

FOURTH DIVISION
September 3, 2015

No. 1-13-1596

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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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 DV 79250
)	
SUSAN VILLAREAL,)	Honorable
)	James Patrick Murphy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

¶ 1 **Held:** We affirm defendant's conviction for domestic battery where the evidence showed that defendant threw a brick at the victim and the court did not shift the burden of proof to the defense.

¶ 2 Following a bench trial, defendant Susan Villareal was convicted of domestic battery and sentenced to one month of conditional discharge. On appeal, defendant contends the State failed to prove her guilt beyond a reasonable doubt where the victim's testimony was contradictory and

impeached, her own testimony was more credible, and the trial court shifted the burden of proof to the defense. We affirm.

¶ 3 The testimony at trial showed that defendant filed for divorce from the victim, Gerardo Rodriguez, in October 2012. At the time of trial, they were married for eight and one-half years and had two daughters, ages nine and six. Defendant and Rodriguez each alleged that an order of protection against the other was in effect on December 13, 2012. Neither claim is confirmed in the record.

¶ 4 Rodriguez testified that at approximately 1:15 p.m. on December 13, 2012, he left his mother's residence at 91st Street and Baltimore in Chicago, driving a relative's car alone toward Lake Shore Drive. While on Baltimore or Brandon, Rodriguez observed defendant's car, a Ford Fusion with tinted windows, approaching from 90th Street, driven by a man named Carlos Lopez. Defendant sat in the front passenger seat. Rodriguez later stated that he "didn't notice the vehicle" until Lopez pulled up to his left at a stop sign one block away. Rodriguez was smoking with his driver's side window down. The Ford's passenger's side window opened and Lopez threw a beer bottle into Rodriguez's car, which struck the opposite window frame and shattered. Lopez turned left and Rodriguez followed to observe the car's license plate but believed that Lopez wanted to evade him. When Rodriguez lost sight of the car, he turned and drove across the bridge at Harbor and Ewing but made a U-turn after the Ford approached in the opposite direction. He drove onto the shoulder, pulling up to the right of the car while traffic was stopped at the bridge. Rodriguez's window and defendant's window were down and he swore at defendant and Lopez. Defendant reached between her legs or to her side and Lopez dialed his cell phone.

Rodriguez looked for something to throw and observed defendant holding a "quarter brick" in her right hand. She threw the brick backhanded, hitting his left arm near the shoulder. He did not know what part of the brick hit him. The brick bounced against the driver's side door, striking his left hand. He did not feel pain immediately but experienced "bruising and soreness" a few days later. Lopez drove away and Rodriguez called 911. He provided the first three digits of the Ford's license plate, the car's direction, and the identity of the driver, then followed the Ford on Harbor Avenue until Lopez ran a red light. Rodriguez crossed the bridge on 95th Street towards Avenue N, where the Ford passed him as he made a left turn. He called the police to provide the complete license plate number and arranged to meet an officer at 99th Street and Ewing, where he believed Lopez and defendant were going. On the way, the Ford again passed Rodriguez from the opposite direction and Lopez threw a brick at his rear driver's side door. Rodriguez exited the car and called police, then continued driving toward the meeting place with the Ford ahead of him.

¶ 5 Rodriguez further testified that he observed individuals "throwing down" gang signs for the Pitchforks and Latin Dragons near 99th Street and Ewing. One gang member approached his vehicle, carrying what appeared to be a 12-ounce beer bottle. Rodriguez "told him not to do it" but the gang member threw the bottle and broke his rear driver's side window. The bottle did not hit Rodriguez and he did not observe the gang members throw anything else. Rodriguez believed that Lopez directed the attack, alleging he was a gang leader and was having an affair with defendant. Rodriguez called 911, arranging to meet the police at 98th Street and Avenue L. More gang members were at that location, so he continued on 98th Street past Ewing, where he

observed the Ford leaving an alley on Avenue J. The Ford moved in reverse, hitting a maroon Jeep Cherokee or Trailblazer that was exiting a garage. Rodriguez heard a siren and drove to 99th Street and Ewing, where he flagged a policeman later identified as Officer David Marinez. Rodriguez led Marinez to the alley and blocked defendant's vehicle. Marinez ordered defendant and Lopez to exit at gunpoint. A second officer arrived, followed by a sergeant two or three minutes later. Rodriguez spoke with the arresting officer only to sign paperwork, then talked to the sergeant for six or seven minutes. Rodriguez told the sergeant that Lopez threw a bottle into his vehicle, that he was hit by a brick on his left shoulder, and that gang members threw objects at his car, breaking the window.

¶ 6 Rodriguez rejected medical treatment but went to Cook County Hospital the following day, December 14, 2012. After waiting for six hours, he was treated by a triage attendant but was not examined by a doctor. He did not have a hospital report and testified that no one at the hospital took pictures of him. The State published a photograph of Rodriguez's left shoulder, showing a bruise. The State also published a photograph of scratches on Rodriguez's left hand. These photographs, taken on December 17, 2012 at the office of the State's Attorney, were entered into evidence and included in the record on appeal.

¶ 7 On cross-examination, Rodriguez stated that on December 17, 2012, he appeared in court seeking an order of protection. He acknowledged being asked whether he went to the emergency room and responding "[y]es, I did, and they took pictures and I've taken pictures."¹ He further

¹ At the hearing on December 17, 2012, the court questioned Rodriguez as follows:

"Q: Did you go—

A: Yes.

stated that on December 13, 2012, he lived at 10636 South Hoxie and denied living at 8343 South Buffalo, which he described as marital property originally belonging to defendant's aunt.

¶ 8 Officer David Marinez testified that on December 13, 2012, he responded to a call regarding criminal damage to a vehicle. Marinez met Rodriguez at 99th Street and Ewing and stopped defendant's car when it approached on 99th Street. Marinez asked Rodriguez what happened and "took his personal information." Rodriguez gave his address as 8343 South Buffalo and stated that defendant hit his left shoulder with an object. Marinez did not recall whether Rodriguez stated the object was a brick but said he would have recorded the information had Rodriguez made that claim. He did not observe any injuries on Rodriguez, who declined medical attention. Rodriguez showed him a brick in his car. Marinez believed it "was the brick that broke the window." Marinez did not recall the size of the brick and denied that Rodriguez showed him other bricks, a bottle, or any other objects.

¶ 9 Defendant testified that on December 13, 2012, she and Lopez visited a residence at 8343 South Buffalo, where she had lived with Rodriguez until 2003. Defendant leased the property to tenants on behalf of her daughters, who inherited it from her mother. After collecting rent and mail, she and Lopez entered her car, with Lopez driving and defendant in the front passenger

Q: —to the doctor?

A: Yes, to the emergency room, yes, I did. And they took pictures.

Q: They what?

A: And I've taken pictures.

Q: Do you have those with you?

A: No, they did downstairs.

Q: Today they did?

A: Yes, they did. And I showed the State's Attorney the injuries Friday."

seat. She observed a friend of Rodriguez, whom she knew only as Willie, standing outside his home across the street, talking on a cell phone. Near the bridge at 92nd Street and Harbor, Lopez told defendant that he observed Rodriguez crossing from the opposite direction. Defendant knew that Rodriguez's mother lived nearby. She turned and observed Rodriguez make a U-turn, pulling up next to the driver's side of the car. The windows on defendant's car were closed and she did not know whether Rodriguez's window was open. Rodriguez left his vehicle and punched Lopez's window with both fists, screaming that he should "get out of the car." Lopez did not open the door, which was broken and would have required lowering the window and using the outside handle. Defendant told Lopez to leave, so he put the car in reverse and drove onto Harbor. This encounter was the only time her car and Rodriguez's car were side by side. She denied throwing anything from the car or seeing Lopez throw anything. Defendant denied keeping bricks or bottles in her car or that Lopez brought those objects with him.

¶ 10 Defendant further testified that she and Lopez drove for approximately four minutes and made several turns while Rodriguez chased them. Near 99th Street and Avenue L, two or three teenagers emerged from gangways and "scramble[ed] to pick things up to throw." She did not see them display gang signs but heard yelling and observed one of Rodriguez's windows break. Rodriguez exited the car and stood by the door, appearing to argue with the teenagers. He then drove down Avenue L while Lopez and defendant circled the block. They encountered Rodriguez in a school zone near Avenue J, where he drove around them and left his car. He put his hand under his shirt and ran within 25 feet of defendant's vehicle. Defendant believed he was motioning that he had a gun. She called her attorney because she had an order of protection and

did not know what to do. She did not call the police because the incident happened quickly. Lopez tried to drive away but encountered a speed hump and traffic. When police arrived, Rodriguez told defendant "you're stupid, curse word. I'm going to get the kids." Lopez exited the car but defendant stayed inside while Rodriguez paced and yelled from across the street. She testified that she was scared because she and Rodriguez had "several domestic issues in the past." She also stated that custody was a "very big issue" in their divorce.

¶ 11 On cross-examination, defendant stated that she filed a petition for an emergency order of protection after the incident. Defendant acknowledged stating in an affidavit that Rodriguez "drove along the driver's side of my car before running his car into my front driver's side headlight and damaging my car." She testified that Lopez and Rodriguez were once acquaintances but had not spoken in several years. She did not know the nature of their relationship, but stated that Rodriguez would "definitely" be upset she was with another man.

¶ 12 At the close of trial, the court stated that the pending divorce and custody dispute "are two of the most—at least to me—compelling motives for anybody to fabricate any case in domestic violence court." The court noted that the domestic relations litigation was "not dispositive of the case" but was "something to consider in the context of all the evidence." The court stated:

"The State has the burden of proving each and every element of the offense beyond a reasonable doubt.

[T]he record includes a picture of a man with a bruise on his arm, a brick in his car, and he calls the police. These are three things that I don't think would happen unless it happened the way [Rodriguez] described it to me.

You seem like a nice person, but I don't believe you. I don't think it happened the way the Defendant says it happened. I hope that with a finding of

guilty here, which I'm going to enter—I don't know what repercussions they're going to have on the domestic relations case, and I would hope it's not abused, but that's not something that I'm going to concern myself with. It's something that I consider in assessing the credibility of the witnesses, and I've taken it into account.

Like I pointed out, it's a compelling motive, but, I mean, I have a picture of a bruise here. There's no evidence in the record, at least for me, that this bruise was caused by any manner other than the brick being thrown at him by the Defendant. I can speculate that someone else hit him with something, but there's no evidence in the record that anybody did, and I don't think that's a reasonable inference.

The suggestion is being made that because it's days old, it was caused some other way. That might be, but there's no evidence of that, and I can't—I'm not going to draw that inference. That's not an inference I can draw. Now, had somebody come in here and said, you know, I punched him in the shoulder the day after this, that's evidence that he might have sustained the injury in a different way, but it's not there.

The only evidence of the bruise is that she caused it. There's a brick in his car. I'm asked rhetorically why would she have a brick in her car, and the same question goes for him. Why would he have a brick in his car? And to me, the answer is because it was thrown in his car."

¶ 13 The court found defendant guilty of domestic battery and sentenced her to one month of conditional discharge. Defendant filed a motion to reconsider. At the hearing, the court noted that "the only issue with the trial was one of credibility." The court stated that it found defendant's demeanor "suspect," that "[h]er version of the events was implausible," and that defendant made a prior inconsistent statement regarding damage to her vehicle. The court denied the motion.

¶ 14 On appeal, defendant contends that she was not proven guilty beyond a reasonable doubt and that the trial court shifted the burden of proof to her to prove her innocence, thereby violating her due process rights. We address defendant's contentions in turn.

¶ 15 Defendant first argues the evidence failed to establish she committed domestic battery where the victim's testimony was contradictory and impeached, her own testimony was more credible, and the facts suggested she could not have caused defendant's injuries.

¶ 16 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. Brown*, 2013 IL 114196, ¶ 48. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Although the State need not disprove every reasonable hypothesis of innocence, that the trier of fact accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision. *People v. Ross*, 229 Ill. 2d 255, 272 (2008); *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). A defendant's conviction will be reversed if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). It follows that where the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 17 To sustain a conviction for domestic battery, the State must show that defendant knowingly and without legal justification caused bodily harm to any family or household member by any means. 720 ILCS 5/12-3.2(a)(1) (West 2012); *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). On appeal, defendant does not contest the elements of the offense but challenges the credibility of the victim whose testimony supported her conviction.

¶ 18 Minor inconsistencies between witnesses' testimony or within one witness' testimony affect the weight of the evidence but do not automatically create a reasonable doubt of guilt. *People v. Adams*, 109 Ill. 2d 102, 115 (1985); *People v. Gill*, 264 Ill. App. 3d 451, 458-59 (1992). The trier of fact must judge how flaws in part of a witness' testimony, including inconsistencies with prior statements, affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283; *People v. Strother*, 53 Ill. 2d 95, 100-01 (1972). The trier of fact may accept or reject all or part of a witness' testimony. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22. The testimony of a single witness, if positive and credible, is sufficient to sustain a conviction although it is contradicted by the defendant. *Siguenza-Brito*, 235 Ill. 2d at 228. The defendant's credibility, like that of any witness, is a question for the trier of fact. *People v. Luckett*, 339 Ill. App. 3d 93, 103 (2003). The defendant's testimony does not carry a presumption of veracity and is not entitled to greater deference than the testimony of any other witness. *People v. Barney*, 176 Ill. 2d 69, 74 (1997). The trier of fact is not required to accept explanations that are consistent with the defendant's innocence or to disregard inferences flowing from the evidence. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 19.

¶ 19 We find the evidence was sufficient to establish that defendant committed domestic battery. As to the facts most pertinent to the State's case, Rodriguez testified that he pulled onto the shoulder of the road, to the right of defendant's car. Defendant's passenger's side window and his own driver's side window were down. He observed defendant reach between her legs or to her side and then saw her holding a "quarter brick" in her right hand. She threw the brick backhanded, hitting his left arm near the shoulder, and the brick bounced against the driver's side door, striking his left hand. Rodriguez's account was plausible and the trial court was not obligated to reject his entire testimony due to contradictions elsewhere in his narrative. *People v. Billups*, 318 Ill. App. 3d 948, 954 (2001) (where witnesses to a battery provided contradictory testimony, jury was not required to "accept or reject all of a witness' testimony but may attribute different weight to different portions of it."). Defendant notes that Rodriguez contradicted himself regarding when he first observed observed her car and was contradicted by Officer Marinez regarding how and where the car was stopped. Rodriguez also told the officer that he resided at an address where he had not lived for several years. Each inconsistency affects the weight of Rodriguez's testimony but none render his account of the battery improbable or unsatisfactory. *People v. Myles*, 257 Ill. App. 3d 872, 883-84 (1994) (affirming conviction where inconsistencies in the testimony were "of a minor nature and certainly collateral."). Whether and to what extent the inconsistencies damaged Rodriguez's credibility was a question for the trier of fact and will not be disturbed on review.

¶ 20 Defendant contends Rodriguez was impeached by his earlier testimony at a hearing for an order of protection, but the record does not support this conclusion. At trial, Rodriguez testified

that no photographs were taken of him when he went to the hospital on December 14, 2012. At the hearing on December 17, 2012, the court questioned Rodriguez as follows:

"Q: Did you go—
A: Yes.
Q: —to the doctor?
A: Yes, to the emergency room, yes, I did. And they took pictures.
Q: They what?
A: And I've taken pictures.
Q: Do you have those with you?
A: No, they did downstairs.
Q: Today they did?
A: Yes, they did. And I showed the State's Attorney the injuries Friday."

¶ 21 Rodriguez's meaning is unclear because the pronoun "they" could refer to either the hospital personnel or the office of the State's Attorney. Defense counsel confronted Rodriguez with his prior statement but even if Rodriguez contradicted himself at trial, the inconsistency would not discredit his entire testimony. *Strother*, 53 Ill. 2d at 100-01 (minor discrepancies in testimony taken at two different times did not destroy witness' credibility where defense counsel explored inconsistencies on cross-examination and raised issue in closing argument). The trial court heard the testimony and arguments and we will not reweigh the evidence on review.

¶ 22 We reject defendant's contention that she testified more credibly than Rodriguez. The trial court, as trier of fact, heard defendant testify and was best equipped to judge her credibility. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (credibility determinations carry great weight and "due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses."). Although defendant contradicted Rodriguez's version of events, the court was not obliged to grant her testimony greater deference than the victim's testimony. *Barney*, 176 Ill. 2d at 74. The court noted that both defendant and Rodriguez were susceptible to bias due to

their divorce and custody proceedings. *Id.* (trier of fact "was entitled to consider the defendant's interest in the result of the trial in weighing his testimony."); *Gill*, 264 Ill. App. 3d at 459 (affirming conviction where trier of fact "was aware of all the inconsistencies and possible motivation for [the witnesses] testifying."). The court also noted that the divorce litigation was "not dispositive of the case" but was "something to consider in the context of all the evidence." After hearing defendant's testimony, the court concluded she did not testify believably in view of her "suspect" demeanor, "implausible" narrative, and prior inconsistent statement regarding damage to her vehicle. We will not disturb this credibility finding on review. *E.g.*, *People v. Harris*, 297 Ill. App. 3d 1073, 1083 (1998) (we defer to the trial court in credibility assessments because a court of review is not in a position to observe the witness as she testifies).

¶ 23 Defendant argues it is unlikely that she had a brick and could use it to injure Rodriguez, but this was also a question for the trier of fact. *Brown*, 2013 IL 114196, ¶ 48 (trier of fact obliged "to draw reasonable inferences from basic facts to ultimate facts") (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trial court stated:

"[T]he record includes a picture of a man with a bruise on his arm, a brick in his car, and he calls the police. These are three things that I don't think would happen unless it happened the way [Rodriguez] described it to me.

The only evidence of the bruise is that she caused it. There's a brick in his car. I'm asked rhetorically why would she have a brick in her car, and the same question goes for him. Why would he have a brick in his car? And to me, the answer is because it was thrown in his car."

¶ 24 The court heard and weighed testimony from both defendant and Rodriguez, including testimony that "gang members" or "teenagers" threw objects at Rodriguez's car. After hearing all the testimony, the court reasonably inferred that defendant threw the brick at Rodriguez, causing

his injuries. In view of the record and the credibility determinations, we cannot say the evidence was so improbable or unsatisfactory as to render this conclusion unreasonable.

¶ 25 Defendant next argues the trial court shifted the burden of proof to her to prove her innocence, thereby violating her due process rights. In support of her contention, defendant relies on the following remarks made by the court in delivering the guilty verdict:

"There's no evidence in the record, at least for me, that this bruise was caused by any manner other than the brick being thrown at him by the Defendant. I can speculate that someone else hit him with something, but there's no evidence in the record that anybody did, and I don't think that's a reasonable inference.

The suggestion is being made that because it's days old, it was caused some other way. That might be, but there's no evidence of that, and I can't—I'm not going to draw that inference. That's not an inference I can draw. Now, had somebody come in here and said, you know, I punched him in the shoulder the day after this, that's evidence that he might have sustained the injury in a different way, but it's not there."

¶ 26 Whether the trial court applied the proper legal standard is a question of law subject to a *de novo* standard of review. *People v. Fitzpatrick*, 2013 IL 113449, ¶ 12; *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 26. The trial court is presumed to know the law, including the allocation of the burden of proof, and to apply it properly, absent a strong affirmative showing to the contrary in the record. *People v. Howery*, 178 Ill. 2d 1, 32-33 (1997).

¶ 27 In a criminal proceeding, the State has the burden of proving each element of the offense beyond a reasonable doubt and this burden never shifts to the defendant. *Cameron*, 2012 IL App (3d) 110020, ¶ 27. The defendant is presumed innocent of the charges against him and does not have to prove his innocence, testify, or present any evidence. *Id.* However, the trial court's efforts to test, support, or sustain the defense's theories cannot be viewed as diluting the State's burden of proof or shifting that burden to the defendant. *Howery*, 178 Ill. 2d at 35; *Cameron*, 2012 IL

App (3d) 110020, ¶ 28. The court may comment on the implausibility of the defense's theories, as long as it is clear from the record that the court applied the proper burden of proof in finding the defendant guilty. *Howery*, 178 Ill. 2d at 34-35.

¶ 28 In the present case, we find the record lacks strong affirmative proof that the trial court erroneously shifted the burden of proof to defendant. In reaching its decision, the court commented on the State's evidence and theories, the defendant's evidence and theories, and the State's burden of proof. By providing an example of testimony that might have created reasonable doubt, the court demonstrated that it thoroughly considered and tested defendant's theories, which included the argument that Rodriguez was injured by objects thrown by gang members. *Cameron*, 2012 IL App (3d) 110020, ¶ 16, 29 (trial court did not shift burden of proof by stating that prosecution's evidence "could have been rebutted" had witnesses "come into Court and *** testified that, yeah, I was responsible."). We reject defendant's comparison to *People v. Weinstein*, 35 Ill. 2d, 467, 470-71 (1966), where our supreme court reversed a conviction after the prosecutor repeatedly told the jury that a defendant had the burden to present evidence creating reasonable doubt. Here, defendant appeals from a bench trial, where the court served as trier of fact. The court may draw or reject inferences based on the evidence and is presumed to know the law. The record is clear that the court knew and properly applied the burden of proof and its comments do not support a claim that it erroneously shifted the burden to defendant.

¶ 29 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 30 Affirmed.