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2016 IL App (3d) 140381-U

Order filed February 10, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0381
JEFFERY CAMPBELL,	)	Circuit No. 13-CF-1887
Defendant-Appellant.	)	Honorable Gerald R. Kinney, Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The evidence was sufficient to sustain defendant's aggravated domestic battery conviction, and we correct the mittimus so that it is consistent with the trial court's oral pronouncement.
- ¶ 2 Defendant, Jeffery Campbell, appeals from his conviction and sentence for aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)). On appeal, defendant argues that: (1) the evidence did not establish a necessary element of the offense of aggravated battery; and (2)

the written judgment must be corrected to conform to the trial court's oral sentence pronouncement. We affirm as modified.

¶ 3

### FACTS

¶ 4

Defendant was charged by indictment with two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(a)(5) (West 2012)), and one count each of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2012)), criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2012)), and domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2012)). The aggravated domestic battery count, which is the subject of this appeal, alleged that defendant made "physical contact of an insulting or provoking nature with [the victim], a family or household member, in that said defendant strangled [the victim]." The case proceeded to a bench trial.

¶ 5

At trial, the victim testified that she was the mother of three children ages nine, five, and one. Defendant was the father of the five-year-old child and one-year-old child. In November or December 2012, the victim ended her relationship with defendant. On August 30, 2013, defendant called the victim to notify her that he was coming to pick up his son. Shortly after the call, defendant arrived at the victim's home.

¶ 6

The victim noticed that defendant was upset when he entered her home because he had learned through a social media post that the victim was intimately involved with one of his friends. The victim ignored defendant's accusations and walked up the stairs. The victim stated that while she was still on the stairs, defendant "grabbed" her around the neck. With his hand around the victim's neck, defendant forced the victim into the bedroom where he restrained the victim on the bed by holding his right hand on the victim's neck. Defendant said he could not believe what he heard and threatened to kill the victim. While the victim was restrained, defendant ripped off her underwear with his left hand. The victim said that defendant touched,

but did not penetrate, her vagina. Thereafter, the victim pushed defendant off her, and the victim's eldest son came into the room and threatened to call the police. Defendant moved away from the victim, yelled that he hated the victim, threw items off the victim's dresser, and turned the dresser over. Defendant's daughter was standing in the hallway, and when defendant saw her, defendant went downstairs where he turned over some furniture in the living room and left the house. The victim calmed her children, sent them to school, and then called the police.

¶ 7 On cross-examination, the victim stated that defendant followed her up the stairs and "choked" her in the bedroom. On redirect examination, the victim said that there were two incidents where defendant had choked her: the first occurred while she was walking up the stairs; and the second occurred on the bed.

¶ 8 Joliet police officer Jack Evans testified that he was dispatched to the victim's home on August 30, 2013. Evans noted that the home was in disarray and the victim was upset and shaking. The victim told Evans that she was involved in an altercation with defendant. Evans identified several photographs that were taken of the interior of the victim's home and two close-up photographs of the victim's neck.

¶ 9 Joliet police officer Tony Nowak testified that on August 30, 2013, he went to a residence on Wheeler Street to locate defendant. A woman named Sherita answered the door and said defendant was not inside. While speaking with Sherita in his patrol car, Nowak asked Sherita to call defendant on her cell phone. Sherita handed the ringing phone to Nowak. Nowak heard defendant say "[w]hy did you tell the police I'm in the house?"

¶ 10 After the State rested, defendant moved for a directed finding of not guilty. The court granted defendant's motion on the two charges of aggravated criminal sexual abuse and one

charge of criminal sexual abuse. The court denied the motion as to the aggravated domestic battery and domestic battery charges.

¶ 11 Defendant called Joliet police officer Jeffrey Tropp as his only witness. Tropp testified that he took the photographs of the victim's neck. Tropp did not see any visible marks or signs of injury to the victim's neck.

¶ 12 The court found defendant guilty of aggravated domestic battery and domestic battery. At the conclusion of the sentencing hearing, the court merged the domestic battery conviction into the aggravated domestic battery conviction and imposed a single sentence of three years' imprisonment. The written judgment stated that a three-year sentence was imposed on both convictions and the sentences were ordered to run concurrent. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 I. Sufficiency of the Evidence

¶ 15 Defendant argues that the evidence was insufficient to sustain his conviction because there was no evidence that he intentionally impeded the normal breathing or blood circulation of the victim. Viewing the victim's testimony in the light most favorable to the State, we find the State met its reasonable doubt burden.

¶ 16 When a defendant argues that the evidence is insufficient to sustain his conviction, a reviewing court must decide " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). On review, we do not retry defendant and we accept all reasonable inferences from the record in favor of the State. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The testimony of a single witness, if positive and

credible, is sufficient to sustain a conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). The fact finder is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 17 Defendant challenges his conviction for aggravated domestic battery. To sustain this conviction, the State needed to prove in relevant part that defendant, "in committing a domestic battery, strangle[d] another individual." 720 ILCS 5/12-3.3(a-5) (West 2012). The legislature has defined "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." *Id.*

¶ 18 Here, the victim's testimony established that defendant grabbed her throat twice with his right hand. The amount of pressure applied and its resulting effect presented a factual dispute, which the court, in its role as fact finder, determined was sufficient to sustain the charge of aggravated domestic battery. We find that the evidence allowed the court to reasonably make the inference from the evidence that defendant had intentionally impeded the victim's normal breathing. We note that any constriction of the throat affects "normal" breathing by restricting air or blood flow or inducing anxiety. However, visible signs of these conditions will not be apparent in every case. Thus, these cases often turn on a victim's testimony and the reasonable inferences that the fact finder may draw. In this case, we conclude that the evidence was sufficient to sustain defendant's aggravated domestic battery conviction.

¶ 19

## II. Sentence

¶ 20 Defendant also argues that the written judgment order must be corrected to conform to the court's oral pronouncement that defendant was sentenced on the aggravated domestic battery charge alone. The State concedes that the mittimus should be corrected to reflect that defendant was sentenced only on the aggravated domestic battery conviction. After reviewing the record, we accept the State's concession and correct the mittimus to remove the sentence entered on the domestic battery conviction. Ill. S. Ct. R. 615(b); see also *People v. Roberson*, 401 Ill. App. 3d 758, 774 (2010) (where the oral pronouncement of the court conflicts with the written order, the oral pronouncement controls).

¶ 21 **CONCLUSION**

¶ 22 The judgment of the circuit court of Will County is affirmed as modified.

¶ 23 Affirmed as modified.