2016 IL App (3d) 150625-U

Order filed April 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0625
v.	)	Circuit No. 14-CM-1353
	)	
MICHAEL R. SHERIDAN,	)	Honorable
	)	Cynthia M. Raccuglia,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence at trial was sufficient to prove the defendant guilty beyond a reasonable doubt.

¶ 2 The defendant, Michael R. Sheridan, appeals his conviction for battery. The defendant contends that the evidence presented at trial was insufficient to establish his guilt beyond a reasonable doubt.

¶ 3 FACTS

¶ 4 The State charged the defendant by information with battery, a Class A misdemeanor (720 ILCS 5/12-3(a)(1) (West 2012)). In the charging instrument, the State alleged that the defendant intentionally caused bodily harm to C.S. by striking him in the back. The matter proceeded to a bench trial on June 17, 2015.

¶ 5 The evidence adduced at trial established that the defendant was married to Kristen S., and C.S. was their son. In March of 2014, the defendant filed for a divorce and subsequently sought temporary custody of C.S., citing "a pattern of paternal alienation." A visitation order was entered in September, granting the defendant one overnight visit and one after-school visit per week. The defendant exercised his visitation through Thursday, November 13, 2014, the date of the alleged battery.

¶ 6 C.S. testified that on the date in question he was doing his homework at the defendant's house. The defendant was helping with C.S.'s homework; when C.S. got a question wrong, the defendant corrected him. C.S. testified that when he accidently wrote down another incorrect answer, the defendant "must have just gotten mad at me and accidently like punched me." C.S. testified that the punch stung briefly, "but not like crazy." Not long after the punch, Kristen came to the defendant's house to take C.S. home.

¶ 7 C.S. did not tell Kristen about the incident until "the next day." He told Kristen because the injury had started to hurt a little bit. After telling Kristen what had happened, C.S. recalled that "she just like told the police pretty much." C.S. identified four pictures that his mother had taken of his back. The pictures show a faint bruise on C.S.'s left shoulder blade area. C.S. testified that the defendant caused the bruise.

¶ 8 C.S. testified that he told police that the defendant had punched him. The police took pictures of his back, which C.S. identified in court. Those pictures were taken after Kristen had

taken her pictures. The two pictures taken at the police station do not appear to show any type of bruising on C.S.'s back.

¶ 9 On cross-examination, C.S. testified that he told his counselor, Shawn Slagle, about the punch "just a few days" after the incident. Slagle did not look at C.S.'s back, nor did he request to. C.S. believed that the bruise lasted approximately six days and was still present when he talked to police.

¶ 10 C.S. also testified on cross-examination that he did not like doing his homework with the defendant. He had previously told this to his mother and Slagle. C.S. did not enjoy doing his homework with the defendant "because sometimes he'd get like mad and like maybe like hit me or like say like do it the right way or write it right or we'll do it over again." When the defendant would hit him, it was not very hard, and C.S. "didn't really think it was bad." He had told Kristen and Slagle about the previous hitting during homework, but only told police that the defendant hit him during sports. This included the defendant throwing baseballs at his legs and kicking C.S. on the buttocks during football. C.S. testified that he had previously told Kristen and Slagle that he hated his father.

¶ 11 The State repeatedly objected to the defense's questions to C.S. relating to past incidents, arguing that they were irrelevant to the one incident at issue. Defense counsel argued that C.S.'s feelings about the defendant were relevant to his motive to falsify his story. When the court overruled the State's argument, the State noted that defense had "opened the door to everything prior to this incident." Defense counsel disputed this. The court pointed out that a door had been opened, but stated that it would reserve ruling on how far that door had opened until such evidence was actually presented.

¶ 12 Jason Quinn testified that he was a patrol officer for the Ottawa police department on November 19, 2014. On that date, Quinn met Kristen, who told him she wanted to report a case of child abuse. Quinn met with C.S. later that day. Quinn testified that C.S. told him that the defendant had punched him on the back while he was working on his homework on November 13, 2014. C.S. showed Quinn his back, but Quinn did not observe any marks or bruising. Quinn identified the photographs—previously identified by C.S.—that he took of C.S.'s back.[1] Quinn subsequently interviewed the defendant. Afterward, Quinn forwarded a report of his findings to the State's Attorney's office, and contacted the Department of Child and Family Services (DCFS) as well.

¶ 13 On cross-examination, defense counsel asked Quinn about prior incidents of abuse that C.S. had mentioned when Quinn met with him. Quinn testified that C.S. told him that the defendant had punched him on several prior occasions for doing poorly at basketball. The defendant had also thrown baseballs at C.S.'s legs. The defendant had once kicked C.S. in the buttocks for dropping a football. Quinn testified that the defendant denied all of these allegations in his interview. The defendant also denied to Quinn striking C.S. on November 13, 2014.

¶ 14 DCFS child protection investigator Lavonne Muzzarelli testified that she met with C.S. on November 20, 2014. Muzzarelli met with C.S. at his school, with the school principal present for portions of the meeting. C.S. told Muzzarelli that his father had punched him in the back while he was doing his homework. C.S. also told Muzzarelli that hitting and kicking were two forms of discipline employed at the defendant's home.

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[1]Quinn explained that Kristen had taken two pictures on her cell phone. With his own camera, Quinn took a total of four pictures of the two pictures on Kristen's phone. It was these four pictures—not the actual pictures from Kristen's phone—which were entered into evidence.

¶ 15 Muzzarelli testified on cross-examination that she also met with the defendant. He denied punching C.S. in the back. Muzzarelli also testified that the defendant answered all of her questions and provided her with all of the information she requested. Muzzarelli testified that the principal at C.S.'s school informed her that C.S. had never previously reported any physical abuse. When Muzzarelli met with C.S., she inspected his back, and reported that there were no bruises or marks of any kind present.

¶ 16 The defendant told Muzzarelli that C.S. was an alienated child and was being kept from him by Kristen. The documents supplied by the defendant to Muzzarelli included printed text communications between Kristen and the defendant's mother, Elaine. In the text exchange, dated Tuesday, November 18, 2014, Elaine suggests that Kristen is a weak parent and has made poor decisions relating to C.S. Kristen responded with a text message that read: "You have no idea what your talking about. Your gonna be real embarrassed really soon."

¶ 17 The State called Kristen as its next witness. Kristen testified that C.S. told her that the defendant hit him because he did a math problem incorrectly. Kristen then noticed a bruise on C.S.'s back. Her observation of the bruise was approximately 24 hours after the incident. C.S. did not say anything to her about the punch on the night of the incident, November 13, 2014. Kristen identified the aforementioned pictures as those she took of C.S.'s back after she saw the bruise. She testified that she took one picture of the bruise on November 14, and the second picture on November 15. Kristen testified that she did not contact police in order to enhance her position in her pending divorce from the defendant. She was not present when either Quinn or Muzzarelli spoke with C.S.

¶ 18 On cross-examination, the defense entered into evidence a copy of the defendant's petition for temporary custody. The State again objected, arguing that the petition was irrelevant

to the events of November 13, 2014. The court overruled the objection, stating that the petition went to the parties' motives. The defense also entered into evidence text message communications between Kristen and the defendant from Friday, November 14 through Tuesday, November 18. None of the text messages included any reference to the punch. In regard to her text message exchange with Elaine, Kristen explained that she was angry at Elaine, stating "She has no idea what I have lived through and what my son has lived through."

¶ 19 On redirect examination, the State introduced into evidence text message communications between Kristen and the defendant from the time period prior to November 13, 2014. Most of the text messages were from June of 2013, shortly after the couple's separation. In one text message, the defendant apologized to C.S. for being selfish, stating that "I am not happy with many of my words and actions. *** I am going to earn back your love and your trust." The text messages described that C.S. did not want to be around the defendant because, in part, the defendant had kicked C.S. in the buttocks and "put [C.S.] down when [C.S.] was trying at something." Additionally, the admitted evidence contained text messages in which Kristen chastised the defendant for "[r]ipping [C.S.'s] hat and glasses off." Defense counsel objected to the admission of the text messages, but the court overruled the objection, pointing out that it was the defense that had raised the issue of alienation as a motive. The State rested following Kristen's testimony.

¶ 20 The defendant testified in his own defense. He denied ever physically disciplining C.S. in the past, and denied punching him on November 13, 2014. The defendant explained that he and C.S. had worked on C.S.'s math homework in the living room. He praised C.S. for his work. Afterward, they watched television until Kristen picked C.S. up. In regard to the text messages

between the defendant and Kristen prior to November 13, 2014, defendant explained that he was merely telling Kristen what she wanted to hear in order for him to see C.S.

¶ 21 The defense, with agreement from the State, entered into evidence an extraction report from Kristen's phone. The extraction report indicated that the two pictures Kristen had taken of C.S.'s bruise were taken on Monday, November 17, and Tuesday, November 18—four and five days after the incident, respectively.

¶ 22 The defense then called Kristen to testify in its case-in-chief. Kristen again asserted that she took the pictures of C.S.'s bruise on November 14 and 15. When confronted with the extraction report, Kristen suggested that the report could be incorrect, or that the dates on the report were dates on which she had "screen-shotted" her phone.

¶ 23 The defense also questioned Kristen regarding a text message exchange she had with Slagle on the evening of Monday, November 17. In the exchange, Kristen was the first to bring up the incident, writing: "[C.S.] does have a bruise where he was punched. I took a picture after he got out of his shower just now. Now what do I do? Just contact my attorney?" Kristen testified that she was not certain if she took any pictures on November 17. She insisted that she took the pictures of C.S.'s back on Friday and Saturday—one and two days after the incident, respectively. She did not remember the exact date of C.S.'s appointment with Slagle, but recalled that her text message exchange with Slagle came immediately after that appointment.

¶ 24 The defense rested following Kristen's testimony. After closing arguments, the court found the defendant guilty of misdemeanor battery. In delivering its verdict, the court explained that if it "had just considered this case in a vacuum, there's no question that there was sufficient evidence to convict the defendant beyond a reasonable doubt." But, the court explained, it wanted to open the case to other evidence so that the defendant could make his argument that

Kristen was lying to further alienate C.S. from the defendant. The court reasoned that the text message exchange from June of 2013—which referenced the defendant's apparent mistreatment of C.S.—damaged the defendant's theory that Kristen and C.S. were now lying about the present incident. In the court's view, the text messages served as an admission to the previously alleged abusive conduct. The court elaborated: "There is clear conduct on [the defendant's] part that [led] up to what occurred in this case." The court sentenced the defendant to one year of court supervision.

¶ 25 ANALYSIS

¶ 26 On appeal, the defendant argues that the evidence introduced at trial by the State was insufficient to prove his guilt beyond a reasonable doubt. In making that argument, the defendant contends that the trial court failed to give appropriate weight or consideration to certain evidence. Specifically, the defendant argues that the testimony of Kristen and C.S. regarding the date on which Kristen photographed C.S.'s back was impeached by the extraction report of Kristen's phone. The defendant also argues that the trial court put too much emphasis on the text messages from June of 2013.

¶ 27 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).

¶ 28 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 or accept 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).

¶ 29 A person commits battery when that person knowingly "(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature." 720 ILCS 5/12-3(a) (West 2012). The State charged the defendant under subsection (a)(1), requiring it to prove that the defendant caused bodily harm to C.S. While bodily harm may be shown by actual injury, such as a bruise, it may also "be inferred by the trier of fact based upon its common knowledge." *People v. Jenkins*, 190 Ill. App. 3d 115, 138 (1989). Direct evidence of an injury, then, is not necessary to sustain a conviction based upon bodily harm. *People v. Gaither*, 221 Ill. App. 3d 629, 634 (1991). Indeed, our supreme court has held that "some sort of physical pain" is sufficient to sustain such a conviction. *People v. Mays*, 91 Ill. 2d 251, 256 (1982). In summary, "evidence of contact between a defendant and the victim, combined with the jury's common knowledge, is sufficient to establish that a defendant's conduct has caused bodily harm." *Gaither*, 221 Ill. App. 3d at 634.

¶ 30 In the present case, C.S. testified that the defendant punched him in the back while C.S. completed his math homework. He testified that the punch stung at the time and started to hurt more later. C.S. told Kristen the same version of events, and Kristen observed a bruise in the

area in which C.S. stated he was punched. Kristen took two pictures of the bruise, which were introduced into evidence. C.S. also told Slagle, Quinn, and Muzzarelli that the defendant had punched him in the back.

¶ 31 This evidence was more than sufficient for the trial court to conclude, beyond a reasonable doubt, that the defendant knowingly caused bodily harm to C.S. The direct evidence of C.S.'s injury was certainly imperfect; Quinn's photographs were merely photographs of Kristen's cell phone, and it was unclear when exactly Kristen herself took those photographs. C.S. testified, however, that the defendant punched him. The court could easily infer from common experience that a punch causes bodily harm. See *Gaither*, 221 Ill. App. 3d at 634. Moreover, C.S. testified to the pain the punch caused, which is also sufficient proof of bodily harm. *Mays*, 91 Ill. 2d at 256.

¶ 32 The defendant contends that the testimony of Kristen and C.S. was not credible. The defendant points out that the extraction report of Kristen's phone, in concert with her text message to Slagle, indicate that the pictures of C.S.'s bruise were taken on November 17 and 18. Both Kristen and C.S. testified that the pictures were taken on November 14 and 15. This identical deficiency in Kristen's and C.S.'s testimonies, the defendant argues, supports his theory that Kristen and C.S. were lying about the punch in order for C.S. to avoid spending further time with the defendant.

¶ 33 Issues of witness credibility are within the province of the trier of fact. *Milka*, 211 Ill. 2d at 178. In the present case, the trial court determined that the version of events offered by C.S. and Kristen was more credible than that presented by the defendant. That rational conclusion is not undermined by the impeachment of Kristen's testimony relating to the photographs. The precise date on which the photographs were taken is not directly probative of whether the

defendant caused bodily harm to C.S. See 720 ILCS 5/12-3(a)(1) (West 2012). In fact, as discussed above, the photographs themselves were not indispensible to the State's case.

¶ 34 The defendant also takes exception to the apparent emphasis that the trial court put on the text message evidence from June of 2013. The defendant's argument is not that the trial court erred in admitting such evidence. Instead, the defendant's argument is a bald request that this court reweigh the evidence presented at trial. We will not do so. See *Milka*, 211 Ill. 2d at 178.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of La Salle County is affirmed.

¶ 37 Affirmed.