

FIFTH DIVISION
October 23, 2015

No. 1-14-3180

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. 13 DV 20035
)	
JOHN BARRIGER,)	Honorable
)	Callie L. Baird,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

¶ 1 *Held:* We affirm defendant's conviction for domestic battery where the victim's testimony was supported by the evidence and not incredible. Minor inconsistencies in the testimony and variances from the complaint did not raise a reasonable doubt of defendant's guilt.

¶ 2 Following a bench trial, defendant John Barriger was convicted of domestic battery and sentenced to one year of conditional discharge. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt where the victim's testimony was unsupported by the totality of the evidence, incredible, and inconsistent. We affirm.

¶ 3 On January 28, 2013, the victim, Laura Fitzpatrick, and defendant were engaged and lived together in Kenilworth with their four minor children: their daughter, E.B., defendant's two sons, and Fitzpatrick's daughter. The first floor of the house had two bedrooms, a kitchen, a living area, and the only bathroom. A flight of stairs led to another bedroom on the second floor.

¶ 4 Fitzpatrick testified that defendant called her at 1:15 p.m. on January 28, 2013, while she was at work. Defendant had taken E.B. to a class that ran from 1 to 3 p.m. and asked Fitzpatrick to pick up E.B. so he could go to the gym. Fitzpatrick told him that she could not because she was working. Fitzpatrick traveled home between 1:30 and 1:45 p.m., still talking to defendant by telephone. At home, she continued arguing with him on the first floor. Defendant went upstairs, followed by Fitzpatrick. In the bedroom, defendant picked up a toy sword, pointing it downward. He yelled at Fitzpatrick and approached within six inches of her face. As Fitzpatrick moved away, defendant dropped the sword and pushed her to a landing one step below the bedroom, applying "constant pressure" to her shoulders and right side. She crouched and defendant punched her right shoulder and side three or four times, causing pain. He also kicked her once or twice on the left side of her torso. Fitzpatrick yelled at defendant and he eventually stopped.

¶ 5 Fitzpatrick went downstairs to get away from defendant. She did not call the police, call a neighbor, or leave the house. After 20 or 30 minutes, defendant went downstairs and showered. When defendant yelled at Fitzpatrick through the bathroom door, she went to the door and yelled back. Defendant went upstairs to dress and they resumed arguing when he came down. He grabbed Fitzpatrick "on [her] neck" and pushed her to the floor. She crouched with her hands over her face while defendant held her down, kicking and punching the right side of her torso. The punches were "hard and painful," and Fitzpatrick cried and screamed for him to stop. Defendant crouched in front of her and she kicked him in the stomach while trying to get up. He

left the house, went to the garage, and drove away after approximately five minutes. Fitzpatrick then called the police, as she "worried about what [defendant] would do while he was there."

When officers arrived, she told them everything that happened.

¶ 6 Sergeant Padilla testified that he and his partner, Officer Stewart, responded to the domestic disturbance call shortly after 2 p.m. Padilla spoke with Fitzpatrick, who told him that a fight involving a wooden sword had started on the top floor of the house. Padilla believed that Fitzpatrick was fearful, based on the movement of her eyes, her blinking, the expression of her lips, and the shaking in her hands. Her face and eyes "looked red, like she had been crying," and there was a "fairly apparent section of redness" in her right shoulder area. However, he acknowledged stating in his report that the redness was on her neck. Padilla did not see any other injuries, and Fitzpatrick did not complain of pain or injuries. Approximately two hours later, Padilla interviewed defendant at the police station and advised him that Fitzpatrick was going to sign a complaint. Defendant then showed Padilla a small cut on his left forearm.

¶ 7 The parties stipulated to the testimony of Officer Stewart, who would testify that he observed redness on the right side of Fitzpatrick's neck.

¶ 8 Defendant moved for a directed finding, arguing that the testimony was incredible and the sworn complaint failed to indicate what injuries occurred as a result of the altercation.¹ The court denied the motion.

¶ 9 Defendant testified that at 1 p.m. on January 28, 2013, he dropped off E.B. at a class and called Fitzpatrick as he drove home. Defendant asked her to pick up E.B. at 3 p.m. so he could

¹ The complaint stated that defendant "[k]nowingly caused bodily harm to Laura Fitzpatrick, a household member of the defendant, in that said defendant while on a second floor landing, grabbed the victim by the shoulder area and forced her to the ground. While on the first floor the defendant pushed her to the floor, kicked and punched her on her right side abdomen/lower right back."

work out. They began arguing about who should pick up E.B. and whether they would have another child, so defendant turned off his phone. He arrived home before Fitzpatrick, who met him outside and yelled at him. Fitzpatrick followed him inside and pushed him, but defendant denied making any physical contact with her. In the bedroom, Fitzpatrick pushed him on the bed, spit at him, and kicked him on his right side, although he did not remember exactly where she struck him. Defendant then went to the bathroom, locked the door, and showered. Through the door, he told Fitzpatrick that he wanted custody of E.B. Afterwards, he tried to dress in their bedroom but Fitzpatrick was "attacking" him, so he finished dressing upstairs and left. Fitzpatrick tried to stop defendant and cut his arm. He noticed bruises on his legs only after speaking with the police.

¶ 10 At the close of trial, the court noted that Stewart and Padilla both observed redness on Fitzpatrick's neck. The court also reviewed the testimony of Fitzpatrick and defendant. The court stated:

"I thought Ms. Fitzpatrick testified very credibly. She articulated what occurred; she said there were two altercations: there was an altercation on the second floor and there was another. She didn't embellish; she admitted she was yelling at the defendant and he was yelling at her. *** I found her testimony to be clear and very credible.

In contrast to Mr. Barriger: I did not find Mr. Barriger's testimony to be believable at all. He couldn't seem to recall any of the incidents, any of the facts, except those that he chose to volunteer. *** I don't find his testimony believable. I think that the complaining witness's testimony is credible."

The court found defendant guilty of domestic battery. Subsequently, the court denied defendant's posttrial motion and sentenced him to one year of conditional discharge.

¶ 11 On appeal, defendant contends that the evidence was insufficient to sustain a finding of guilty where Fitzpatrick's testimony was unsupported by the totality of the evidence, incredible, and inconsistent. Defendant urges that Fitzpatrick never testified that he hit her neck, the only place on her body where Padilla saw a possible injury. Further, defendant argues that Fitzpatrick did not complain of pain or injury on the date of the incident or prior to trial, despite testifying that defendant struck her hard. Defendant also notes that no photographs of marks or injuries were submitted by the State. Finally, defendant argues that Fitzpatrick's testimony was inconsistent and contradicted the sworn complaint.

¶ 12 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 State, 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. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Jackson*, 232 Ill. 2d at 281. A conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 13 To sustain a conviction for domestic battery, the State must show that defendant knowingly and without legal justification by any means caused bodily harm to any family or

household member. 720 ILCS 5/12-3.2(a)(1) (West 2012); *People v. Wilson*, 214 Ill. 2d 394, 400 (2005). Bodily harm may be proven by evidence that the victim suffered physical pain or bodily damage. *People v. Mays*, 91 Ill. 2d 251, 256 (1982). On appeal, defendant contends the evidence is insufficient to show that he harmed Fitzpatrick where her testimony was unsupported by the totality of the evidence, incredible, and inconsistent.

¶ 14 We cannot say that Fitzpatrick's testimony was so unsatisfactory as to raise a reasonable doubt of defendant's guilt. The totality of the evidence supports Fitzpatrick's testimony that defendant kicked her, punched her, and grabbed her "on [her] neck." Her account was corroborated by Officer Stewart, who saw redness on her right neck area. Officer Padilla testified that he saw "a fairly apparent section of redness" on her right shoulder but acknowledged that his report stated the redness was on her neck. Additionally, Padilla testified that Fitzpatrick appeared to have been crying and displayed fear in the movement of her eyes, her blinking, the expression of her lips, and shaking in her hands. No photographs of injuries were submitted at trial, but none were required to sustain a conviction in view of the foregoing testimony. *People v. Taher*, 329 Ill. App. 3d 1007, 1018 (2002) (victim's uncorroborated testimony sufficient to sustain conviction for domestic battery); *People v. Gaither*, 221 Ill. App. 3d 629, 634 (1991) (bodily harm requires "evidence of contact between a defendant and the victim" but not "direct evidence of injury"). The only other evidence at trial was defendant's testimony, which the trial court discredited and was not obliged to accept. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001) ("a fact finder need not accept the defendant's version of events as among competing versions") (quoting *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001)).

¶ 15 By contrast, nothing in Fitzpatrick's testimony rendered her account of events incredible. The court watched and evaluated her as she described how defendant repeatedly struck her,

causing pain. Although aware that Fitzpatrick did not complain of pain or injuries on the day of the incident and that Padilla observed only one mark on her body, the court concluded that Fitzpatrick testified "very credibly." Specifically, the court noted that Fitzpatrick articulated what occurred, did not embellish, and provided a clear and credible account of the events. Due consideration must be given to the fact that the trial court saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (credibility findings are entitled to great weight because trier of fact is best equipped to judge credibility of witnesses). Here, where Fitzpatrick's testimony was not so incredible as to raise a reasonable doubt of defendant's guilt, we will not disturb the trial court's credibility finding on appeal.

¶ 16 The inconsistencies that defendant alleges in Fitzpatrick's testimony are minor and inconsequential. Defendant contends that Fitzpatrick's account contradicted the sworn complaint, which states that defendant grabbed her shoulder and forced her down on the second floor landing, then, while on the first floor, kicked and punched her "right side abdomen/lower right back." In contrast, Fitzpatrick testified that defendant pushed her down, punched her right shoulder and side, and kicked her left side on the second floor landing, then, while on the first floor, grabbed her neck, pushed her down, kicked her, and punched the right side of her torso. Additionally, defendant notes that Fitzpatrick claimed to be afraid of him, yet reengaged him in an argument while he showered. These inconsistencies were minor, collateral to the central issue of defendant's guilt, and were not so contradictory as to render Fitzpatrick's account of the battery improbable or unsatisfactory. *People v. Foley*, 206 Ill. App. 3d 709, 715 (1990) (where minor inconsistencies in complainant's account do not detract from reasonableness as a whole, testimony may still be clear and convincing). Whether and to what extent the inconsistencies affected the weight of Fitzpatrick's testimony was a question for the trier of fact and will not be

disturbed on review. *People v. Green*, 298 Ill. App. 3d 1054, 1064 (1998) (minor inconsistencies do not render testimony unworthy of belief but only affect its weight).

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

¶ 18 Affirmed.