

No. 2—10—0314
Order filed February 18, 2011

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09—CM—550
)	
RONALD L. LaROCHE,)	Honorable
)	Gordon E. Graham,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of domestic battery; given the aggressive context of the contact, the trial court could find that the contact was insulting or provoking, even though the victim didn't testify that he was insulted or provoked; similarly, the court could find that defendant knowingly acted to insult or provoke, even if he also wanted to retrieve his phone from the victim; the court could reject defendant's claim of justification, as defendant's violence was disproportionate.

Following a bench trial, defendant, Ronald L. LaRoche, was convicted of domestic battery (720 ILCS 5/12—3.2(a)(2) (West 2008)), and he was sentenced to one year of probation and ordered to pay \$100. Following the denial of his motion to reconsider or for a new trial, defendant timely

appeals, claiming that he was not proved guilty of domestic battery beyond a reasonable doubt. We affirm.

Evidence presented at the bench trial revealed that defendant and his stepson, Tyler Johnson, were at defendant's home when they got into an argument about Johnson going to work with defendant. When defendant learned that Johnson was too sick to go to work but that he was well enough to go out with his friends, defendant disconnected the phone on which Johnson was talking with his friends and told Johnson that defendant was going to call Johnson's mother on defendant's cell phone.

Johnson grabbed the cell phone from defendant and ran into the kitchen. Defendant went after Johnson. As Johnson leaned over the kitchen island with the phone in his outstretched hands, defendant leaned on top of Johnson and reached his arms around him, attempting to retrieve the phone from Johnson. When Johnson advised defendant that defendant was choking him, defendant backed off. Johnson "squirmed" out from underneath defendant, tripped over some cabinets, and ran out the door.

Once outside, Johnson called the police. In the recording of his 911 call, Johnson is heard crying, hyperventilating, and advising the 911 dispatcher that defendant threatened to "break [his] fucking neck." When the police arrived, defendant told an officer that Johnson was lazy. Based on these facts, the trial court found defendant guilty of domestic battery, noting that defendant's act of lying on top of Johnson while trying to get his cell phone back constituted physical contact of an insulting or provoking nature.

At issue in this appeal is whether defendant was proved guilty beyond a reasonable doubt of domestic battery. "A criminal conviction will not be set aside unless the evidence is so improbable

or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant. *Id.* Rather, “ ‘the relevant question is whether, after viewing 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

Here, defendant was convicted pursuant to section 12—3.2(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12—3.2(a)(2) (West 2008)), which provides, in pertinent part, that “[a] person commits domestic battery if he intentionally or knowingly without legal justification *by any means*” “[m]akes physical contact of an insulting or provoking nature with any family *** member.” (Emphasis added.) In connection with the statute’s requirements, defendant admits that he struggled with Johnson, a family member, over possession of the phone. Defendant, however, claims that (1) his contact with Johnson was not insulting or provoking; (2) his conviction cannot stand, because Johnson failed to testify at trial that he was insulted or provoked; (3) he did not *knowingly* make contact of an insulting or provoking nature with Johnson; and (4) he was justified, under section 7—3 of the Code (720 ILCS 5/7—3 (West 2008)) in acting the way he did in order to prevent his phone from being broken. We address each of these contentions in turn.

First, we consider whether defendant’s act of leaning on top of Johnson while attempting to retrieve his cell phone constituted contact of an insulting or provoking nature. In determining

whether physical contact is insulting or provoking, we observe that, in isolation, the contact at issue might not appear to be insulting or provoking. See *People v. DeRosario*, 397 Ill. App. 3d 332, 334-35 (2009). Thus, when courts evaluate whether the contact was insulting or provoking, they consider the factual context in which it occurred. *People v. d'Avis*, 250 Ill. App. 3d 649, 651 (1993). In doing so, courts are mindful of the fact that contact that does not injure the victim may nonetheless be deemed insulting or provoking given the relationship between the parties. *DeRosario*, 397 Ill. App. 3d at 334.

Here, viewed in favor of the State, the evidence revealed that defendant and Johnson had been arguing about whether Johnson was too sick to go to work with defendant that day. During that argument and before defendant touched Johnson, defendant disconnected the phone Johnson was using to talk with his friends. When defendant “made contact” with Johnson, he threatened to break Johnson’s neck and backed away from Johnson only after Johnson complained that defendant was choking him. When Johnson called the police to report the domestic battery, he was crying and hyperventilating. Subsequently, after the police arrived, defendant told an officer that Johnson was lazy. Given the factual context in which the contact between Johnson and defendant arose, we cannot conclude that the trial court erred in finding that the contact was insulting or provoking.

Second, we consider whether defendant’s conviction can stand when Johnson did not testify at defendant’s trial that he was either insulted or provoked. When an element of the offense with which a defendant is charged requires the State to prove that the defendant’s contact was insulting or provoking, “[t]he victim does not have to testify [that] he or she was provoked.” *People v. Wrencher*, 399 Ill. App. 3d 1136, 1150 (2009). Rather, “the trier of fact can make that inference from the victim’s reaction at the time.” *Id.* Accordingly, given the fact that Johnson “squirmed” out

from underneath defendant, ran out of the house while calling the police, and was crying and hyperventilating when he relayed to the 911 dispatcher what had happened, we conclude that the trial court did not err when it inferred that Johnson was insulted or provoked by defendant's contact.

Third, we address whether defendant *knowingly* made physical contact of an insulting or provoking nature with Johnson. As relevant here, a defendant acts knowingly when he is consciously aware that his conduct is insulting or provoking. See 720 ILCS 5/4—5(a) (West 2008). In determining whether a defendant acted with the requisite knowledge, courts may infer it from the circumstantial evidence. *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009). That is, knowledge may be inferred from the act itself as well as the defendant's conduct when the act was committed. *Id.*

The same evidence from which the trial court could conclude that defendant's conduct was insulting or provoking supports a conclusion that defendant acted knowingly. Specifically, from the fact that defendant and Johnson were arguing about Johnson going to work with defendant, that defendant disconnected the phone that Johnson was using, that defendant threatened to break Johnson's neck, that defendant released Johnson only after Johnson told defendant that he was choking him, that Johnson was distraught when talking with the dispatcher, and that defendant called Johnson lazy, we determine that the trial court did not err in inferring that defendant's act of lying on top of Johnson and reaching around him with both arms in an attempt to retrieve his cell phone was insulting or provoking contact done knowingly.

In arriving at this conclusion, we find unpersuasive defendant's reliance on *People v. Craig*, 46 Ill. App. 3d 1058 (1977). There, the appellate court concluded that "[t]he testimony of record leads to the conclusion that defendant's sole objective or purpose in taking the complainant's camera

from her hand and immediately giving it to her mother was to enforce the hospital’s rule against the use of cameras.” *Id.* at 1060. The court in *Craig* reached that result because there was no history between the defendant, a hospital security guard, and the complainant from which the trier of fact could infer that the defendant knowingly acted to insult or provoke the complainant when he removed the camera from her hands. *Id.* Here, in contrast, the relationship between defendant and Johnson, *i.e.*, stepfather and stepson, and the context in which defendant had contact with Johnson suggest that defendant knowingly acted to insult or provoke Johnson, even if he also acted to retrieve his phone.

Last, we consider whether defendant was justified in acting the way he did because he needed to prevent Johnson from breaking defendant’s cell phone. See 720 ILCS 5/7—3(a) (West 2008). Before addressing the substance of defendant’s argument, we observe that defendant insinuates on appeal that the State bore the burden of proving beyond a reasonable doubt that defendant’s contact with Johnson was without legal justification. Defendant’s position is incorrect. The justifiable use of force was an affirmative defense that defendant was required to raise. See *People v. Sambo*, 197 Ill. App. 3d 574, 582 (1990) (“[t]he lack of legal justification is not a necessary element of the offense of battery”; rather, it “is considered to be an affirmative defense.”).

Turning to the substance of defendant’s claim, although defendant raised this defense at trial, the trial court was not required to accept it. See *People v. Young*, 347 Ill. App. 3d 909, 920 (2004). Rather, the trial court, as the trier of fact, assessed this defense in light of all the other evidence and concluded that defendant was not justified in using force to regain possession of his cell phone. See *Id.* The trial court did not err in making this finding. Indeed, the court was clearly entitled to find

that defendant's violence was disproportionate to the alleged justification. See *People v. Garibay*, 366 Ill. App. 3d 1103, 1110 (2006).

Accordingly, after viewing the evidence in the light most favorable to the prosecution, as we are required to do, we conclude that a rational trier of fact could have found the essential elements of domestic battery proved beyond a reasonable doubt. Thus, we affirm defendant's conviction.

Affirmed.