FOURTH DIVISION
December 17, 2015

No. 1-14-0245

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 CR 19870
	)	
JABYRON REEVES,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction for aggravated domestic battery affirmed over his challenge to the sufficiency of the evidence; mittimus, and fines and fees order corrected.

¶ 2 Following a bench trial, defendant Jabyron Reeves was found guilty of aggravated domestic battery, then sentenced to 30 months' probation and six months' imprisonment. On appeal, he contends that his conviction should be reduced to domestic battery because the State

failed to prove beyond a reasonable doubt that he caused great bodily harm to the victim, J.R. He also requests that his mittimus be corrected to reflect two additional days of credit for time served in presentence custody, that the miscalculated fines and fees order be corrected and that the $250 DNA analysis fee be vacated.

¶ 3 At trial, eight-year old J.R. testified that a year ago he resided with his mother, and defendant, his father. In 2012, he "kept getting into trouble," and sometime during the first week of August of that year, defendant told him to get in the push-up position. Every time he got tired and started going down to the floor, defendant "whack[ed]" him with a white extension cord. Defendant struck him a total of 11 times, which hurt, and left marks. After the beating, defendant told the victim to go to his room and lay down. In the next couple of days, his grandmother, Vonda Johnson, took him to her house, where police came and spoke with him, and also took photographs of his injuries. The victim described the injuries in the photographs as "scratches." When asked if he still has scarring to this day, the victim responded, "[n]o. Just lines."

¶ 4 The court then conducted an *in camera* inspection of the victim. The court observed that there was some discoloration on the backs of the victim's legs, with somewhat darker spots on the rear portion of his left leg, and darker colored linear marks on his right leg. The court also observed some very slight discoloration on the center part of the victim's back and on the lower back above his buttocks, as well as one "sort of spot" separate and apart, further left of the midline about five inches above his waistline, which was smaller than a dime and irregular.

¶ 5 The victim finally testified that after the incident he moved in with his grandparents, who discipline him, but have never beaten him with an extension cord.

¶ 6 Vonda Johnson testified that around August 7, 2012, she picked the victim up from his home, and he stayed with her overnight. The next day, while he was showering, he asked her to help wash his back. When she went to do so, she noticed "[w]hips, marks, cuts, bleeding wounds," and "abrasions." The whip marks were on the victim's upper back all the way down to the top of his calf. The next day, August 9, 2012, she called DCFS. The police and a few detectives came to her home and took photographs of the victim's injuries. Johnson viewed the photographs in court and noted that they showed "[w]hips, abrasions, abuse," and "cuts."

¶ 7 Johnson further testified that she did not take the victim to the hospital, but put Neosporin on the wounds, and took him to the doctor on August 9, 2012. Johnson stated that the victim moved in with her after the incident.

¶ 8 Photographs of the victim's injuries taken a couple of days after the incident, were admitted into evidence, and filed with the record on appeal. These show scabbing and dry blood, as well as severe welts and scarring on the victim.

¶ 9 Defendant acknowledged that he had prior convictions for possession of a controlled substance and theft, and testified that he does not have a good relationship with Johnson, who is his girlfriend's mother and the grandmother of his son, the victim. Defendant denied striking his son with an electrical cord, making him get in the push-up position and striking him 11 times. Defendant also testified that he did not see anyone strike his son 11 times with an electrical cord, nor see any injuries on him before he went to Johnson's house in August 2012, or hear the victim complain of any injuries.

¶ 10 At the close of evidence, the court found defendant guilty of aggravated domestic battery. In doing so, the court found that defendant caused the injuries to the victim, and that the injuries

"clearly appear to be injuries sustained by somebody whipping him" with some kind of belt or cord. The court noted that the skin discoloration and differences now over a year has passed are "very, very slight," however, the photographs taken of the victim show slashing marks from some sort of cord.

¶ 11 The trial court denied defendant's motion for a new trial, finding that the victim was credible as to who caused his injuries. The court subsequently sentenced defendant to 30 months' probation and 6 months' imprisonment, noting that defendant had already served 6 months in presentence custody.

¶ 12 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he caused great bodily harm to the victim. He thus requests this court to reduce his conviction to domestic battery, and remand the cause for resentencing.

¶ 13 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 14 To sustain defendant’s conviction of aggravated domestic battery in this case, the State was required to prove, in relevant part, that, in committing domestic battery, he knowingly

caused great bodily harm. 720 ILCS 5/12-3.3(a) (West 2012). What constitutes great bodily harm is a question of fact for the trier of fact to determine. *People v. Olmos*, 67 Ill. App. 3d 281, 289 (1978). The element of great bodily harm does not lend itself to a precise legal definition, but requires proof of an injury of a greater and more serious nature than a simple battery. *In re J.A.*, 336 Ill. App. 3d 814, 815 (2003). Bodily harm constitutes some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent. *In re J.A.*, 336 Ill. App. 3d at 815, citing *People v. Mays*, 91 Ill. 2d 251, 256 (1982). For great bodily harm, the injury must be more severe than that set out in the *Mays* definition. *In re J.A.*, 336 Ill. App. 3d at 816.

¶ 15 In this case, defendant contends that the State only proved bodily harm, not great bodily harm, where the victim only suffered scratches, lacerations and abrasions, which, he maintains, characterize bodily harm. We disagree.

¶ 16 The evidence, viewed in the light most favorable to the State (*Campbell*, 146 Ill. 2d at 375), shows that the seven-year old victim was whipped 11 times with an extension cord when he tired from doing the ordered push-ups, which were painful and left marks on his body. A day after the incident, the victim's grandmother saw "whips, marks, cuts, bleeding wounds," and "abrasions," on his back. The whip marks ran from the victim's upper back down to the top of his calf. The photographs taken shortly after the incident show scabs and dry blood, as well as welts and scarring, and a year after the incident, the court noted that there were still marks on the child's body from the incident. Based upon this evidence, the trial court's finding of great bodily harm is not so improbable or unjustified as to warrant reversal. *Olmos*, 67 Ill. App. 3d at 289-90.

¶ 17 Defendant, however, contends that there was no great bodily harm where the victim did not complain of his injuries, called them scratches and did not bring them to the attention of his grandmother. Defendant also contends that there was no medical evidence establishing the extent of the victim's injuries or indicating that any medical treatment was given, and only Neosporin used to treat the wounds.

¶ 18 We observe that the question is not what the victim did or did not do to treat the injury inflicted, but what injuries he did in fact receive. *People v. Mays*, 91 Ill. 2d 251, 256 (1982); See also *Olmos*, 67 Ill. App. 3d at 289-90. In addition, there can be a determination of great bodily harm even if the victim did not seek medical attention. *People v. Matthews*, 126 Ill. App. 3d 710, 714-15 (1984). Here, although the victim, a child, did not immediately seek medical attention, he was taken to a doctor just days after the incident (*People v. Costello*, 95 Ill. App. 3d 680, 686 (1981)), after his injuries were brought to the attention of his grandmother.

¶ 19 Notwithstanding, defendant, citing, *In re J.A.*, 336 Ill. App. 3d at 817, contends that lacerations, bruises or abrasion characterize bodily harm, not great bodily harm. In that case, the victim was stabbed once in his shoulder, which the victim described as feeling like somebody pinched him, and although he was advised to receive stitches, he did not. *In re J.A.*, 336 Ill. App. 3d at 815. Here, unlike *J.A.*, the victim was whipped 11 times with an extension cord, which resulted in pain, bleeding, lacerations, welts, and permanent scarring, which are sufficient for a finding of great bodily harm (*Olmos*, 67 Ill. App. 3d at 289-90), as opposed to the puncture injury in the cited case.

¶ 20 Defendant also calls our attention to *People v. Steele*, 2014 IL App (1st) 121452, ¶28, which he finds instructive. In that case, a police officer was struck by defendant's car and thrown

into oncoming traffic. *Steele*, 2014 IL App (1st) 121452, ¶3. The hospital discharge report indicated that the officer had been treated for bruises to his knees and arms, but the officer testified that he had torn ligaments in both knees and his right shoulder and needed surgery to remove bone fragments from his shoulder. *Id.* This court held that the officer's testimony was sufficient to support a finding that he suffered great bodily harm, but that finding was not supported by the hospital discharge report, which indicated that he was not diagnosed at the time as having torn ligaments in his shoulder or knees. *Id.* ¶30. This court further held that the medical discharge report and photographs showed that his injuries were nothing more extensive than bruises and abrasions, which only resulted in bodily harm, and not great bodily harm. *Id.* ¶35.

¶ 21 Here, unlike *Steele*, photographs taken shortly after the incident showed that the victim had scabs and dry blood on his back and legs which corroborated the grandmother's testimony that the victim had cuts and bleeding wounds. In addition, the photographs showed that the victim had welts and scarring on his back as a result of being struck with an extension cord, which were still there a year later. Moreover, and contrary to defendant's contention, the fact that there was no medical evidence does not support the finding that there was insufficient evidence of great bodily harm. *Matthews*, 126 Ill. App. 3d at 714-15.

¶ 22 Defendant further contends that there are a number of cases in which the injuries to the victims were arguably more serious, but the reviewing court found the evidence insufficient to establish great bodily harm, citing *In re T.G.*, 285 Ill. App. 3d 838, 846 (1996) (victim reported first stab felt like being poked with a pen or pencil and there was no evidence that he felt the other two stab wounds); *People v. Watkins*, 243 Ill. App. 3d 271, 278 (1993) (bullet shot at the victim's chest, pierced his clothing, grazed his left side, but no credible evidence of any

bleeding); and *People v. Figures*, 216 Ill. App. 3d 398, 402 (1991) (gunshot pierced victim's shoe, but did not penetrate his skin). We find these cases distinguishable from the one at bar where there was ample testimony and evidence regarding the extent, severity and lingering proof of the victim's injuries, which was sufficient to allow the trial court to conclude that defendant caused great bodily harm to the victim and find him guilty of the offense charged.

¶ 23 Defendant next contends, and the State concedes that he is entitled to two additional days of presentence custody credit. We observe that defendant already served his six-month prison sentence, but was also placed on 30 months' probation. We, therefore, will credit him the two days, and order that the mittimus be amended to reflect an additional two days of pre-sentence custody credit. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 24 Defendant next contends that the fines and fees order was miscalculated, and that the $250 DNA analysis fee must be vacated because he was previously convicted of a felony and has already submitted a DNA sample. Based on the supreme court decision in *People v. Marshall*, 242 Ill. 2d 285, 297, 303 (2011), the State agrees that a DNA analysis fee is authorized only where defendant is not currently registered in the DNA database. Pursuant to our authority under Supreme Court Rule 615(b)(2) (eff. April 1, 2015), we vacate the $250 DNA assessment, and direct that the trial court’s order be modified to reflect a total of $689.

¶ 25 In light of the foregoing, we direct that the fines and fees order be modified as indicated, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 26 Affirmed, as modified.