2018 IL App (1st) 143573-U

No. 1-14-3573

Order filed August 2, 2018

Fourth Division

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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. 12 CR 20186
	)	
SYLSHINA LONDON,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's perjury conviction affirmed. Evidence was sufficient to support guilty verdict. Defense counsel did not provide ineffective assistance.

¶ 2 Following a bench trial, defendant Sylshina London was convicted of perjury (720 ILCS 5/32-2(a) (West 2010)) and sentenced to 30 months' probation, with the first four and a half months to be served in the Cook County Department of Corrections. On appeal, she argues the evidence was insufficient to find her guilty beyond a reasonable doubt, as the allegedly

perjurious testimony was ambiguous, and the State failed to prove the testimony's falsity. She further argues she received ineffective assistance of counsel when counsel objected to the admission of the entire transcript from the underlying trial which gave rise to the perjury charge. We find no basis for reversal and affirm.

¶ 3 Defendant, who happened to be an officer with the Chicago Police Department, testified as a complaining lay witness in the misdemeanor battery trial of Debra Green (Debra) in case number 10 MC1 213383, styled *People v. Debra Green* (the "*Green* trial"). In the *Green* trial, defendant testified that while she was in her personal car on westbound 79th Street, another car in which Debra was a passenger pulled up alongside her car, at which point Debra threw a bottle at defendant and hit defendant in the face, causing pain and injuries.

¶ 4 In the case on appeal before us, defendant was charged with one count of perjury stemming from her testimony in the *Green* trial. The State's theory was that defendant lied in the *Green* trial when she said that the bottle hit her in the face at 79th and Vincennes—that video footage from a Police Observation Device (a "POD camera") indicated that, at most, the bottle hit her car, but not her person, thus causing property damage but not a battery of the person.

¶ 5 Defendant's theory was that, whatever the POD camera revealed near the intersection of 79th and Vincennes, it showed not the *first* bottle thrown by Debra but a later one she threw, and that an earlier thrown bottle while defendant was driving further eastbound—closer to 79th and Wentworth—was the one defendant was referencing in the *Green* trial that struck her in the face. Thus, defendant claimed, she told the truth at the *Green* trial.

¶ 6 We recount the evidence in this case, which obviously will concern in great detail the testimony from the *Green* trial as well, below.

¶ 7 Assistant State's Attorney Maria Burnett testified that, on September 21, 2010, she was the prosecutor in the *Green* trial. Burnett identified the battery complaint, which listed the offense as occurring on March 19, 2010 at 7900 South Vincennes in Chicago, with defendant as the complaining witness. The complaint alleged that Debra, without legal justification, knowingly and intentionally threw a bottle at defendant, striking her in the left side of her face.

¶ 8 The State moved to admit the entire transcript from the *Green* trial as People's Exhibit # 1. Defense counsel objected. The trial court stated:

> "The questions and answers that are the subject matter of the perjury indictment have to be material to the issue at hand. The issue at hand has to do with the proceeding. So for a different reason, that would be wrongly inadmissible. Whatever else is the transcript of the proceeding. There is no way to determine if it is material without noting that it was in. So your objection to admit the exhibit is overruled."

¶ 9 Defendant testified at the *Green* trial that, on March 19, 2010, she was driving a white pearl or tan Lexus on 79th Street on her way to work as a Chicago police officer. Burnett testified that the following exchange took place between her, as the prosecutor, and defendant as the complaining witness, in the *Green* trial:[1]

> "[Assistant State's Attorney]: Who did you first see?
>
> [Defendant]: The first person I initially saw was Debra Green.
>
> Q. Where was she?

[1] There are some minor differences between Debra's trial transcript and what Burnett read into the record at the perjury trial regarding testimony at Debra's trial. For consistency, our recitation of the facts will reflect what is contained in the misdemeanor transcript. Any discrepancies do not affect the outcome of this appeal.

A. She was inside of the maroon Pontiac on 79th Street going westbound.

Q. Where was she in the car?

A. She was the passenger in the front seat.

Q. Did the defendant Green say anything to you?

A. Yes, she did.

Q. What happened?

A. While I was sitting in traffic inside of my personal vehicle, the vehicle driven by Anthony Fisher, the Pontiac, the maroon Pontiac with Debra Green, as they approached on the side of my vehicle, she looked at me and was like, 'you f*** b***,' and she threw the bottle at me, which struck me.

Q. How close was she to you?

A. It was probably a foot. I mean it was just two lanes going southbound on 79th Street.

Q. Where did the bottle strike you?

A. On the left side of my face and neck.

Q. What is this a photograph of?

A. It is a photograph of my left side of my face where I was struck.

Q. Does that show an area of bruising from the bottle that you testified to?

A. Yes."

¶ 10 Burnett identified the photograph of defendant's bruised face as the one she showed to defendant at the *Green* trial. Burnett then testified to the following testimony from the cross-examination of defendant at the *Green* trial:

"[Assistant Public Defender]: With the cars the defendants were traveling in?

[Defendant]: I never noticed their cars until 79th and Vincennes when I got hit with the glass bottle.

Q. You never noticed them at all?

A. I never seen those people before.

Q. Isn't it true that you merged into their funeral procession?

A. No. I had no knowledge of a funeral procession until after they said that's what happened, but they had no stickers on their cars for funerals, no lights or anything.

Q. At the end of the day, you, in fact, did merge with the funeral procession?

A. No, because is a two-way lane on 79th Street westbound. I'm in the right lane behind a car and a CTA bus. Unless the CTA is with the funeral procession, in which it wasn't, because it was picking up passengers.

Q. So it is your contention that they just pull up alongside of you and threw a bottle at you?

A. Debra Green pulled up on the side of me. She was like, you f*** b***, and she struck me with the glass bottle. She hit it against me.

Q. Your window was up, correct?

A. My window is down. It is hot.

Q. When Ms. Green was next to you, she was about one foot from you, you said?

A. One or two feet, you know, enough distance for the cars to have space between them while traveling.

Q. Could you demonstrate how she threw that bottle?

A. She was like, you f*** b*** and she threw it, like that (Indicating).

Q. Just with her elbow up, just tossed it?

A. She didn't toss it. She threw it directly at me.

Q. Go ahead.

A. She threw the bottle at me. I'm sorry. She threw the bottle and she hit me with the bottle from her car to my window.

Q. It hit you square on the face?

A. It hit me on the left side of my face right here (Indicating).

Q. The side that's facing Ms. Green?

A. Yes, the left side.

Q. And this hurt?

A. Of course.

Q. Because you got hit really hard?

A. Yes."

¶ 11 The trial court in *Green* ultimately found Debra guilty of battery. After the trial, Burnett learned that there was a POD camera showing the incident at 79th and Vincennes. However, she did not have the video from the POD camera at the time of the *Green* trial.

¶ 12 On cross-examination, Burnett stated that, at the *Green* trial, she did not direct defendant to a particular location where the incident occurred. Instead, defendant provided 79th and Vincennes as the location, unprompted. Burnett did not ask defendant if her driver's side window was completely or partially rolled down. Burnett testified that no questions, from her or defense counsel, were asked of defendant regarding the whereabouts of the bottle after it had hit her. Burnett further testified that she did not ask defendant if there were one or more incidents where Debra or someone from her car threw objects at defendant.

¶ 13 On redirect examination, Burnett testified that defendant never alleged that more than one battery had occurred. Burnett then testified to the following additional testimony from cross-examination of defendant at the *Green* trial:

"Q. Now, while you were driving, how did you get on 79th Street, from where?

A. I took the route. I came northbound at State Street going westbound on 79th Street.

Q. And you merged with traffic there?

A. It is a stop light. So once the light turns green, then I proceeded to go westbound.

Q. When you got to the light, there were cars in the intersection, wasn't there?

A. On – When I had the green light?

Q. Yeah.

A. I mean, we all turned because I was in the turning lane to go westbound. So we all turned to go westbound.

Q. With the cars the defendants were traveling in?

A. I never noticed their cars until 79th and Vincennes when I got hit with the glass bottle."

¶ 14 Burnett testified that there was no mention of any batteries taking place from between State Street and Vincennes along 79th Street. There was no mention of any battery except for the one at 79th and Vincennes.

¶ 15 Debra testified in this case that, at the relevant time, she was a part of a funeral procession for her sister, riding inside a burgundy-colored Pontiac Grand Prix. Anthony Fisher was driving, she was in the front passenger seat, and her father Hubert Green (Hubert) was in the back seat. As they approached the area of 79th and Vincennes Avenue, their car pulled next to a white Lexus. Debra told the driver of the Lexus, identified in court as defendant, that there was a funeral procession and pointed to the orange funeral sticker displayed on the windshield of the Pontiac. Debra was about two feet away from defendant, and the front, driver's side window of defendant's car was up. Debra denied throwing anything at defendant.

¶ 16 Debra continued on with the funeral procession but was eventually pulled over by Chicago police officers. Debra later received a summons for a battery complaint and learned that defendant was the complaining witness. Following Debra's trial for battery in the *Green* matter, which included defendant's testimony, the trial court found Debra guilty of battery for throwing a bottle at defendant and striking her in the face.

¶ 17 In this case, Debra was shown the POD camera footage of 79th and Vincennes, which was later entered into evidence as People's Exhibit #5, and described the events it depicted. The video shows 79th Street just east of Vincennes. Defendant's Lexus is stopped behind a CTA bus, and the maroon Pontiac pulls up in the left-turn-only lane alongside defendant's driver's side.

Defendant's driver's side window is rolled up. As the Pontiac drives away, it appears something strikes defendant's driver's side window and bounces to the street. The camera's view then turns, displaying a new area of 79th Street and no longer depicting the interaction between defendant and the Pontiac.

¶ 18 Hubert testified in this case consistently with Debra as to these events. Specifically, when he was in the area of 79th and Vincennes, he noticed a white Lexus "going in and out of traffic." The driver's side window of the Lexus was up. Debra "was out of the window" telling the driver of the Lexus that there was a funeral procession but did not throw anything at the driver of the white Lexus. Later, the car Hubert was in was stopped by police, causing him to miss the burial of his daughter.

¶ 19 Fisher testified in this case that, in the area of 79th and Vincennes, he noticed a white Lexus cutting in and out of traffic before pulling up alongside his car. Debra's window and the driver's side window of the Lexus were rolled up. No one in the Pontiac Fisher was driving threw anything at the white Lexus. Eventually, police pulled over and detained Fisher, Debra, and Hubert.

¶ 20 Defendant testified in this case that she was driving westbound on 79th Street in her white-colored Lexus. She was heading to work at 7808 South Halsted, where she was employed as a Chicago police officer. While she was driving, a maroon Pontiac "drove up on her driver's side" near the bus terminal at 79th and Wentworth Avenue. Debra, who was in the front passenger seat of the Pontiac, "reached out of the car" and said " '[y]ou f*** b***.' " She then hit defendant in the face with a glass bottle. Defendant had her window rolled down, and the

bottle hit her on the left side of her face. Debra threw another bottle at the car, causing defendant to roll up the window.

¶ 21 Defendant called the police and continued heading down 79th Street. When she was at 79th and Vincennes, the Pontiac pulled up to defendant a second time, and Debra threw another bottle at her. Defendant began to follow the Pontiac southbound on Vincennes and, shortly after, both cars stopped on Vincennes. When defendant went to unlock her car, the window rolled down. Approximately six vehicles pulled up near her, surrounding her car. These people exited their cars and "start[ed] banging [defendant's] car with bottles, pouring Hennessy on it." The people said, " '[b]***, we gonna [*sic*] kill you.' " Debra "was all over [defendant's] hood."

¶ 22 Defendant identified herself as a Chicago police officer, and the individuals returned to their vehicles and drove away. Defendant continued to follow the Pontiac, but the other vehicles tried to cut her off and threw bottles at her car. Police arrived, pulled over the Pontiac, and detained the occupants. Defendant filed a battery complaint against Debra the next day.

¶ 23 Prior to testifying at the *Green* trial, defendant met with law students permitted to assist the State's Attorney's Office in trial work pursuant to Illinois Supreme Court Rule 711 (eff. July 1, 2013). Defendant testified that, "[w]hen Maria Burnett [the prosecutor in *Green*] walked into the room where they prepared me, she told me to get myself together, I'm a Chicago police officer, and that I only need to testify to the bottle that hit me in my face. She said, 'Don't testify to anything else. Get yourself together.' " Burnett did not ask defendant what had happened on the day in question or about the entire duration of defendant's contact with Debra, Hubert, and Fisher.

¶ 24 Defendant testified in this case that the battery had occurred "westbound of 79th and Wentworth, but at the time I didn't really know the street. But it was near 79th and Vincennes. It's not exactly on the corner of 79th and Vincennes, but as we were going westbound, that's the next major intersection, 79th and Vincennes. So that's where it occurred, on 79th Street." She further explained that the battery to which she was referring in the *Green* trial was not the incident depicted in the POD video showing her Lexus and the Pontiac at the corner of 79th and Vincennes. Rather, the battery occurred further east. Defendant testified that she told the truth when she testified previously that Debra had thrown a bottle that struck her in the face.

¶ 25 On cross-examination, defendant testified that, at 79th and *Wentworth*, Debra threw a bottle that hit her in the face. She denied being hit in the face with a bottle at 79th and Vincennes. Defendant admitted she testified at the *Green* trial that she "never noticed their cars until 79th and Vincennes when [she] got hit with the glass bottle." But she explained:

> "That answer is for the multiple defendants I was testifying against for the second incident that occurred to me. I was testifying against the assault. I never noticed their cars. That's the other people that came around me when they surrounded me. He was asking me about the other defendants.
>
> So once Debra Green hit me with the bottle, when I turned on 79th Place and Vincennes, there go the other people. I never even knew that she was with a whole crew."

¶ 26 Defendant further testified that, when she testified to 79th and Vincennes at the *Green* trial, she was referring to "[w]hen you turn and make the left turn, that's 79th Place and Vincennes." Defendant testified that she did not know Debra was with anyone else "until after—when she hit me with the glass bottle and I turned the corner with her, all these other people

come [*sic*] out." Defendant testified that she did mention the incident east of 79th and Vincennes when she stated she was traveling westbound on 79th Street when she was struck with a bottle.

¶ 27 Defendant marked on a map the location where she was hit with a bottle as being on 79th Street between Wentworth and Yale Avenue. Defendant reiterated that 79th Place and Vincennes was a separate location where she was "assaulted and attacked." She admitted signing the complaint for battery against Debra, which indicated the battery had occurred at 7900 South Vincennes, but she stated that the warrant officer prepared the complaint.

¶ 28 After the defense rested, the State moved again to admit the entire transcript from the *Green* trial. Over defense counsel's objection, the trial court ultimately admitted into evidence the entire trial transcript. The following exchange occurred:

> "THE COURT: I have to have her entire trial transcript. It should be in evidence for materiality, not just the parts you care about, her trial testimony about this case, Miss Green."
>
> [ASSISTANT STATE'S ATTORNEY]: You want Miss Green's trial transcript? I'm sorry.
>
> THE COURT: Her testimony at the trial as to this defendant as it applies to Miss Green.
>
> [ASSISTANT STATE'S ATTORNEY]: Okay.
>
> THE COURT: If it is somehow intertwined with everything else, then I will figure it out, because I'm only going to take into consideration the materiality and questions and answers that were asked her regarding that battery that Miss Green was charged with."

¶ 29 In rebuttal, Burnett testified that, in her discussions with defendant before her testimony in the *Green* trial, defendant never told her that multiple bottles were thrown at her car. Defendant also never told her that she was hit in the face with a bottle at a location other than 79th and Vincennes. Burnett denied ever telling defendant that she could not testify as to other bottles thrown at her.

¶ 30 Burnett testified that she planned on having Supreme Court Rule 711 students try the case, but the trial judge insisted on a State's Attorney trying the case. She was not present the entire time the Rule 711 students were talking with defendant prior to trial. Burnett did not question defendant at the *Green* trial regarding any other bottles thrown at her by Debra on 79th Street, other than the instance defendant testified to. Burnett testified, "I did not ask her that question because the first time she saw the people was when she was struck by the bottle, then they followed her, and then the assault occurred and that was the testimony that we put forth to the court." Burnett stated that defendant indicated the battery occurred at 79th and Vincennes.

¶ 31 The trial court found defendant guilty of perjury. It stated, "I have considered the evidence admitted in this trial. I have considered the transcript of the proceedings in People of the State of Illinois versus Debra Green the misdemeanor trial in first municipal Branch 46 under case number 10 MCI 213383." The court further noted it had "to look at the testimony given in the misdemeanor trial which is I have said is made a part of the record."

¶ 32 The court stated that the POD camera video from 79th and Vincennes showed "[defendant's] car and something, whatever the something is, being thrown out of the car where the other defendants in the misdemeanor matter were present hitting what is clearly a rolled up window of [defendant's] car and falling to the ground." It found that defendant testified at the

Green trial that she "never noticed their cars until 79th and Vincennes when [she] got hit with a bottle," and "[t]hat is truly in direct conflict with the testimony given by the defendant in this matter." The court determined that the only act occurred on 79th and Vincennes and, because her window was up, no one could have struck her in the face. The court stated that defendant's testimony was "simply made up" and was "nothing more than a second perjurious statement."

¶ 33 The court denied defendant's written motion for a new trial, and defendant filed a *pro se* motion to reconsider. The trial court denied the motion to reconsider and proceeded to sentencing. It sentenced defendant to 30 months' probation with the first four and a half months to be served in the Cook County Department of Corrections. Defendant filed a timely notice of appeal.

¶ 34 On appeal, defendant argues the evidence was insufficient to prove her guilty beyond a reasonable doubt, as the allegedly perjurious statement was ambiguous and resulted from an ambiguous question. Further, she contends the State failed to prove the statement was false, as the witnesses at trial were incredible and the POD video from 79th and Vincennes does not establish the falsity of the statement. She also argues ineffective assistance of counsel because her attorney objected to the admission of the entire transcript from Debra's misdemeanor battery trial.

¶ 35 When reviewing the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the elements of the offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. A reviewing court must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). In a bench trial, the trial judge, as the trier of fact, is tasked with determining the

credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 39. Although the determinations of the trier of fact are afforded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). "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).

¶ 36 Perjury occurs when a person "under oath or affirmation, in a proceeding or in any other matter where by law such oath or affirmation is required, *** makes a false statement, material to the issue or point in question, which he does not believe to be true." 720 ILCS 5/32-2(a) (West 2010). When addressing a perjury conviction, we note that " '[t]he burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry.' " *People v. Wills*, 71 Ill. 2d 138, 147 (1978) (quoting *Bronston v. United States*, 409 U.S. 352, 360 (1973)). Therefore, "[t]he benchmark is whether the words involved, read in their immediate context, are susceptible to a reasonable interpretation other than that intended by the questioner, and whether the witness' answer truthfully responds to his reasonable interpretation of the words." *Id.* Further, a statement is material "if it influenced, or could have influenced, the trier of fact in its deliberations on the issues presented to it." *People v. Baltzer*, 327 Ill. App. 3d 222, 227 (2002).

¶ 37 We find that the evidence, viewed in the light most favorable to the State, was sufficient to sustain defendant's conviction for perjury, as a rational trier of fact could find that defendant's testimony under oath at the *Green* trial—that she was hit in the face with a bottle at 79th and Vincennes—was false, and that defendant believed it to be false. Following the incident leading to the misdemeanor battery charge against Debra, defendant signed a complaint which indicated

the battery took place at 7900 South Vincennes. At the *Green* trial, while under oath, defendant testified that she was sitting in traffic on 79th Street when a maroon Pontiac pulled up alongside her vehicle. According to defendant at the *Green* trial, Debra then said "you f*** b***" and threw a bottle, which hit her in the face. Defendant was then asked what did the "defendants do in the maroon car," to which defendant responded, "we were at 79th and Vincennes at the red light and so as we turned, they pulled over and that's when they jumped out." Based on this testimony, which includes the statements that she was hit with a bottle and "we were at 79th and Vincennes at the red light," a rational trier of fact could find that defendant was pinpointing the location of the alleged battery at 79th and Vincennes during her testimony in the *Green* trial.

¶ 38 Defendant confirmed the location of the alleged battery as 79th and Vincennes while being cross-examined by defense counsel at the *Green* trial. When asked if she turned west onto 79th Street from State Street "with the cars the defendants were traveling in," defendant responded, "I never noticed their cars until 79th and Vincennes when I got hit with the glass bottle." She was then asked, "you never noticed them at all," to which she responded, "I never seen those people before." By defendant's own testimony, she indicated she never noticed any of the defendants prior to 79th and Vincennes, the location where she got hit with the glass bottle.

¶ 39 The evidence was also sufficient to conclude that defendant's testimony at the *Green* trial, that she was struck in the face with a bottle, was false. Specifically, defendant testified at the *Green* trial that her window was not rolled up but was instead rolled down. She testified that she was hit with a bottle on the left side of her face. However, the POD camera video from the intersection of 79th and Vincennes directly contradicts this testimony. The video shows defendant at the intersection with her driver's side window rolled up. The maroon Pontiac pulls

up alongside her in the left-turn-only lane. As the Pontiac drives away, an object strikes defendant's window and bounces to the street. The video does not show a bottle hitting defendant in the face.

¶ 40 Moreover, defendant's false statement, while under oath, that she was hit in the face with a bottle at 79th and Vincennes, was material to the trial court's guilty finding in the *Green* case. Defendant was the complaining witness who was alleged to have been battered, and this testimony led the trial court, as trier of fact, to find Debra guilty of battery. See *Baltzer*, 327 Ill. App. 3d at 227. The difference between hitting someone's car window and hitting someone's *face* is the difference between a not-guilty verdict and a guilty verdict on a battery charge. See 720 ILCS 5/12-3 (West 2008) (person commits battery by "knowingly without legal justification by any means (1) causes *bodily harm* to an individual or (2) makes *physical contact* of an insulting or provoking nature with an individual." (emphasis added)).

¶ 41 The State presented sufficient evidence that defendant knew her testimony was false, as the trial court reasonably found her rolled-up window prevented a bottle from hitting her in the face. These statements from defendant, as well as the POD camera video from 79th and Vincennes, supported the trial court's finding that the only act occurred on 79th and Vincennes and that, because her window was up, no one could have struck her. In addition, the prosecutor in the *Green* trial testified that defendant never mentioned to her, at the time of the *Green* trial, that there had been more than one episode of bottle throwing as defendant drove on 79th Street on the day in question. The evidence was sufficient to sustain the conviction for perjury.

¶ 42 Defendant argues that both counsel's question and her response, which led to the perjury charge, were ambiguous. Specifically, after defendant in the *Green* trial testified that "we all"

turned off State Street onto 79th Street, counsel asked, "With the cars the defendants were traveling in?" Defendant responded, "I never noticed their cars until 79th and Vincennes when I got hit with the glass bottle." She argues this question did not ask her to identify a precise location of the battery. That much is true—the question did not. But defendant gave the remainder of her answer unprompted. She volunteered that she never saw "their cars" until 79th and Vincennes, "when [she] got hit with the glass bottle." The fact that the false testimony was an unsolicited comment, rather than a direct question, does not make it any less false.

¶ 43 Defendant also argues that the State did not prove that no other battery occurred on 79th Street. The State, that is, did not disprove that the thrown bottle that struck her in the face happened near 79th and Wentworth, outside the view of the POD camera video at 79th and Vincennes. But "[t]he trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). Viewing the evidence in the light most favorable to the State, the trial court could have permissibly found, as it explicitly did, that the there was only one alleged battery, which occurred at 79th and Vincennes, and defendant's claim of another battery on 79th Street was "simply made up" after defendant realized the incident was caught on a POD camera and was "nothing more than a second perjurious statement."

¶ 44 Defendant further argues that her testimony was ambiguous. She says that when she was asked in the *Green* trial whether she first turned onto 79th Street "[w]ith the cars defendants were travelling in," and she answered that she did not see them "until 79th and Vincennes when I got hit with the glass bottle," she was not referring to Debra's car but the other cars, with other occupants who ultimately accosted her when they all turned off 79th onto Vincennes, some of

whom were on trial for assault in the *Green* trial along with Debra, who was charged with battery.

¶ 45 The trial court did not believe her, and the evidence supports the trial court's finding. Defendant also testified at the *Green* trial that she was sitting in traffic on 79th Street when a maroon Pontiac pulled up alongside her vehicle. Debra then swore and threw a bottle, which hit defendant in the face. Defendant was asked what did the "defendants do in the maroon car," to which defendant responded, "we were at 79th and Vincennes at the red light and so as we turned, they pulled over and that's when they jumped out." Based on her testimony, the alleged battery occurred at 79th and Vincennes, before the cars turned, and before the defendants on trial for assault "jumped out."

¶ 46 Defendant contends that the trial court did not consider her testimony in the proper context, which was in a trial for four defendants, not solely for Debra's battery charge. In support, defendant points to the court's statement that it would consider defendant's testimony at the *Green* trial "as it applies to Miss Green." Defendant argues that this statement shows the trial court refused to consider alternative, non-perjurious interpretations of her testimony.

¶ 47 We disagree with defendant's characterization of the trial court's comments. Notably, immediately after this comment, the court stated, "If it is somehow intertwined with everything else, then I will figure it out, because I'm only going to take into consideration the materiality and questions and answers that were asked her regarding the battery that Miss Green was charged with." Viewing the court's comments, we find the court was not limiting what it would consider and even acknowledged that defendant's testimony at Debra's battery trial may be "intertwined" with matters separate from the battery.

¶ 48 Further, there is no basis to conclude that the court did not consider nonperjurious alternative interpretations of her testimony at Debra's trial, especially when it stated, in finding defendant guilty, that it considered the evidence admitted in this trial as well as the transcript of the proceedings in the *Green* trial. Based on this statement, the trial court did not limit what it would consider in determining defendant's guilt.

¶ 49 Defendant next contends that Debra, Hubert, and Fisher were not credible witnesses and points to various inconsistencies in their respective testimonies. Predominant among those inconsistencies, defendant argues their testimony that no one threw anything from the Pontiac at defendant is contradicted by the POD camera video from 79th and Vincennes. According to defendant, this alone is enough to discredit any testimony from them.

¶ 50 The trial court, as the trier of fact, is tasked with determining matters of witness credibility and resolving any conflicts in the evidence. See *Siguenza-Brito*, 235 Ill. 2d at 228. Here, the trial court heard all of the witnesses' testimony and was aware of any inconsistencies or conflicts contained therein. The trial court specifically found that an object was thrown "out of the car where the other defendants in the misdemeanor matter were present hitting what is clearly a rolled up window of [defendant's] car and falling to the ground." The trial court also specifically recognized that Debra, Hubert, and Fisher testified that Debra did not throw anything out the window at defendant at any time (though the court did not mention them by name), and the court made it clear that it did not agree with that portion of their testimony. Yet it found defendant guilty regardless, primarily because the trial court found that, while it was clear from the POD video that Debra threw the bottle, it was just as clear that the bottle hit a rolled-up window, not defendant's face.

¶ 51 We will not substitute our judgment for that of the trier of fact on the issue of the credibility of witnesses. *People v. Brown*, 2013 IL 114196, ¶ 48. "[I]t is for the fact finder to judge how flaws in part of the testimony affect the credibility of the whole." *Cunningham*, 212 Ill. 2d at 283. Here, the court acknowledged an object was thrown from the Pontiac, which conflicts with part of the witnesses' testimony, but it did not have to reject the entirety of their testimony. See *id.* Accordingly, the evidence was sufficient to prove defendant guilty of perjury.

¶ 52 Defendant next argues ineffective assistance of counsel, as her attorney objected to the admission of the entire transcript of the *Green* trial, which resulted in an unreliable verdict by allowing the trial court to consider her prior testimony out of context. A defendant has a constitutional right to the effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). In order to establish that counsel is ineffective, the defendant must show both that (1) counsel's representation was deficient and (2) that deficiency prejudiced the defendant. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010) (citing *Strickland*, 466 U.S. at 694). When an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not first determine whether counsel's performance was deficient. *People v. Graham*, 206 Ill. 2d 465, 476 (2003).

¶ 53 Here, defendant suffered no prejudice because the entire transcript of the *Green* trial was admitted into evidence. After the defense rested, the trial court stated, "I have to have her entire trial transcript. It should be in evidence for materiality, not just the parts you care about, her trial testimony about this case, Miss Green." Further, in finding defendant guilty, the trial court stated it had considered the transcript and had "to look at the testimony given in the misdemeanor trial which is I have said is made a part of the record." We further note that the entire transcript is

included in the record on appeal. Thus, we find the trial court admitted the entire transcript of the *Green* trial into evidence and considered the entire transcript in finding defendant guilty. Accordingly, defendant's claim that counsel was ineffective for objecting to the admission of the entire transcript fails.

¶ 54 We affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed.