

No. 1-12-1930

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 3279
	)	
DAVID GRANT,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence was sufficient to prove defendant guilty of aggravated domestic battery beyond a reasonable doubt; seven-year prison sentence was not an abuse of discretion; affirmed.

¶ 2 Following a bench trial, defendant David Grant was convicted of aggravated domestic battery and sentenced to seven years in prison. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt and that his seven-year prison sentence was an abuse of discretion. We affirm.

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¶ 3 The record reveals that defendant was charged with attempted first degree murder, aggravated domestic battery, and domestic battery following an altercation between him and his then-fiancée, Dora Sanders, on February 12, 2011.

¶ 4 At trial, Sanders testified that around 2 a.m. on February 12, she arrived at defendant's house at 6217 South Talman after getting her hair done. Sanders spent the night there and she and defendant spent the day together as well. Around 10:30 p.m., a former co-worker of defendant's, Chris Wallace, and another man named Ken Weston picked up Sanders and defendant. The group planned to go to a club. Wallace drove, Weston was in the front passenger seat, and Sanders and defendant sat in the back seat.

¶ 5 On the way, defendant and Sanders began arguing about Sanders' new phone, which resulted in defendant and Sanders pushing each other and then defendant smashing her head into a window. After Sanders asked to return to defendant's house, Wallace pulled into a parking lot. There, Wallace tried to talk to defendant, but defendant reached over Sanders, opened the car door, and kicked Sanders out of the car so that she landed on the ground. Defendant got out of the car and began choking, punching, and kicking her. Additionally, defendant said, "b\*\*\*, I'm going to kill you, I'm going to kill you, you're going to meet your maker tonight." Sanders testified that while defendant was choking her, she could not breathe and unsuccessfully tried to remove defendant's hands from her neck. After about 15 seconds, Weston pulled defendant from Sanders, but defendant broke free and resumed choking her, causing Sanders to be unable to breathe. When Weston pulled defendant off Sanders again, Sanders felt once more that "[i]t was hard to breathe" and she tried to catch her breath. While Wallace and Weston tried to restrain defendant, who was yelling, Sanders tried to get in the car. However, before she could do so, defendant ran up from behind and choked her a third time until Wallace and Weston pulled him

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off. Wallace pushed Sanders into the front passenger side of the car and returned to the driver's seat, while defendant and Weston sat in the back. Sanders testified that on the way to defendant's house, defendant screamed at her and pushed the back of her head six times. Additionally, defendant pulled Sanders's hair throughout the entire struggle, but she did not know exactly when and where that occurred.

¶ 6 When the group arrived at defendant's house, defendant demanded that Sanders get out of the car and tried to open her locked door. Leaving defendant on the driveway, Wallace drove off and Sanders called the police, who told her to wait in the car outside defendant's house. Subsequently, the police arrived and brought defendant out of his house.

¶ 7 Sanders also testified about her injuries, which included bruises on her neck, knee, and side, a swollen kneecap, sore ribs, broken nails, and a scar on her collarbone. Additionally, defendant's pulling on her hair weave caused her real hair to fall out over the course of two weeks. The prosecutor introduced pictures of Sanders that were taken the day after the incident. On one picture, which Sanders stated depicted her bruised and swollen neck, Sanders indicated the locations of her bruising and swelling, but added that the picture did not show other areas of bruising and swelling. On other pictures, Sanders noted her bruised kneecap and indicated where defendant scratched her as he grabbed her neck. On cross-examination, Sanders acknowledged that she never called a doctor about her injuries, but she did speak with a beautician about her hair.

¶ 8 Ken Weston testified that after he and Wallace picked up defendant and Sanders and the group had been driving for a little while, Weston heard an "uproar" in the back seat followed by a "whole fight." Weston observed defendant throw a punch at Sanders and told Wallace to turn the car around, whereupon Wallace pulled into a vacant lot. Weston next observed that

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defendant was on top of Sanders with his hands on her neck. Weston did not remember whether Sanders appeared to be losing her breath and agreed with the prosecutor when asked if he "didn't notice that." Weston also did not notice if Sanders was injured. Weston pulled defendant away and walked him down a street, repeatedly telling defendant he did not want to go to jail. Weston then walked defendant back to the car and the group drove to defendant's house. On the way, defendant was "moving around a little bit" and told Sanders, "I'm going to f\*\*\* you up." Once they arrived, defendant got out of the car and pulled on Sanders's door, but Wallace had already begun to drive away. Weston testified that he "didn't really look at her bruising and stuff like that," but was scared for her. After Sanders called the police, Wallace, Weston, and Sanders waited at the end of the street for a while, but ultimately went to a police station when the police did not arrive. At the station, they spoke with police officers and then returned to defendant's house, where the officers eventually arrived and arrested defendant.

¶ 9 In its ruling, the court summarized Sanders's testimony, stating that defendant hit her in the head and then punched her when she refused to close her phone. The court also recalled that defendant "literally kicked the victim out of the car, got on top of her and was choking her. This was observed by\*\*\*Weston." The court further stated that "[b]ased on the credibility of the witnesses, [and] the testimony the court has heard," defendant was guilty of aggravated domestic battery and domestic battery.

¶ 10 Subsequently, defendant filed a motion for a new trial. At the hearing on the motion, defense counsel asserted that defendant did not act with the specific intent to harm Sanders. In denying the motion, the court stated that it found that "the victim and civilian witnesses testified clearly and credibly to your actions, your beating up the victim. People tried to stop you, you couldn't be stopped, sir."

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¶ 11 A presentence investigation report (PSI) revealed that 30-year-old defendant's criminal history began as a juvenile, when he was convicted of battery, criminal trespass to land, and unlawful use of a weapon. As an adult, defendant's criminal background included three prior convictions for domestic battery, which occurred in 2004, 2005, and 2008. For the first two convictions, defendant was sentenced to conditional discharge and probation, which were both terminated unsatisfactory. For the third conviction, in 2008, defendant was also sentenced to probation and it was terminated satisfactory.

¶ 12 The PSI also revealed that defendant's father had abused alcohol and physically abused defendant and his mother, which led to the family becoming involved with the Department of Children and Family Services. Defendant reported that he currently had a "pretty good" relationship with his siblings. Further, defendant had two children to whom he provided monetary support.

¶ 13 As for education, defendant received his high school diploma while in mental health treatment at a facility in Arkansas. For three months in 2004, defendant was enrolled in an automotive technician program at Lincoln Technical Institute, but he quit because he "just didn't want to do it." In 2010, defendant completed a six-week weatherization training program at OAI and was most recently employed at OTB Weatherization Services. Previously, defendant worked at a Jewel-Osco store.

¶ 14 The PSI further stated that defendant had been a member of the Gangster Disciples, and left the gang when he was 18 years old. Defendant reported that in the past, he drank alcohol almost every day, which led his family and friends to express concern. While on probation for a previous offense, defendant attended anger management classes where alcohol abuse was

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discussed. Defendant had continued to drink alcohol daily, but cut back on the amount he consumed.

¶ 15 The PSI also summarized defendant's mental health history. As a youth, defendant was hospitalized twice and diagnosed as bipolar. In 1997, defendant was sent to the Lord's Ranch in Warm Springs, Arkansas, and while there, he took his medications regularly and graduated from high school. However, when he returned to Chicago, he did not take his medications because he did not feel he needed them. In January 2011, defendant consulted a doctor about his psychiatric history and mood swings. Rather than medication, the doctor prescribed physical activities to help with defendant's depression and suggested that he write, exercise, and "be more open to fun" to deal with mood swings. While in jail for this offense, defendant began seeing a doctor for his psychological health. The PSI also listed defendant's current medications.

¶ 16 Also included in the record was a mental health screening from the Mental Health Unit of the Adult Probation Department. During the screening, defendant reported previous suicide attempts. Additionally, the screening stated that defendant had not made significant efforts to address his mental health issues until his most recent arrest and incarceration, where he informed the medical staff that he was experiencing symptoms of depression and the staff was made aware of his childhood diagnosis of bipolar disorder.

¶ 17 At the sentencing hearing, the State noted in aggravation defendant's history of domestic battery, his past involvement in the Gangster Disciples, and that at one point he had stopped attending outpatient sessions for his mental health issues.

¶ 18 In mitigation, defense counsel noted that defendant was only affiliated with the Gangster Disciples as a youth and had never been convicted of a gang-related crime or sent to prison. Defense counsel additionally noted that defendant obtained a high school diploma and went on to

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attend Lincoln Technical Institute and OAI. Prior to his arrest, defendant was employed and supported his two children. Additionally, defense counsel reported that the mother of defendant's daughter had been to court on numerous occasions and had contacted defense counsel many times to express support and inform her that defendant had been a good father and provided for his daughter.

¶ 19 Additionally, defense counsel noted defendant's "unfortunate childhood," in which he witnessed excessive alcohol abuse and domestic violence, leading to defendant being removed from his home, placed in foster homes, and eventually sent to Arkansas, where he obtained his high school diploma. Defense counsel stated that defendant was bipolar, continued to battle depression, and manifested "possibly post-traumatic symptoms throughout his years." Further, defendant had sought help for his mental health issues. According to defense counsel, defendant had come to realize that he needed medication "to be a better and more mature, developed person."

¶ 20 Defense counsel contended that probation was an appropriate sentence. Defense counsel asserted that defendant was open to and desired help, as opposed to "pure incarceration." Defendant had made efforts to receive his medication regimen while in jail and sought out additional services. Defense counsel also noted that defendant had been in jail for 467 days, which provided "extensive time to dwell and reflect on his behaviors." Defense counsel asserted that if defendant was placed on probation, the court could monitor him closely and defendant could "be hopefully rehabilitated as to deal with the issues that have presented since his childhood."

¶ 21 In allocution, defendant apologized for his actions and apologized to Sanders, explaining that he "just flipped out" and never intended to hurt her or anyone else. Defendant additionally

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stated that he used his current incarceration to work on his mental health and "have things lined up as far as jobs and everything." Defendant further stated he was "trying to get everything right" so he could raise his children and return to his family.

¶ 22 In sentencing defendant, the court stated the following:

"[T]he [c]ourt has considered factors in aggravation and mitigation as set out by the statute, the facts of this case that the [c]ourt heard, your criminal, your social history; and unfortunately, sir, I can accept some of the responsibility for your actions as a member of the judiciary but you have been given opportunity after opportunity after opportunity since 1996, batteries, guns, domestic battery after domestic battery after domestic battery and judges have just had no problem terminating your domestic battery probation unsatisfactorily and you're just out there to commit more domestic batteries."

The court stated that "for the protection of society," defendant was sentenced to seven years in prison for aggravated domestic battery.

¶ 23 Defense counsel subsequently made an oral motion to reconsider the sentence. In denying the motion, the court stated that:

"[A]ttempted murder is where you caught your break on this case\*\*\*. You were charged and\*\*\*I gave you the benefit of the doubt on the [attempted] murder charge. Your criminal history, your social history[,] and the facts of this case [demand] seven years in the Illinois Department of Corrections\*\*\*."

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¶ 24 On a later date, defense counsel appeared in court and stated that she would like to file a motion to reconsider the sentence, which was the maximum defendant could have received.<sup>1</sup>

The court responded that "[b]ased on the facts the [c]ourt heard, the defendant's criminal history, for the protection of society," the seven-year sentence was necessary and not excessive.

¶ 25 On appeal, defendant contends the State failed to prove his guilt beyond a reasonable doubt. Defendant asserts that Sanders's testimony greatly conflicted with the testimony given by Weston, who was an impartial observer. Defendant additionally contends that the photographs introduced at trial did not support Sanders's testimony about her injuries. According to defendant, these significant discrepancies rendered Sanders's testimony unreliable, and as a result, her testimony that defendant impeded her breathing was also not credible.

¶ 26 When a defendant challenges the sufficiency of the evidence, "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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Our function is not to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Rather, in a bench trial, it is the role of the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, weigh and draw reasonable inferences from the evidence, and resolve any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Testimony may be found insufficient only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will not reverse a conviction

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<sup>1</sup> A written motion to reconsider the sentence is not included in the record.

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unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 27 A person commits aggravated domestic battery if, in intentionally or knowingly causing bodily harm to a family or household member, the person strangles the victim, defined as intentionally impeding the victim's normal breathing or blood circulation by applying pressure on the throat or neck. See 720 ILCS 5/12-3.2, 12-3.3(a-5) (West 2010). Here, the evidence was sufficient to sustain defendant's conviction. At trial, Sanders testified that after defendant kicked her out of the car, defendant choked her three separate times, causing her to have trouble breathing. Sanders also testified that defendant at various points punched, kicked, and hit her. When shown pictures of her injuries in court, Sanders identified where her neck was bruised, swollen, and scratched—injuries consistent with being strangled. As for Weston, he testified that after an "uproar," he observed defendant throw a punch at Sanders. Once in a vacant lot, Weston observed defendant on top of Sanders with his hands on her neck. Contrary to defendant's assertion, Weston did not contradict Sanders's testimony that she had trouble breathing. Rather, Weston testified that he did not remember or did not notice if Sanders had trouble breathing. Considering the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant committed aggravated domestic battery.

¶ 28 Our conclusion is not affected by the relatively minor differences between the testimony given by Sanders and Weston that defendant raises. Sanders testified that defendant choked her three times, while Weston recalled defendant choking her only once. Sanders and Weston also gave different accounts of defendant's actions on the way back from the parking lot and how the police were summoned. Because these inconsistencies are related to collateral matters, they do not necessarily render the testimony on the material issue of whether Sanders was struck and

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strangled improbable or incredible. See *People v. Coleman*, 301 Ill. App. 3d 37, 43 (1998). Additionally, it is expected that witnesses' statements will vary in minor respects anytime multiple people witness the same event under traumatic circumstances. *People v. Brooks*, 187 Ill. 2d 91, 133 (1999). We also note that there is no minimum number of times that a victim must be strangled under the aggravated domestic battery statute. More broadly, the trier of fact, not the reviewing court, resolves conflicts in the evidence (*Siguenza-Brito*, 235 Ill. 2d at 228) and was in the best position to assess the credibility of the witnesses (*People v. Myles*, 257 Ill. App. 3d 872, 884 (1994)).

¶ 29 We are also not persuaded by defendant's contention that, based on the photographs and the fact that Sanders did not seek medical attention, Sanders exaggerated her injuries and was not credible. The trial court found Sanders credible, and we will not substitute our judgment for that of the trier of fact on this issue. *Siguenza-Brito*, 235 Ill. 2d at 224-25. It is not the role of this court to reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal (*People v. Howard*, 376 Ill. App. 3d 322, 329 (2007)), which is essentially what defendant asks this court to do. The evidence was not so unreasonable, improbable, or unsatisfactory as to raise a reasonable doubt of defendant's guilt.

¶ 30 Next, defendant contends that his seven-year sentence, the maximum term for his offense, was an abuse of discretion because the trial court failed to account for the many factors presented in mitigation. Defendant asserts that his strong rehabilitative potential, education and employment history, expression of remorse, family ties, and history of mental illness and willingness to seek treatment merited a lesser sentence. Defendant additionally contends that his sentence is not proportional to the harm caused.

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¶ 31 A trial court has broad discretionary powers in imposing a sentence and the trial court's sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The sentencing judge should consider all matters reflecting on the defendant's personality, propensities, tendencies, and every aspect of his life relevant to the sentencing proceeding (*People v. Fern*, 189 Ill. 2d 48, 55 (1999)), including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age (*Stacey*, 193 Ill. 2d at 209). A sentence within the statutory limits will be deemed excessive and an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Id.* at 210.

¶ 32 Here, the sentencing range for defendant's offense was three to seven years. 720 ILCS 5/12-3.3(b) (West 2010); 730 ILCS 5/5-4.5-35(a) (West 2010). While defendant received the maximum sentence, he has failed to show that his sentence was an abuse of discretion. It is presumed that the trial court properly considered all mitigating factors and rehabilitative potential before it, and the burden is on the defendant to affirmatively show the contrary through evidence other than the sentence itself. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010); *People v. Jones*, 376 Ill. App. 3d 372, 393 (2007). Additionally, although the trial court may not disregard evidence in mitigation, it may determine the weight to attribute to it. *People v. Markiewicz*, 246 Ill. App. 3d 31, 55 (1993).

¶ 33 Here, the trial court's comments at the sentencing proceeding suggest that it considered the evidence presented in mitigation, but determined that it was outweighed by other factors. The PSI and defense counsel's argument in mitigation raised defendant's history of mental illness and efforts to seek treatment, as well as defendant's education and employment history and relationships with family members. Defendant, in allocution, expressed remorse and noted his

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efforts to rehabilitate himself while in jail. There is no evidence that the court disregarded this evidence in mitigation. Rather, based on the court's statements, it appears that the court believed that this mitigating evidence was outweighed by the facts of defendant's actions toward Sanders and defendant's propensity to commit domestic batteries, despite having been given probation in the past. We may not substitute our judgment for that of the trial court merely because we might have balanced the appropriate factors differently. *People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002). Further, the existence of mitigating factors does not automatically oblige the trial court to reduce a sentence from the maximum allowed. *Markiewicz*, 246 Ill. App. 3d at 55. Because defendant has not shown that the trial court failed to consider evidence in mitigation—and to the contrary, the record suggests that the trial court balanced it against defendant's criminal history—he has not demonstrated that the trial court abused its discretion.

¶ 34 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 35 Affirmed.