2016 IL App (2d) 140769-U
No. 2-14-0769-U
Order filed March 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CM-1457
DAVID COOPER,	)	Honorable Charles P. Weech,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Conflicts in testimony of witnesses were a matter for the trial court to resolve, and the State proved that defendant's conduct exceeded the bounds of reasonable discipline such that domestic battery conviction would stand.

¶ 2 I. INTRODUCTION

¶ 3 Following a bench trial, defendant, David Cooper, was convicted of one count of domestic battery (725 ILCS 5/12-3.2 (West 2012). The trial court found that defendant had made contact with his daughter (hereinafter, "the minor") of an insulting or provoking nature without legal justification. On appeal, defendant raises two issues. First, he contends that he

was not proven guilty beyond a reasonable doubt, as the witnesses to the alleged offense related inconsistent versions of what transpired. Second, he asserts that his actions were legally justified as reasonable discipline. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 The following is taken from the transcript of defendant's trial. The State first called Becky Evans. Evans testified that on June 15, 2012, at about 6 p.m., she was at her sister's residence in Woodstock. She was sitting on the back deck, and Evans was facing directly toward her sister's neighbor's yard (the neighbor was Ashley Cooper, defendant's sister). Evans' mother, Sue Ellen Pepkowski, was also present. They were about 55 feet away from Ashley's back yard. Evans could hear an argument coming from Ashley's yard. Defendant was arguing with two females. One of the women was defendant's sister, and Evans did not know the other. Three small children were present in Ashley's back yard. Defendant was "very agitated." He was "swearing [and] slamming stuff around." He was going in and out of the house.

¶ 6 At one point, defendant exited the residence and went over to the right side of a pool, where the children were playing. The minor—a little girl aged three or four—was walking from the pool toward the center of the deck. Defendant started "screaming at her." Defendant "came over and just started repeatedly hitting her head." The minor's back was toward Evans. Defendant struck the minor, using both hands, about eight times, "[r]ight up by the temple area." Evans "started screaming." She "jumped up and started running towards the railing of the deck because [defendant] still was not stopping." Evans kept screaming "get your hands off her." Defendant stopped, looked at Evans, and told her to "shut the fuck up." Evans and defendant "kind of got into a yelling match." Defendant told her to "mind [her] own fucking business" and threatened to "come over and kick [her] ass too." During the commotion, the women whom

Evans did not know came out of Ashley's residence "to comfort the child *** and took her into the house." Evans called the police, who arrived shortly thereafter.

¶ 7 On cross-examination, Evans denied consuming any alcoholic beverages that day. Prior to the incident at issue here, defendant had stopped arguing with the two females, but he continued to appear agitated. He was "still slamming doors and [was] very aggressive with things outside." He did not say anything to the children to indicate that he was upset with them. The children were playing in a "splash pool," which was about 18 inches deep. Evans did not know why defendant started yelling at the minor, but she perceived no reason for him to yell at her. When defendant struck the minor, it caused her head to move four or five inches, from side to side. She could hear the blows from where she was sitting, 55 feet away (she later agreed that she may have been about 30 feet away from defendant at the time he struck the minor). Evans heard no crying. Evans initially stated she was not aware of any problems between her mother or sister and defendant or his sister; however, she then acknowledged some conflict over a pit bull. She explained that that situation had been resolved, as defendant's sister "took care of it" after they spoke to her.

¶ 8 The State next called Sue Ellen Pepkowski. Pepkowski testified that she lived in Woodstock. A little before 6 p.m., she heard yelling coming from Ashley's yard, specifically, her deck. Defendant was "really angry." He was "yelling at the women" and "swearing a lot." Pepkowski knew that one of the women was defendant's sister and the other was his girlfriend. They were asking him to leave. Pepkowski estimated she was about 50 feet away from the commotion.

¶ 9 Pepkowski heard a "weird noise" and saw defendant "hitting this little girl." She did not see defendant approach the minor, but she did see him bent over a little, "smacking her." Her

attention was drawn to Ashley's yard when she heard a "weird noise," and thought someone was playing with a ball. She saw defendant hit the minor 8 to 10 times. She added, "[I]t sounded like if he did that to me[,] it would have hurt." Defendant's hands were "in more or less of a fist." Defendant "had a crazy look on his face." Evans started screaming at defendant, and defendant screamed back. He stated, "[Y]ou don't know what my daughter did." Defendant further stated that it was none of their business and that "he was going to kick [their] fucking ass [*sic*]." They called the police.

¶ 10 During cross-examination, Pepkowski testified that she never heard the minor cry. She acknowledged that her two dogs do not get along with Ashley's pit bull, but that had not caused any friction between them and Ashley. She stated that she could not say what caused the "weird noise" that initially drew her attention to Ashley's yard, and it was not necessarily defendant striking the minor. However, subsequently, she could hear the sound of the blows. Pepkowski stated she had no bad feelings regarding her neighbor.

¶ 11 The State next called V.S., who was seven years old at the time of the trial. V.S. testified that defendant had a son and a daughter (the minor). He was in the pool with defendant's two children. The minor was splashing defendant's son, who was about two years old at the time. Defendant told the minor to stop, and she then dunked defendant's son under water. Defendant grabbed the minor by the hair and dragged her out of the pool. Defendant "smacked" the minor six times on the head. The minor was crying. Defendant then put the minor on time out.

¶ 12 During cross-examination, V.S. stated that defendant told his mother (Ashley) not to go to court because "he's afraid to go to jail because he doesn't, like, want us to tell the truth." Defendant told the minor to stop splashing her brother nine times before he hit her. Defendant hit the minor because she had dunked her brother in the pool. When defendant pulled the minor

from the pool, he was "pulling super hard by the hair." When V.S. talked to the police on the day of the incident, he told them defendant struck the minor twice. When defendant struck the minor, it did not make any noise.

¶ 13 The State next called Ashley Cooper (Ashley) who is defendant's sister. Cooper testified that at the time of the incident, the minor was about three years old. Ashley was inside, setting up for a meal. She was inside when the police arrived. She went outside to see what was going on, but the police directed her to stay inside. Defendant came in and told Ashley the police wanted to speak with her. Defendant told Ashley to tell the police he saw defendant hit the minor one time. She did not actually see the incident. On cross-examination, Ashley admitted that she did tell the police that she saw defendant hit the minor once. Ashley saw the minor while she was in time out, and the minor was crying. The minor was, in fact, four years old at the time of the incident.

¶ 14 The State then called Officer Kevin Tietz of the Woodstock police department. He testified that on July 15, 2012, he was dispatched to Ashley's residence regarding a possible domestic battery. He first went to Pepkowski's residence and spoke with Evans and Pepkowski. They told him that they had seen defendant strike a young child. He then went to Ashley's residence. He met with defendant, who "was agitated" and "kind of blew off questions without giving full answers." Defendant stated he struck the minor once because she had dunked her brother's head under the water. During cross-examination, Tietz stated he could not recall how many times V.S. told Tietz that defendant had struck the minor in the head.

¶ 15 The State then rested. Defendant moved for a directed finding. The trial court held that, while the testimony presented by the State indicated that defendant was acting "for discipline

purposes," there was a question as to whether it was "reasonable discipline of a child based on the circumstances." It therefore denied defendant's motion. Defendant then rested as well.

¶ 16 The trial court found defendant guilty of domestic battery. It first questioned whether this "was an overreaction by" Evans and Pepkowski, and it concluded, "Maybe to a degree." It then noted the "sound, the age of the victim, the earlier event of aggression, [and] the agitation by defendant that was displayed earlier" and found that all these factors go "to the reason why the reaction that [*sic*] was made by the neighbors." The trial court recognized that a parent has the right to discipline a child.

¶ 17 The trial court then observed that the victim was a four-year-old child with a limited ability to defend herself. V.S., the witness who was closest to the incident, testified defendant struck the minor six times. The court acknowledged that the minor had been told nine or ten times to stop splashing her younger brother. The court found that it was appropriate for defendant to react to the minor's behavior. Further, it disagreed with the State that defendant was acting out of anger, though defendant did lose his "temper during the event."

¶ 18 The trial court next found that defendant had lied when he told the police he only struck the minor once. It then pondered why defendant would lie, and concluded:

> "[Defendant] lied because I think [he] set the bar of what reasonableness was. In his mind, what was reasonable was to strike the child one time. That was the bar that he set. That was the bar that he as a parent thought was appropriate. That's why he felt if he stated one time, he would not be charged."

The court added some instruction was warranted. Yelling may have been appropriate, and so may have been some degree of physical discipline. For example, a strike on the hand or buttocks may have been reasonable and possibly even a "slap of the back of the head."

¶ 19 However, the testimony indicated that the minor was "struck six to eight, possibly even ten times, not about the buttocks or that hand, but about the head." While it sounded "worse than it was," the neighbors' intervention "stopped additional strikes to the head."

¶ 20 Moreover, that defendant pulled the minor out of the pool by her hair indicates that he "had lost, to some degree, control." The trial court further found that the minor was crying during the incident. The neighbors, due to the fact that the minor was facing away as well as their distance from the incident, could not tell she was crying.

¶ 21 The trial court then found that defendant had, intentionally and knowingly, made contact with the minor of an insulting or provoking nature. It further found that "it was beyond reasonableness for discipline." It added, "I think there was a line. He crossed the line." Defendant now appeals.

¶ 22 III. ANALYSIS

¶ 23 On appeal, defendant raises two main issues. First, he contends he was not proven guilty beyond a reasonable doubt, as the State's witnesses recounted inconsistent versions of the alleged offense. Second, he contends his actions constituted reasonable discipline. We disagree and affirm.

¶ 24 A. REASONABLE DOUBT

¶ 25 Defendant first argues he was not proven guilty beyond a reasonable doubt. When a defendant challenges the sufficiency of the evidence, the following standards apply. We must view all evidence in the light most favorable to the State. *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 26. It is not necessary that the trier of fact find beyond a reasonable doubt each link in the chain of circumstances supporting the conviction. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). A court of review does not retry a defendant. *People v. Collins*, 106 Ill. 2d 237, 261

(1985). Rather, we must consider whether any rational trier of fact could, given the state of the record, find the essential elements of the charged offense proven beyond a reasonable doubt. *Id*. We will reverse only if the evidence is so improbable and unsatisfactory as to raise a reasonable doubt as to the defendant's guilt. *Id*. This is not the case here.

¶ 26 Defendant contends that the cumulative effect of contradictions in testimony can raise a reasonable doubt as to guilt, citing *People v. Poltrock*, 18 Ill. App. 3d 847, 850 (1974). Defendant first points out that various witnesses used different terms to describe the contact made by defendant with the minor, specifically, witnesses described the contact using the terms "slap," "smack," and "hit." Defendant asserts that these terms connote different levels of intensity. Assuming, *arguendo*, this is true (defendant cites nothing to establish the meanings of the terms), we note that these terms were not the only evidence of the degree of intensity of the contact present in the record.

¶ 27 For example, Evans testified that when defendant struck the minor, it caused her head to move four or five inches, from side to side. Pepkowski testified that defendant's hands were "in more or less of a fist." V.S. testified that defendant hit the minor, "Like, a little bit harder." In any event, while defendant has identified an inconsistency, we do not believe it would preclude a rational trier of fact from finding the essential elements of the crime beyond a reasonable doubt. Indeed, defendant cites no case where such a result obtained in similar circumstances.

¶ 28 Defendant identifies other inconsistencies. Evans and Pepkowski testified they could hear the blows; V.S. said he could not. V.S. described "flat hits"; Pepkowski said defendant's hands were clenched in a fist. V.S. stated defendant pulled the minor from the pool by her hair; Evans testified the minor was walking "nonchalantly" across the deck when defendant confronted her. V.S. and Cooper said defendant put the minor in a time out; Evans stated an

unidentified woman came from the house and took her inside. Again, these inconsistencies would not preclude a trier of fact from finding defendant guilty.

¶ 29 Defendant cites no case where a verdict was disturbed on grounds similar to what he advocates here. In *Poltrock*, 18 Ill. App. 3d at 850, from which defendant draws general support, the discrepancies at issue involved a higher degree of improbability going beyond simple inconsistency:

> "We find it unbelievable that Poltrock simultaneously attacked three opponents and struck them in such rapid succession that each one thought he was the first one hit. We also find unbelievable the complainants' assertions that only Poltrock landed any blows."

In the present case, the inconsistencies simply do not rise to this level. It is well established that "[w]here inconsistencies and conflicts exist in the evidence, the trier of fact has the responsibility of weighing the credibility of the witnesses and resolving these conflicts and inconsistencies." *People v. Coleman*, 301 Ill. App. 3d 37, 42 (1998).

¶ 30 Moreover, we note that despite these inconsistencies, the witnesses consistently related that defendant struck the minor multiple times with both hands along each side of the head. Their consistency on this most salient of points would allow a rational trier of fact to find the elements of the offense beyond a reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 62 ("Despite the inconsistencies concerning events collateral to the criminal sexual assault, the testimony of C.H. and the other witnesses was consistent concerning the sexual assault.").

¶ 31 In short, defendant has failed to convince us that the trial court erred on this basis.

¶ 32 B. REASONABLE DISCIPLINE

¶ 33 Defendant next argues that his actions constituted legally justified, reasonable discipline. The right to discipline a child stems from the right to privacy granted by the federal constitution.

In re F.W., 261 Ill. App. 3d 894, 898 (1994). Discipline may include reasonable corporal punishment. *Id*. Corporal punishment exceeding the bounds of reasonableness, however, may subject a parent to criminal prosecution. *Id*. Factors to consider include the degree of physical harm inflicted on the child; the likelihood of more injurious future punishment; the psychological effects of the purported discipline; and whether the parent was "calmly attempting to discipline the child or *** lashing out in anger." *People v. Green*, 2011 IL App (2d) 091123, ¶ 24. This is not an exclusive list of considerations, and a parent's conduct must be evaluated "under the circumstances of each case." *Id.*

¶ 34 Here, the degree of physical harm was low. No evidence addresses the possibility of more serious harm in the future. Evidence of psychological harm consisted of the fact that V.S. testified that the minor was crying. Defendant asserts that "universal human experience tells us that it is not atypical for a four-year-old to cry when being reprimanded." While this is true, we note that at this stage of the case, we are required to construe the evidence in the light most favorable to the State. *Fountain*, 2011 IL App (1st) 083459-B, ¶ 26. Thus, defendant is not entitled to the inference he seeks to draw here. Nevertheless, while it does not favor defendant, we do not find that this factor is entitled to great weight. Finally, we come to whether defendant was calmly disciplining his daughter or lashing out in anger. The trial court found that defendant was not motivated by anger on the one hand, but it also found he lost his temper. Further, that he grabbed his daughter by the hair and pulled her from the pool, according to the trial court, indicated he lost control. Additionally, a rationale fact finder could determine that striking a four- year-old child six or more times about the head constituted unreasonable discipline. Thus, though not motivated by anger, defendant's actions clearly cannot be characterized as calm discipline. Of the factors set forth above, the first favors defendant, but a reasonable trier of fact

could find that the last weighs against him to a degree. The others factors provided little insight. Under such circumstances, the application of these factors does not establish error.

¶ 35 Moreover, we find insightful the trial court's observation that defendant essentially admitted he exceeded the bounds of reasonableness by lying regarding the number of times he struck the minor. He told the police he only struck her once when, in fact, he struck her from 6 to 10 times. Defendant's reluctance to relate his true conduct to the police provides strong evidence that it was unreasonable.

¶ 36 In sum, the trial court did not err in finding that defendant exceeded the bounds of reasonable punishment by striking his daughter in the head as many as 10 times.

¶ 37 IV. CONCLUSION

¶ 38 In light of the foregoing, the judgment of the circuit court of McHenry County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 39 Affirmed.