal who was unencumbered by any conflict." *Perkins*, 408 Ill. App. 3d at 762. Unlike appellate counsel in *Perkins* who argued ineffective assistance by trial counsel (*Perkins*, 408 Ill. App. 3d at 762), appellate counsel in the present case chose not to raise that issue.

¶ 24 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 25 Affirmed.