2017 IL App (1st) 152328-U

No. 1-15-2328

Order filed December 22, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 14433
	)	
CHARLES ALLEN,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for domestic battery is affirmed over his contention that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt. Defendant's conviction for unlawful restraint is reversed where the evidence was insufficient to prove beyond a reasonable doubt that he detained the victim.

¶ 2 Following a bench trial, defendant Charles Allen was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)) and unlawful restraint (720 ILCS 5/10-3 (West 2014)), and sentenced to concurrent terms of four years' imprisonment. On appeal, defendant contends that

the State failed to prove him guilty of either offense beyond a reasonable doubt. He further contends that one of his convictions should be vacated for violating the one-act, one-crime rule because they were based upon the same act. We affirm in part and reverse in part.

¶ 3 Defendant was arrested on July 21, 2014, as a result of an altercation with his pregnant girlfriend, Lakieva Green. He was subsequently charged with one count of each of the following: home invasion (count 1); residential burglary (count 2); unlawful vehicular invasion (count 3); and unlawful restraint (count 16). Defendant was also charged with eight counts of aggravated battery (counts 4-11) and four counts of domestic battery (counts 12-15). Defendant waived his right to a jury trial and, on June 1, 2015, the case proceeded to a bench trial on all charges.

¶ 4 At trial, Green testified that she did not want to appear in court, but received a subpoena to testify, which was the only reason that she was present. Green told the court that she had a five-month-old son with defendant. She stated that, on July 21, 2014, she was playing cards in her apartment with defendant and some other friends. Green became angry with defendant and accused him of cheating on her. Green threw the cards and exited her apartment. Green went to a common area porch where defendant followed and tried to speak with her. Because she did not want to talk with him, Green left the porch and got into a vehicle with her friend, Myisha. Green did not remember Myisha's last name. While Green was inside the vehicle, defendant attempted to speak with her. After a while, she agreed to exit the vehicle and speak with defendant. They returned to her apartment where defendant grabbed her by the arm. Green stated that she called the police because defendant had grabbed her arm. She called the police without incident and they arrived shortly thereafter.

¶ 5 Green testified that the next day she was "probably" at the 6th District police department. Green did not remember talking to a detective or an Assistant State's Attorney that day, nor did she remember giving them a statement about what had transpired the night before. The State introduced into evidence Green's typewritten statement. At this point, the court allowed the State to treat Green as a hostile witness. Green testified that her signature is at the bottom of each page of the statement. In addition to the statement, there were two photographs attached. The first was a photograph of defendant. Green acknowledged that her signature was on the bottom of that photograph. Green stated that the other photograph was of her. She insisted that she did not remember providing that statement, nor did she remember any portion of what the statement indicated happened on the night in question.

¶ 6 On cross-examination, Green acknowledged that she was angry with defendant that night because she believed he was cheating on her. Green stated that defendant grabbed her arm so that they could talk. She acknowledged that she suffered no bodily harm as a result of defendant grabbing her arm. Green was asked if defendant "did it in an insulting or provoking way," which prompted the following exchange:

"GREEN: When you mad and upset, you cursing. So what?

DEFENSE COUNSEL: But the way in which he grabbed your arm --

GREEN: No.

DEFENSE COUNSEL:-- that was not in an insulting or provoking way?

GREEN: No."

¶ 7 Chicago police detective Heslin testified that, on July 22, 2014, he investigated a domestic disturbance that had occurred the previous night. As part of that investigation, Heslin

met with Green and Assistant State's Attorney Garcia at the 6th District police station, where Green was asked to provide a statement. Garcia drafted Green's statement by asking her questions about what had occurred the previous night and then, contemporaneously, typing out her answers. When the statement was finished, Green read each page aloud to see if she wanted to change any of the information. At the conclusion of Green reading each page, all three would sign at the bottom of the page. The court then allowed Heslin to read Green's typewritten statement aloud in open court.

¶ 8 In the statement, Green related that, on July 21, 2014, she was five-and-a-half months pregnant with defendant's child. At that time, defendant did not have keys to Green's apartment, but he lived in that same building in an apartment with his brother and would spend the night with Green. That night, Green and some friends were playing cards in defendant's apartment. At some point during the game, defendant grabbed Green's head and pulled it back. Green became upset and returned to her apartment. Green's friend followed her down to her apartment. Eventually, Green and her friend went to the ground floor, which has a porch that is a common area for all units in the building. Defendant made his way down to that area with some of his friends and approached Green to talk. Green told defendant she did not want to talk. Green and her friend then walked nearby to where her friend's car was parked and sat inside the vehicle. Defendant approached the vehicle and tried to open the passenger door. When he was unsuccessful, he punched the car's window. Green's friend confronted defendant about punching her window. Green exited the vehicle and defendant followed her to the side of the apartment building. Defendant accused Green of cheating on him. Green dialed 9-1-1, but defendant

slapped the phone out of her hand. Defendant struck Green in the face with an open hand about five times. Defendant then drove away with a friend.

¶ 9 Green returned to her friend's car. Defendant returned to the apartment building and Green saw him ringing the doorbell to the building. Defendant noticed Green was still in her friend's car and he walked toward her. Defendant convinced Green to get out of the car, and, when she did, he grabbed her by the neck, and forced her into the apartment building. While walking up the stairs to Green's apartment, defendant slapped her repeatedly in the face. Defendant took Green's keys and opened her apartment door. After they entered the apartment, defendant punched Green in the face. Defendant left the apartment, and Green buzzed her friend into the building.

¶ 10 A few minutes later, Green saw defendant ringing her doorbell. She told her friend to call the police. Defendant entered the building and pounded on Green's apartment door. After Green refused to let him in, defendant kicked the apartment door until it came off its hinges. Defendant entered Green's apartment through the broken door. Green was in the living room holding her friend's son in front of her. Defendant told her to drop the child because he "was going to beat her a**." Green dropped the child and defendant backed her into a corner. Defendant punched her in the face with a closed fist and kicked her repeatedly in the body. When defendant stopped, Green went to another room to help dress her friend's children. Defendant followed Green into the other room and punched her numerous times in the face with a closed fist and punched her in her side. Defendant "finally let [Green] leave [her] apartment," but as she walked down the stairs of her building he poured beer on her and threw a beer bottle at her that struck her in the head. At this point, police arrived and encountered Green as she exited her building. As a result of the

altercation, Green stated that she had a bump and a scratch on her head, a "busted" and swollen lip, a swollen cheek, and a loose tooth. Attached to Green's statements were two photographs: one of defendant and the other of Green signing the statement.

¶ 11 On cross-examination, Heslin stated that it was his understanding that when officers first arrived at the scene, Green told them that defendant had a gun. Heslin acknowledged that no gun was recovered from the scene. Heslin also acknowledged that Green refused medical attention that night.

¶ 12 Chicago police officer Davis testified that, on July 21, 2014, he responded to a domestic disturbance call at 8101 South Maryland Avenue. When Davis arrived, Green ran out of the building and put her arms around him. Davis noticed that Green was wet and smelled of beer. Davis and Green returned to her apartment door. As they got to the door, defendant came toward the apartment. Green identified defendant as the person that had struck her and Davis placed defendant under arrest. Davis noticed that Green's apartment door was "completely off the hinges." Davis also noticed that Green had a cut on her lip. On cross-examination, Davis could not recall Green telling him that defendant had a gun.

¶ 13 The State introduced into evidence a certified copy of a conviction indicating that defendant had previously been convicted of a domestic battery. The State then rested.

¶ 14 During closing arguments, the court interrupted the State and said that, while it did believe "there was some sort of altercation between [Green and defendant] that night," the court found that the photographs of Green did not corroborate portions of Green's statement to police. Specifically, the court noted that the photographs did not show any visible injuries, which was inconsistent with Green's statement that she was struck repeatedly in the face with a closed fist.

In response, the State argued that it could not explain why some people exhibit injuries differently than others, but it drew the court's attention to the portions of the statement that were corroborated by the evidence. Specifically, the State pointed to the photograph and testimony of Davis that Green's apartment door had been broken off its hinges, and Davis's testimony that Green was wet and smelled like beer when he first encountered her.

¶ 15 In announcing its decision, the court reiterated that it found that the photographs of Green did not corroborate the type of beating that she described in her statement. The court did find, however, that Davis's testimony corroborated that defendant threw a beer at Green. The court also found that Green's testimony corroborated that "the defendant did grab her at some point." Based on this evidence, the court found defendant guilty of domestic battery (count 15) and unlawful restraint (count 16). Defendant was sentenced, based on his criminal background, to concurrent extended terms of four years' imprisonment.

¶ 16 On appeal, defendant challenges the sufficiency of the evidence to sustain his convictions. First, defendant contends that the State failed to prove him guilty of domestic battery beyond a reasonable doubt because it failed to prove that he grabbed Green in an insulting or provoking manner.

¶ 17 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask 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 beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of

the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 18 In this case, the trial court found defendant guilty of domestic battery (count 15). In order to sustain this conviction as charged in count 15, the State had to prove that that defendant "intentionally or knowingly *** made physical contact of an insulting or provoking nature with [Green]" when he "grabbed [her] about the body ***" and that Green was a "family or household member" as defined by statute. See 720 ILCS 5/12-3.2(a)(2) (West 2014); 725 ILCS 5/112A-3 (West 2014).

¶ 19 Defendant does not dispute that he grabbed Green, or that Green was a family or household member. He challenges only whether the State proved that the physical contact was of an "insulting or provoking" nature.

¶ 20 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant made physical contact of an insulting or provoking nature with Green. We initially note that the trial court, in determining whether defendant's conduct was "insulting or provoking in nature," is entitled to consider the context in which the contact was made. See *People v. DeRosario*, 397 Ill. App. 3d 332, 334–35 (2009) ("Thus, while the conduct might be completely innocent in another context, under the facts here the court could find that defendant knowingly provoked the victim.").

¶ 21 Here, the record shows that on the evening in question Green and defendant were involved in a heated argument. Green testified that she was angry with defendant and left his apartment, but he continued to pursue her. At one point during the altercation, defendant grabbed her arm in an attempt to get her to talk with him, and she reacted by calling the police. In her statement, Green stated that defendant grabbed her by the neck, poured a beer on her, and threw a beer bottle at her head. Green's testimony was corroborated, in part, by Davis, who testified that, when he arrived on the scene, Green was wet and smelled of beer. The evidence presented, and the reasonable inferences therefrom, support the finding that defendant grabbed Green in an insulting or provoking manner. Accordingly, the evidence was not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt.

¶ 22 Defendant nevertheless argues that Green's testimony provided direct evidence that he did not grab her arm in an insulting or provoking nature and, therefore, the court could not infer otherwise based on the context. Specifically, defendant points out that Green was asked on cross-examination if defendant grabbed her in an "insulting or provoking way," to which she replied, "No."

¶ 23 Defendant's argument, however, ignores earlier testimony from Green where she stated that she called the police precisely because defendant had grabbed her arm. Such a reaction belies Green's later testimony that she did not feel as though defendant grabbed her in an insulting or provoking way. Moreover, defendant's argument dismisses the entirety of Green's statement as incredible. This, however, is not consistent with the court's oral pronouncement, which found several parts of the statement to have been corroborated by trial testimony. Ultimately, it is not for us to resolve these inconsistencies, but the trier of fact. See *Brown*, 2013

IL 114196, ¶ 48 ("It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts."); see also *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67 ("The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases."). As mentioned, we will not substitute our judgment for that of the trier of fact on these matters. *Brown*, 2013 IL 114196, ¶ 48.

¶ 24 Defendant next contends that the evidence was insufficient to prove him guilty of unlawful restraint beyond a reasonable doubt because the State did not prove that he "detained" Green. Specifically, he argues that there is no evidence to support the inference that he ever impaired Green's freedom of locomotion.

¶ 25 To establish that defendant committed unlawful restraint, the State had to prove that defendant "knowingly without legal authority detained [Green]." See 720 ILCS 5/10-3 (West 2014). "The gist of unlawful restraint is the detention of a person by some conduct which prevents [her] from moving from one place to another." *People v. Brials*, 315 Ill. App. 3d 162, 174 (2000). Neither physical force nor the presence of a weapon is required. *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 50.

¶ 26 After viewing the evidence in the light most favorable to the State, we find it insufficient to establish that defendant detained Green. Here, neither Green's testimony, nor her prior statement to police, support the inference that defendant prevented her from moving from one place to another. Rather, Green's testimony and statement both related that she was continuously free to move from place to place in an attempt to avoid defendant. She testified that the dispute began in defendant's apartment during a card game and that she left his apartment after she became angry with him. When he followed her to a common area of the apartment building, she

moved into her friend's car. Defendant eventually convinced her to exit the car and the two went to her apartment. According to Green's testimony, this was when defendant "grabbed [her] up and talk[ed] to her," but she refused to listen to what he had to say. She then called the police. Likewise, in her statement, Green related that, during the argument, she moved throughout the apartment and, eventually, called the police. Accordingly, we find that the State's evidence establishing that defendant detained Green was so unsatisfactory, as to create reasonable doubt of his guilt.

¶ 27 In reaching this conclusion, we are not persuaded by the State's reliance on *People v. Satterhwaite*, 72 Ill. App. 3d 483 (1979). In *Satterhwaite*, the defendant grabbed the victim by the arm and asked her to get into his car. *Satterhwaite*, 72 Ill. App. 3d at 484. When she refused, he touched her between her legs and her breasts, while still holding her arm. Ultimately, defendant was holding the victim by both her arm and her leg. *Id.* The defendant held onto the victim for the entire two-minute encounter. *Id.* The court concluded that, due to the defendant holding the victim's arm and leg, "her locomotion was then impaired." *Id.* at 485. Here, in contrast, defendant is alleged only to have grabbed Green to talk to her, but there is no evidence that he held onto her for any meaningful length of time. In fact, the evidence presented indicates that the altercation took place in many venues, including defendant's apartment, a common area, near a friend's car, and Green's apartment. As such, the evidence was insufficient to support his conviction.

¶ 28 As we have concluded that defendant's conviction for unlawful restraint should be vacated because the State did not prove defendant guilty beyond a reasonable doubt, we need not address whether his conviction violated the one-act, one-crime rule.

¶ 29 In sum, we conclude that the State proved beyond a reasonable doubt that defendant made physical contact of an insulting or provoking nature with Green, a member of his family or household. We therefore affirm his domestic battery conviction. We reverse defendant's conviction for unlawful restraint because the State did not prove beyond a reasonable doubt that he detained Green.

¶ 30 Affirmed in part and reversed in part.