

No. 1-12-1369

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 11 DV 77621
)	
REBEKAH ROTTMAN,)	
)	Honorable
Defendant-Appellant.)	Yolande M. Bourgeois,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County is affirmed where the State proved defendant guilty beyond a reasonable doubt and where there was no reasonable probability that the ruling of the trial court would have been different had defense counsel called another witness.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Rebekah Rottman was convicted of one count of domestic battery in violation of section 12-3.2(a)(1) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-3.2(a)(1) (West 2010)) and one count of criminal

trespass in violation of section 19-4(a)(1) of the Code (720 ILCS 5/19-4(a)(1) (West 2010)). She appeals, challenging the sufficiency of the evidence to support her conviction and alleging she received ineffective assistance of counsel. For the reasons below, we affirm.

¶ 3 BACKGROUND

¶ 4 On June 12, 2011, defendant was charged with criminal trespass to a residence and domestic battery. The charges alleged defendant "scratched, kicked, and punched" her boyfriend, Brian Remnes, in the "face, neck, arm, and leg area" after she refused to leave Remnes's apartment. A bench trial occurred on September 13, 2011.

¶ 5 I. Trial

¶ 6 At trial, the State presented the testimony of Remnes and Chicago police officer Collins. Defendant testified in her own defense.

¶ 7 A. Testimony of Brian Remnes

¶ 8 Remnes testified that at the time of the incident he and defendant had been dating for six or seven months. On June 11, 2011, he, defendant, and defendant's friend, Katie Haverhals, attended a baseball game. After the game, the group went to a nearby bar before returning to Remnes's apartment around 1 a.m. Remnes then began grilling on the balcony while defendant and Haverhals remained inside the apartment.

¶ 9 According to Remnes, defendant was "fairly intoxicated" by this time—having consumed four to six beers over the course of the evening—and became irate. After observing defendant stumble into walls, doors, and bedroom curtains, Remnes asked her to relax and lay down. Defendant began cursing at him. Remnes asked defendant to leave, but she did not do so and instead hit him in the face with a combination of open and closed fists. Remnes again asked her to leave, but defendant continued to attack Remnes, kicking him in the groin and upper leg areas.

Defendant then started to choke Remnes by placing both of her hands around his neck. Remnes tried to remove her hands from his neck and attempted to push her out of the bedroom.

¶ 10 During the altercation, defendant retrieved Remnes's cell phone and used it to call Remnes's sister. Remnes then recovered the cell phone from defendant and used it to call the police. When defendant again refused to leave, Remnes grabbed defendant by her shoulders, pushed her out of the bedroom, and locked the door. Defendant responded by using a paper clip to open the lock, reentering the bedroom, and hitting Remnes again. Defendant again declined to leave the apartment.

¶ 11 Eventually, Remnes exited the apartment building and met the police outside. Remnes directed them upstairs to his apartment. Remnes's parents arrived shortly thereafter and, after briefly entering the apartment, waited with him outside. While outside, Remnes observed defendant being escorted out of the apartment by police.

¶ 12 At the conclusion of his direct examination, the Assistant State's Attorney presented Remnes with several photographs of his injuries. The photographs depicted: (1) a bite mark on his arm; (2) scratches, bruises, cuts, and scrapes on his face; (3) cuts and markings on his leg; and (4) bruises, cuts, and scrapes on his neck.

¶ 13 On cross-examination, Remnes testified that he consumed approximately four to six alcoholic drinks throughout the entire evening. He had nothing to drink before the baseball game, but drank a total of four beers at the ballpark. He then consumed two beers over the course of three hours after the ballgame. Remnes claimed he was unsure if defendant or Haverhals had anything else to drink after returning to his apartment because he was on the balcony grilling food and smoking a cigar while Haverhals and defendant were inside his apartment.

¶ 14 Remnes further added that defendant had, prior to the incident, moved personal items into his apartment. They had also purchased a dog together under Remnes's name. In addition, Remnes testified that defendant frequently stayed with him for extended weekends and had keys to the apartment.

¶ 15 B. Testimony of Officer Collins

¶ 16 Chicago police officer Collins testified that he and his partner, Officer Tellez, responded to the 911 call on June 12, 2011. When he arrived at Remnes's apartment, Officer Collins met Remnes, who then directed him upstairs. Upon entering the apartment, Officer Collins heard items being knocked over and a woman screaming. He also observed items knocked over in the kitchen and living room and he heard the same woman yelling profanity.

¶ 17 Officer Collins further testified that he witnessed defendant in a hallway between the kitchen and the bedroom. He and his partner asked her questions, but she ignored them and continued to yell profanity. Officer Collins also testified that he observed several scratch marks on Remnes's face, neck, and arm area, as well as bruises on his arm and legs. As defendant was wearing a "summerish outfit," Officer Collins testified that he was able to view her face, arms, and legs, and did not observe any injuries.

¶ 18 On cross-examination, Officer Collins testified that he did not witness how any of Remnes's injuries occurred and did not know what Remnes looked like earlier in the day. He further acknowledged he and his partner were unable to examine defendant at the apartment, but added that they did examine her upon returning to the police station. Officer Collins also testified that he did not see how the other items in the apartment were knocked over, but he witnessed defendant kick a statute in the hallway as she was going into the bedroom.

¶ 19 C. Testimony of Defendant

¶ 20 Defendant testified that she began dating Remnes in October 2010. At the time of the incident, she resided in Hanover Park with her parents, but spent the majority of her time at Remnes's apartment and left personal affects there. Together they purchased a dog and several items for the apartment.

¶ 21 On June 11, 2011, defendant drove from Remnes's apartment to pick up Haverhals from her home in Addison so they could attend a baseball game. When they returned to the apartment, defendant claims Remnes was sitting on the couch using his laptop with several empty beer cans resting on the table next to him. Defendant added that Remnes then had three beers prior to the game while, she and Haverhals each drank two beers.

¶ 22 According to defendant, the group arrived at the baseball game in the middle of the fourth inning. Each of them consumed three beers at the ballpark. In the middle of the ninth inning, the three left the ballpark and drove back to Remnes's apartment. Defendant testified that they spent approximately one hour there before leaving to go to a bar. During this time, defendant testified she consumed one beer. Meanwhile, Remnes consumed two beers and a Four Loko, a malt liquor beverage.

¶ 23 The group then walked to another bar near Remnes' apartment and remained there until midnight. While at the bar, defendant had three beers. According to defendant, Remnes consumed four beers and "chugged" a mixed drink that "was made up of at least six shots of different whiskeys." After walking back to Remnes's apartment, defendant and Haverhals changed into their pajamas and got something to eat while Remnes went to his bedroom. Defendant testified that Remnes consumed another two drinks upon returning home. After realizing she had not seen him for 20 minutes, defendant went to go look for Remnes. She found him on the balcony outside of his bedroom stumbling and unsuccessfully trying to light a grill.

Defendant suggested they go to bed and he approached her, grabbed her breasts, and pushed her toward the bed. In an attempt to regain her balance, defendant reached for the wall and instead pulled down the curtains.

¶ 24 According to defendant, at this point Remnes stated that defendant would be "really sorry" at 5:30 a.m. when the sun comes up. When defendant suggested that they fix the curtain in the morning, Remnes "chug[ged]" the rest of his beer and threw the can off the balcony. Defendant claims she then went into the kitchen to get a chair and fix the curtain. When she returned, defendant claims she sat next to Remnes, who by now was in bed. Remnes began kicking her and she got off the bed and stood next to the dresser. Defendant testified that Remnes followed her, began to call her names, and claimed he knew she was cheating on him. He then pushed her into the dresser several times. Defendant informed him that if he did not stop she was going to call his parents to come get him.

¶ 25 In response, Remnes threw his cell phone at her. Defendant then used it to call Remnes's sister. When his sister called back, defendant gave the phone to Remnes and he threw it at her a second time. When defendant asked him to calm down, Remnes again pushed her into the dresser. Whenever defendant tried to leave the bedroom, Remnes would block her way. According to defendant, Remnes then "kicked the dog" before trapping her in a corner and screaming at her to hit him because he "liked it." When Remnes came within inches of her face, she punched him and Remnes yelled at her to continue hitting him. Defendant turned her head away and Remnes grabbed her by the wrists and slapped his own face with her hands.

¶ 26 Defendant further testified that when Remnes finally left the bedroom, she began to gather her belongings into a bag. Remnes returned and threw the bag's contents all over the room. When Remnes left to go to the bathroom again, defendant sat on the bed in an attempt to

get the dog out from under the bed. Remnes came back into the bedroom, grabbed defendant by the hair, dragged her off the bed onto the floor, and "began bashing [her] head into the wall."

After hitting her head against the wall "at least six times," Remnes started to kick defendant who began to cry. When she asked him to stop, he bent over her and informed her he could kill her. Defendant then claimed she attempted to crawl over to the bed before he started beating her again.

¶ 27 Defendant testified she eventually retrieved her phone and called 911. Remnes then left the apartment and defendant started to gather her belongings again. Defendant testified that she did not know where Haverhals was when the attack occurred, but that after Remnes left the apartment, Haverhals came back upstairs and defendant showed her the injuries she received. She and Haverhals then continued to gather her belongings and get the dog out from under the bed. Defendant also testified that she was not knocking anything over in the apartment and there was no statue in the hallway. Defendant further testified that she was wearing a long-sleeved shirt and sweatpants when the police arrived.

¶ 28 At the end of defendant's direct testimony, her counsel showed her several photographs. Defendant claimed the photographs were taken thirty-six hours after the incident after she was released from jail. According to defendant, the photographs depicted handprints on her arms from when Remnes grabbed her, bruises on her arm from being kicked, scratches, bruising on her left foot, a swollen ankle, a bruise that went down to her toes, a large bruise on her hand, a sprained thumb, a swollen hand, and a bruise on her breast. She testified that the pictures accurately depicted her injuries thirty-six hours after the incident and she did not have any marks or bruises on her body prior to the incident.

¶ 29 On cross-examination, defendant testified that she had a softball-sized welt on the back of

her head from Remnes bashing it into the closet door. She testified that the police officers would not let her show them her injuries. She also testified that she did not swear at the officers and said that she did not refuse to leave, but instead Remnes tried to keep her in the bedroom.

¶ 30 D. Trial Court's Ruling

¶ 31 After the defense rested, the parties gave closing arguments and the trial court found defendant guilty on both counts of domestic battery and criminal trespass. The trial court found the defendant's version of events to be incredible and that Officer Collins' testimony corroborated Remnes' testimony.

¶ 32 The trial court provided several reasons for its finding. First, it noted that the photographs of defendant's injuries did not tend to support her version of events over Remnes's version; Remnes admitted that he grabbed her—which could explain defendant's bruises—and testified that defendant knocked over various items and kicked the statue—which could account for defendant's injuries to her hands and feet. The trial court additionally questioned why the defendant did not call Haverhals as a witness. Given defendant's violent version of events, the trial court noted her testimony could have easily corroborated defendant's story. Finally, the trial court found defendant's recounting of Remnes's alcohol consumption incredible. The trial court questioned whether Remnes would even be able to stand after such excessive alcohol consumption, and further questioned why Remnes's drunken state went unmentioned by the officers if he had consumed so much alcohol.

¶ 33 The trial court sentenced defendant to one year conditional discharge and ordered her to undergo domestic violence counseling, pay fines, fees, and costs and was subject to an order of protection for eighteen months.

¶ 34 II. Motion for New Trial

¶ 35 Thereafter, defendant obtained new representation and filed a motion for a new trial alleging that the State failed to prove her guilty beyond a reasonable doubt. She also asserted she received ineffective assistance due to her prior defense counsel's failure to call Haverhals as a witness. Defendant later filed an amended motion in which she asserted that her previous defense counsel had spoken to Haverhals on two separate occasions before the trial and requested she be present in court for the trial. Defendant explained that Haverhals appeared in the courthouse and waited in the hall during the trial, but was not called to testify. Defendant argued that the testimony of Haverhals was relevant evidence that was available, but was not presented to the trier of fact.

¶ 36 Defendant supported her claim of ineffective assistance of trial counsel with an affidavit executed by Haverhals. In her affidavit, Haverhals averred that on the night of the incident, she was asleep on the couch in Remnes's apartment when she was awakened by the sounds of defendant and Remnes arguing in Remnes's bedroom. Haverhals further averred that she observed Remnes push defendant twice. She also observed defendant hit Remnes in the face. Thereafter, Haverhals left the apartment to call her sister and defendant's sister.

¶ 37 The court denied the motion for a new trial, finding that it was a matter of trial strategy for defendant's prior counsel not to call Haverhals as a witness. This appeal timely followed.

¶ 38 ANALYSIS

¶ 39 On appeal, defendant contends: (1) the trial court erred in finding her guilty because the State failed to prove her guilty beyond a reasonable doubt; and (2) defense counsel was ineffective for failing to call Haverhals as a witness. As defendant's arguments only address her conviction for domestic battery, we find she waives her right to appeal her conviction for criminal trespass; accordingly, we will only consider her arguments in relation to her domestic

battery conviction. *People v. Campa*, 217 Ill. 2d 243, 269 (2005).

¶ 40 I. Reasonable Doubt

¶ 41 Defendant argues the trial court erred in finding her guilty of domestic battery because the State failed to prove her guilty beyond a reasonable doubt. Accordingly, upon viewing the evidence in the light most favorable to the State, we must ask whether any rational trier of fact could have found the essential elements of domestic battery beyond a reasonable doubt. *People v. Pickens*, 354 Ill. App. 3d 904, 911 (2004). We will only set the conviction aside if the evidence is so "improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Id.* (citing *People v. Collins*, 106 Ill. 2d 237, 261 (1985)).

¶ 42 Credible testimony from a single witness may be sufficient to convict a defendant. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. The trier of fact is responsible for determining if a witness is credible, the amount of weight to be given to their testimony, and for drawing any reasonable inferences from the evidence. *Id.* The trier of fact is in the best position to resolve any conflicting inferences produced by the evidence. *Id.*

¶ 43 According to defendant, the photographic evidence she presented at trial "had the twofold effect of supporting [her credibility] and independently creating doubt as to the veracity of the complainant's testimony." Defendant thus alleges the trial court was unreasonable in finding the photographs "somehow supported the credibility of [Remnes]." All of the injuries depicted by these photographs, however, could have been inflicted by the events described by Remnes; that is, by defendant attacking Remnes, knocking over various objects, kicking statues, and by Remnes's attempt to physically remove her from the bedroom. Moreover, defendant did not provide a photograph depicting the sole injury she claimed to have suffered that could not have been explained by Remnes's account, her head injury. As Remnes's account was further

corroborated by Officer Collins, the lone disinterested witness, we accordingly find the trial court's credibility determination in this regard reasonable. See, e.g., *People v. McCracken*, 179 Ill. App. 3d 976, 985 (1989).

¶ 44 Defendant additionally maintains her version of events "is a far more likely set of facts." According to defendant, Remnes's account suggests she was too drunk to stand up, let alone inflict the type of harm Remnes described. We disagree.

¶ 45 Remnes's account does not imply that defendant's level of intoxication rose to the point where she entirely lacked control over her movements. In fact, Remnes's testimony describes an erratic set of punches, scratches, and kicks consistent with his description of defendant prior to the attack. Moreover, we do not find it inherently incredible that defendant succumbed to her intoxication and stumbled one moment, only to later regain her balance and proceed to attack Remnes.

¶ 46 In this case, the parties presented the trier of fact with two conflicting stories from witnesses who both admitted to having consumed alcohol throughout the evening. In comparing those stories, the trier of fact considered the photographic evidence and testimony of the only neutral party, the officer who responded to the scene and interacted with both parties. The trier of fact is in the best position to resolve any conflicting inferences produced by the evidence and nothing in the record gives us reason to depart from its determination in this matter.

¶ 47 **II. Ineffective Assistance of Counsel**

¶ 48 Defendant also argues that she received ineffective assistance of counsel for defense counsel's failure to call Haverhals as a witness. To succeed on a claim of ineffective assistance of counsel, defendant must prove both *Strickland* prongs: (1) defense counsel's performance was deficient; and (2) there is a reasonable probability that the trial court's ruling would have been

different had it not been for defense counsel's deficient performance. *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In this case, we need not discuss whether defense counsel's performance was deficient, because defendant has failed to establish any "reasonable probability" that the trial court's ruling would have been different had Haverhals testified. *People v. Buss*, 187 Ill. 2d 144, 213 (1999).

¶ 49 In order to establish a "reasonable probability" that the trial court's ruling would have been different, defendant cannot merely speculate or rely on conjecture. *People v. Deleon*, 227 Ill. 2d 322, 337 (2008). Defendant must show the alleged trial errors were sufficient to undermine confidence in the trial court's ruling or render the trial court's ruling unreliable. *People v. Dodds*, 2014 IL App (1st) 122268, ¶ 24.

¶ 50 In this case, defendant argues Haverhals's testimony would undermine the trial court's ruling because it "shifts the status of the aggressor from [defendant] to [Remnes]." In her affidavit, however, Haverhals claims to have only seen a small portion of the confrontation, as she had either been sleeping on the couch or outside on the phone for much of the incident. Consequently, it would have been impossible for Haverhals to know who was the "aggressor," having been asleep for the onset of the incident. Moreover, what little Haverhals does claim she witnessed does not contradict the trial court's findings or Remnes's version of events. Nor does Haverhals's affidavit mention any of the unique facts exclusive to defendant's testimony. Haverhals's affidavit merely states that she observed Remnes push defendant twice and that she witnessed defendant hit Remnes in the face. As Remnes admitted to these facts in his testimony, we do not see how Haverhals's affidavit undermines the trial court's findings in this case. Indeed, the trial court, which was the trier of fact in this case, actually had the opportunity to review Haverhals's affidavit posttrial and still rejected defendant's motion for a new trial.

Accordingly, we find defendant has failed to establish a "reasonable probability" the outcome at trial would have been different, and therefore cannot succeed on her ineffective assistance of counsel claim.

¶ 51

CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.