

No. 1-13-0169

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 DV 72139
	)	
CHRISTINE PAWLAK,	)	The Honorable
	)	Yolande M. Bourgeois,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* In a domestic battery prosecution, the State proved the element of bodily harm beyond a reasonable doubt where the victim testified that defendant repeatedly punched him with a closed fist, that the punches hurt, that a bruise developed the next day or the day after that, and that the next day he was sore from the blows.

¶ 2 Following a bench trial, defendant Christine Pawlak was convicted of domestic battery and sentenced to one year of conditional discharge with various conditions. On appeal,

defendant contends that the State failed to prove the element of bodily harm beyond a reasonable doubt.

¶ 3 On May 14, 2012, defendant and the victim, Brian Lueck, were in a dating relationship and had just moved together into the second floor apartment of a two-flat building located at 3748 West Sunnyside Avenue in Chicago. At approximately 6:30 p.m. on that date, defendant was alone in the apartment when the victim returned. The victim noticed that defendant had moved almost all of her belongings into the second bedroom from the bedroom that they had been sharing. They had a conversation and agreed that defendant would move out immediately. However, defendant then said that she had paid rent and that she did not have to move out until the end of the month.

¶ 4 Later that night, defendant became increasingly agitated and made noise. The victim did not want to wake up the landlord, who lived in the apartment below, and asked defendant to "keep it down" because she was going to wake the landlord and get them in trouble. Defendant immediately stood up, looked at the victim, and said, "how dare you care about what other people think. Why don't you care about what I think?" Defendant then punched the victim in the face, specifically the left cheekbone. The blow hurt and caught the victim off guard and he backed away.

¶ 5 Defendant continued to pursue the victim and tried to punch him in the face. The victim extended his arms and repeatedly blocked punches while defendant punched him in the shoulders, arms, and the cast that was on his left wrist and hand. The victim backed away and asked defendant to stop. When the victim turned his back for a second, defendant punched him

1-13-0169

"a bunch" of times very fast on his back, kidneys, and around the side. The blows were closed fist punches from rage and anger. Defendant followed the victim for at least 15 minutes from the living room through the hallway, into the dining room, into their bedroom, and back to the dining room, and the victim guarded himself the entire time. The punches hurt, and the next day the victim was "pretty sore." Defendant also kicked the victim several times and tried to bite him and to knee him in the crotch several times. Defendant might have inflicted some open-hand slaps on him, but there were a lot of closed-hand punches.

¶ 6 Defendant grabbed her flat screen television and threw it on the ground. She also grabbed a lamp, ripped it out of the wall, and threw it on the ground. The victim then called the police and sat on defendant for approximately five minutes, until the police arrived, to prevent her from getting up and breaking anything else. When the victim thought that the police would have arrived, he got up and went downstairs. Meanwhile, he heard defendant "tearing down the stairs." Defendant punched the victim several more times at the door. The victim unlocked the door and got away from defendant and a police car arrived.

¶ 7 The victim approached the police car. Officers Raczka and Schwocher got out of the car and asked him what had happened. He told them that defendant was out of control and was "hitting" him. He did not specify open hands and believed that he told the officers that she punched him with a closed fist. Defendant "took another big lunging swing" at him as the officers stood two feet away. The victim blocked the blow and it struck his arms. The victim would not describe that blow as a slap. It was a punch and it was painful, "[t]he same as the others." The officer grabbed defendant by the other arm, put her on the hood of the car,

handcuffed her, and threw her in the back of the car. When asked if he had any visible injuries, the victim testified that he had a bruise on his forearm and that he had scratches. He also had "overall soreness" from taking and blocking punches, but he did not go to the hospital because the injuries were not severe enough. He did not recall whether he told the officers that he was injured. When asked whether he showed the bruise on his arm to the officers, the victim testified that the bruise did not form until the next day or a few days later. Nor did the victim show the officers any scratches on his arms. The victim has a photograph of the bruise that he apparently did not take to the trial. He did not take pictures of the scratches.

¶ 8 Officer Raczka testified that he saw defendant slap the victim in the face with an open hand. Officer Raczka did not see any visible injuries on the victim.

¶ 9 The trial court found that defendant was "totally out of control" because she hit the victim in front of the police officers. The court observed that defendant followed the victim from room to room punching him, kicking him, and kneeing him, and that the State's witnesses (the victim and Officer Raczka) were "not impeached in any significant way." The court found that the State had proved the element of bodily harm. Earlier, when denying defendant's motion for a judgment of acquittal at the close of the State's case in chief, the court observed that the victim's testimony was clear and credible.

¶ 10 On appeal, defendant contends that there was insufficient evidence of bodily harm because she merely slapped the victim with an open palm and the victim had no visible injuries and never presented the alleged photographic evidence of a bruise. Defendant argues that Officer Raczka's testimony impeached the victim's testimony because the officer did not see

injuries on the victim and testified that defendant slapped the victim, not that she punched him. Defendant maintains that the victim never showed any evidence of bodily harm to Officer Raczka and that the victim's testimony that he "hurt" is not tantamount to physical pain.

¶ 11 The domestic battery statute requires bodily harm as an element of the offense. See 720 ILCS 5/12-3.2(a)(1) (West 2012). The Illinois Supreme Court defined bodily harm as follows for the battery statute:

"Although it may be difficult to pinpoint exactly what constitutes bodily harm for the purposes of the statute, some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent, is required." *People v. Mays*, 91 Ill. 2d 251, 256 (1982).

¶ 12 Physical pain can constitute bodily harm (see *People v. McCrimmon*, 225 Ill. App. 3d 456, 466 (1992) (physical pain in shoulder from being slammed against a building and absence from work the following day proved bodily harm); *People v. Wenkus*, 171 Ill. App. 3d 1064, 1067 (1988) (physical pain from striking chin against a stair after having been pushed down the stairs constituted bodily harm)), and bodily harm can exist even where the victim did not seek medical attention and had no visible injury (*Wenkus*, 171 Ill. App. 3d at 1067).

¶ 13 In the present case, defendant ignores that physical pain can constitute bodily harm and that the victim testified he was in physical pain from defendant's punches, not from one slap with an open palm as defendant argues. The victim testified that defendant punched him with a closed fist a bunch of times very fast in his back, kidneys, and around the side, that the punches hurt, and that he was sore the next day. Additionally, she punched him in the left cheekbone, and

that blow hurt. Officer Raczka testified that he did not see any visible signs of injury, but the victim testified that soreness, or physical pain, developed the next day, and that a visible bruise also did not develop until the next day or a few days later. There was no evidence that the officers examined the victim's kidney areas, where the victim testified he had also been punched. The victim felt "overall soreness" from taking and blocking punches. Physical pain did not require visible evidence to constitute bodily harm. See *Wenkus*, 171 Ill. App. 3d at 1067. The trial court explicitly stated that the victim's testimony was clear and credible. Viewed in a light most favorable to the State, as it must be, the evidence was not so improbable or unsatisfactory as to raise a reasonable doubt regarding defendant's guilt.

¶ 14 The cases cited by defendant are readily distinguishable. For example, in *People v. Veile*, 109 Ill. App. 3d 847, 850-51 (1982), bodily harm was not proved where the defendant hit the victim, a police officer, one time in the chest, which jolted him back but did not injure him; and the victim was wearing soft body armor under his uniform. In the present case, the victim was not wearing body armor, he was hit multiple times in his face and body, he was bruised, and he felt pain and soreness from the blows. In *People v. Benhoff*, 51 Ill. App. 3d 651, 652, 656 (1977), the victim, a police officer, was not physically injured or harmed at all. The victim in the present case was physically injured or harmed, was in physical pain, and developed a bruise from the blows. We have considered, and rejected, all of defendant's arguments on appeal.

¶ 15 The judgment of the circuit court is affirmed.

¶ 16 Affirmed.