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2012 IL App (3d) 110090-U

Order filed August 14, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0090
v.	)	Circuit No. 10-CF-2123
	)	
SALVADOR DELOSANGELES,	)	Honorable
	)	Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt of aggravated battery and domestic battery, where the trial court reasonably found the victim's prior written statement more credible than her recantation at trial.
- ¶ 2 Following a bench trial, defendant was found guilty of aggravated battery (720 ILCS 5/12-4(b)(11) (West 2010)) and domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)) and was sentenced to four years' imprisonment on the aggravated battery conviction. Defendant appeals, arguing that the evidence at trial was insufficient to prove beyond a reasonable doubt that he

made contact of an insulting or provoking nature with the victim. We affirm.

¶ 3

### FACTS

¶ 4 On October 18, 2010, defendant was charged by indictment with aggravated battery and domestic battery. The indictment alleged that on October 8, 2010, defendant made physical contact of an insulting or provoking nature with Abby Aguilar-Gonzalez. The aggravated battery count alleged that defendant struck Gonzalez about the face, knowing she was pregnant. The domestic battery count alleged that defendant kicked Gonzalez, a family or household member, about the body. Defendant pled not guilty, and the cause proceeded to a bench trial.

¶ 5 On the first day the bench trial was set, Gonzalez failed to appear in court pursuant to a subpoena. A petition for a rule to show cause was ordered. After Gonzalez failed to appear on the rule, the court issued a warrant of arrest. Gonzalez subsequently appeared, and her motion to quash arrest was granted when she agreed to a material witness bond.

¶ 6 At the bench trial, just prior to her testimony, Gonzalez asserted her privilege against self-incrimination. In response to a request by the State, the court granted Gonzalez immunity from prosecution in exchange for her testimony. Gonzalez testified that she had been dating defendant for over a year. She and her children moved in with defendant in May or June of 2010, and were still living with him on the date of the incident.

¶ 7 On October 8, 2010, Gonzalez was pregnant with defendant's child and one week away from having her baby. Gonzalez discovered defendant and her friend, Taylor Mitchell, in the downstairs bedroom engaged in a sexual act. Gonzalez told defendant she was leaving him. Defendant begged her not to and would not let her leave the house. Gonzalez eventually walked to the back of the house, and she saw Mitchell sitting in her car. Gonzalez screamed at both

Mitchell and defendant and got into a physical altercation with Mitchell. Defendant broke up the fight, and Gonzalez and Mitchell went back into the house, where Gonzalez continued to argue with defendant.

¶ 8 Gonzalez further testified that when the police arrived shortly thereafter, she told them that defendant had hit her. Defendant was arrested, and Gonzalez told the police she did not want to press charges, but she wanted to leave the house. Gonzalez refused to sign a written statement at the house, but an hour later went to the police station and filled out a written statement. Gonzalez told the police that she did not fill out a statement before because defendant intimidated and scared her.

¶ 9 Gonzalez's written statement to the police was admitted as substantive evidence pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963. 725 ILCS 5/115-10.1 (West 2010). In her statement, Gonzalez stated that defendant punched her on the side of the head. After she caught defendant cheating and did not want anything to do with him, he threatened her, would not let her leave the house, and told her she was not going to have his baby. Gonzalez further stated that when she did not answer her telephone, defendant kicked her ankle. As Gonzalez was walking out of the house, defendant kicked her in the lower back. Gonzalez stated that defendant was violent and possessive. At trial, Gonzalez testified that defendant did not hit her, and that she told the police defendant did hit her to get him out of the house for a while.

¶ 10 Gonzalez testified that since defendant had been in custody, she had numerous telephone conversations with him. Gonzalez told defendant what she wrote in her written statement, and defendant became upset. Defendant begged Gonzalez to stay with him, and told her to think about the consequences of going through with this case.

¶ 11 The telephone conversations between defendant and Gonzalez were admitted into evidence. On October 12, 2010, defendant told Gonzalez that he did not want to raise his daughter in jail. Defendant said "can you please not do this to me." Defendant stated that he did not intend to mess anything up, and told Gonzalez that he still cared about her. Gonzalez responded that defendant did not care about her, and pointed out that he had another woman running errands for him while he was in custody.

¶ 12 On October 13, 2010, Gonzalez confronted defendant about another woman visiting him in jail. Defendant responded that he wanted Gonzalez back. In reference to the incident, defendant told Gonzalez,

"I told you I'm taking the blame for whatever. If you go through with it, you go through with it. But, honestly, you think that - I understand that it's my problem, whatever. I'm the one that put myself here, okay. Plain and simple, I did.<sup>1</sup> I'm not blaming you for nothing. I really didn't think it would go this far - but okay. I put myself here."

¶ 13 On October 15, 2010, defendant told Gonzalez that the court might be trying to subpoena her, and that she was going to have to "move around for a little bit. At least until I go to trial."<sup>2</sup>

¶ 14 On October 20, 2010, defendant told Gonzalez to call his lawyer as soon as possible.

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<sup>1</sup> We note that the transcript of the October 13 telephone conversation incorrectly states "Blame (indecipherable) for what I did," instead of "Plain and simple, I did."

<sup>2</sup> In some of the telephone calls with Gonzalez, defendant discussed the incident as though he were talking to the victim's best friend. It appears defendant did so to avoid violating a no-contact order with the victim. The trial court noted that it was clear defendant was talking about the instant case.

Defendant suggested that Gonzalez say it was a misunderstanding, and that she overreacted because she was pregnant. Defendant further suggested that Gonzalez sign an affidavit stating that nothing happened.

¶ 15 On October 21, 2010, defendant got upset when he found out that Gonzalez gave a written report to the police. In discussing the case as if Gonzalez was the victim's best friend, defendant denied that he hit the victim. Defendant again asked Gonzalez to call his lawyer, and expressed concern about Gonzalez getting subpoenaed.

¶ 16 The two police officers that arrived at the scene on October 8, 2010, also testified at trial. Their testimony established that after they knocked at the door for 10 minutes, Gonzalez came out the front door and closed it behind her. Gonzalez was crying and visibly shaken. The officers did not observe any injuries on Gonzalez. Gonzalez was reluctant to give any information, and indicated that she wanted to leave the house.

¶ 17 After the officers questioned Gonzalez outside the front door, they went into the house with her to get her belongings. Defendant was inside the house, and when Gonzalez saw him and he spoke to her, it caused her to hesitate and cry more. Gonzalez tried to avoid contact with defendant while inside the house. Defendant was agitated and would raise his voice. When the officers arrested defendant, Gonzalez said that she did not want anything done, and that she would just seek an order of protection. The officers also recovered Gonzalez's damaged cellular telephone outside of the house.

¶ 18 The trial court ultimately found defendant guilty on both counts. The trial court noted that defendant made an admission to the charges during the October 13 telephone call, when defendant admitted that he was responsible for putting himself in jail. The court also noted that

on October 20, defendant told Gonzalez what she should say to the lawyer when stating that defendant did not hit her.

¶ 19 Defendant filed a motion for a new trial, which the trial court denied. Defendant was subsequently sentenced to four years' imprisonment for aggravated battery, and the count for domestic battery was dismissed. Defendant appeals.

¶ 20 ANALYSIS

¶ 21 Defendant argues that the evidence at trial was insufficient to prove beyond a reasonable doubt that he made physical contact of an insulting or provoking nature with Gonzalez. Specifically, defendant argues that the evidence was insufficient, because Gonzalez's written statement to the police, in which she claimed defendant hit her, was recanted at trial.

¶ 22 When defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246 (2009); *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). The trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.* We will set aside a defendant's conviction only when we find the evidence was insufficient or so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *Jackson*, 232 Ill. 2d 246.

¶ 23 In this case, the trial court was presented with Gonzalez's prior written statement alleging that defendant hit her, and her trial testimony recanting that statement. The trial court, in

considering all the evidence presented at trial and assessing Gonzalez's credibility, determined that Gonzalez was telling the truth in her written statement and lying at trial. It was for the trial court to weigh Gonzalez's testimony, and we find nothing in the record that would require us to substitute our judgment for that of the trial court's. See *Ross*, 229 Ill. 2d 255; *People v. Logan*, 352 Ill. App. 3d 73 (2004). As such, Gonzalez's prior inconsistent statement alone, even without corroborative evidence, was sufficient to support defendant's conviction. See *People v. Thomas*, 354 Ill. App. 3d 868 (2004).

¶ 24 Additionally, the trial court was also presented with numerous telephone calls between defendant and Gonzales. Defendant takes issue with the fact that the trial court determined that defendant made an admission to the charges based on his telephone conversations. In the telephone calls, defendant told Gonzales to sign an affidavit attesting that defendant did not hit her, stated that he was responsible for putting himself in jail, and told Gonzalez to avoid getting a subpoena. Looking at defendant's telephone conversations as a whole, the evidence was sufficient to support the inference that defendant made an admission. See *Ross*, 229 Ill. 2d 255. However, even without this inference, defendant's statements as a whole support the trial court's finding that Gonzalez's written statement was more credible than her trial testimony. See *Logan*, 352 Ill. App. 3d 73. Therefore, viewing all the evidence in the light most favorable to the State, we cannot say that the evidence was so improbable or unsatisfactory that it created a reasonable doubt of defendant's guilt. See *Jackson*, 232 Ill. 2d 246.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 27 Affirmed.