

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).

No. 3--09--0537

Order filed January 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit La Salle County, Illinois
Plaintiff-Appellee,)	
v.)	No. 08--CM--789
CHANCE T. BROWN,)	Honorable William Balestri
Defendant-Appellant.)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

Held: Where trial judge who found defendant guilty of domestic battery considered and rejected letter of recantation from complaining witness who testified at bench trial, defendant was not entitled to evidentiary hearing to determine if witness' recantation warranted a new trial.

Defendant, Chance T. Brown, was convicted of domestic battery (720 ILCS 5/12--3.2(a)(1) (West 2008)) for grabbing his girlfriend, Jennifer Lurz, by the neck and banging her head

against a wall. Before the trial court sentenced defendant, Lurz wrote a letter recanting her trial testimony against defendant. The trial court sentenced defendant to 90 days in jail and conditional discharge for one year. On appeal, defendant argues that the trial court should have held an evidentiary hearing on the credibility of Lurz's letter. We affirm.

Defendant was charged by information with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2008)). The information alleged that on June 10, 2008, defendant "grabbed Jennifer Lurz around the neck with both hands and banged her head off the wall." A bench trial was held.

At trial, Lurz testified that on June 10, 2008, as she was pulling into her driveway, she saw a vehicle pull up to her home. She recognized the female in the vehicle and became angry. She told defendant to get his belongings and leave her house. Defendant then became angry and "started putting his hands on [her]." He pulled her hair and banged her head on a wall. Lurz called the police. She initially told the police that she did not have any injuries, but an officer pointed out that she had a scratch on her face. She did not know how she received the scratch but thought it could have happened when defendant grabbed her hair.

Officer Brian Wahl testified that he was dispatched to

Lurz's home on June 10, 2008. When he arrived, Lurz was crying and very upset. He noticed a mark on Lurz's face. Lurz told him that the mark was the result of a physical altercation with defendant.

Defendant testified that Lurz became angry when another woman came to her house on June 10, 2008. She yelled at him and snatched his clothes as he packed them. He said that he never grabbed or struck Lurz.

On December 11, 2008, the trial court found defendant guilty of domestic battery. Defendant's sentencing hearing was scheduled for January 15, 2009. Defendant failed to appear at the sentencing hearing, so the court issued a bench warrant.

On June 2, 2009, Lurz sent a letter to the court recanting her trial testimony. She claimed that she told police that defendant injured her because she was angry at him. She stated that, in actuality, defendant "never once placed his hands on me." She also claimed that the State threatened to arrest her if she did not testify at defendant's trial.

On June 8, 2009, defendant was arrested and taken into custody pursuant to the bench warrant issued by the trial court in January. On June 17, 2009, defendant filed a letter with the court, requesting a reexamination of his case in light of Lurz's letter. Defendant's sentencing hearing was held the next day.

At defendant's sentencing hearing, the court discussed Lurz's letter with the prosecutor and defense counsel. Defense counsel suggested that defendant's sentencing be postponed so that he could "file motions" in light of the letter. The prosecutor urged the court to proceed with sentencing because Lurz's testimony at trial was credible. The prosecutor also noted that Lurz's letter was written almost six months after Lurz testified and just six days before police took defendant into custody.

The trial court concluded that the letter was "very, very suspicious." The court found that Lurz's testimony under oath "carries much more weight than a letter." Thus, the court saw no reason to delay sentencing. The court sentenced defendant to 90 days in jail and placed him on conditional discharge for one year.

ANALYSIS

Defendant argues that the trial court should have held an evidentiary hearing to determine if Lurz's recanted testimony merited a new trial.

"The recantation of testimony is regarded as inherently unreliable." *People v. Morgan*, 212 Ill. 2d 148, 155 (2004). Courts will not grant a new trial on the basis of recanted testimony except in extraordinary circumstances. *Id.*

A trial judge is not required to hold an evidentiary hearing to examine the credibility of a witness' posttrial recantation if he or she was the judge who presided over the defendant's trial. *People v. Hernandez*, 298 Ill. App. 3d 36, 40 (1998). This is so because the trial judge heard the trial testimony and could resolve the questions of fact concerning the reliability of the recantation by considering the witness' credibility at trial, the complete trial record and the arguments and documents presented by the defendant. *Id.*

Here, the trial judge who presided over defendant's bench trial was the same one who considered defendant's request for a reexamination of his case after Lurz filed her letter. The judge specifically recalled the testimony Lurz provided under oath at defendant's trial. He found Lurz's testimony at trial to be more believable than the letter she wrote nearly six months later. In light of these facts, the trial court was not required to hold an evidentiary hearing before rejecting defendant's request to reconsider his conviction.

CONCLUSION

The order of the La Salle County circuit court is affirmed.
Affirmed.

