

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 CR 17669 |
| |) | |
| JOHN CRAIG, |) | Honorable |
| |) | Joel L. Greenblatt, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for aggravated domestic battery affirmed over his challenge to the sufficiency of the evidence.

¶ 2 John Craig contends the State had not proven him guilty of aggravated domestic battery beyond a reasonable doubt because the victim's testimony was incredible and uncorroborated. We affirm. This court lacks any basis to substitute its judgment for that of the trial court, which assessed the victim and found her credible. None of the inconsistencies alleged by Craig

contradict the victim's testimony that Craig strangled her. Rather, they affect the weight of her testimony, a question for the trier of fact.

¶ 3 Background

¶ 4 Craig was charged by indictment with one count of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)). At trial, Annette Rizzo, the victim, testified that she and Craig had been friends since grammar school. They began dating in September 2013 and in April 2014, she moved into Craig's house. On July 19, 2014, Rizzo and Craig went to dinner. Afterwards, they went home and watched television for around "five, six hours." Though Rizzo was not drinking, she stated Craig "took some Demerol" and was "[f]irst *** drinking beer, and then *** Patrón, and then he was drinking Patrón mixed with Mike's Hard Lemonade." At about 2 a.m., Craig walked into the kitchen and Rizzo asked him if they could go to bed because she was "tired" and he was "f***** up." Rizzo next remembered being on her back on the floor as Craig was "straddling" her, with his right hand "around [her] neck strangling [her]."

¶ 5 Rizzo described Craig strangling her as "hurting" and "very painful." As Craig sat on top of her, with "one leg on each side" of her waist, Rizzo "goug[ed]" Craig in the face. She struggled "to get away." Turning on to her stomach, Rizzo tried to crawl from Craig when he punched her in the back at least three times.

¶ 6 Once free, Rizzo ran upstairs into their bedroom and "slammed" the door shut. Craig immediately "slammed" the bedroom door open, threw Rizzo against the wall, and repeatedly punched her in the eye, forehead, breasts, and stomach. Rizzo testified that her hip was also bruised, but she did not know if it was from the punching or Craig's knee. Craig punched her six or seven times, threw her to the ground, straddled her, and strangled her again. According to

Rizzo, Craig had “his right hand, *** around [her] neck. He was squeezing hard, where [she] was starting to not be able to breathe.” After Rizzo’s body “started going limp,” Craig got up and left the room.

¶ 7 Once Rizzo “gained [her] breath back,” she ran out of the house wearing a T-shirt and yoga shorts and no shoes. Rizzo spent the night at the house of Craig’s mother, Evelyn Craig, who lived one block from her son. In the morning, Evelyn Craig stated that it “looked like someone beat [Rizzo] up,” and offered to let Rizzo stay at her house for as long as she needed. Rizzo, however, called her uncle, and asked to stay with him. Craig’s nephew drove Rizzo to her uncle’s house, first stopping by Craig’s house for necessities. That day, Rizzo’s uncle took photographs of her injuries. Rizzo identified one of the photographs as People’s Exhibit 1. The photograph depicts the side of her face with a black eye, bruises by her cheek and eyebrow, and fingerprint marks and bruises. The marks were “from where [Craig] strangled [her].”

¶ 8 Rizzo reported the incident to police on July 26, 2014. She took some time to report what had happened because she had been in shock, was “terrified of just what had happened,” and needed to find a place to live and be sure about filing the charges. Rizzo identified People’s Exhibits 2 through 17, a series of photographs depicting her injuries taken by the police that day. The photographs show her with a black eye, a cut on her hand, a rug burn on her elbow, and bruises on her cheek, back, shoulder, breast, stomach, and thigh. Rizzo noted that in People’s Exhibit 2, which shows the front of her face and neck area, the injuries to her neck were no longer visible as they had “dissipated.”

¶ 9 On cross-examination, Rizzo denied drinking on the night of the incident and stated she “quit drinking” in 2011, with a few relapses. She acknowledged having her cell phone when she

fled the house, but did not call the police or go to the police station or the hospital because she was not wearing shoes and could not “run five, six blocks down the street in the middle of the night like that, in shock.” Although Rizzo had received a liver transplant, she explained that she did not seek immediate medical attention because the transplant was on the right side of her body and Craig punched her left side. She denied that her transplant medications made her prone to bruising.

¶ 10 Rizzo clarified that when she first arrived at her uncle’s house, he told her she could only stay for a day or two, but later allowed her to stay six weeks. He encouraged her to go to the hospital and contact police. Initially, she declined, though she admitted knowing “how the system worked,” having obtained orders of protection against three other men. On July 24, 2014, she went to the hospital for blood tests related to her transplant and medications. No one asked about her injuries, and she did not seek help.

¶ 11 Rizzo stated that her uncle used her cell phone to take photographs of all her injuries, time stamped July 20, 2014. When she went to the police station on July 26, 2014, an officer took her cell phone and said he would email the photographs and include them in evidence. But, during a subsequent hearing, an Assistant State’s Attorney told Rizzo the office did not have photographs showing she was strangled. Rizzo then gave them a hard copy of the photograph entered as People’s Exhibit 1. Rizzo had told officers that she “gouged” Craig’s face and bit his finger when he stuck his finger in her throat while holding her against the bedroom wall. She acknowledged that her written statement to an ASA did not reflect either detail. On redirect examination, Rizzo stated that she had told the ASA what she had specifically done to defend herself against Craig, but her physical resistance was only mentioned generally in the statement.

¶ 12 Rizzo acknowledged having a pending charge for aggravated driving under the influence (DUI) of alcohol.

¶ 13 Arlington Heights police officer Brian Clarke testified that he interviewed Rizzo at the police station on July 26, 2014, and identified People's Exhibits 2 through 17 as the photographs of Rizzo's injuries taken that day. On cross-examination, Clarke testified that he did not recall any injuries to Rizzo's neck area, but noted "slight redness to the lower portion of the front of her neck and chest" in People's Exhibit 4. On re-direct examination, Clarke confirmed that he had seen multiple injuries throughout Rizzo's body, including a black eye, bruises to her chest, leg, stomach, back, and breast, and a rug burn to her right elbow.

¶ 14 Evelyn Craig testified for the defense. Her son lived five doors down from her. Northwest Community Hospital was "seven, eight blocks" from her home and the police station about 10 to 12 blocks away. Rizzo rang her doorbell at 3 a.m., "fully dressed." Rizzo said she had an argument with Craig and wanted to stay with her to "let things cool down." In the morning, her grandson drove Rizzo to her uncle's home. She did not observe any injuries on Rizzo, nor did Rizzo complain that she had been involved in a physical altercation with Craig. Evelyn Craig denied telling Rizzo "[y]ou look like you've been beaten up." She and Rizzo had several conversations about the title to a car and that from the time Rizzo left her home that morning until the following week, she had not been able to give Rizzo the title.

¶ 15 On cross-examination, Evelyn Craig denied knowing the substance of Rizzo's testimony, but testified that she remembered Rizzo had been wearing shoes when she came over to her house and stated that she "would remember" if Rizzo had been barefoot. She did not see any of

the injuries depicted in Rizzo's photographs, though she acknowledged that she had no idea what actually happened in Craig's home that night.

¶ 16 Craig testified that Rizzo, whom he had known since childhood, had moved in with him. Craig was familiar with Rizzo's medical history, which included cirrhosis, liver cancer, and polyps in her esophagus, and that she bruised easily due to her liver transplant medications. On July 19, 2014, he and Rizzo went to dinner because his employer, the post office, had assigned him a new position accommodating his disability after years of being at home, and they each drank three Bloody Mary's. They went home around 9 p.m., and watched television until 2 a.m. As Craig rubbed Rizzo's arms, he "struck a nerve" and "she jumped" because "it hurt her." Then, Rizzo "took her right hand and *** clobbered [him] right in the bridge of the nose," which started "dripping blood." Craig stated that Rizzo asked him "How do you like it?" and punched him in the face "four to five times." Craig told Rizzo to stop and pushed her down on the couch, but she "never went on the floor." Craig used his shirt to absorb the blood from his nose. Rizzo went to the kitchen, went upstairs, got dressed, went to the backyard, and had a cigarette. When Rizzo returned to the house, Craig advised that he was going to bed. Rizzo went back outside and did not return. Craig added that the car Rizzo discussed with his mother had been purchased for Rizzo.

¶ 17 On cross-examination, Craig denied drinking alcohol after he and Rizzo returned from the restaurant. While he was rubbing Rizzo's arms, she hit him with the back of her hand and a "huge ring" on her finger caused the bleeding. He put his hands on Rizzo's chest to push her off him, but never hit her or caused her injuries. Craig did not call Rizzo or follow her when she left the house that night. The next day, Rizzo returned to the house and Craig asked her to apologize,

but she took her belongings and left. Craig denied that Rizzo had any of the injuries depicted in the People's photographs. He stated that the injury to her elbow had been from a fall at a White Sox game in April. He explained that Rizzo "has bruises all the time, *** really, really, deep bruises."

¶ 18 On re-direct examination, Craig stated that Rizzo was not happy that he was returning to work because her car had been impounded due to a DUI, and he would not be able to take her places during the day.

¶ 19 Defense counsel rested and moved to dismiss the charge, alleging that Rizzo committed perjury. The trial court denied the motion.

¶ 20 Following arguments, the trial court found Craig guilty of aggravated domestic battery. The court noted that "[d]omestic battery is an insidious crime" and these cases often become "a question of the credibility of the witnesses [,] *** devolv[ing] into a he said, she said." The trial court noted that it considered "very carefully" that "there was no outcry to authority until July 26, 2014," but stated that People's Exhibit 1, the photograph of Rizzo taken the day after the incident, shows injuries consistent with Rizzo's testimony that she was strangled. The court also noted that People's Exhibit 4, one of the photographs taken at the police station, shows "evidence as testified to by the witness of some bruising on the lower portion of the right side of her neck that still remain[ed] seven days later."

¶ 21 The trial court further stated that it found Rizzo credible despite "some inconsistencies" in her testimony, and that Evelyn Craig was "less than credible" because she claimed she did not see Rizzo's injuries after the incident. The court also "noted with interest" that Evelyn Craig "knew to say" that she would have noticed if Rizzo were barefoot, which suggested that Evelyn

Craig “had some information from the testimony that was adduced” on another day of the trial. The court found “significant portions” of Craig’s testimony to be “incredible and unworthy of belief,” including his testimony that he was only stroking Rizzo’s arm in a playful way when she flailed at him, struck his nose, and said “how do you like it.” The court was “convinced” that Craig and Rizzo had a “real fight,” during which Craig strangled her.

¶ 22 The court sentenced Craig to 60 days in the Cook County Department of Corrections and 24 months’ probation. Additionally, the court entered a plenary order of protection for two years beginning after Craig’s term of probation ended.

¶ 23 Analysis

¶ 24 On appeal, Craig argues that he was not proven guilty of aggravated domestic battery beyond a reasonable doubt. According to Craig, no rational trier of fact could have accepted Rizzo’s testimony, as she was an incredible witness and the State did not corroborate her account by calling her uncle as a witness or producing the photographs from the day after the incident, which Rizzo claimed to have tendered to the police.

¶ 25 The State maintains that the evidence established beyond a reasonable doubt that Craig committed an aggravated domestic battery where the court concluded that Rizzo credibly testified and the photographic evidence corroborated her testimony.

¶ 26 When reviewing a challenge to the sufficiency of the evidence, we consider whether, viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Internal quotation marks omitted.) *People v. Belknap*, 2014 IL 117094, ¶ 67. “This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on

questions involving the weight of the evidence or the credibility of the witnesses.” *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Moreover, “[a] conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant’s guilt.” *Belknap*, 2014 IL 117094, ¶ 67.

¶ 27 A person commits domestic battery when, without legal justification, he or she knowingly “[c]auses bodily harm to any family or household member,” or “[m]akes physical contact of an insulting or provoking nature with any family or household member.” 720 ILCS 5/12-3.2(a) (West Supp. 2013). In turn, a person commits aggravated domestic battery when he or she “knowingly causes great bodily harm, or permanent disability or disfigurement” in the course of a domestic battery. 720 ILCS 5/12-3.3(a) (West 2014). Conduct constituting aggravated domestic battery includes strangling, which is “intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.” 720 ILCS 5/12-3.3(a-5) (West 2014).

¶ 28 Viewing the facts in the light most favorable to the State, we find that the trial court could have found beyond a reasonable doubt that Craig strangled Rizzo. The positive and credible testimony of a single witness can be sufficient evidence to convict. *Siguenza-Brito*, 235 Ill. 2d at 228. While Craig denied hitting Rizzo, and testified that he rubbed her arms and struck a nerve which made her hit him in the bridge of his nose, the trial court found him not credible and concluded that an actual fight had occurred. “The fact finder need not accept the Craig’s version of events as among competing versions.” *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). Under these circumstances, and based on Rizzo’s testimony and the photographic evidence, the trial

court could reasonably reject Craig's version of events. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24 (reviewing court will not substitute its judgment for that of trial court on issues involving witness credibility or inferences drawn from evidence).

¶ 29 Notwithstanding, Craig challenges the trial court's decision to accept Rizzo's testimony despite several factors that he argues weigh against her credibility. In particular, Craig cites Rizzo's relapses into alcoholism, a pending DUI charge, and the fact that she did not seek medical attention for her injuries despite receiving a liver transplant, either immediately after the incident or several days later when she went to the hospital for other reasons. But, the allegation that a witness "had been drinking alcohol or was drunk does not necessarily preclude the trier of fact from finding the witness credible." *People v. Gray*, 2017 IL 120958, ¶ 40 (citing *People v. Bradford*, 194 Ill. App. 3d 1043, 1046-47 (1990)).

¶ 30 Moreover, the trial court could accept Rizzo's testimony that she was not drinking. And, this court has recognized that the failure to report or seek medical attention immediately may be reasonable if it can be attributed to fear, shame, guilt, and embarrassment. *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993). Rizzo testified that she was in shock, "terrified of just what had happened," needed to make sure she had a place to live, and be sure about filing charges. In its discretion, the trial court assessed Rizzo and found her credible. *Vaughn*, 2011 IL App (1st) 092834, ¶ 24. This court lacks any basis to substitute its judgment for that of the trial court because the trial court's determinations were not unreasonable. *Belknap*, 2014 IL 117094, ¶ 67.

¶ 31 Craig further argues that beyond belief was Rizzo's testimony that she fled to the bedroom, instead of the bathroom with a locking door, and that she waited to report the incident

due to concern as to where she would live, although familiar with the process for obtaining an order of protection and the offers to stay made by Evelyn Craig and her uncle.

¶ 32 None of these alleged inconsistencies contradicts Rizzo's testimony that Craig strangled her. Whether and to what extent these details affected the weight of Rizzo's testimony presents a question for the trier of fact, who was in a superior position to assess her testimony and found her credible. *People v. Burgos*, 243 Ill. App. 3d 993, 1001-02 (1998) (minor inconsistencies do not render testimony unworthy of belief but only affect its weight). Again, we have no basis to disturb that determination.

¶ 33 Craig, relying on *People v. Doll*, 371 Ill. App. 3d 1131, 1137 (2007), argues that Rizzo's testimony was uncorroborated as the State failed to call her uncle as a witness. This, suggests Craig, allows for the inference that the uncle's testimony would have been unfavorable. But, the *Doll* court noted that a negative inference could only be allowed in limited circumstances such as the witness possesses unique knowledge of a crucial, disputed issue of fact, or the government has caused the absence of a material witness. *Id.* Conversely, no negative inference arises when the witness is known and available to the defense and the defense does not call the witness. *Id.*

¶ 34 Here, no circumstances support the negative inference. Rizzo's uncle did not possess unique knowledge of a disputed fact, as Rizzo testified about her physical condition after the incident, and her injuries were photographed. Nor does Craig contend the government caused the uncle's absence, or that the uncle was not known to the defense, which could have subpoenaed him. So, the State's failure to call Rizzo's uncle is inconsequential.

¶ 35 Finally, Craig contends the State did not corroborate Rizzo's account because it failed to produce all the photographs taken by her uncle the day after the incident, despite her claim that

she tendered them to the police. Craig contends that, while Rizzo claimed those photographs were “time stamped,” the only photograph she tendered was undated, and the fact it depicted the particular injuries at issue at trial was too “convenient” for belief.

¶ 36 The trial court found that People’s Exhibit 1, the photograph taken by Rizzo’s uncle, comported with Rizzo’s testimony that Craig strangled her. The court also noted that People’s Exhibit 4, a photograph taken at the police station one week after the incident, shows bruising on the lower portion of Rizzo’s neck. Both photographs appear in the record and square with the trial court’s description and Rizzo’s testimony. Therefore, while Rizzo only produced one undated photograph taken by her uncle, it corroborated the other evidence.

¶ 37 Affirmed.