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2013 IL App (3d) 110543-U

Order filed March 22, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Tazewell County, Illinois,
)	
v.)	Appeal No. 3-11-0543
)	Circuit No. 11-CF-82
)	
ANTHONY JAMES MAILE,)	Honorable
)	Stuart P. Borden,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence at trial proved defendant did not act in self-defense. (2) Defendant was not substantially prejudiced by the State's use of leading questions on direct examination of the victim.

¶ 2 Following a bench trial, defendant, Anthony James Maile, was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)) and sentenced to four years' imprisonment.

Defendant appeals, arguing that: (1) the evidence at trial was insufficient to prove beyond a reasonable doubt that he did not act in self-defense; and (2) the prosecutor's use of leading

questions during direct examination of Stephanie Rottach constitutes reversible error. We affirm.

¶ 3

FACTS

¶ 4 On March 3, 2011, defendant was charged by indictment with one count of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010)) and one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)). The aggravated domestic battery count alleged that on February 19, 2011, defendant caused great bodily harm to Rottach by striking her in the face, causing a nasal fracture. Defendant asserted the affirmative defense of self-defense.

¶ 5 Prior to trial, the court granted the State's motions *in limine* to admit evidence that defendant pled guilty to causing bodily harm to Amy Landrith in June 2010 and that Rottach reported to police that defendant struck her in the face on January 18, 2011.

¶ 6 At defendant's bench trial, the State called Rottach, who testified that as of February 19, 2011, she had been defendant's girlfriend for seven years and they lived together. On the day of the offense, Rottach and defendant had been "bar hopping" for approximately 12 hours. When they returned home, they continued to drink alcohol and were intoxicated. Defendant became very upset and began yelling at Rottach about the amount of money she had spent to retrieve her dog from animal control. While Rottach was in the bathroom, she heard her dog yelp and assumed defendant had kicked the dog.

¶ 7 In order to protect her dog, Rottach jumped on defendant and began pulling his hair and punching him in the face. Defendant did not fight back at first because Rottach was on top of him, but he eventually managed to slap Rottach in the face. Rottach asked defendant "is that all you got?" Defendant then struck Rottach in the face and broke her nose. Rottach testified that she fled to a neighbor's house, who called for emergency assistance. Rottach was taken to the

hospital and received treatment for a broken nose. While at the hospital, Rottach gave the following statement to the police:

"On this night, [defendant] and myself were intoxicated and he started on asking me how much it cost to get my dog [out of] jail, then I went to the bathroom and heard him kicking my dog, (like my dog remembers why he's getting kicked!) I went after him, protecting my dog and he went into a rampage on how much I spent to get him out of jail (I said none of your business, it's none of your money anyway) he got very mad and started slapping me. I said 'is that all you got', we fought in the bedroom for awhile then he punched me in the nose. I ran to a neighbors house, and called 346-3132."

Rottach admitted that her written statement was accurate and reflected what happened on the night of the incident because it was fresh in her memory.

During direct examination, the State asked Rottach the following questions:

"Q: Do you recall calling 911?"

A: No. Because I didn't.

Q: If I were to play the 911 call, would you recognize your voice?"

A: Yeah. I mean, if I talked—

Q: If the 911 call were to sound like it's you, is it possible that you were the person that called 911?"

A: Yeah. Because I don't want to hear that. I mean—

Q: Okay. You indicated to the 911 operator a threat the defendant had made to you. Do you remember what that threat was?"

A: No."

The State also asked:

"Q: And you remember speaking with Officer Bush. Did you talk to Officer Bush about another incident with the defendant? Do you remember that?

A: No, I don't recall.

Q: Do you remember what happened on January 18 of 2011?

A: No. I'm not recalling a specific incident. We fought all the time.

Q: Do you remember on or about January 18, 2011 the defendant inflicting physical harm on you?

A: I don't recall that single incident.

Q: But you talked to the officer—you talked to Officer Bush the night of the incident, right, and you told him what happened that night; correct?

A: Yes.

Q: And you also may have mentioned something that happened previously between you and the defendant?

A: I'm not recalling the single incident. Like I said, it was a wild ride.

Q: Is it fair to say, [Rottach], this isn't the first time the defendant struck your face?

A: No. It's not the first time we've been in a fight."

¶ 8 On cross-examination, Rottach testified that she and defendant physically fought constantly and admitted being the aggressor in some of the fights. Rottach stated that her written statement probably consisted of scattered thoughts, and she did not intend for the statement to

express the order of events as they happened. Rottach recalled that the altercation happened very fast. Rottach acknowledged that defendant suffered a gouge and cuts to his forehead as a result of the altercation. Rottach admitted that she probably caused defendant's injuries by slamming his head into the wall.

¶ 9 The State next called police officer Josh Bush, who responded to a report of a domestic disturbance on the night of the offense. Bush testified that he found Rottach at a neighbor's house bleeding from the nose. Rottach informed Bush that defendant caused her injuries and was at her residence. Bush located defendant and placed him under arrest. Defendant stated that he could not believe Rottach called the police and that he would be going to prison.

¶ 10 The parties stipulated that the emergency room physician would testify that she treated Rottach for a laceration to the nose and a nasal fracture on February 19, 2011. The physician would testify that Rottach reported she had been in an argument with defendant, was punched in the face an unknown number of times, fell to the ground, and ran to a neighbor's house. The parties further stipulated that Landrith would testify that on June 23, 2010, defendant, who was her boyfriend, struck her in the face with a closed fist, causing her nose to bleed. Landrith would testify that her injury occurred when she and defendant argued after defendant had been drinking alcohol.

¶ 11 Defendant moved for a directed verdict, which the trial court denied. Defendant did not present any evidence on his behalf. The trial court found defendant guilty of aggravated domestic battery. In finding that defendant did not act in self-defense, the court noted that Rottach was very reluctant to testify and offered two somewhat different versions of events. In Rottach's trial testimony, she indicated a mutual combat situation where she was the instigator.

In Rottach's written statement, however, she indicated that defendant punched her after she verbally taunted him. The court found Rottach's written statement more credible and consistent with Rottach's statement at the emergency room and with the prior incident involving Landrith.

¶ 12 Defendant filed a motion for judgment of acquittal or a new trial, arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt. The trial court denied the motion, finding that defendant did not act in self-defense because Rottach was not an aggressor at the time defendant punched her. Moreover, the court found that defendant used more force than was necessary. Defendant was then sentenced to four years' imprisonment. Defendant appeals.

¶ 13

ANALYSIS

¶ 14

I. Sufficiency of the Evidence

¶ 15 Defendant first argues the evidence was insufficient to prove beyond a reasonable doubt that he did not act in self-defense when he hit Rottach in the face.

¶ 16 When a 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. Collins*, 106 Ill. 2d 237 (1985); *People v. Dickey*, 2011 IL App (3d) 100397. Under this standard, the reviewing court must allow all reasonable inferences from the record in favor of the State. *People v. Givens*, 237 Ill. 2d 311 (2010). In a bench trial, it is the responsibility of the trial court to assess the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009). This court will not substitute its judgment for that of the trial court on these matters. *Id.*

¶ 17 To prove defendant guilty of aggravated domestic battery, the State needed to establish that defendant, without legal justification, caused great bodily harm to Rottach. See 720 ILCS 5/12-3.2(a)(1), 12-3.3(a) (West 2010). Defendant claimed that he was legally justified in hitting Rottach because he was acting in self-defense. The elements of self-defense are as follows: (1) unlawful force was threatened against defendant; (2) defendant was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) defendant actually and subjectively believed a danger existed requiring the use of force applied; and (6) defendant's beliefs were objectively reasonable. 720 ILCS 5/7-1 (West 2010); *People v. Lee*, 213 Ill. 2d 218 (2004). If the State negates any one of these elements beyond a reasonable doubt, defendant's claim of self-defense must fail. *Id.* A reviewing court may not disturb the trier of fact's determination that defendant was not acting in self-defense, unless such conclusion is so unreasonable or improbable that it creates a reasonable doubt of defendant's guilt. *People v. Peterson*, 273 Ill. App. 3d 412 (1995).

¶ 18 Viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant did not act in self-defense. The strongest evidence suggesting that defendant acted in self-defense consisted of Rottach's trial testimony that she was the initial aggressor when she jumped on defendant and hit him after he kicked her dog. Rottach testified that the altercation was a mutual combat situation, noting that she injured defendant when she slammed his head into the wall.

¶ 19 The trial court, however, found Rottach's written statement to police, which Rottach admitted was accurate, more credible than her trial testimony. In the written statement, Rottach indicated that she "went after" defendant to protect her dog, at which point defendant started to

slap her. Rottach then taunted defendant, and he punched her in the face and broke her nose.

The trial court could have reasonably given more weight to the written statement, as it happened closer in time to the offense and Rottach conceded that the events happened very fast.

¶ 20 Rottach's written statement was also corroborated by evidence from the physician that Rottach reported being in an argument with defendant, was punched in the face an unknown number of times, and fell to the ground. There was also evidence that in June 2010, defendant similarly punched Landrith in the face while in an argument. From this evidence, the trial court reasonably inferred that Rottach was not threatening unlawful force when defendant punched her in the face. It was for the trial court to assess Rottach's credibility and draw reasonable inferences from the evidence, and we find nothing in the record that would require us to substitute our judgment for the trial court's. See *Siguenza-Brito*, 235 Ill. 2d 213. Thus, the first element of self-defense, that defendant faced a threat of unlawful force, is negated, and so is defendant's entire claim of self-defense. See *Lee*, 213 Ill. 2d 218.

¶ 21 Moreover, even assuming Rottach was the initial aggressor or threatened unlawful force, the court found that when defendant protected himself by punching Rottach in the face and breaking her nose, he used an unnecessary amount of force. Based on the evidence, it was reasonable for the trial court to determine that defendant's use of force exceeded what was necessary to defend himself against an imminent threat, thereby negating defendant's self-defense claim. See *Lee*, 213 Ill. 2d 218. Accordingly, we must reject defendant's argument.

¶ 22 II. Leading Questions

¶ 23 Defendant next argues that the prosecutor's use of leading questions during direct examination of Rottach constitutes reversible error.

¶ 24 Defendant admits that he has forfeited this issue by failing to object to it at trial or raise it in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176 (1988). Nevertheless, defendant requests that we review his issue under the plain error doctrine. See *People v. Hillier*, 237 Ill. 2d 539 (2010). Before invoking the plain error exception, however, we must first determine whether a clear or obvious error occurred. See *id.*

¶ 25 Generally, leading questions may not be used by the party calling the witness. *People v. Bunning*, 298 Ill. App. 3d 725 (1998). The allowance of leading questions is within the sound discretion of the trial court, and its decision will not be reversed unless the court abused that discretion and defendant has been substantially injured as a result. *People v. Schuldt*, 217 Ill. App. 3d 534 (1991). Additionally, the use of unsupported insinuations as impeachment without producing supporting evidence will not rise to the level of reversible error unless the unfounded insinuation that the witness is lying or is not credible was substantial, repeated, and definitely prejudicial. See *People v. Redman*, 135 Ill. App. 3d 534 (1985).

¶ 26 Here, defendant calls our attention to two questions that were asked by the State during Rottach's direct examination. The questions related to whether Rottach placed the 911 call after the incident and indicated to the operator that defendant made a threat to her, and whether defendant inflicted physical harm to Rottach on January 18, 2011. Defendant claims that it was reversible error for the State to ask such leading questions and not offer any evidence to substantiate the implications of its questions when Rottach denied making the call and did not recall the prior incident. Defendant claims that the insinuations from the leading questions prejudiced him at trial. In light of Rottach's properly elicited testimony that she and defendant had an abusive relationship, any insinuation from the State's brief use of leading questions was

minimal. See *Redman*, 135 Ill. App. 3d 534. Additionally, the trial court's limited weight placed on Rottach's trial testimony obviated any improper insinuations created by the questions.

¶ 27 Moreover, absent some indication in the record to the contrary, a trial judge in a bench trial is presumed to have considered only competent evidence. *People v. Naylor*, 229 Ill. 2d 584 (2008). Here, in making its finding, the trial court did not reference the alleged threat or the incident in January 2011 when it found defendant guilty of the offense. The cases defendant cites to support his claim of reversible error in a bench trial setting are distinguishable because those cases found a substantial number of unsupported remarks. See *People v. Nuccio*, 43 Ill. 2d 375 (1969) (noting the extensive improper questions asked by the State); *People v. Robertson*, 198 Ill. App. 3d 98 (1990) (noting the State's repeated use of unsupported insinuations). Therefore, we find that defendant was not substantially prejudiced when the court allowed the use of leading questions during Rottach's direct examination. See *Schuldt*, 217 Ill. App. 3d 534. Without error, the plain error exception does not apply, and we must therefore honor defendant's procedural default. See *Hillier*, 237 Ill. 2d 539.

¶ 28

CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 30 Affirmed.