2018 IL App (1st) 162597-U

No. 1-16-2597

Order filed December 7, 2018

Fifth 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. 16 DV 20449
	)	
HUMBERTO ALVARADO,	)	Honorable
	)	Marguerite Ann Quinn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial evidence was sufficient to convict defendant of domestic battery. Defendant's jury waiver was proper.

¶ 2 Following a 2016 bench trial, defendant Humberto Alvarado was convicted of domestic battery and sentenced to one year of probation. He contends that the trial evidence was insufficient to convict him beyond a reasonable doubt. He also contends that the trial court did not ensure that he knowingly and intelligently waived his right to a jury trial. We affirm.

¶ 3 Defendant was charged with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) for allegedly, on or about March 21, 2016, knowingly causing bodily harm to Patsy Sanchez, his girlfriend, by bruising her arms with his hands and by pushing her so that she fell.

¶ 4 On June 6, 2016, with defendant present in court, trial counsel asked the court "for a date for bench trial." The court set the case "for bench" on June 27, 2016, and, after other matters were discussed, reiterated that "[t]his is set for a bench trial."

¶ 5 On June 27, 2016, the court noted that it received a jury waiver from counsel. (A signed jury waiver is in the trial record.) The court then said to defendant: "By signing this document and giving it to the court, you are giving up your right to a jury trial. Do you understand that?" Defendant replied "I understand." Defendant replied affirmatively when the court asked if the signature on the jury waiver was his and whether he signed "of your own free will." The court asked defendant if he had "any question at all about your right to a jury trial?" He replied "No." The court accepted the jury waiver as knowingly and voluntarily made. Trial then commenced.

¶ 6 Patsy Sanchez testified that she was in a relationship with defendant for six years and that they had lived together. On March 21, 2016, she was living with defendant and her young son. At about 5 a.m., she was waiting for defendant to come home. He came home smelling of alcohol and with an "attitude," and she opined that he was "intoxicated." When she asked him where he had been, he became aggressive in that he raised his voice and put his hands on her biceps. The record reflects that she made "a grabbing motion in front of her with both hands" to demonstrate. When he grabbed her, she "was scared" and "[i]t was painful." He continued yelling at her, and he pushed her onto a bed. She then left. She denied touching him. She did not

call the police that day because "I didn't feel the need to at that point. I just wanted him to be out" of the home permanently.

¶ 7 Sanchez called the police on March 23 or 24 – she could not recall which day – because she had changed the locks on her home but found defendant inside nonetheless. He would not leave despite her asking him to leave several times. Four police officers arrived. They spoke to defendant and Sanchez, then placed them in separate rooms of the home. Thus, she did not see the police take defendant away. She later noticed that the knob of the back door was "loose." She went to the police station that day, where she was photographed. The record on appeal includes photographs of a woman with bruises on both arms, which Sanchez identified as depicting herself on that day. She testified that she received the bruises from defendant grasping her arms.

¶ 8 On cross-examination, Sanchez testified that she lived with defendant for over five years of their six-year relationship. She did not date anyone else during their relationship. She denied that they had ended that exclusivity shortly before March 21, but agreed that she and defendant "recently had some relationship troubles" in that she asked him on the 21st if he "had been with another woman." She saw online messages between defendant and another woman discussing meeting without being seen, specifically by the woman's husband. Sanchez maintained that she stopped having sex with defendant once she learned of the other woman; that is, she did not have sex with him on March 21 to 23.

¶ 9 Sanchez denied being upset on the 21st because defendant came home late, as "[i]t had been quite a few days where he was not coming home until late." He did not move out of the home on the 21st but spent the next two nights elsewhere. On the night of the 21st, defendant

slept in the bed and Sanchez slept on the couch. Sanchez's brother was at her home on the 22nd but she did not ask him to remove defendant from the home when he and defendant were there.

¶ 10 When Sanchez called the police, she did not mention to the operator that defendant pushed her, bruised her arms, or broke the door lock. Instead, she said that she wanted defendant removed from her home because he was there without her permission and would not leave. She told the responding officers that she changed the locks the previous day and did not know how he entered her home. Only when she walked through the home with an officer, after defendant was arrested, did she see the loose back door lock. She did not tell the police of defendant's intoxication on the 21st. She did not seek medical attention for her bruises, nor did the police offer it to her. She denied that she and defendant had "rough" sex "to the point of leaving marks on me" for "years" before the day in question.

¶ 11 Police officer Howe testified that, on March 24, he responded to Sanchez's call.[1] Upon arriving, he saw Sanchez and defendant. Sanchez showed Howe bruises on her arms, and he testified that the photographs in the record accurately depicted the bruises he saw. Howe spoke with defendant, who had no visible injuries.

¶ 12 On cross-examination, Howe testified that he was responding to a property dispute in that Sanchez wanted defendant removed from the home. Sanchez said she already removed defendant's belongings from the home so that he should take only the property outside. Sanchez mentioned the incident of the 21st when Howe asked her if there were any prior incidents with defendant. "She did not volunteer that information." She did not mention defendant being intoxicated on the 21st, or that a door lock was broken. Howe did not recall examining the door

[1] The record does not include Officer Howe's first name.

locks, nor being told by other officers that they had, but he would not have included such a detail in his report. Howe offered to call Sanchez an ambulance but she declined. Defendant was cooperative, not aggressive or loud.

¶ 13 Upon the court's questioning, Howe testified that he asked Sanchez "if she had any previous altercations with the defendant." She replied that they had an argument about three days earlier. Howe asked her if the argument became physical, and she replied with a simple "Yes." She was crying, and showed her arms reluctantly only when Howe pressed for details.

¶ 14 On redirect examination, Howe testified that he and two other officers responded. He interviewed Sanchez, but another officer may have asked her questions while he interviewed defendant. On recross examination, Howe testified that he prepared the police report of the incident after discussing it with the other officers.

¶ 15 Defendant testified that Sanchez was his girlfriend for six years, during which he lived with her. Their relationship was exclusive until they broke up about two months before March 21 at his behest. Afterwards, they were not exclusive but were still having sex with each other. Sanchez confronted him about another woman based on a message, but on the 23rd rather than the 21st. He denied drinking alcohol on the night of the 21st and denied pushing Sanchez or grabbing her arms between March 21 and 24. He testified that he and Sanchez had sex on the 21st and 22nd and that she slept with him in the bed rather than on the couch on the night of the 22nd. They often had "rough" sex including scratching, but Sanchez did not tell him that he hurt her during sex on the 21st or 22nd. He recalled her saying on the 22nd that he had "marked" her.

¶ 16 On cross-examination, defendant acknowledged that Officer Howe questioned him on the 24th. He told Howe that he and Sanchez had broken up two months earlier, that they were still

having sex, that they last had sex on the 20th, and that her bruises could have been from rough sex. He denied telling Howe that he argued loudly with Sanchez.

¶ 17 On redirect examination, defendant denied being upset with Sanchez when he went to the home. He was there only to retrieve his belongings. He told Howe that he did not touch Sanchez.

¶ 18 In rebuttal, Officer Howe testified that defendant told him that his last instance of sex with Sanchez was on the 20th. He also told Howe that he and Sanchez had argued, including that defendant yelled very loudly. However, he told Howe that their dispute did not become physical, and he denied touching her.

¶ 19 Following closing arguments, the court found defendant guilty of domestic battery. The court found defendant's testimony not credible and Sanchez's testimony credible. The court noted the officer's testimony that Sanchez was emotional and initially reluctant to show her bruises, which indicated that she was "not a woman who was trying to set anyone up [or] making this up in order to get him out." She "was absolutely the victim of a battery [with] the bruises to show it." She also demonstrated her fear by changing the locks. She called the police because defendant was in her home despite the change of locks, the court found.

¶ 20 In his posttrial motion, defendant challenged the sufficiency of the evidence but raised no issue regarding his jury waiver. Following arguments, the court denied the motion. The court reiterated its findings that defendant's account was incredible, and that Sanchez was a victim of domestic battery in that she was defendant's "domestic partner" and he "caused the injuries to her arms." Counsel tried to introduce new evidence that Sanchez made online postings after the "alleged incident" and the trial expressing her love for defendant. The court found that such evidence, if true, shows "almost classic battered woman behavior" but would not change the trial

evidence that defendant committed a battery against Sanchez when she was his domestic partner so that the elements of domestic battery were established.

¶ 21 Following a sentencing hearing, the court sentenced defendant to 12 months of probation with fines and fees.

¶ 22 On appeal, defendant first contends that the trial evidence was insufficient to convict him of domestic battery beyond a reasonable doubt.

¶ 23 A person commits domestic battery when he "knowingly without legal justification by any means *** causes bodily harm to any family or household member." 720 ILCS 5/12-3.2(a)(1) (West 2016). Family or household members include "persons who share or formerly shared a common dwelling, [and] persons who have or have had a dating or engagement relationship." 720 ILCS 5/12-0.1 (West 2016). Bodily harm is " 'some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent.' " *People v. Ross*, 2018 IL App (2d) 161079, ¶ 174 (quoting *People v. Mays*, 91 Ill. 2d 251, 256 (1982)). In determining whether a defendant's actions caused bodily harm, a trier of fact may consider direct evidence of an injury, or may infer an injury based upon circumstantial evidence in light of common experience. *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 31. As we have stated, "it was the State's burden to prove beyond a reasonable doubt only that [the victim] experienced some level of physical pain." *Id.*, ¶ 32.

¶ 24 On a claim of insufficient evidence, we must determine whether, taking 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. Gray*, 2017 IL 120958, ¶ 35. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences

from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry a defendant; that is, we do not substitute our judgment for that of the trier of fact on witness credibility or the weight of evidence. *Gray*, 2017 IL 120958, ¶ 35. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. Instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id*. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness not credible merely because a defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Gray*, 2017 IL 120958, ¶ 35.

¶ 25 A conviction will not be reversed merely because there was contradictory evidence, as the task of the trier of fact is determining if and when a witness testified truthfully, and minor or collateral discrepancies in testimony need not render a witness's entire testimony incredible. *Id.* ¶¶ 36, 47. When a finding of guilt depends on eyewitness testimony, we must decide whether a trier of fact could reasonably accept the testimony as true beyond a reasonable doubt. *Id*. ¶ 36. We find eyewitness testimony insufficient only when the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id*.

¶ 26 Here, taking the trial evidence in the light most favorable to the State as we must, we cannot conclude that no rational trier of fact would convict defendant of domestic battery. Sanchez testified to being grabbed by the arms and pushed to the bed by defendant during an

argument, and to experiencing pain from the grabbing. Photographic evidence of bruising on her arms corroborates that she suffered bodily harm. The positive and credible testimony of a single witness is sufficient to convict. *Gray*, 2017 IL 120958, ¶ 36. The trial court found Sanchez credible, and her testimony was therefore sufficient by itself to convict defendant of domestic battery for inflicting physical harm on her.

¶ 27 Against this evidence, defendant notes that Sanchez testified to being grabbed and pushed by defendant on March 21 but not calling the police until the 24th, and that she did not mention the injuries in her call to police. However, as the court noted in finding defendant guilty, Sanchez did not volunteer to police that defendant had injured her. Instead, Officer Howe had to press her to discuss and show her injuries as she was crying. We agree with the trial court that this palpable reluctance by Sanchez is inconsistent with the specter defendant tries to raise: that Sanchez fabricated on the 24th that defendant grabbed and pushed her on the 21st so that he would be removed from the home. We are not required to raise that possibility to the level of reasonable doubt, especially in light of our deference to the trier of fact as assessor of credibility of the witnesses who testified before it.

¶ 28 Defendant also argues discrepancies between Sanchez's testimony that four officers came to her home, and that she learned of a loose or broken door lock along with an officer after defendant's arrest, and Officer Howe's testimony that three officers responded and that he did not recall checking door locks or being told that other officers did so. However, given the presence of multiple officers on the 24th, and Officer Howe's testimony that checking door locks is a detail he would not include in his report, we do not find these discrepancies fatal to

Sanchez's credibility. In sum, we do not find the evidence of defendant's guilt to be so unreasonable, improbable, or unsatisfactory that a reasonable doubt remains.

¶ 29 Defendant also contends that the trial court did not insure that he knowingly and intelligently waived his right to a jury trial.

¶ 30 As a threshold matter, defendant acknowledges that he did not challenge the validity of his jury waiver at trial or in his posttrial motion, and thus did not preserve this claim, but asserts that we may consider it as a matter of plain error. See *People v. Harvey*, 2018 IL 122325, ¶ 15; *People v. West*, 2017 IL App (1st) 143632, ¶ 11. Under the plain-error doctrine, we may address a forfeited claim where a clear or obvious error occurred and either (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Harvey*, 2018 IL 122325, ¶ 15; *West*, 2017 IL App (1st) 143632, ¶ 11. In applying the plain-error doctrine, we first determine whether error occurred at all. *Harvey*, 2018 IL 122325, ¶ 15; *West*, 2017 IL App (1st) 143632, ¶ 11.

¶ 31 A defendant may waive the right to a jury trial but must do so knowingly and voluntarily. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The court must ensure that a defendant waives that right understandingly. *Id*. at 66. For a defendant to validly waive his right to a jury trial, he must understand that the facts of his case will be determined by a judge and not a jury. *Id.* at 69.

> " 'All the trial judge has to do, at the bare minimum, is ask the defendant if he understands he is giving up his right to have a jury decide his case and if that is something he wants to do. If the defendant answers these simple questions in the affirmative, the constitutional requirement of a knowing and understanding jury waiver

will be satisfied.' " *People v. Marquez*, 324 Ill. App. 3d 711, 716 (2001) (quoting *People v. Dockery*, 296 Ill. App. 3d 271, 277 (1998)).

¶ 32 The court need not give any specific admonition for a jury waiver to be valid, and the determination of whether a waiver was valid cannot rest on any precise formula. *Bannister*, 232 Ill. 2d at 66. Thus, it is preferable but not required that the court admonish a defendant of his right to a jury trial. *People v. Parker*, 2016 IL App (1st) 141597, ¶ 47. Instead, whether a jury waiver was valid depends on the facts and circumstances of the particular case, which may include the defendant's prior interactions with the criminal justice system and that he remained silent while counsel requested a bench trial. *Bannister*, 232 Ill. 2d at 66; *Parker*, 2016 IL App (1st) 141597, ¶ 47. It is generally a valid jury waiver when counsel waives the right in a defendant's presence in open court and the defendant does not object to the waiver. *West*, 2017 IL App (1st) 143632, ¶ 10; *People v. Asselborn*, 278 Ill. App. 3d 960, 962 (1996) (finding a valid jury waiver when a defendant did not sign a waiver form and was silent in court when the court asked counsel "Jury waiver. Bench or jury?" and counsel elected a bench trial). A written jury waiver is not conclusively valid but weighs in favor of finding a valid waiver. *Parker*, 2016 IL App (1st) 141597, ¶ 50. A defendant challenging a jury waiver bears the burden of establishing that it was invalid, and we review such a claim *de novo*. *West*, 2017 IL App (1st) 143632, ¶ 10.

¶ 33 Here, counsel told the court that defendant was electing a bench trial, and defendant was present but did not object. Later, just before trial, counsel tendered the court a signed jury waiver. Moreover, the court asked defendant (1) if he understood that he was giving up his right to a jury trial, (2) whether the signature on the signed jury waiver was his, and (3) whether he signed of his own free will. Defendant replied affirmatively to all three questions. We find that

defendant has failed to show that he was not made aware that he would be tried by the court or bench rather than a jury. In other words, he has failed to show that his election of a bench trial over a jury trial, both by counsel in his presence and by defendant personally, both orally and in writing, was not a knowing and intelligent jury waiver. Because we find no error regarding defendant's jury waiver, we find no plain error.

¶ 34 Accordingly, the judgment of the circuit court is affirmed.

¶ 35 Affirmed.