2018 IL App (2d) 170642-U
No. 2-17-0642
Order filed June 7, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BOBBY VAN SCHAIK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 17-CM-200 Honorable James M. Hauser, Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of domestic battery, as the trial court was entitled to credit the victim's testimony over defendant's; (2) defendant forfeited an argument by failing to cite relevant authority, particularly given the split of authority on the issue.

¶ 2 Following a bench trial in the circuit court of Stephenson County, defendant, Bobby Van Schaik, was found guilty of domestic battery (720 ILCS 5/12-3.2 (West 2016)). Defendant argues on appeal that the State failed to prove his guilt beyond a reasonable doubt. Defendant alternatively argues that, in finding him guilty, the trial court held his silence against him in violation of his Fifth Amendment privilege against self-incrimination. We affirm.

¶ 3 At trial Craig Croffoot, a sergeant with the Stephenson County sheriff's department, testified that he responded to a report of a domestic dispute at 309 Washington Street in Ridott. When he arrived at that location, Croffoot saw Jessica E. at the front doorway to the residence at that address. Croffoot encountered defendant standing in the driveway. Jessica had blood on her neck, her forehead, her cheek, and her shirt. There was a bloody paper towel on a countertop.

¶ 4 Croffoot spoke with defendant before speaking with Jessica. Croffoot asked defendant what had happened. Defendant said that he and Jessica were arguing. After speaking with Jessica, Croffoot went outside to speak with defendant again. Croffoot noticed that defendant had blood on his right hand. During Croffoot's testimony about his second conversation with defendant, the following exchange took place:

> "Q. On the second point in time that you spoke to [defendant], did you go into further detail about the events of that night?
>
> A. I asked him if he struck Jessica. He denied that. I asked him how he got blood on his hand and he couldn't tell me how he got blood on his hand.
>
> Q. Did he have any explanation for the blood that you observed on [Jessica]?
>
> A. He couldn't explain how the blood had gotten there."

Croffoot further testified that defendant was intoxicated.

¶ 5 Jessica testified that defendant was her fiancé when the incident occurred. They had gone to Dubuque for dinner and had a few drinks. They were in Dubuque for a few hours and then went to defendant's house in Ridott. They arrived after midnight and had a few more drinks, after which they began to argue. Defendant threw empty beer cans at Jessica. Because the argument was getting out of hand, Jessica called a friend, Jessica Lindquist, to pick her up. While Jessica was on the telephone with Lindquist, defendant walked over and struck her face,

causing her nose and mouth to bleed. Lindquist testified that Jessica called her. Jessica was crying. During her conversation with Jessica, Lindquist heard a thump. Lindquist testified, "Jessica is like he just hit me and that's when she sounded like she was in shock." Lindquist then called the police.

¶ 6 Stephenson County sheriff's deputy Jaime Hare testified for the defense that he responded to the report of a domestic dispute at defendant's home. After being arrested and handcuffed, defendant said, " 'So when she gets upset and smacks her head like this, I have to go to jail.' "

¶ 7 Defendant testified that Jessica had already been drinking before they went to Dubuque and that she drank while they were there. When they returned to defendant's home, defendant began drinking heavily. He and Jessica began to argue. The argument never got physical, but at some point Jessica turned her head quickly. It struck the corner of a kitchen cabinet and she started bleeding. Defendant held some paper towels up to Jessica's face. Defendant denied that he ever struck Jessica.

¶ 8 Defendant first argues that the State failed to prove his guilt beyond a reasonable doubt. A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When we review a challenge to the sufficiency of the evidence, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court

ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 9 Defendant points out that certain evidence is consistent with his account of the incident. According to defendant, the bloody paper towels could have transferred blood to his hand, and the "thump" Lindquist heard could have been the sound of Jessica's head hitting the kitchen cabinet. Defendant's argument overlooks the principle that "[t]he trier of fact is not required to accept any possible explanation compatible with defendant's innocence and elevate it to the status of reasonable doubt." *People v. Cowart*, 2017 IL App (1st) 113085-B, ¶ 31. Defendant also contends that Jessica had a considerable amount to drink before he allegedly hit her. Defendant contends that Jessica's "testimony should therefore have been viewed accordingly to question her recollection of the evening's events." Defendant maintains that "[i]t is entirely possible that [Jessica] believed that the defendant did strike her, though she, herself, struck her head on the cabinet causing her injury." With this argument, defendant asks us to evaluate Jessica's credibility. As noted, credibility determinations are for the trier of fact. That Jessica consumed alcohol at the time in question did not require the trial court to discount her testimony. Accordingly, we conclude that the State proved defendant's guilt beyond a reasonable doubt.

¶ 10 Defendant also argues that, in finding him guilty, the trial court relied, in part, on his silence when Croffoot asked him how blood got on his hand and on Jessica. Addressing defendant, the trial court remarked, "[T]he telling thing to me here is that you initially when Croffoot was speaking to you had an opportunity to explain what happened or explain where the blood on [Jessica] came from and there was no explanation provided." Defendant argues that, by relying on his failure to explain why there was blood on his hand and on Jessica, the court violated his Fifth Amendment privilege against self-incrimination.

¶ 11 Defendant has cited no authority in support of this argument. It is well established that the failure to cite authority in support of issues raised on appeal results in forfeiture of those issues. *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19. Forfeiture is particularly appropriate in this case, which concerns defendant's prearrest silence. Defendant's argument presupposes that the Fifth Amendment privilege against self-incrimination applies to prearrest silence. We have found no Illinois case addressing precisely this question where, as in this case, the defendant's silence was used for a purpose other than impeachment. That question was before the United States Supreme Court in *Salinas v. Texas*, 570 U.S. 178 (2013), but the Court decided the case on other grounds. Our survey of cases from other jurisdictions reveals that some courts hold that the privilege does apply (see, *e.g.*, *State v. Leach*, 2004-Ohio-2147, ¶ 30, 807 N.E.2d 335) and other courts hold that it does not (see, *e.g.*, *Buentello v. State*, 512 S.W.3d 508, 521 (Tex. Ct. App. 2016)). We will not resolve this issue without adequate briefing. It is well established that "[t]he appellate court is not a depository into which a party may dump the burden of research." *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046 (2005). Accordingly, defendant has forfeited the issue of whether the trial court improperly relied on his silence in finding him guilty.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court of Stephenson County. 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 13 Affirmed.