FIFTH DIVISION
MAY 15, 2015

No. 1-13-1414

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. 10 C 440409
	)	
STEPHEN YOUNG,	)	Honorable
	)	Noreen Valeria Love,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on defendant's conviction of heinous battery affirmed over challenge to the sufficiency of the evidence and claim that his right to a fair trial was violated; aggravated battery and domestic battery judgments vacated under "one act, one crime" doctrine; mittimus corrected.

¶ 2 Following a bench trial, defendant Stephen Young was found guilty of heinous battery, aggravated domestic battery, and aggravated battery, then sentenced to concurrent, respective terms of six, three, and two years in prison followed by corresponding terms of mandatory supervised release. On appeal, defendant contends that the evidence was insufficient to prove

him guilty of heinous battery beyond a reasonable doubt because the testimony of the complainant was inconsistent, improbable, and unconvincing. He further contends that the trial court denied his right to a fair trial by relying on its own personal knowledge to discredit his alibi evidence, and accordingly, that his conviction for heinous battery should be reversed. Alternatively, defendant contends that his convictions for aggravated domestic battery and aggravated battery should be vacated under the one-act, one-crime doctrine.

¶ 3 The charges filed in this case arose from an incident that occurred on March 21, 2010, in Bellwood, Illinois. At the preliminary hearing, Christopher Hall testified that he lived with his mother in the 200 block of Eastern Avenue, and about 10:45 a.m. that day, he heard a knock on the back door of their house. When he answered the door, he observed his ex-boyfriend, defendant, whom he had dated for about three years. He and defendant began to argue in the kitchen, and their conversation became more heated. At that point, defendant reached into his side jacket pocket, removed a small bottle, and tossed the liquid contents of the bottle onto Hall's neck, back, and arm. Hall sustained first and second degree chemical burns, and was taken to Loyola Hospital, where he was in the intensive care unit for three days, before being transferred to another floor for two more days. He also needed skin grafts. The court entered findings of probable cause on all charges and the case proceeded to trial.

¶ 4 Hall testified in substantially the same manner as he did at the preliminary hearing, adding that he and defendant ended their relationship in October 2009. When Hall answered the door on the day in question, defendant was in his work uniform. As their conversation became heated, Hall told defendant that he did not have time to talk to him. At that point, defendant reached into his right jacket pocket, removed a small bottle, and tossed the liquid contents of the

bottle onto Hall's neck, back, shoulder and chest. Hall felt his skin burning where the liquid made contact with it. Defendant then ran out of Hall's house, and Hall tried to pursue defendant, but his skin was burning too much for him to continue. He then called 911, and the police and fire department personnel responded.

¶ 5 Hall testified that he took his shirt off, and medical personnel sprayed him down in the middle of the street, before transporting him to the emergency room at Loyola University Hospital. Hall stayed overnight at the hospital and was released in the morning. Since then, Hall had returned to the hospital eight or nine times, and had a skin graft on his back. He had also been given medication to help with pain and headaches, and he still had scars from the incident. He told the medical personnel, police, and the assistant State's Attorney that defendant had done this to him.

¶ 6 Hall further testified that after the preliminary hearing, he went to the Cook County jail to visit defendant, who looked like he had been in a fight. Hall did not want to see defendant hurt, so he wrote defendant a letter, in which he stated that his attacker was someone named "Jonathan," a person he knew to be defendant's cousin. He explained that he still had feelings for defendant at that time, and "put that in there to help to get him out of jail"; however, at trial, he testified that defendant was the individual who threw the liquid on him. During cross-examination, Hall acknowledged that he testified at the preliminary hearing that he was in the burn unit for three days, however, he only spent a day or day and half there.

¶ 7 Bellwood police officer Rene Ibarrientos testified that she responded to the incident in question at 10:44 a.m. She then interviewed Hall, who told her that he was attacked by

defendant, and gave her his description and address. In the yard of Hall's house, Officer Ibarrientos observed a red box of Creolin, a disinfectant.

¶ 8 Bellwood fire department paramedic Damon Martin testified that he responded to the incident at 10:46 a.m. When he arrived, Hall was wearing a shirt that was soiled and emanating a foul odor. He observed that Hall was in pain and had some redness around his neck. After Hall's shirt was removed, Martin noted "redness on the left side down the chest on the back and on the left bicep," and that Hall had suffered first degree burns. He testified that Hall's skin was redder than the photographs entered into evidence showed because the photos were taken after the chemical had been irrigated. Hall was then transported to the emergency room at Loyola University Hospital.

¶ 9 The parties stipulated that, if called to testify, Doctor Sean Cahill, who was employed by Loyola Hospital, would state that Hall presented at the emergency department with chemical burns and acidosis on March 21, 2010. He would testify that "the burns were caused by a liquid disinfectant named Creolin," which covered Hall's "left shoulder, mid upper back, left neck, posterior upper arm and left elbow region." Hall informed him that he was assaulted by his ex-boyfriend with a bottle containing a chemical. Despite showering and decontamination, Hall reported that the affected area felt raw. Dr. Cahill would testify that Hall was discharged the following day, with "recommended continuing pain management and application of Bacitracin, an antibacterial antibiotic, to the wounds," and instructions to return for after-care treatment. Dr. Cahill diagnosed Hall with "first degree burns which were caused by a chemical agent and the injuries were consistent with the version of events given by [Hall]."

¶ 10 Defendant's motion for a directed finding was denied by the court, and Pat McKinley, defendant's work supervisor, was called as a witness by the defense. He testified that on the day in question, defendant was working for Guardsmark as a patrol officer at Northwestern Women's Hospital located at 250 East Superior Street in Chicago. McKinley briefly observed defendant there at 7 a.m., and related that patrol officers move throughout the building to which they are assigned, and do so by swiping an ID card to access locked doors. These ID cards log when a specific door is opened by that card, and all the "swipes" are recorded and kept in an electronic printable format. McKinley testified that defendant swiped his card 13 times on the day in question, with the first swipe occurring at 7:06 a.m. and the last one occurring at 2:48 p.m. On cross-examination, McKinley testified that defendant swiped his card at 7:06 a.m., 8 a.m., 8:21 a.m., and 8:22 a.m., and then again at 11:36 a.m., but there were no swipes by him between that period.

¶ 11 The State requested that the court take judicial notice "that the distance from Eastern Avenue in Bellwood, Illinois, to 250 East Superior Street, Chicago, Illinois, is approximately 16.52 miles," to which the court responded, "Okay. Noted." Following arguments, the trial court found defendant guilty of heinous battery, aggravated domestic battery, and aggravated battery. In doing so, it noted that Hall still had feelings for defendant, and when he went to the jail and observed that defendant had been beaten up, he wanted to find a way to have him released from jail, but ultimately the court believed that "[defendant] is the person who did this." The court also stated:

> "There is no doubt there is certainly a window and I did take judicial notice of the distance. I'm familiar with the area downtown and I'm familiar with the area of

> Bellwood and there's a three-hour window here for travel. 8:22 was a swipe and the next swipe is not until 11:36. We're talking even more than three hours."

¶ 12 In this appeal from that judgment, defendant first contends that he was not proven guilty of heinous battery beyond a reasonable doubt where the testimony of the victim was "inconsistent, improbable, and unconvincing" and "was completely contradicted" by his alibi witness.

¶ 13 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question for the reviewing court 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. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 14 In order to prove that defendant committed heinous battery in this case, the State was required to show beyond a reasonable doubt that he knowingly caused great bodily harm to the victim by means of a caustic or flammable substance, that is, by throwing acid on Hall. 720 ILCS 5/12-4.1(a) (West 2010).

¶ 15 Viewed in a light most favorable to the prosecution, the evidence adduced at trial showed that defendant was Hall's ex-boyfriend, and came to Hall's home about 10:45 a.m. on the day in question. They argued in the kitchen, and defendant reached into his right jacket pocket, removed a small bottle, and tossed the liquid contents of the bottle onto Hall's neck, back, shoulder and chest. This caused a burning sensation on the victim's skin, requiring immediate medical attention. The paramedic who responded to the emergency call testified that Hall's skin appeared red and they removed his shirt and "irrigated" his skin, and the stipulated testimony of Dr. Cahill showed that Hall suffered from first degree burns caused by a chemical agent, Creolin, consistent with Hall's version of events. In addition, Officer Ibarrientos testified that she found a red box of Creolin in the yard of the house where Hall was attacked. Hall further testified that he returned to the hospital many times for treatment, and had a skin graft on his back. This evidence was sufficient to allow a reasonable trier of fact to find the elements of heinous battery proved beyond a reasonable doubt. *Wheeler*, 226 Ill. 2d at 115.

¶ 16 Defendant contends, however, that Hall's version of events was characterized by "inaccuracies and exaggeration," which made his testimony incredible. In particular he notes discrepancies in the victim's testimony regarding his length of stay at the hospital (several days vs. one and a half days), and the nature and extent of his injuries (first degree burns vs. second degree burns). Minor inconsistencies in testimony do not render that testimony unworthy of belief or destroy the credibility of that witness, but go only to the weight to be given to that testimony. *People v. DeJesus*, 94 Ill. App. 3d 1018, 1020 (1981). Here, Dr. Cahill's stipulated testimony that Hall was at the hospital for a lesser time period does not refute or contradict Hall's testimony that he was treated at the hospital and returned several times after that, and that he

sustained great bodily harm from the acid thrown at him as evidenced by the treatment administered. The trial court found Hall to be a credible witness, and none of the minor inconsistencies now raised by defendant render his testimony so "improbable, unconvincing, and contrary to human experience," regarding the elements of the charged offense. *People v. Vasquez,* 233 Ill. App. 3d 517, 527 (1992).

¶ 17 Defendant also contends that Hall's testimony was "truly unworthy of belief" given the letter Hall wrote to him in prison naming someone else as the offender in the case. Hall explained at trial that when he visited defendant in jail, it appeared that he had been beaten up, and Hall, who still cared for defendant, wanted to help him be released from jail. The court found Hall's testimony regarding the letter credible, and we will not second-guess the trial court's factual findings concerning Hall's credibility in this matter (*People v. Young,* 128 Ill. 2d 1, 51 (1989)).

¶ 18 Defendant further contends that Hall's testimony is "highly improbable" in light of his alibi testimony, which showed that he was at work during the alleged offense. Contrary to defendant's assertion, however, the alibi testimony actually showed that defendant did not swipe his ID card between 8:22 a.m. and 11:36 a.m. The court took judicial notice of the fact that the distance between Hall's house and defendant's workplace was 16.52 miles, and noted that there was more than a three hour time window for travel. Hall had also testified that defendant was in his uniform that morning, which is consistent with the theory that he left work and went to Hall's house during that three-hour period. Accordingly, we find that defendant's alibi was not "airtight" and that it did not exonerate him or create a reasonable doubt of his guilt.

¶ 19 Defendant finally contends that he did not receive a fair trial because the trial court "used [its] own private knowledge of the travel time" between defendant's workplace and Hall's house to discredit his alibi witness. The State contends that defendant has forfeited this issue by failing to object at trial and in a posttrial motion. We agree.

¶ 20 To preserve an issue for review, defendant must both object at trial, and include the alleged error in a written posttrial motion (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), and here, defendant has failed to do either. Defendant, however, asks this court to review this issue under the plain error doctrine. *People v. Naylor*, 229 Ill. 2d 584, 602 (2008).

¶ 21 We find no basis for plain error, where, contrary to defendant's assertion, the trial court did not look beyond the evidence to its own specialized knowledge about the travel times between the two locations. Instead, the record shows that the trial court properly considered the evidence presented before it, including the stipulated evidence that the distance between defendant's workplace and the victim's house was 16.52 miles, and the alibi witness' testimony that defendant failed to make any ID card swipes at work for a three-hour window during which the offense occurred. As this court has previously noted, a trial judge does not operate in a bubble, and she may take into account her own life and experience in ruling on the evidence. *People v. Thomas*, 377 Ill. App. 3d 950, 963-64 (2007). Here, the court's brief comment that "I'm familiar with the area downtown and I'm familiar with the area of Bellwood" does not reveal any error or suggest that it considered anything other than the competent evidence in the record (*People v. Kent*, 111 Ill. App. 3d 733, 740 (1982)), showing ample time for defendant to have committed the crime. Having found no error, there can be no plain error (*People v. Bannister*, 232 Ill. 2d 52, 79 (2008)), and we thus conclude that defendant has forfeited his claim.

¶ 22 In reaching this conclusion, we reject defendant's reliance on *People v. Wallenberg*, 24 Ill. 2d 350, 354 (1962), and find it factually distinguishable. In *Wallenberg*, the trial court rejected defendant's testimony as incredible where, although defendant testified that there were no gas stations along a particular road, the court "[knew] different." *Wallenberg*, 24 Ill. 2d at 354. The supreme court held that the deliberations of the trial court are limited to the record made before it, and it cannot rely on its own private knowledge, untested by cross-examination or any of the rules of evidence. *Wallenberg*, 24 Ill. 2d at 354. Here, however, the court did not refute defendant's alibi testimony based on its private knowledge. Instead, the court determined that it was possible for defendant to have committed the offense, consistent with his alibi testimony, based on the properly admitted evidence before it, *i.e.*, the three-hour window when defendant did not swipe his ID card at work, the 16.52-mile distance between his workplace and the crime scene, and evidence that defendant was in his work uniform when he arrived at Hall's house. Accordingly, we find no cause for reversal or remand on this basis.

¶ 23 Defendant finally contends, and the State concedes, that defendant's convictions of domestic battery and aggravated battery should be vacated because they are based on a single act of throwing acid in the victim's face, and therefore violate the "one act, one crime" doctrine. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004). We agree. Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the court to correct defendant's mittimus to reflect one conviction for heinous battery and one sentence of six years, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 24 Affirmed in part, vacated in part, mittimus corrected.