

2017 IL App (2d) 141110-U
No. 2-14-1110
Order filed April 18, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellee,)	
)	
v.)	No. 14-CM-244
)	
EDWARD SINCERE,)	Honorable
)	Charles P. Weech,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to convict defendant of domestic battery. Therefore, we affirmed.
- ¶ 2 Defendant, Edward Sincere, was found guilty of domestic battery on August 26, 2014, following a bench trial. The victim was Charles Lawrence, defendant's nephew, who had been living in defendant's basement for several years. Lawrence testified that on February 17, 2014, defendant came to the basement, broke down the door to his bedroom, and proceeded to hit him with a piece of door trim and with his hands. Defendant denied the accusations, testifying that he was not home at the time but instead was at his mother's house. Officer Kinter of the McHenry County Sheriff's Department responded to the scene on February 17, and she testified

that Lawrence's wounds were "fresh" and were consistent with his story that defendant hit him with wood trim and his hands. She never saw defendant at his home.

¶ 3 Defendant challenges the sufficiency of the evidence on appeal. For the reasons set forth herein, we affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 18, 2014, defendant was arrested and charged with domestic battery. On June 23, 2014, the State filed a superseding information that charged defendant with two counts of domestic battery under alternative statutory sections. Count one charged defendant with domestic battery under 12-3.2(a)(2) of the Illinois Criminal Code (Criminal Code) (720 ILCS 5/12-3.2(a)(2) (West 2012)), in that he made physical contact of an insulting or physical nature with Lawrence when he struck Lawrence with a piece of wood and with his arms. Count two charged defendant under section 12-3.2(a)(1) of the Criminal Code (720 ILCS 5/12-3.2(a)(1) (West 2012)), in that the aforementioned conduct caused Lawrence bodily harm.

¶ 6 Prior to trial, the State filed a motion *in limine* regarding the admissibility of Lawrence's prior written statement to the police. In its motion, the State sought to have Lawrence's statements admitted if Lawrence became "unavailable," by testifying to a lack of memory or refusing to testify about his prior statements. Defense counsel objected, and the court reserved ruling on the motion.

¶ 7 The case proceeded to a bench trial on August 26, 2014. Lawrence was the first witness, and he testified as follows. He was 31 years old, and he was living with defendant, who was his uncle, on February 17, 2014. Defendant's address was 11106 Lucas Road, Woodstock, Illinois. Lawrence had been living at that address with defendant for about three years.

¶ 8 On February 17, 2014, sometime before noon, Lawrence was lying in his bed in his basement bedroom. He received a call from defendant asking him to come to work. Lawrence did not want to go to work because defendant had not paid him for working 32 hours the week before. He told defendant that he did not want to work, and defendant screamed at him over the phone. Defendant told him that he was coming downstairs right now, and Lawrence did not respond.

¶ 9 Shortly thereafter, defendant “busted the door down” to Lawrence’s bedroom. Lawrence was standing by the window smoking a cigarette when defendant came to his door. In busting the door, a piece of molding fell off the door, and defendant picked it up. Defendant used the molding to beat Lawrence “until it was too short to swing.” Lawrence had his arms raised over his head with his wrists outwards, and he went into a fetal position after a few swings. Once the molding was too short to swing, defendant used his hands to beat him.

¶ 10 Lawrence estimated that the molding was the length of the height of the door, around seven feet. He estimated that defendant struck him five to eight times with the molding, hitting him on his left arm, right hip, and scratching his face. When defendant used his hands, he used “clenched fists” and “was standing over [him] swinging his arms downward and punching [him] all over.” He estimated that defendant hit him with his hands 10 to 15 times, mostly in his upper body. The altercation ended with defendant yelling at him to “get the f*ck out of my house.”

¶ 11 After the altercation, Lawrence went upstairs and called the police. When the police arrived, he met them in the driveway and provided a written statement. Lawrence’s prior written statement was admitted into evidence as State’s exhibit 1, without objection. When asked about his uncle and whether he cared for him, Lawrence responded that “[i]t’s a crappy situation and I didn’t ask for any of this to happen.” He did not want to get defendant in trouble.

¶ 12 On cross-examination, Lawrence testified as follows. When defendant called him on the morning of February 17, defendant was not in the house but was working in the barn. He did not have keys to his bedroom, but the door to his bedroom was not locked. Defendant either kicked in the door or used his shoulder to break it. The door was made of wood, likely a hollow particle wood. When defendant swung the molding at him, he swung it like a baseball bat with two hands. Lawrence was standing when defendant began swinging at him.

¶ 13 Lawrence did not pay rent. Instead, Lawrence would help defendant with work around the house, especially since defendant had been recovering from surgery. Lawrence agreed that defendant had undergone a “pretty invasive” surgery. After his surgery, defendant needed help with regular, everyday tasks.

¶ 14 The police arrived approximately ten minutes after Lawrence called them. Lawrence was standing in the driveway, and he was unable to go back inside the house—the door was locked and he did not have keys. He did not see defendant leave the house or go into the barn. The police checked the barn for defendant, but he was not there, and they were unable to get into the house.

¶ 15 Lawrence denied that he and defendant had had a disagreement about him continuing to live in the house. Defendant had told him to save up money for his own house, but he believed that was what a “supporting uncle would want for his nephew.” Defendant had not given him a timeframe in which he wanted him to move out, and he never told him he was not welcome at the house anymore.

¶ 16 Joann Kinter testified next as follows. She was a deputy sheriff working at the McHenry County Sheriff’s Department, and she had been a law enforcement officer for 16 years. On February 17, 2014, she was dispatched to defendant’s residence on Lucas Road, in response to a

report of a domestic incident. When she arrived at defendant's house, she pulled up next to the driveway and observed someone run from the house to the garage. She could not identify who she saw, and she was not sure whether it was a man or a woman. She then saw a vehicle back out of the driveway, and she went over to the vehicle and asked the driver to stop and get out. The driver was Lawrence, and he told her that he had gotten into a fight with his uncle.

¶ 17 She observed physical injuries on Lawrence. His injuries appeared to be "fresh." He had swelling on his left forearm and left hand, including his middle finger. He had what appeared "like a rug burn" on his forehead. He had small scratches on his face and a "great big bruise or welt" on his right thigh. Her training as an officer included how to identify injuries and their possible sources. She believed his injuries were consistent with his story that defendant struck him with a piece of wood trim from a door. In particular, the injuries on the outside of his arms were consistent with using his arms to protect his head from being hit with the wood.

¶ 18 She was unable to photograph Lawrence's injuries because her personal camera was not working. Due to a snowstorm that day, officers were busy and nobody was available to come to defendant's residence.

¶ 19 Lawrence told Kinter that defendant was still in the house and that the doors should be unlocked. She knocked on the front door, but nobody answered. She also went around the house to knock on the other doors but again received no answer. She then went to check the garage because she had observed a subject run from the house to the garage when she first arrived. However, she again received no response. The doors to the house were all locked, and Lawrence did not have keys, so she was unable to observe his bedroom in the basement. She never observed the wood trim that Lawrence said defendant used to hit him.

¶ 20 Lawrence provided Kinter with defendant's wife's phone number, and Kinter spoke with her. She said that defendant should be at home. Kinter asked that she call defendant and tell him to step out of the house. She said she would, but Kinter never heard back from her.

¶ 21 After Kinter's testimony, defense counsel moved for a directed finding. The court denied the motion. The State also withdrew its motion *in limine* regarding Lawrence's written statement, because in light of Lawrence's testimony at trial, the motion to use his statement in the event he was unavailable to testify was no longer necessary.

¶ 22 Shayla Sincere testified next as follows. She was defendant's wife, and Lawrence was her nephew. She worked as a nurse's assistant, and she lived with defendant at his residence on Lucas Road. Lawrence also lived with them, but he did not pay rent. Instead, he would take out the trash, do dishes, and clean up. He also performed some manual labor, including assisting their mechanic in the shop fix cars and mowers. Occasionally, she would observe cuts on him after he was working in the shop. He had keys to the house. He lived in the basement, and the door to his room did not lock. The door had been "jimmied" and did not shut all the way.

¶ 23 She described Lawrence and defendant as having a good relationship. She wanted Lawrence to leave, however, and defendant "was backing [her] up on that." She and defendant had asked Lawrence to leave prior to February 17, 2014. His reaction was that he was "scared"; he did not know where to go. He did not leave.

¶ 24 Defendant had undergone surgery prior to February 17, 2014, and he required care afterward. As of February 17, she was still helping him dress—putting on socks and tying his shoes—and bringing him dinner upstairs. She brought him dinner because going up and down the stairs "wore him out." He also experienced some pain when he bent over. She never saw him run, and he walked slowly.

¶ 25 She was not at the house with defendant and Lawrence on February 17. She received a call from Kinter that day, and she did not recall saying that defendant should be at home. Rather, she told her that she did not know where defendant was.

¶ 26 Defendant, after admonishments of his rights by the court, took the stand and testified as follows. He was away from his home on February 17, visiting his mother. He went to his mother's house in Woodstock around 10 a.m., and he did not leave until early evening, when it was dark outside. Shane, who worked at defendant's shop, drove him to his mother's.

¶ 27 Lawrence lived at defendant's home in the basement, and defendant described the door to Lawrence's bedroom as a white pine door. The door did not lock, and as of February 17, the door could simply be pushed open. Their living arrangements included that Lawrence snowplow in the winter and do jobs around the house, such as washing dishes, taking out the trash, and cleaning the bathrooms. Lawrence would also help by working in defendant's shop. Defendant saw Lawrence every day. He would often observe him coming back from the shop wearing shorts and t-shirts, and he would be "scratched up."

¶ 28 Around February 17, defendant was still in pain from his full liver transplant. He had 22 inches of scar, including a cut "from love handle to love handle." The expected recovery time for his surgery was 12 to 18 months. After his surgery, he needed "a lot of help" around the house. He needed help getting out of bed, and he could not bend over. His wife and oldest daughter would help him put on socks and tie his shoes. He was "absolutely" recovering from the surgery around February 17, although he was "getting better at that point." Stairs still gave him trouble. At the time of trial, he still had pain in his stomach and still moved slowly up and down stairs.

¶ 29 Defendant described “disagreements” that he and Lawrence had around February 17. Lawrence was supposed to have saved money during 2013 in order to find a new place to live in 2014. He had not saved money or moved out. Defendant had spoken with Lawrence about this in January 2014, telling him he was disappointed and that Lawrence could not stay at his house anymore. Defendant was worried enough about providing for his own family.

¶ 30 The court found defendant guilty on both counts of domestic battery. The court explained that it was “rare that the Court has a case with so little evidence.” The court continued that it would have been aided by photographs of the door, the door trim, and the room, as well as by more witnesses in corroboration—in particular, Shane, who worked in defendant’s shop, and defendant’s mother—to confirm that defendant was actually at his mother’s home on February 17. Nevertheless, the court heard the testimony of Lawrence that he was beaten, and that testimony was corroborated by Kinter, who arrived at the scene about 10 minutes after the incident. Kinter testified to injuries consistent with the beating that Lawrence described, in particular the location of his injuries and that his injuries were “fresh.” This was the only corroborated testimony the court had.

¶ 31 The court expressed concern about defendant’s surgery and his limitations resulting therefrom. “However, [the court] was never given dates of when the surgery was.” The court understood that defendant had difficulty putting on socks, but there was no testimony that he could not swing his arms or that his arms were affected in any way. The court would have “loved to have heard testimony” of the exact date when the surgery occurred.

¶ 32 The court continued that it had to weigh the credibility of the witnesses and testimony before it, and the court found that Kinter was the most credible witness. Her testimony corroborated Lawrence’s, and therefore the court found that the State had met its burden of

proof. With respect to the evidence and testimony presented in this case, the court noted that while it “certainly would have liked more, it’s not fatal.”

¶ 33 Defendant moved for a new trial, and the court denied the motion on October 15, 2014. On November 5, 2014, the court sentenced defendant to one year of conditional discharge.

¶ 34 Defendant timely appealed.

¶ 35 II. ANALYSIS

¶ 36 Defendant raises one issue on appeal: Whether the evidence was sufficient to find him guilty of domestic battery beyond a reasonable doubt. In reviewing the sufficiency of the evidence, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trial of fact could have found the essential elements of the crime beyond a reasonable doubt.’ (Emphasis in original.)” *People v. Bishop*, 218 Ill. 2d 232, 249 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In a challenge to the sufficiency of the evidence, we do not retry the defendant. *People v. Kant*, 2016 IL App (2d) 140340, ¶ 18. We must carefully examine the evidence while giving due consideration to the fact that the court saw and heard the witnesses. *Id.* “The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict.” *People v. Smith*, 185 Ill. 2d 532, 541 (1999). We will reverse where the evidence is “so unreasonable, improbable, or unsatisfactory” as to justify reasonable doubt of defendant’s guilt. *Id.* at 542.

¶ 37 Defendant argues as follows that the evidence was insufficient to convict him. The State presented no physical or photographic evidence of defendant’s guilt. Rather, the State’s case depended upon the largely uncorroborated testimony of Lawrence, who had motive to falsely accuse defendant “in retaliation for attempting to evict him,” and the testimony of Kinter. Defendant contends that the court’s reliance on Kinter’s testimony was misplaced, as her

testimony served only to confirm that Lawrence's recent injuries could have been sustained in the manner that Lawrence described, not that they actually did. She relied on Lawrence's story to reach her conclusion, and therefore her testimony could not be considered corroborative. In addition, Kinter's testimony did not corroborate that defendant was at his home when she arrived on February 17. Kinter's only testimony regarding the presence of defendant at the home was her sighting of an unidentified person running from the house to the garage and a phone call with Shayla, where she told Kinter that defendant "should be at home." Defendant argues that the court adopted Kinter's assumption that the person she saw run from the house to the garage was probably defendant, despite defendant's testimony that he was at his mother's house at the time of the incident.

¶ 38 Defendant argues that the only independent corroboration of Lawrence's account was provided in his improperly admitted written statement. Defendant compares Lawrence's prior written statement to a police artist sketch in *People v. Fair*, 45 Ill. App. 3d 301 (1977). In *Fair*, the identity of the defendant was a material issue at his bench trial, and a police artist sketch of the defendant was improperly admitted into evidence. *Id.* at 305. The court held that the admission of the sketch was hearsay and constituted prejudicial error, given that the defendant was identified by only one witness, the victim; there was conflicting testimony about defendant's appearance and the description that the victim gave to the police; and the sketch may have bolstered and corroborated the identification of the defendant by the victim. *Id.* The prejudice to the defendant was aggravated by the State's repeated references to the sketch during closing argument, in an effort to rebut the defendant's arguments that the victim's description to the police was unreliable. *Id.* at 306. Finally, the presumption that the court considered only admissible evidence was overcome because the court admitted the sketch into evidence over

defense counsel's objections. *Id.* Here, defendant contends that Lawrence's testimony was consistent with his written statement, and therefore his prior consistent statement should not have been admitted into evidence. Defendant also contends that he objected to the State's motion *in limine* before trial. Defendant acknowledges that the court did not discuss Lawrence's written statement in its ruling, but he argues that the court "presumably considered it."

¶ 39 Next, defendant argues that Lawrence's testimony was inherently unbelievable. Importantly, defendant points to the contradiction that defendant supposedly broke down a door that was unlocked. Defendant argues that Lawrence's testimony is absurd, given that defendant could have simply opened the unlocked door to Lawrence's room. Further, Lawrence testified that he was standing outside waiting for Kinter, but Kinter testified that when she arrived, he was in a car in the driveway. The defendant likewise argues that Lawrence's testimony that he did not have keys to the house was unbelievable. Shayla testified that he did have keys to the house, and Lawrence had lived there for three years. While Kinter testified that she could not get into the house because the doors were locked, she also testified that Lawrence said the doors should be unlocked but that she might not want to go inside because the dog was unfriendly. Defendant continues that these inconsistencies demonstrate that the court was unreasonable to conclude that defendant and his family thwarted Kinter's investigation of the scene.

¶ 40 Finally, defendant argues that Lawrence's testimony that he went into a fetal position on the floor while defendant stood over him and struck him was at odds with testimony that defendant had trouble bending over. Because defendant testified that he had trouble bending over, Lawrence's testimony that defendant struck in a downward motion—which would have required him to bend over—was unbelievable.

¶ 41 The State responds as follows. The defendant's argument about the credibility of witnesses is improper in that he is asking this court to re-try defendant and reassess the court's credibility determinations. The State stresses that the court, as the trier of fact, had to assess witness credibility. After hearing testimony from both sides, the court believed the testimony of Lawrence as corroborated by Kinter, and it found Kinter to be the most credible witness. Kinter's testimony was that Lawrence's wounds were "fresh" and consistent with his story. Her testimony, especially when viewed in the light most favorable to the prosecution, corroborated Lawrence's testimony. Police officers rarely witness the defendant actually causing injuries but rather must listen to the victim's claims. It is the finder of fact's job to then assess witness credibility.

¶ 42 Further, the State contends that defendant's focus on Lawrence's written statement is a red herring. The court is presumed to know the law and follow it accordingly. *People v. Guja*, 2016 IL App (1st) 140046, ¶ 62. In particular, during a bench trial, the court is presumed to consider only admissible evidence, and this presumption is overcome only where it affirmatively appears from the record that the court considered improper evidence. *People v. Dobbs*, 353 Ill. App. 3d 817, 824 (2004). Accordingly, this court should not presume that the trial court considered improper evidence. In addition, the State argues that it did not reference the written statement in its closing argument and the circuit court did not comment on it when making its findings.

¶ 43 We agree with the State. Defendant's arguments boil down to three contentions: (1) we should presume that the court improperly considered Lawrence's prior written statement; (2) Lawrence's testimony was unbelievable because it was contradicted by defense testimony and he had motive to lie; and (3) the court's reliance on Kinter's testimony was misplaced. We note that

in a bench trial, it is for the trial judge sitting as the trier of fact to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a conviction “simply because the evidence is contradictory *** or because the defendant claims that a witness was not credible.” *Id.*

¶ 44 We first reject defendant’s argument that the court improperly considered Lawrence’s prior written statement. The State is correct that the court is presumed to know and follow and law (*People v. Stoffel*, 239 Ill. 2d 314, 327 (2010)), and in particular, during a bench trial, there is a presumption that the trial court considered only admissible evidence (see *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 138). The presumption that the court considered only admissible evidence may be overcome if it affirmatively appears from the record that improper evidence was considered. *Dobbs*, 353 Ill. App. 3d at 824.

¶ 45 Here, the presumption was not overcome. While the State made a brief reference to Lawrence’s written statement in its closing argument,¹ the court did not reference the written statement in its findings but instead relied on Kinter’s testimony to corroborate Lawrence’s account. See *People v. Burton*, 2012 IL App (2d) 110769, ¶¶ 15-16 (the presumption to consider only admissible evidence was not overcome despite the State’s reference to inadmissible evidence, because the court did not reference the improper evidence in its ruling but instead relied upon evidence properly adduced at trial). While defendant objected to the State’s motion

¹ To wit, the State argued in closing that Lawrence “testified to those injuries. He gave a written statement what happened that day, and his written statement that he gave that day is consistent with what he testified here in court on this date.”

in limine, defendant did not object to the admission of the written statement at trial, and the State later withdrew its motion *in limine* concerning the use of the written statement, informing the court that the statement was unnecessary in light of Lawrence's testimony at trial. Accordingly, the record does not affirmatively overcome the presumption that the court considered only properly admitted evidence.

¶ 46 Even then, any error was harmless. See *McCullough*, 2015 IL App (2d) 121364, ¶ 138 (finding error in admission of improper evidence was harmless). Unlike the sketch in *Fair*, Lawrence's written statement was not crucial corroborating evidence that Lawrence was battered. Rather, the court relied on Kinter's testimony to corroborate Lawrence's account of his injuries, without reference to the written statement. The State made a brief reference to the statement in closing argument, but unlike in *Fair*, it did not repeatedly use the statement to rebut defendant's arguments. Because the essential corroborating evidence of Lawrence's testimony at trial was Kinter's proper testimony, any error from the admission of the written statement was harmless.

¶ 47 We also disagree that Lawrence's testimony was inherently unbelievable. While Lawrence's testimony may conflict with the testimony of defense witnesses, this does not render his testimony inherently unbelievable, as contradictions in the evidence were for the court to resolve. See *People v. Majka*, 365 Ill. App. 3d 362, 371 (2006) (a reviewing court may reject testimony as unbelievable only where the record compels the conclusion that no reasonable person could accept the testimony beyond a reasonable doubt). Here, Lawrence testified that he had physical injuries as a result of being hit by defendant, and his injuries were corroborated by Kinter. The defense implicitly acknowledged his injuries by suggesting that they were a result of

Lawrence's work at defendant's shop.² Furthermore, Lawrence's testimony was not inherently unbelievable that he did not have access to defendant's house on February 17, whether because he never possessed keys to the house or because he simply did not have keys with him that day. Kinter also testified that they did not have access to the house after Kinter arrived on February 17, and it was not unreasonable for the court to assume that defendant and his family controlled the premises, as it was their home. Moreover, testimony that defendant broke the door to Lawrence's room despite the door being unlocked did not render Lawrence's testimony unbelievable. This was an issue of witness credibility for the trial court to resolve. It is not inherently unbelievable that a man would break a door in anger, and there was no contradictory evidence before the court that would render Lawrence's claim implausible, such as a picture of the door intact taken later in the day on February 17, 2014.

¶48 Finally, the court's reliance on Kinter's testimony was not misplaced. The court explained that she was the most credible witness. Her testimony corroborated Lawrence's account because she testified that the injuries appeared "fresh" and were consistent with Lawrence trying to defend himself from the assault he described. She had training in identifying

² During closing argument, defense counsel acknowledged that Kinter probably did observe injuries on Lawrence and argued that Lawrence "had been doing manual labor this whole last past week and *** the reason he wasn't going in the barn to work is because he wasn't paid for the work he did. That explains why injuries are possibly fresh." Defense counsel continued that both Shayla and defendant "testified that they see [Lawrence] all the time, that he goes to work for this mechanic and that he comes home and it's not uncommon *** that he might have some scratch marks, he might have some bruises."

injuries and their possible sources. The court considered all of the evidence, including testimony from defendant and his wife, but the only corroboration of any testimony in this case was Kinter's corroboration of Lawrence's testimony. In particular, the court noted that defendant's testimony that he was at his mother's house on February 17 was uncorroborated by either the man who drove him to his mother's house or by his mother. The court also discussed defendant's surgery and the impact it had on him, acknowledging defendant's difficulty putting on socks and clothes. However, there was no testimony as to the date of the surgery, and further, there was no testimony that defendant was limited in swinging his arms, only in bending over. Contrary to defendant's argument, the court never relied on Kinter's sighting of an unidentified subject upon her arrival at defendant's home to establish that defendant was present at the scene. Rather, it relied on her to corroborate Lawrence's testimony, which she did by testifying to the nature of his injuries.

¶ 49 The trial court did its job in assessing witness credibility and resolving contradictions in the evidence, and we must not substitute our assessments of witness credibility and the evidence for that of the trial court. See *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). Accordingly, we reject defendant's argument that the evidence was insufficient to support his conviction.

¶ 50 III. CONCLUSION

¶ 51 The evidence was sufficient to support defendant's conviction for domestic battery. 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 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978). The judgment of the McHenry County circuit court is affirmed.

¶ 52 Affirmed.