2015 IL App (3d) 130520-U

Order filed April 2, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0520
v.	)	Circuit No. 12-CF-16
	)	
JAMES MONROE LANE,	)	Honorable Stephen A. Kouri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: (1) State proved defendant guilty beyond a reasonable doubt of the offense of aggravated domestic battery. (2) Matter is remanded to the trial court for recalculation and proper judicial entry of costs.

¶ 2 Defendant, James Monroe Lane, was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)) and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)). The court sentenced defendant to a term of six years' imprisonment and entered judgment against defendant for costs. On appeal, defendant argues that the State's evidence with respect to the

charge of aggravated domestic battery was insufficient to sustain a conviction. Defendant also maintains that many of his fines and fees were miscalculated. We affirm defendant's conviction and remand for the proper judicial entry of a written order enumerating defendant's costs.

¶ 3 FACTS

¶ 4 Defendant was charged by indictment with, *inter alia*, aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2010)), domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)), and home invasion (720 ILCS 5/12-11(a)(2) (West 2010)). The charges stemmed from an October 22, 2011, incident involving defendant and Candace Hearton. The indictment on the aggravated domestic battery charge alleged that defendant "knowingly strangled Candace Hearton by squeezing her neck with his hands." The matter proceeded to a bench trial.

¶ 5 The State began its case-in-chief by calling Hearton. Hearton testified that at the time of the events in question, she shared a room with defendant in a home rented by a third roommate, Latoya Crowder. Hearton and defendant began dating in June 2010. Hearton testified that in the early morning of hours of October 22, 2011, she was sitting in her room with Danielle Durham. Hearton had recently learned that defendant was cheating on her with Durham, and Hearton and Durham were discussing their feelings on the issue.

¶ 6 Hearton testified that at one point she left the room; as she did, defendant entered through the front door of the home. Defendant had a key to the residence because he lived there. Hearton was mad because defendant had cheated on her, and defendant was mad because Hearton had found out. Hearton testified that she ran to Crowder's bedroom and tried to hide under the blankets on the bed. Defendant then struck Hearton in the eye. When asked whether defendant strangled or choked her at any point, Hearton replied, "No."

¶ 7 Hearton testified that Peoria police officer Scott Goforth arrived at the scene. Hearton

agreed that she told Goforth that defendant had entered the residence by climbing through her bedroom window. Hearton explained that she told Goforth this because she was intoxicated and upset at the time and she "just wanted him gone." Hearton explained that by "gone" she meant "[o]ut of my life, disappeared, to the joint, somewhere. I don't care. At that time I didn't care."

¶ 8 Hearton also admitted that she filled out a written report following the incident. She testified that she was intoxicated while filling out the report, and as a result, she did not remember doing it. Hearton's domestic violence victim's statement was admitted into evidence. In the report, Hearton wrote: "I jumped in [Crowder's] bed and told her to call the police. [Defendant] came in in [*sic*] started choaking [*sic*] me then hit me all in my face." Hearton testified that she had lied about defendant choking her, but insisted that those were the only lies she had told.

¶ 9 Hearton testified that she later filled out a request for the charges against defendant to be dropped. That written request was admitted into evidence, and read, in part, as follows: "The domestic I wuld [*sic*] like to drop because I payed [*sic*] him back for what he did to me. The aggravated assult [*sic*] where he choaked [*sic*] me because there was no bruising."

¶ 10 The State's only other witness was Goforth. He testified that he was dispatched to Hearton's residence on the day in question after receiving a call regarding a person "coming in through a window." Goforth spoke to Hearton, Durham, and Crowder, and had Hearton fill out a domestic violence statement. He also took photographs of Hearton's face and neck. Goforth could not recall whether Hearton seemed intoxicated when he spoke to her, but he noted that she "did not seem to be hysterical or upset[.]" Goforth took the picture of Hearton's neck because she said she had been choked, but he admitted that the picture did not indicate any marks on her neck area. Goforth testified that the window through which Hearton initially alleged defendant

entered was large enough for a person to fit through, but he could not recall whether that window was open or closed when he arrived at the scene.

¶ 11 The State rested after Goforth's testimony, and defendant did not offer any evidence. Following closing arguments, the trial court found defendant guilty of domestic battery and not guilty of home invasion. After taking the aggravated domestic battery charge under advisement until a later date, the court found defendant guilty of that offense.

¶ 12 A sentencing hearing was held on June 13, 2013. The court sentenced defendant to a term of six years' imprisonment, of which he would be required to serve 85%. That sentence was imposed only as to the aggravated domestic battery charge. In a written order entered pursuant to sentencing, a box is checked indicating "[t]hat a judgment be entered against the defendant for costs[.]" The box corresponding to the collecting and testing of DNA is unchecked. The presentence investigation report indicated that defendant's DNA was previously registered. The sentencing order is filled out in green ink, and was signed by the trial court in black ink. Written next to the line indicating a judgment for costs, in blue ink, is the total $1,412. On September 10, 2013, a case payments sheet was printed and included in the common law record. This sheet reflected a total assessment of $1,412 against defendant, and included, *inter alia*, a DNA testing fee, a lump sum criminal surcharge, and the Violent Crime Victims Assistance Fund fine. The case payments sheet does not contain any statutory citations, nor does it provide defendant with any credit for time spent in jail.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he strangled Hearton, a required element of aggravated domestic battery (720 ILCS 5/12-3.3(a-5)

(West 2010).[1] Defendant also contends that the calculation of his total costs suffers from a number of errors. He does not challenge his conviction for domestic battery. We affirm defendant's conviction and remand for the proper judicial entry of a written order enumerating defendant's costs.

¶ 15 I. Sufficiency of the Evidence

¶ 16 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005).

¶ 17 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). The weight to be given to witnesses' testimony, the witnesses' credibility, and the reasonable inferences to be drawn from the evidence, are all the responsibility of the fact finder. *Milka*, 211 Ill. 2d at 178. The trier of fact is not required to accept or otherwise seek out any explanations of the evidence that are consistent with a defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

[1] Section 12-3.3(a-5) of the Code states that "[a] person who, in committing a domestic battery, strangles another individual commits aggravated domestic battery." 720 ILCS 5/12-3.3(a-5) (West 2010).

¶ 18 A witness's recantation of prior testimony is inherently unreliable. *People v. Steidl*, 177 Ill. 2d 239, 260 (1997). It is the purview of the trier of fact to determine the credibility of recantation testimony. *People v. Brooks*, 187 Ill. 2d 91, 111 (1999). A conviction may be sustained when based upon a witness's prior disavowed inconsistent statement. *People v. Zizzo*, 301 Ill. App. 3d 481, 488-89 (1998).

¶ 19 The *Zizzo* court, citing extensively to *People v. Curtis*, 296 Ill. App. 3d 991 (1998), rejected the notion that, without corroborating evidence, a conviction may not rest on recanted statements alone:

> "Relying upon the Illinois Supreme Court's decision in *People v. Schott*, 145 Ill. 2d 188 (1991), the [*Curtis*] court held that, where evidence is claimed to be insufficient on review, the *Collins* test is to be applied *regardless of the nature of the evidence.* [Citation.] Thus, where a jury or trial court has convicted a defendant on the basis of a recanted prior inconsistent statement, the question for the reviewing court is not whether any evidence existed to corroborate that statement. [Citation.] Rather, the only inquiry 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 proven beyond a reasonable doubt." (Emphases in original.) *Zizzo*, 301 Ill. App. 3d at 489

¶ 20 In the present case, Hearton told Goforth that defendant had choked her. In a victim's statement taken the night of the incident, she wrote that defendant had choked her. Indeed, even when Hearton attempted to have the charges against defendant dropped, she did not state that defendant did not choke her. Instead, she merely insisted that there had been no bruising from "the aggravated assult [*sic*] where he choaked [*sic*] me." Though Hearton recanted her

statements at trial, the court was free to find that recantation testimony incredible.

¶ 21 Defendant also argues that, even if uncorroborated recanted statements alone may sustain a conviction, Hearton's statements do not establish that defendant strangled her under the definition provided by the Code. Section 12-3.3(a-5) defines "strangle" as "intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual." 720 ILCS 5/12-3.3(a-5) (West 2010). While defendant does not dispute that the term "choke" itself is synonymous with "strangle," he points out that Hearton merely stated that defendant "started" choking her. This, defendant asserts, may not be the equivalent of actual strangulation.

¶ 22 We find that the trial court could reasonably infer from Hearton's statement that defendant actually choked—and thereby strangled—Hearton. Hearton's statement that defendant "started" choking her may reasonably be interpreted as a statement that defendant began to actually choke her, but eventually relented. While the statement *could* be interpreted as defendant taking some action short of actually choking Hearton, the trier of fact need not seek out any explanation consistent with defendant's innocence, and all reasonable inferences in favor of the State are allowed upon review. See *Bush*, 214 Ill. 2d at 327. Further, it bears repeating that in her request for charges to be dropped, Hearton simply wrote, "he choaked me."

¶ 23 The trial court rationally inferred from Hearton's previous statements that defendant strangled Hearton. The court further found Hearton's previous statements to be more credible than her testimony at trial. We decline to retry defendant, and instead defer to the trier of fact. Accordingly, we find that the State's evidence was sufficient to prove beyond a reasonable doubt that defendant strangled Hearton.

¶ 24 II. Fines and Fees

¶ 25 Defendant argues that his monetary assessments were incorrectly calculated.[2] Specifically, defendant contends that he should not have been assessed a DNA testing fee, because his DNA was already registered, and the court had not ordered that his DNA be collected. Defendant also points out that the $5-per-day statutory credit (725 ILCS 5/110-14 (West 2010)) is not contemplated anywhere on the case payments sheet, arguing that many of his fines should be offset by that credit. Defendant also identifies the lump sum criminal surcharge and Violent Crime Victims Assistance Fund fine as being miscalculated.

¶ 26 The State concedes that each of the errors identified by defendant was committed in the calculation of defendant's fines and fees, and agrees that remand is the proper remedy. Indeed, it has been the position of this court that "[a]ny miscalculations with regard to monetary charges are best addressed in the trial court, with both parties present." *People v. Hunter*, 2014 IL App (3d) 120552, ¶ 17.

¶ 27 We therefore remand the matter to the trial court with directions to review and, if necessary, correct the costs summarized in the case payments sheet, and enter the correct amount of all financial charges in a written order. Each charge should be supported by the relevant statutory authority.

¶ 28 CONCLUSION

[2] Defendant also maintains that his costs were improperly imposed by the circuit clerk, rather than by the trial court. Defendant points to the multiple colors of ink on his sentencing order and the case payments sheet placed in the record months after sentencing in support of his argument. Because we find that remand is necessary in order for the trial court to correctly calculate defendant's total costs, we need not consider the implications of the various shades of ink on defendant's sentencing order.

¶ 29 The judgment of the circuit court of Peoria County is affirmed in part and remanded with instructions.

¶ 30 Affirmed in part; remanded with instructions.