

No. 1-13-3617

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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. 13 MC1 90356
)	
LOVIE HARBIN,)	Honorable
)	Beatriz Santiago,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

O R D E R

¶ 1 **Held:** The judgment of the trial court is affirmed where the victim's testimony sufficiently established beyond a reasonable doubt that the defendant committed a battery.

¶ 2 Following a bench trial, the defendant, Lovie Harbin, was found guilty of misdemeanor battery (720 ILCS 5/12-3(a)(1) (West 2012)) and sentenced to one year of supervision and 24 hours of community service. On appeal, the defendant challenges the sufficiency of the evidence to sustain her conviction, arguing that the victim's testimony was incredible.

¶ 3 The defendant was charged with battery of the victim, Charmaine Nathan, for an incident that occurred on April 29, 2013, after an argument between the defendant and the victim's daughter, Jasmine Porter, escalated into three separate incidents and allegedly resulted in the defendant cutting the little finger of the victim's left hand with a butcher knife. At trial, the State presented the testimony of the victim, her daughter, Bryanna Nathan, and a responding officer, Officer Arroyo. The defendant was the only witness presented on behalf of the defense.

¶ 4 The victim testified that on April 29, 2013, at approximately 8:30 p.m., the defendant and Porter began arguing at a party several blocks away from a restaurant the victim managed. The argument was a continuation of an ongoing dispute that has lasted several years. At some point, Porter ran to the victim's restaurant and the argument continued outside of this location for approximately 45 minutes until the police were called to the scene.

¶ 5 Several minutes after police officers left the area, a second altercation ensued when the defendant returned to the restaurant with her friends and family members, including the defendant's sister. The victim was standing outside the restaurant when the defendant and her sister "started coming towards [the victim and her children] *** trying to fight [them]." The defendant was not carrying a weapon, but other members of her group wielded items such as a brick, a stick, a chain, and a sock with a lock inside. The victim stated that she was in the middle of the melee attempting to stop the opposing parties from fighting when the defendant's sister attempted to hit her with a stick. Before she was hit, however, the victim's son grabbed the stick and used it to hit the defendant's sister on the head. The police were again called to the scene, and an ambulance arrived that took defendant's sister to the hospital. According to the victim, the

defendant's group then dropped their weapons and left the scene. The defendant's sister was the only person injured during the incident.

¶ 6 Later that night, at approximately 10:30 p.m., there was still a large crowd present when the defendant returned to the victim's restaurant as she was leaving for the night. The victim was standing on the sidewalk talking to a family member when the defendant exited her friend's vehicle holding a butcher knife and began chasing her. The victim eventually ran into the street where she stopped and tried to disarm the defendant by grabbing her arm, which resulted in a cut to the little finger of the victim's left hand. The defendant then left the scene and the police were called for a third time. Although she refused transport to the hospital, an ambulance arrived and the victim's injury was bandaged. At trial, the victim displayed a scar on her finger that she testified was the result of the injury caused by the defendant.

¶ 7 Bryanna Nathan's testimony substantially corroborated the victim's version of events. She testified that she observed the defendant exit a white vehicle carrying a butcher knife in her right hand and chase the victim for approximately three minutes. She confirmed that the victim was cut when she stopped running and attempted to disarm the defendant. She also stated that there was a group of approximately 30 people present during this final confrontation.

¶ 8 Officer Arroyo testified that he reported to the scene twice on the night of the incident. After the last altercation, he noticed that the victim was bleeding from a cut to her finger. At that time, the victim provided him with the defendant's name and a physical description. He was also provided with a possible address for the defendant, but was unable to locate her at the address given. No weapons were ever recovered from the scene.

¶ 9 The defendant's testimony was substantially the same as the victim's regarding the first incident. The defendant explained that she and Porter argued "over a boy" while attending a party, which was an ongoing dispute that has lasted several years. A comment the defendant made upset Porter prompting Porter to run to the victim's restaurant. The police later arrived and the defendant walked "back down the street" away from the scene.

¶ 10 The second incident occurred just minutes later when Porter, the victim, and several of her family members emerged from the victim's restaurant. The defendant testified that Porter and the victim were carrying butcher knives. At the same time, the defendant's sister drove by in her vehicle. Upon observing that the defendant was outnumbered, her sister exited the vehicle and attempted to pull the defendant away. As her sister was exiting the vehicle, the victim's son, "Casey," hit her on the head with a metal pole causing an injury that required stitches. The defendant later testified that the victim's son, "Harrison," hit her sister. After her sister was injured, an ambulance arrived and took her to the hospital. According to the defendant, she followed the ambulance.

¶ 11 The defendant also stated that she was not armed with a weapon and never returned to the scene of the incident after the second altercation.

¶ 12 On cross-examination, the defendant stated that the victim's son was never arrested because she did not know his name, although she has known the victim's family for more than seven years. She also testified that a police officer—other than Officer Arroyo—followed the defendant and her sister to the hospital. On re-cross examination, the defendant stated that, while

at the hospital, she provided police officers with the victim's son's name, approximate age, and potential location.

¶ 13 The trial court ultimately found the defendant guilty of battery. In so finding, the court determined that the victim's testimony was credible "as compared to [Bryanna Nathan's] or [the] defendant's." The court explained:

"I found credible that she was there. She's attempting to break up a fight, and that in that mayhem of trying to break up the fight, that in the third location after the sister was hurt, that the defendant came back a third time, apparently, upset over what happened to her sister, and she received a cut."

¶ 14 The defendant filed a motion for new trial which the trial court denied. She was subsequently sentenced as previously described. She now appeals from this ruling alleging that the evidence was insufficient to prove her guilt beyond a reasonable doubt.

¶ 15 When a defendant challenges the sufficiency of the evidence to sustain a conviction, the relevant question on review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the function of this court to retry the defendant. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). In a bench trial, the trial court is responsible for determining the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or

inconclusive that it creates a reasonable doubt of the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8. The testimony of a single witness, if positive and credible, is sufficient to convict even if it is contradicted by the defendant. *Singuenza-Brito*, 235 Ill. 2d at 228.

¶ 16 To sustain a conviction for battery, the State had to prove that the defendant knowingly without legal justification caused bodily harm to the victim. See 720 ILCS 5/12-3(a)(1). The testimony of the victim, which the trial court found credible, established that the defendant cut the little finger of the victim's left hand with a butcher knife during their final encounter. This injury was corroborated by Officer Arroyo's testimony and the existence of a scar on the victim's finger. The court also determined the defendant had a motive to commit the present offense after the defendant, the victim, and their family and friends were involved in an altercation in which defendant's sister was injured by a member of the victim's family.

¶ 17 The defendant's primary challenge to the evidence at trial is not whether the alleged acts constitute a battery; rather, that the victim's incredible testimony failed to prove beyond a reasonable doubt that the defendant was present and committed the offense. Specifically, the defendant argues that no rational trier of fact could have found that the victim testified credibly based upon: (1) the inconsistencies in the victim's testimony with regard to the presence of weapons left at the scene; (2) the victim's motive to lie to deflect attention away from the wrongdoings of her children; and (3) the improbability of the victim's version of events where the victim had readily available access to the type of weapon she alleged was used by the defendant to inflict her wound.

¶ 18 We note, however, that these weaknesses were presented to and resolved by the trial court when it found the victim's testimony credible. See *People v. Baugh*, 358 Ill. App. 3d 718, 737-38 (2005). Moreover, the defendant does not dispute, and we agree, that the State presented evidence sufficient to prove the essential elements of battery. See 720 ILCS 5/12-3(a)(1); *Beauchamp*, 241 Ill. 2d at 8. Therefore, according the appropriate deference to the trial court's finding of credibility and construing the evidence in the light most favorable to the State, we cannot find that no rational trier of fact could have found defendant guilty of battery. *Singuenza-Brito*, 235 Ill. 2d at 228.

¶ 19 The defendant, however, cites *People v. Smith*, 185 Ill. 2d 532 (1999), arguing that, like *Smith*, this court should reverse her conviction because the victim's testimony was improbable and inconsistent, and the record demonstrates that she had a motive to lie. *Smith* involved a murder trial where the testimony of the State's key witness was repeatedly impeached by her own prior statements. *Id.* at 542-43. Her version of events was also contradicted by multiple witnesses (other than the defendant), and the record demonstrated that she had a motive to falsely implicate the defendant to deflect suspicion from her sister's boyfriend who was also a suspect. *Id.* at 544. Based upon these circumstances, our supreme court found that no rational trier of fact could have found the witness' testimony credible and reversed the defendant's conviction because it was the only evidence tending to directly link the defendant to the crime. *Id.* at 545-46. Although we acknowledge that, like *Smith*, the victim's testimony was the only evidence that the trial court found credible and tended to connect the defendant to the instant offense, we nonetheless conclude that that the present case is distinguishable on its facts.

¶ 20 First, there is no evidence in the record that the victim's testimony was impeached by her own prior statements. Furthermore, any inconsistency in her testimony regarding the presence of weapons is merely tangential. The State was not required to produce physical evidence to sustain the defendant's battery conviction. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 76 (prosecution not required to produce weapon where victims credibly testified that they observed the defendant fire a gun). We also do not find that the absence of recovered weapons impeaches the victim's testimony or damages her credibility. Unlike *Smith*, the only testimony in direct contradiction to the victim's version of events was that of the defendant, and the trial court was under no obligation to accept her testimony as true. See *People v. Primbas*, 404 Ill. App. 3d 297, 302 (2010). Moreover, our review of the record leads us to conclude that the trial court could reasonably find that the defendant testified incredibly.

¶ 21 Likewise, the victim's motive to lie to protect her children does not rise to the level of false implication in *Smith*, because her children were not suspects in the commission of the present offense. More importantly, the record appears to positively rebut this assertion. The victim admitted that her daughter was arguing with the defendant and that several members of her family were involved in a physical altercation, including when her son hit the defendant's sister with a stick. Notwithstanding the viability of the defendant's theory in this regard, the presence of a motive to lie does not render testimony unconvincing in and of itself (*People v. Sullivan*, 366 Ill. App. 3d 770, 782 (2006)), and the trial court was aware of the children's involvement when making its credibility determination in favor of the State.

¶ 22 Therefore, under these circumstances, we are unconvinced by the defendant's arguments that we should reverse the trial court's finding of credibility because we do not find that no rational trier of fact could have found that the victim testified credibly. Consequently, we do not find the evidence of battery at trial was so improbable, unsatisfactory, or inconclusive as to create reasonable doubt of the defendant's guilt in the minds of this court.

¶ 23 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.