

NOTICE

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2019 IL App (4th) 160743-U

NO. 4-16-0743

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 13, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
DESHANTI S. WORK,)	No. 16CF207
Defendant-Appellant.)	
)	Honorable
)	Robert C. Bollinger,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the State presented sufficient evidence to sustain defendant’s conviction for domestic battery.

¶ 2 In February 2016, the State charged defendant, Deshanti S. Work, by information with aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)) and domestic battery (subsequent offense) (720 ILCS 5/12-3.2(a)(1) (West 2014)). In July 2016, a jury found defendant guilty of domestic battery but acquitted him of aggravated domestic battery. Following a September 2016 sentencing hearing, the trial court sentenced defendant to eight years in prison.

¶ 3 Defendant appeals, arguing the State failed to prove him guilty of domestic battery beyond a reasonable doubt because he and the alleged victim were not members of the same household. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2016, the State charged defendant by information with aggravated domestic battery, a Class 2 felony (720 ILCS 5/12-3.3(a-5) (West 2014)), alleging defendant, in committing a domestic battery, intentionally strangled Sarah Kelly, a family or household member of defendant, by covering her mouth and nose. The State also charged defendant with domestic battery (subsequent offense) (720 ILCS 5/12-3.2(a)(1) (West 2014)), alleging defendant knowingly and without legal justification caused bodily harm to Sarah Kelly, a family or household member of defendant, by striking her. The information stated the domestic battery offense was a Class 2 felony based on defendant's four prior convictions for domestic battery. See 720 ILCS 5/12-3.2(b) (West 2014). Defendant's case proceeded to a jury trial in July 2016.

¶ 6 A. Testimony

¶ 7 1. *Sarah Kelly*

¶ 8 Sarah Kelly testified that on February 13, 2016, she lived at 2304 North Central Drive in Decatur, Illinois. Sarah and her family had lived there for several months. They lived there with a friend named Crystal and Crystal's boyfriend, defendant.

¶ 9 Sarah testified that as of February 13, 2016, defendant lived at the house on North Central Drive for approximately two weeks. Defendant kept his personal belongings in the home and received a cable bill there in his name from either DISH or DirecTV.

¶ 10 That afternoon, defendant, who drank alcohol all morning to the point of stumbling, cooked in the kitchen with Sarah's daughter standing behind him. Sarah removed her daughter from the kitchen, placing her in a bedroom to play. As Sarah passed by the kitchen to go outside, she asked defendant to stay away from her children due to his drinking. Defendant told Sarah to "shut up" or he was going to "punch [her] in the face." As she turned around to respond, defendant "put his hand on [her] mouth and [her] nose." His hand moved "very

quickly” and caused her pain. After his hand made contact with her face, they “ended up on the ground.” Sarah was in a kneeling position, bent over with her stomach against her thighs, and defendant was kneeling on top of her with his hand over her mouth. Unable to yell for help, make any noise, or inhale, Sarah began to beat on the back door with her elbows in an effort to get someone’s attention.

¶ 11 Eventually defendant stood up and went back into the kitchen, allowing Sarah to stand. She then exited through the breezeway door to go outside. While screaming for help, Sarah encountered her husband. As Sarah and her husband walked back inside the house, defendant “was coming around the corner like back after [her].” Her husband stepped between Sarah and defendant and told Sarah to go outside to call the police. Sarah testified she sustained a laceration to her left cheek, a cut on her bottom and top lips, and bruises to her right elbow. The police photographed Sarah’s injuries, the photos of which were admitted during the trial. After the incident, the cuts on her lips “formed to scars” and she had “some scabs on [her] elbow from hitting the hinge on [the] door” behind her. She also developed “bluish/purplish bruises on [her] face from [defendant’s] hand.”

¶ 12 On cross-examination, Sarah testified to only defendant and her being in the room during the incident. She explained that when she and her family moved in with Crystal, Crystal had already lived there for a period of time. Sarah and her husband were not on the lease, but the landlord knew they lived there, and Sarah and her husband contributed to half of the household bills. Sarah failed to produce receipts to confirm the alleged contributions. When she and her family moved into the house in September 2015, defendant did not reside there. She first met defendant about one month before the incident, approximately January 2016.

¶ 13 At the time defendant moved into the home, he brought “[a]ll of his belongings,” including “an entertainment center, his clothes, his television, [and] his kitchen items.” Sarah admitted that after the incident, she told a police officer that defendant moved in “either a week or two weeks prior to February 13th.” Defendant stayed in Crystal’s room with her and subscribed to either DISH or DirecTV television service. Sarah recalled the satellite equipment being “there ready to use” at the time he moved in. She lacked a copy of any bills from either television provider in defendant’s name. Sarah paid her family’s portion of the household bills to Crystal, resulting in Sarah obtaining no receipts for the payments.

¶ 14 In March 2016, Sarah and her family moved out of the home. Defendant never returned to the home after February 13, 2016. Sarah denied that defendant owed her marijuana or money for marijuana on the date of the incident.

¶ 15 On redirect, Sarah testified that when she moved into the house on North Central Drive, she brought all of her belongings with her. She slept in one bedroom with her husband, and defendant slept in another bedroom. During the period of one or two weeks that she lived with defendant, he slept at the home “most or every night.” After the incident, she obtained an emergency order of protection against defendant and later a plenary order of protection.

¶ 16 *2. Ryan Kelly*

¶ 17 Ryan Kelly testified that on February 13, 2016, he lived at 2304 North Central Drive in Decatur, Illinois, with his wife, Sarah Kelly, their three children, Crystal, and defendant. As of February 13, 2016, defendant lived at the home on North Central Drive for about two weeks. When defendant moved in, he “showed up in a van with all his personal belongings,” which included “[a] TV, entertainment center, all his clothes, [and] shoes.”

¶ 18 On February 13, 2016, Ryan was outside “about four or five foot away from the breezeway door” of the home. That afternoon, he “heard banging and *** was walking back up to the house to see what it was and Sarah was running outside screaming.” Sarah appeared “very panicky” and her face was “red.” As he brought Sarah inside and into the kitchen, defendant walked towards Sarah. Ryan “stepped in between them and told [Sarah] to go outside and call the cops.” When the police officers arrived, Ryan gave them a statement.

¶ 19 On cross-examination, Ryan admitted not seeing what happened inside the house before Sarah came outside. He denied telling Officer Eric Havens of the Decatur police department that when he walked into the residence he saw Sarah on the floor crying and defendant standing in front of her.

¶ 20 *3. Officer Eric Havens*

¶ 21 Officer Eric Havens testified that on February 13, 2016, he worked as a patrol officer for the Decatur police department. On that date, he responded to a domestic battery complaint at 2304 North Central Drive in Decatur. Upon arrival, he spoke with Sarah Kelly. Officer Havens observed Sarah “physically shaking. She had tears running down her face. Just very upset. Voice was shaky.” He noticed Sarah had “red marks on both of her cheeks,” “small lacerations” on the inside of her lips, and “abrasions on the right elbow.” He took photographs of some of the injuries. Ultimately, the trial court admitted the photographs into evidence and published them to the jury.

¶ 22 Officer Havens also spoke with defendant, whom he described as, “very angry, uncooperative—obviously intoxicated.” Officer Haven became convinced of defendant’s intoxication due to defendant’s “speech” and “red[,] glossy eyes.” After placing defendant under

arrest, Officer Haven put defendant in his squad car and took him to Macon County jail for booking. When asked for his address, defendant said he lived at 2304 North Central Drive.

¶ 23 On cross-examination, Officer Havens admitted that he neglected to photograph any of the lacerations inside of Sarah's mouth. He explained that the department only provides him with "basic digital cameras" and that "it's very hard for our cameras *** to focus on something like the inside [of] the mouth like that and to get great detail."

¶ 24 Defendant also called Officer Havens to testify. Havens failed to recall if Sarah said anything about defendant paying any bills at the 2304 North Central Drive address. He did remember Ryan Kelly telling him that after he heard Sarah banging inside the home, he walked inside and saw Sarah on the floor crying with defendant standing in front of her.

¶ 25 *4. Defendant*

¶ 26 Defendant testified on his own behalf. He admitted to a 2013 conviction for unlawful possession of a credit or debit card in Sangamon County Case No. 2013-CF-370. He testified that on February 13, 2016, he did not grab Sarah Kelly's face. He stated he did previously borrow \$5 worth of marijuana from Sarah and never returned it. According to defendant, on February 13, 2016, while in the kitchen cooking food for himself, "Sarah kept coming in the kitchen, asking [defendant] 'where's my \$5' or 'where's my weed at.'" Defendant ignored Sarah because the previous day she "disrespect[ed]" him by "calling [him] a b***h." Instead, to be nice, he offered to barbecue for everyone. As he cooked, "[Sarah] comes on the— comes running, comes behind [him]." Sarah pushed him, and defendant grabbed her by the shirt and told her to leave him alone. Defendant stated, "I never put my hand around her face. I never pushed her down on the ground. I never did none of that. And that's the honest to God truth."

¶ 27 On cross-examination, defendant admitted to drinking alcohol that morning. Specifically, he recounted sipping alcohol as he cooked and moved back and forth between the kitchen and the bedroom. He believed Sarah’s injury occurred when she “swiped [his] hand from holding her” when he asked her to leave him alone.

¶ 28 B. Verdict and Posttrial Motions

¶ 29 Following closing arguments, the jury found defendant guilty of domestic battery and not guilty of aggravated domestic battery. On September 14, 2016, defendant filed a timely motion for new trial or judgment notwithstanding the verdict, asserting the State failed to prove him guilty of domestic battery beyond a reasonable doubt. The trial court denied the motion and ultimately sentenced defendant to eight years in prison. On September 15, 2016, defendant filed a timely motion to reconsider sentence, which the trial court denied.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Initially on appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) the circuit clerk improperly imposed various fines and fees. However, defendant withdrew his second argument in light of our supreme court’s decision in *People v. Vara*, 2018 IL 121823, ¶ 23. Therefore, we address only defendant’s first argument.

¶ 33 A. Standard of Review

¶ 34 When considering 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 required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. “It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the

facts.” *Id.* It is not our function to retry the defendant, and we will not substitute our judgment for the trier of fact on issues involving the credibility of the witnesses or the weight of the evidence. See *id.* 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.” *Id.*

¶ 35 B. Domestic Battery

¶ 36 In challenging the sufficiency of the State’s evidence, defendant argues the State failed to prove he was a member of the victim’s household pursuant to section 12-3.2 of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.2 (West 2014)). Defendant contends that because the State failed to prove this essential element of domestic battery, we should reverse his conviction outright or, in the alternative, modify the judgment to reflect a conviction for the lesser-included offense of simple battery.

¶ 37 Section 12-3.2(a) of the Code provides that “[a] person commits domestic battery if he or she knowingly without legal justification by any means: (1) Causes bodily harm to any family or household member.” 720 ILCS 5/12-3.2(a) (West 2014). Section 112A-3(3) of the Code of Criminal Procedure of 1963 defines “ [f]amily or household members’ ” to include “persons who share or formerly shared a common dwelling[.]” 725 ILCS 5/112A-3(3) (West 2014).

¶ 38 In *People v. Young*, 362 Ill. App. 3d 843, 849, 840 N.E.2d 825, 830 (2005), the appellate court held that under the domestic battery statute, “two people do not become a household by virtue of lodging together unless that lodging together is an established mode of living.” In a more recent case, the supreme court determined that the definition of “family or household members” was designed “to capture *** various situations of cohabitation and shared living arrangements.” *People v. Almore*, 241 Ill. 2d 387, 396, 948 N.E.2d 574, 579 (2011).

“There can be no bright-line test for determining household membership.” *Id.* While the length of time two people have resided together is one factor the court may consider to determine whether they shared a common dwelling, “[n]o particular length of time is required, nor is length of time the dispositive factor.” *Id.* The court may also consider “the nature of the living arrangements, whether the parties had any other living accommodations; whether they kept personal items at the shared residence; and whether the parties shared in the privileges and duties of a common residence, such as contributing to household expenses or helping with maintenance.” *Id.*

¶ 39 Applying *Almore* to the instant case, when viewing the evidence in the light most favorable to the State, a reasonable juror could have found beyond a reasonable doubt that defendant and Sarah Kelly shared a common dwelling. Sarah testified that when the incident occurred, she lived at 2304 North Central Drive with her family and Crystal and did so starting in September 2015. She and her family kept their personal belongings there. Ryan Kelly also testified that he lived at that address with Sarah since September 2015 and that Sarah kept her personal belongings there. Both Sarah and Ryan testified that sometime in the first two weeks of February 2016, defendant moved into the home, bringing his furniture, electronics, clothing, shoes, and kitchen items. Sarah testified that she paid Crystal for her family’s portion of the household bills and that defendant paid for television service, which was billed to their address. According to Sarah, during the time defendant lived at the home, he slept there most or every night and stayed in one bedroom with Crystal while she and her husband stayed in another. Officer Havens also testified that when he asked defendant for his address upon booking, defendant said he lived at 2304 North Central Drive. Defendant himself testified that on the date of the incident, he offered to barbecue for everyone in the home. At no point in defendant’s

testimony did he deny living in the home with Sarah. Finally, neither Sarah nor defendant claimed to have any other living arrangements besides the residence at North Central Drive. While defendant may have shared the home for a limited length of time, “[n]o particular length of time is required, nor is length of time the dispositive factor.” *Almore*, 241 Ill. 2d at 396.

¶ 40 We recognize that neither Sarah nor Ryan produced any receipts or copies of bills to corroborate their claims that they paid Crystal for household expenses or that defendant subscribed to television service at their home. It is also true that Ryan’s credibility was impeached by prior inconsistent statement when he testified at trial that he discovered Sarah outside after the alleged battery but previously told Officer Havens he discovered Sarah inside the house. However, defendant’s credibility was also impeached by his 2013 conviction for unlawful possession of a credit or debit card. Furthermore, both Sarah and Officer Havens testified that defendant appeared intoxicated that day, and defendant himself admitted to drinking prior to the incident. As previously noted, the jury functioned to assess the credibility of the witnesses, and their determination that Sarah’s, Ryan’s, and Officer Havens’s testimony was more credible than defendant’s was not unreasonable. This is particularly true considering defendant failed to dispute the facts regarding his place of residence. Accordingly, we find the State’s evidence sufficient for a rational juror to find defendant and Sarah were members of the same household as necessary to convict defendant of domestic battery beyond a reasonable doubt.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the trial court’s judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 43

Affirmed.