

2012 IL App (2d) 101304-U  
No. 2-10-1304  
Order filed June 5, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-800
	)	
LUIS A. TOVAR,	)	Honorable
	)	Thomas E. Mueller,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Burke concurred in the judgment.

**ORDER**

*Held:* The evidence was sufficient to sustain defendant's conviction for home invasion.

¶ 1 Following a jury trial, defendant, Luis A. Tovar, was convicted of two counts of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)) and sentenced to seven years' imprisonment. Defendant appeals, arguing that the evidence was insufficient to sustain his convictions because it failed to establish that he intentionally caused injuries to the two alleged victims. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On May 24, 2009, the State charged defendant with entering Olga Rico's home at 363 Yarwood in Elgin on March 15, 2009, and intentionally causing injury to her by striking her in the eye. It also charged defendant with intentionally causing injury to Ana Espinoza by throwing her to the ground.<sup>1</sup>

¶ 4 Olga Rico, who is currently on probation for retail theft and was charged in 2001 with obstructing justice, testified through an interpreter that her home contains two units. She lived in the second-floor unit. Three other individuals also lived with her: Ana Espinoza (Rico's daughter's friend), Daniel (a renter), and Alberto Hernandez (Rico's son). Espinoza had moved into Rico's home about one month before the incident. She had previously lived with defendant, but moved into Rico's home because she had "left him." Espinoza's bedroom was on the second floor.

¶ 5 Before midnight on March 15, 2009, defendant knocked on Rico's door. When Rico opened the door, defendant asked to speak to Espinoza. He did not ask to come into the home. Rico told him to wait outside the door; he was at the door. She did not shut the door. Rico went to Espinoza's room. Espinoza did not want to speak to defendant, and Rico returned downstairs and told defendant, who was outside, what Espinoza had stated. Rico also told defendant to come back another day. According to Rico, defendant came inside the house: "I was standing at the door, when I told him to come back another day, so then he came up closer to me like in order to come in, and I took my hands off and I went back to the side, and that's when he went upstairs." Rico did not grant defendant permission to enter, and defendant did not shove her. Rico explained that she moved aside as defendant came in because they did not both fit in the area. Defendant ran up the stairs, and

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<sup>1</sup>The State also charged defendant with unlawful possession of a controlled substance (less than 15 grams of a substance containing cocaine). The jury acquitted him of this charge.

Rico followed. Defendant entered the kitchen as Espinoza was coming out of the bedroom. Defendant “went and they were struggling.” He grabbed Espinoza on her shoulder. They did not argue before he grabbed her. Espinoza remained standing, but wanted “to escape from him” and told defendant to let her go. “And from there she fell to the floor.” Defendant “was still grabbing her” and fell. After Espinoza fell, Rico, Alberto, and Daniel “tried to get him off of her.” Alberto grabbed one of defendant’s arms, and Rico (and, later, Daniel, replacing Rico) grabbed the other. When Alberto let go of defendant’s arm in order to call the police, defendant let go of Espinoza and “got free.” Rico witnessed Alberto speaking on the phone and testified that Alberto called 911 because she was afraid that defendant would take Espinoza out of the house. At this point, Rico was standing by the door. Defendant “was able to get away from Daniel and when he was able to—uhm—pull his arm away, that’s when he hit me in the face.” This occurred, “at the moment that he was escaping.” Defendant struck Rico in the eye, stated that he was going to come back to finish what he had come there to do, left the house, and entered a car.

¶ 6 Rico further testified that she has known defendant for many years (more than four) and that he has been to her home and that they have a common relative—Espinoza. Rico had known for about three months that defendant and Espinoza were dating.

¶ 7 On March 16, 2009, Rico gave a taped statement to police. At trial, she denied telling police that, after she told defendant that Espinoza did not want to speak to him, he threw open the door and threw Rico on the stairs. Rico identified photographs that depicted a lamp on a first floor landing that she testified defendant knocked over on his way down the stairs. She also identified a photograph that showed spilled coffee and soda on her kitchen floor and testified that, when Rico and the others grabbed defendant, they moved the table and the items spilled onto the floor.

¶ 8 On cross-examination, Rico testified that, when defendant was able to free one of his arms, she was struck in the eye. She stated that defendant did not take his fist and punch her. Rico does not know exactly how she was struck in the eye or which of defendant's arms struck her. Rico conceded that she did not wish to testify and did so only because the police arrested her (she did not appear the first time that the case was set for trial because she "didn't want to know anything more about this").

¶ 9 Ana Espinoza, age 19, testified that she dated defendant for about eight months and lived with him during that time. After their relationship ended, Espinoza moved in with Rico and lived upstairs in her home. When Espinoza broke up with defendant, she told him that she did not want to continue on with him and she did not tell him where she was moving. However, defendant had been to Rico's house many times. Defendant knew all of the home's occupants.

¶ 10 Addressing the night of the incident, Espinoza testified that Rico came upstairs twice to tell her that defendant wanted to speak to her and Espinoza replied both times that she did not want to speak to him. When defendant came upstairs, he stated that Espinoza had to go with him. She was in the kitchen and refused to go with defendant. Defendant pulled Espinoza by the hands and hair out of the room (Espinoza stood in the doorway at this time). Rico and Daniel defended her, grabbing defendant. Espinoza fell to the ground. Soda spilled onto the floor; defendant possibly hit the table causing the spill. Eventually, defendant left because Rico and Daniel told him that they had called the police.

¶ 11 Espinoza testified that it hurt when defendant pulled her hair and when he scratched her. She identified several photographs of herself, taken on the night of the incident, that depicted two

scratches her arm and a bruise on her hand that she stated were inflicted by defendant. At no time that evening did Espinoza tell defendant that he could come into her home.

¶ 12 Espinoza could not recall when she broke up with defendant. She told Rico twice that she did not want to speak to defendant, but did not state that he could not come upstairs. Defendant never struck Espinoza. Espinoza testified that, on the night of the incident, she did not observe defendant strike anyone. Rico instructed Alberto to call the police, and he called them. After Alberto called the police, defendant left. A recording of the 911 call was played for the jury.

¶ 13 Elgin police officer Katherine Phillips testified that she was dispatched to the scene at 11:45 p.m. When she arrived, she saw Rico and Alberto on the porch. They were frantic, yelling, and Alberto was comforting Rico. Phillips also saw Espinoza, whom Phillips had asked to come downstairs; Espinoza was trying to comfort Rico. Phillips entered the house and observed that the kitchen was disheveled; food and liquid were on the floor and it looked like there had been a struggle. Phillips also observed swelling and redness above one of Rico's eyes. Other than her demeanor, Phillips could not recall observing anything unusual about Espinoza's appearance.

¶ 14 The women identified defendant as the suspect and told Phillips that he had left in a brown taxi. Phillips broadcasted this information and subsequently went with Espinoza to Shales Parkway and Sheldon in Elgin, where Espinoza identified defendant (the show-up). Phillips could not recall if defendant was handcuffed at this time. A brown van was close to defendant, and it was open.

¶ 15 Officer Geoffrey Gomoll testified that, when he arrived at the intersection of Shales and Sheldon, he observed Luis Rosa in the driver's seat of a minivan taxi. Gomoll did not notice anyone else in the vehicle, and Rosa stated he had not seen defendant. Officer Travis Hooker, who was also at the scene, looked in the window. He motioned for Gomoll to the back of the car, and they saw

someone hiding under a blanket in the back seat. The officers removed Rosa from the vehicle, and Hooker retrieved his canine. Hooker instructed the person in the vehicle to exit and warned that, if he or she did not, he would sick the dog inside. Defendant exited the van. Gomoll was aware that defendant was wanted for an investigation of the incident at Rico's house. Hooker detained defendant; he placed him on the ground, face down, and asked him to put his hands behind his back. Gomoll did not observe Hooker handcuff him at this time, nor did he observe Hooker search him. After the show-up, defendant was handcuffed.

¶ 16 David Baumgartner, a detective with the Elgin police department, testified that he arrived at the scene at about midnight. Later, at the police station, he had a conversation with Rico through officer Ramon Lazcano, who served as the interpreter. Baumgartner took notes of his conversation. The next day, Baumgartner had another conversation with Rico; this occurred at her apartment and it was taped.

¶ 17 Addressing his first conversation with Rico, Baumgartner testified that he did not tape it because it was about 12:50 a.m. and she had a small child with her. Her statement was consistent with the one she gave the next day on tape. During their first conversation, Rico stated that defendant pushed on the door and shoved her to the side of the door before he went upstairs. She also stated that, when defendant released Espinoza from his grip, he stood up, turned toward Rico's direction, and punched Rico in the right eye with a closed fist. Rico also stated that, before fleeing, defendant yelled "you'll be sorry, you fucking whore" and "I'll be back and kill everybody." All of this was translated by Lazcano.<sup>2</sup>

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<sup>2</sup>Baumgartner's account of Rico's statements was apparently admitted as substantive evidence.

¶ 18 Defendant testified through an interpreter that Rico is his brother's mother-in-law and he has known her for 10 years. Defendant has been to Rico's house more than seven times; she took care of his brother's son. Defendant lived with Espinoza for about eight months in 2008 and 2009.

¶ 19 On March 15, 2009, Espinoza told defendant in a telephone conversation around 5 p.m. that she wanted to speak with him in person. She told him where she was staying. Defendant traveled from Chicago to Rico's house. When Rico opened the door, she told defendant to come in. She went upstairs first, and he went up behind her. Espinoza was in the kitchen. He spoke to her. Espinoza broke up with him. She came out of the room. "[S]o that's when I grabbed her hands, and I said let's go. So that's when the other two, the guy and the other one were on top of me, and that's when we started to struggle." Defendant pulled away and went downstairs. He never intended to strike anyone; he did not push Rico. He heard someone mention calling the police, and he left. About one block from his house, the police stopped defendant. He was in the passenger seat when he was stopped. He denied that he was under a blanket. After the canine sniffed him, defendant testified that he was handcuffed and transported to the police station.

¶ 20 On cross-examination, defendant was asked who punched Rico in the eye. He responded: "That's when we were struggling, but I didn't, I didn't notice that and forgive me, if that happened, but I didn't realize it." He conceded that he was swinging his arms, but stated that his shirt was over his eyes and he could not see. He wanted to leave and did not have any reason to be angry at Rico. Rico gave defendant permission to enter her home. Defendant denied scratching Espinoza. Espinoza broke up with him that day.

¶ 21 During an interview with police, including Baumgartner, defendant did not mention that he went to Rico's house in response to Espinoza's call because the officers did not ask him. He also

told officers that, when he arrived at Rico's house, a man was coming down the stairs and the man just listened. Defendant could not recall if he told police that the young male jumped on him. Defendant told police that he never entered the residence. At trial, he explained that he meant that he did not initially enter the residence. Defendant further testified that he never had any intent to strike Rico and that he never punched her.

¶ 22 In rebuttal, the State had admitted into evidence certified copies to two convictions against defendant: a 2002 conviction for unlawful restraint and a 2001 conviction for obstructing justice.

¶ 23 Detective Baumgartner testified that, during the early morning hours of March 16, 2009, he interviewed defendant in the jail's interview room. The interview was not taped. Sergeant Phil Danner was also present. The interview was conducted in English. Baumgartner testified that defendant did not appear to have difficulty understanding the questions and did not state that he had any trouble. During the interview, defendant stated that, when he knocked on Rico's door, he noticed a younger male come down the stairs and that the male jumped on him. He also stated that he never entered the residence and that he was not assaulted or attacked. Baumgartner did not observe any injuries on defendant's body, but he did notice reddish marks on both of his wrists that were consistent with handcuffing. Except during his interview of defendant (because he did not need an interpreter), he interviewed about four or five people that day about the incident and used a Spanish interpreter. Sergeant Philip Danner testified consistent with Baumgartner's testimony and added that defendant stated that he did not punch anyone in the residence

¶ 24 Officer Ramon Lazcano testified that Spanish is his primary language. He reviewed the 911 tape of the call from 363 Yarwood on the night of the incident and, during a certain portion of the

tape, he heard a woman's voice in the background, speaking Spanish. According to Lazcano: "She said he punched me in the face."

¶ 25 The jury found defendant guilty of both counts of home invasion. The trial court subsequently ruled that the two counts merged and sentenced defendant to seven years' imprisonment. Defendant appeals.

¶ 26

## II. ANALYSIS

¶ 27 Defendant argues that his conviction must be reversed because, even if a rational jury could have found that defendant did not have authority to enter Rico's and Espinoza's dwelling, the State failed to prove beyond a reasonable doubt that he intentionally caused the charged injuries to Rico and Espinoza, where the victims failed to fully explain how they sustained their injuries. For the following reasons, we reject defendant's argument.

¶ 28 When reviewing a challenge to the sufficiency of the evidence, this court considers whether, 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. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). 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. *Id.* The critical inquiry in reviewing the sufficiency of the evidence is whether the evidence reasonably supports a guilty finding regardless of whether the evidence is direct or circumstantial, or whether the trial was by bench or jury. *People v. Lissade*, 403 Ill. App. 3d 609, 612 (2010).

¶ 29 A person (who is not a peace officer acting in the line of duty) commits home invasion when "without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present" and he or she "[i]ntentionally causes any

injury \*\*\* to any person or persons within such dwelling place.” 720 ILCS 5/12-11(a)(2) (West 2008). The term “intent” is defined as follows: “A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, *when his conscious objective or purpose is to accomplish that result or engage in that conduct.*” (Emphasis 720 ILCS 5/4-4 (West 2008). In its indictment, the State charged defendant with intentionally causing injury to Rico by striking her in the eye and intentionally causing injury to Espinoza by throwing her to the ground.

¶ 30 Defendant urges that the altercation in the kitchen was a free-for-all and that he may have inadvertently, not intentionally, injured the victims. As to Rico’s injuries, defendant notes that she testified that defendant did not shove her and that she did not know exactly how she was struck in the eye. She also said that it could have happened as defendant got his arm loose from Daniel and Alberto. Defendant also notes that Rico testified that he did not punch her in the eye. As to Espinoza’s injuries, defendant notes that Espinoza testified that he did not strike or slap her or strike anyone that evening, although she said that it hurt when he pulled and scratched her on the arm. Addressing Lazcano’s testimony concerning the 911 call and where he heard a woman’s voice say, in Spanish, that “he punched me in the face,” defendant argues that, even if Rico was the speaker and even if the defendant was the person to whom she was referring, a “punch” may be interpreted as the same inadvertent one Rico described during her testimony. Also, defendant contends that he testified that he had known Rico for 10 years and had no reason to be angry at her. As for Espinoza, he asserts that, if his purpose that evening was to reconcile with her, he would have no motive to harm her.

¶ 31 The State relies, as to Rico's injuries, on the 911 statement and notes that Rico admitted that she was a reluctant witness. This reluctance, the State argues, may have colored the nature of her testimony. As to defendant's argument that his blow to Rico was accidental, the State notes that, Daniel replaced Rico during the kitchen struggle. When defendant got away from Daniel, Rico stood by the door. Defendant's arms, the State contends, were free at this point, leading to the conclusion that, if Rico was struck at this time, it was an intentional act. The State also argues that, although Rico did not state that the blow was intentional, the fact that the blow occurred when defendant was apparently away from the immediately-preceding struggle and that it occurred when he had reason to be angry and confrontational due to that struggle, it may reasonably be inferred that he intended to hit Rico.

¶ 32 As to Espinoza's injuries, the State responds that defendant grabbed Espinoza by the hand and hair. She fell to the ground, others came to her aid, and defendant left. This shows, according to the State, that defendant intentionally injured her because he came to take her away against her will and tried to do so through the use of physical force. In the course of doing so, defendant's application of force caused Espinoza to be thrown to the floor and she sustained injuries in the course of the physical altercation. The State also notes that defendant was impeached by the officers' testimony that he denied ever entering the residence. Also, defendant did not deny grabbing Espinoza's hands. The fact that she fell to the floor is a likely outcome of intentionally grabbing an unwilling victim and trying to force them to leave their residence.

¶ 33 The trier of fact is responsible for determining a witness's credibility and the weight to be given to a witness's testimony, as well as drawing any reasonable inferences from the evidence. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Although all reasonable inferences in the record must

be given in the prosecution's favor, unreasonable inferences will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The trier of fact is also in the best position to resolve any conflicting inferences produced by the evidence. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Further, "the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*; see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt"). Additionally, the trier of fact's findings of credibility are given greater weight because it saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). "The testimony of a single witness, if it is positive and the witness [is] credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Circumstantial evidence can sustain a conviction, "provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *Hall*, 194 Ill. 2d at 330. A defendant's conviction will not be reversed "simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 34 Viewing the evidence in the light most favorable to the State, we conclude that a reasonable jury could have found that defendant intended to cause the charged injuries. Where a defendant denies intent, his or her intent may be proved through circumstantial evidence. *People v. Begay*, 377 Ill. App. 3d 417, 421 (2007). The defendant's intent may be inferred, for example, from his or her conduct surrounding the act and from the act itself. *Id.* at 421-22; see also *People v. Masterson*, 79 Ill. App. 2d 117, 127 (1967) (one is presumed to intend the natural and probable consequences of his or her actions). Here, the key witnesses were inconsistent; however, the evidence was sufficient

to sustain the convictions. As to Rico, she conceded that she did not wish to testify and did so only because the police arrested her for failing to appear the first time that trial was set to commence. Baumgartner stated that, during his first conversation about the incident with Rico, she stated that, when defendant released Espinoza from his grip, he turned toward Rico and punched her in the right eye with a closed fist. This is consistent with Lazcano's testimony concerning the woman's voice on the 911 tape, stating that "he" (presumably defendant) punched "her" (presumably Rico) in the face. Baumgartner also stated that Rico mentioned during her interview that defendant also yelled out before fleeing that he would return and kill everyone. It was the jury's province to weigh Rico's testimony and defendant's denial against Baumgartner's testimony concerning the interview. Baumgartner's or Lazcano's testimony was not inherently incredible.

¶ 35 This testimony aside, defendant's assertion that he had no reason to be angry at Rico is not well-taken because she relayed Espinoza's refusal to speak to him after he arrived at the residence and because she tried to restrain him after he had grabbed Espinoza and she had fallen to the floor. A reasonable jury could have found that defendant was angered by what defendant would have perceived as Rico's lack of cooperation. Defendant conceded that he utilized physical force on Espinoza and that, following that struggle, he (allegedly unintentionally) punched Rico. A reasonable jury could have determined that defendant, angry from the struggle from which he had extricated himself (when the others mentioned calling the police), intended to punch Rico, who was standing by the door, in the face. See, e.g., *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009) ("a jury could reasonably infer intent from expressions of anger, made immediately prior to the battery").

¶ 36 As to Espinoza, she testified that defendant scratched her. Defendant's argument that he had no reason to harm Espinoza because he arrived at the residence that evening to reconcile with her

is not well-taken because defendant conceded that he grabbed (*i.e.*, used physical force on) Espinoza and that he participated in a struggle (until someone contacted the police) that resulted in Espinoza falling to the floor. A reasonable jury could have found that defendant was angered by Espinoza's refusal to speak to him and that he intentionally grabbed her and participated in a struggle, the natural and probable consequences of which resulted in Espinoza falling down and sustaining scratches to her arm.

¶ 37

### III. CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 39 Affirmed.