

2012 IL App (2d) 100951-U
No. 2-10-0951
Order filed February 7, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-DV-268
)	
CHRISTHIAN ESTARITA-APARICIO,)	Honorable
)	Elizabeth W. Sexton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of domestic battery: although the complainant's testimony was inconsistent in some minor respects, the trial court was free to credit her testimony as to the crucial fact that defendant picked her up and started carrying her against her will.

¶ 1 Defendant, Christian Estarita-Aparicio, appeals from his conviction of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)). He contends that the evidence was insufficient to convict him.

We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with multiple counts, including two counts of domestic battery, in connection with an incident that occurred on February 9, 2009, involving himself, Karen Giraldo, who was the mother of his child, and Miguel, a friend of Giraldo. One of those counts alleged that defendant caused bodily harm to Giraldo when he grabbed her around the waist, and the second count alleged that he made physical contact of an insulting or provoking nature when he grabbed her around the waist. The other counts were dismissed before trial. On July 21, 2009, a bench trial was held.

¶ 4 Giraldo testified that she had been in a dating relationship with defendant that ended in December 2008. She said that defendant was not allowed in her home. On February 9, 2009, she was at home with Miguel when defendant arrived and knocked on the door. Miguel, not knowing that defendant was not allowed in the home, opened the door. Giraldo testified that defendant came in, grabbed her arm, and started walking her toward the door. She said that, although he did not use a lot of force, he dragged her by her upper shoulder and arm and pulled her through the door.

¶ 5 Giraldo testified that, once they were outside, defendant asked her what was going on and why she had gone out with friends a few nights earlier. Miguel was standing nearby. Giraldo said that she told defendant to leave, and he put his hands on her, picked her up around the legs, and started to walk while carrying her. She also characterized him as picking her up around the waist. As defendant walked with her, he fell, and she hit her head. Giraldo said that Miguel then tried to get defendant to leave, but defendant pulled her by her sweater. Miguel then stepped between her and defendant, but defendant continued to pull on her sweater, and she removed it. Miguel and defendant then got into a physical confrontation. At some point, defendant briefly lost consciousness.

¶ 6 Giraldo testified that defendant's mother, who was in a nearby car, walked up and yelled at defendant to leave and yelled at Giraldo that it was all Giraldo's fault. She said that defendant got into his mother's car, but then jumped back out of the car and got into another fight with Miguel. Giraldo testified that, after the police were called, defendant and his mother drove away, but 15 minutes after the police left, defendant returned and banged on the door of the home, telling Giraldo to come out.

¶ 7 On cross-examination, Giraldo testified that she gave a written statement to the police but did not provide all of the details of the incident. She said that she wrote that defendant picked her up, but no one told her to be specific about where his arms were wrapped around her or to be specific about any other details. She did not write that she took off her sweater or that she hit her head when she fell. A police officer who responded to the call testified that, when he arrived, the back of Giraldo's shirt and pants was wet and muddy. He said that he told Giraldo to write a story about what happened to her.

¶ 8 Defendant's mother testified that she saw the incident from the car and that she saw defendant grab Giraldo's hand, but not violently. She said that the two then walked toward her and that she saw Miguel grab defendant's neck from behind and choke him. There was a struggle, and defendant dropped to the ground. Defendant got back up, and Miguel continued to fight with him. Defendant's mother testified that she was yelling at defendant to leave and that, when Miguel let defendant go, defendant got into the car and they returned home. She said that he did not get back out of the car and did not leave their home that night while she was awake. During the incident, she did not see defendant lift Giraldo and did not see Giraldo remove any clothing. On cross-

examination, she stated that she did not want anything bad to happen to defendant, but that she would not lie for him.

¶ 9 Defendant testified that he and Giraldo had a relationship that would be okay one day and maybe not okay the next. He denied that he ever grabbed her hand in the house, and he said that she followed him outside. According to defendant, once they were outside, he tried to talk to Giraldo, but Miguel would not let them talk. He said that he asked Giraldo if they could talk in his mother's car, and she agreed. He said that he grabbed her hand as they walked away, but Miguel then got him in a choke hold. He said that he blacked out and, when he regained consciousness, Giraldo was no longer by him. Miguel continued to fight with him until he left with his mother. Defendant said that he did not go back to Giraldo's house, but he did talk to her on the phone that night. He denied that he ever grabbed Giraldo or picked her up, and he did not see her wearing a sweater. When he spoke to police the next day, defendant did not report to police that Miguel attacked him. Giraldo testified in rebuttal and controverted some of defendant's testimony. She also said that he called her after the incident, but while the police were still there, and that they urged her to tell him to turn himself in.

¶ 10 The trial court stated that, despite inconsistencies, both Giraldo and defendant provided credible testimony, but it did not find defendant's mother's testimony credible at all. The court then found that defendant did grab Giraldo by the waist or legs, which was consistent with testimony from the officer who observed that Giraldo's back was wet and muddy. Thus, the court found defendant guilty on the count involving physical contact of an insulting or provoking nature. The court did not find bodily harm and acquitted defendant on that charge. Defendant was sentenced to one year of conditional discharge, and he appeals.

¶ 11

II. ANALYSIS

¶ 12 Defendant argues that the evidence was so inconsistent that it was insufficient to convict him beyond a reasonable doubt. “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). In considering a challenge to the sufficiency of the evidence, 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). “Discrepancies, omissions and bias go to the weight of the testimony to be evaluated by the trier of fact.” *People v. Rodriguez*, 408 Ill. App. 3d 782, 794 (2011). “Minor inconsistencies in testimony do not, by themselves, create a reasonable doubt.” *People v. Cunningham*, 309 Ill. App. 3d 824, 827 (1999).

¶ 13 Here, defendant focuses on inconsistencies between Giraldo’s testimony, her written statement, and the complaint. In particular, he notes that, although the complaint stated that he picked Giraldo up around the waist, she did not report that detail to police and she testified that he picked her up around the legs. He also notes that Giraldo did not report anything about hitting her head or removing her sweater. However, these are minor discrepancies that Giraldo explained when she testified; she said that she was not told to provide specific details in her written statement. Although she testified that defendant picked her up both around her legs and around her waist, this

was a minor detail that did not affect the key evidence that defendant picked her up and started carrying her. See *People v. Burdine*, 362 Ill. App. 3d 19, 24 (2005) (“When a crime can be committed by several acts, as in this case, a variance between the act named in the indictment and the act proved will not be fatal.”). Defendant also focuses on his mother’s testimony, but the trial court was free to disbelieve that testimony.

¶ 14 Defendant relies on two cases, which he argues support his position, but in those cases there were serious inconsistencies in the evidence and a lack of corroborating evidence. *People v. Cowan*, 209 Ill. App. 3d 994, 997 (1991); *People v. Jakes*, 207 Ill. App. 3d 762, 771-72 (1990). Thus, those cases are not on point.

¶ 15 Ultimately, the court believed Giraldo’s testimony that she had been picked up and carried, which was consistent with evidence that the back of her shirt and pants was wet and muddy from when she fell. That determination was reasonable, and there was sufficient evidence to convict defendant.

¶ 16 III. CONCLUSION

¶ 17 The evidence was sufficient to convict defendant beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.