

THIRD DIVISION
March 23, 2011

No. 1-10-0318

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).

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. 07 CR 15299
)	
JOSE GARCIA,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Neville concurred in the judgment.

O R D E R

HELD: Judgment affirmed where the testimony of the complaining witness was sufficient to sustain defendant's convictions of aggravated battery and unlawful restraint.

Following a joint bench trial with his codefendant Roberto Garcia, who is not a party to this appeal, defendant Jose Garcia was found guilty of aggravated battery and unlawful restraint, then sentenced to concurrent terms of 30 months' imprisonment.

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On appeal, defendant contends that he was not proved guilty of these offenses beyond a reasonable doubt because the testimony of the complaining witness was substantially impeached and his injuries did not constitute great bodily harm.

At trial, the State presented the testimony of the complaining witness, Joseph Rossi, who worked for defendant's construction company, Garla Trucking and Excavating. In October 2006, a Bobcat machine was stolen from Garla shortly before Rossi left defendant's employ for a construction project in Kentucky with Titan Wrecking. Defendant called Rossi several times in Kentucky and inquired about the Bobcat, but he did not know where the machine could be located. Rossi eventually returned to defendant's employ, but no mention of the stolen Bobcat was made until November 11, 2006, when he went to defendant's office to fill out some paperwork.

Rossi testified that defendant's brother, codefendant Roberto Garcia, and two individuals named Michael and Oscar were also present in the office. While Rossi was talking to defendant, he felt a rope tighten around his neck, leaned back in his chair and saw Roberto holding the rope. Michael and Oscar then held his arms down while defendant repeatedly punched him in the head and yelled, "where is my Bobcat?" Defendant bragged that he paid Michael and Oscar, and that his wife was a Chicago police officer. Rossi stated that he overheard defendant's phone

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calls to Ron Matricard and Roderick Moton bragging and inviting them to come over.

Rossi estimated that a couple of hours had passed since he arrived at defendant's office. During that time, he was tied to a chair with an extension cord, his wrists were bound in front of him with duct tape, and he was beaten and threatened with electrocution. When defendant's wife arrived at the office, she threw her badge on the table and watched the beating. He eventually gave a false location for the Bobcat because he was tired of being hit, and defendant's wife went to look for it. He provided additional false details each time defendant's wife called saying that she could not find the Bobcat. Meanwhile, he was pistol-whipped, beaten, and taken to an adjoining room where he later escaped and called for help.

Rossi further testified that he was transported to Mercy Hospital where he was treated for his injuries and interviewed by a detective. He identified hospital photographs, subsequently admitted into evidence, depicting the injuries he sustained to his face, arms, wrists, and right ankle. He stated that he was initially uncooperative with the police, and explained that he was "spooked" because "an off-duty police officer [] was involved, and I was just suspicious of everything at that point."

On cross-examination, Rossi stated that he was "a little razzled" at 4:30 a.m., when he was first interviewed. He

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recalled saying that seven people were involved, but he did not recall stating that they all beat him. He also explained that he did not tell the detective at the hospital that defendant offered money to Michael and Oscar to beat him because he thought "they were trying to get a handle on who was doing what and where it all took place."

During cross-examination by codefendant's counsel, Rossi was questioned extensively about the precise chronology of events, including his statements during various interviews with the police. On recross-examination, Rossi acknowledged that he filed a civil suit against defendant and others arising out of this incident.

Chicago police officer Ricardo Sanchez testified that he and his partner responded to Rossi's call for help at 3748 South Emerald Avenue where he was found "very frantic, scared" and barefoot with duct tape on one arm. During cross-examination by codefendant's counsel, the parties stipulated that the general offense case report prepared by Officer Sanchez indicated that the incident occurred at 8 p.m. Officer Sanchez further acknowledged that Rossi gave him seven names, including Matricard and Moton, but could not recall if Rossi stated that Matricard and Moton were present during the incident. On redirect examination, Officer Sanchez stated that Rossi was frantic and scared, and that it was "possible" that Rossi was rattling off

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names, which he recorded in his case report. He admitted, however, that his case report also stated that all of the listed offenders struck the victim.

Both Ron Matricard and Roderick Moton testified that they occasionally worked with defendant on construction projects, but neither of them recalled any phone conversations with defendant about beating up Rossi. Matricard added that he and defendant called each other at all hours during ongoing projects, and he was "probably" working on a project with defendant at the time of the incident. The stipulated evidence, however, included defendant's cell phone records showing that various calls were placed to his wife, Matricard and Moton during the incident in question.

Defendant presented the testimony of Michael Foster, who denied any involvement in a crime against Rossi. He also presented the testimony of Detective Mathews regarding his interview of Rossi at Mercy Hospital. On cross-examination by the State, the detective stated that "[b]oth his [Rossi's] eyes were beat up, he had bruises and cuts all over his face." Following closing arguments, the trial court found defendant guilty of the aggravated battery and unlawful restraint of Joseph Rossi.

On appeal, defendant contends that he was not proved guilty of these offenses beyond a reasonable doubt because Rossi's

testimony was substantially impeached. He also contends that Rossi's injuries did not constitute great bodily harm, as required to support his conviction of aggravated battery.

When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Phillips*, 392 Ill. App. 3d 243, 257 (2009). Although the determinations of the trier of fact are not conclusive, they are entitled to great deference and will not be set aside on review unless the evidence is so unlikely or inadequate that a reasonable doubt of defendant's guilt remains. *People v. Rojas*, 359 Ill. App. 3d 392, 396-97 (2005).

Here, Rossi testified that he was tied to a chair in defendant's office, questioned about a stolen Bobcat machine that defendant believed he knew the whereabouts of, then beaten over several hours and threatened with electrocution. He stated that Roberto held a rope around his neck while Michael and Oscar held his arms down and defendant repeatedly punched his head. He overheard defendant's phone calls to Matricard and Moton. Some time after he gave defendant's wife a false location for the Bobcat, he escaped barefoot and called for help. We find that

the trial court could have concluded from Rossi's testimony alone that defendant was proved guilty of aggravated battery and unlawful restraint beyond a reasonable doubt. *People v. Taher*, 329 Ill. App. 3d 1007, 1018 (2002); see also *People v. Murray*, 194 Ill. App. 3d 653, 657 (1990) (complaining witness's testimony alone was sufficient to sustain defendant's aggravated battery conviction).

Moreover, in a prosecution for unlawful restraint, there is no need for corroboration of the victim's testimony, to the extent that such testimony is credible and positive. *People v. Flores*, 79 Ill. App. 3d 869, 873 (1979). The findings of the trial court indicate this was such a case; however, we observe that defendant's cell phone records corroborate the testimony of Rossi that he overheard defendant's phone calls to Matricard and Moton and he gave defendant's wife additional false information each time she called saying that she could not find the Bobcat.

Additionally, Rossi's testimony about the hospital photographs depicting injuries to his face, arms, wrists, and right ankle was consistent with Officer Sanchez's observation of him at 4:30 a.m., and constitute "great bodily harm" as contemplated by the aggravated battery statute. *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993); see *People v. Gonzalez*, 339 Ill. App. 3d 914, 915 (2003) (although photographs were not included in the appellate record, trial testimony revealed their

content). Despite defendant's contrary argument, a finding of great bodily harm is not dependent upon hospitalization of the victim, receipt of medical attention, or the victim suffering permanent disability or disfigurement. *People v. Jordan*, 102 Ill. App. 3d 1136, 1140 (1981).

In sum, we find that defendant's arguments amount to no more than an attack on the credibility of Rossi and the weight to be given to his testimony. *People v. Leak*, 398 Ill. App. 3d 798, 818 (2010). Minor inconsistencies and contradictions between Rossi's trial testimony and prior statements to the police are matters of credibility for the trier of fact to resolve (*People v. Cosme*, 247 Ill. App. 3d 420, 428 (1993)). It is the prerogative of the trier of fact to accept or reject as much of a witness's testimony as it chooses and to draw reasonable inferences from that testimony (*People v. Vazquez*, 315 Ill. App. 3d 1131, 1133 (2000)). The arguments regarding Rossi's alleged impeachment were unsuccessfully advanced before the trial court, and the trial court's resolution of these collateral issues provides no cause for reversal (*People v. Reed*, 80 Ill. App. 3d 771, 780 (1980)).

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

Affirmed.