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2020 IL App (3d) 180003-U

Order filed February 28, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Mercer County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-18-0003 Circuit No. 17-CM-53
AHMED ELSAYED,	)	Honorable Richard A. Zimmer,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt.

¶ 2 Defendant, Ahmed Elsayed, appeals following his conviction for domestic battery. He contends that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant via information with two counts of misdemeanor domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2016)). Count I of the information alleged that defendant made contact of a provoking nature with M.D., a household member, in that he "shoved M.D.[,] pushing her to the ground, breaking her glasses off her face." Count II of the information alleged that defendant made contact of a provoking nature with M.D. in that he "while holding M.D.'s head forceably on the floor, continually applied pressure to her head to keep her pinned to the floor."

¶ 5 At defendant's bench trial, M.D. testified that defendant was her stepfather, and that she lived with defendant and her mother, Susan. M.D. was 16 years old at the time of trial. She testified that she had been arguing with Susan throughout the day on July 17, 2017. When defendant returned to the house around 11 p.m., he became angry when he learned of the argument. M.D. testified that defendant called her a number of "very bad names," and she yelled at him to "shut up."

¶ 6 M.D. testified: "then [defendant] came at me with his hands and grabbed my hair, fistfuls of my hair, and slammed me to the floor with my hair." M.D. testified that defendant "continued to hit [her] head into the floor," and broke the left side of her glasses in the process. M.D. testified that the floor was carpeted. Susan yelled at defendant to get off of M.D. Defendant eventually got up and walked away, at which point M.D. ran downstairs to call 911. M.D. recalled that she had a red mark on her shoulder and a scratch on her arm after the altercation.

¶ 7 On cross-examination, M.D. reiterated that defendant had taken her to the ground by her hair. She estimated that defendant pushed her head into the floor three or four times. M.D. believed she did not suffer any injuries from those strikes because her "glasses kind of acted as a cushion."

¶ 8 Lindsey Kenney of the Aledo Police Department testified that she responded to a report of a domestic disturbance at Susan and defendant's home on July 17, 2017. When Kenney arrived on the scene, M.D. and Susan were standing in the front yard. Kenney observed that M.D. was crying, shaking, and breathing rapidly. Kenney described M.D. as "very upset." M.D. was holding a pair of broken glasses. Kenney observed red marks on M.D.'s shoulder and arm. Kenney photographed those injuries, and the photographs were submitted into evidence. M.D. did not have any apparent injuries on her head or face. The broken glasses were also submitted into evidence.

¶ 9 Kenney testified that she spoke with defendant. Defendant told Kenney that "he just was trying to get her to stop screaming." Defendant denied slapping or pushing M.D. Kenney testified that defendant would not directly answer her questions. She believed a language barrier made her communication with defendant more difficult.

¶ 10 The court found defendant guilty on count I of the information and not guilty on count II. The court explicitly found that M.D. had been credible in her testimony. The court also found that Kenney's testimony that M.D. was highly distressed tended to corroborate M.D.'s account. As to count II, the court pointed out that there had been no testimony that defendant had pinned M.D. to the floor or applied continuous pressure to her head. The court sentenced defendant to a term of 24 months' conditional discharge.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt. More specifically, he argues that no rational trier of fact could have found M.D.'s testimony credible where her claim that "defendant slammed [M.D.'s] head into the floor three

or four times" was rebutted by the physical evidence, namely, a lack of any marks or injuries on M.D.'s face and head.

¶ 13 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The trier of fact is not required to seek out or accept any "possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). The relevant question on appeal is whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. See *People v. Pintos*, 133 Ill. 2d 286, 292 (1989).

¶ 14 Because the trier of fact is best equipped to determine the credibility of a witness, we afford great deference to such credibility determinations. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). That deference, however, is neither conclusive nor binding. *Id.* A reviewing court should not defer to an unreasonable credibility determination. *Id.* ("The simple fact that a judge or jury accepted the veracity of certain testimony does not guarantee reasonableness.").

¶ 15 As charged by the State in this case, domestic battery is committed where a person knowingly "[m]akes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)(2) (West 2016). While a domestic battery charge may also be based on "bodily harm to any family or household member," (*id.* § 12-3.2(a)(1)) the

State did not charge defendant with that form of the offense, and was thus under no obligation to prove an element of bodily harm.

¶ 16 Count I of the information—the count under which defendant was convicted—alleged that defendant made contact of a provoking nature in that he shoved or pushed M.D. to the ground. At trial, M.D. testified that defendant grabbed her hair and slammed her to the ground. The marks or scratches on M.D.'s body, her broken glasses, and Kenney's testimony that M.D. was highly agitated tend to corroborate that M.D. had been in some sort of altercation. On its face, this evidence is sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of domestic battery. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999) ("The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict.").

¶ 17 Defendant contends, however, that M.D.'s testimony was not credible.[1] He insists that M.D.'s testimony that defendant hit or pushed her head into the floor three or four times is belied by the fact that no marks or injuries appeared on M.D.'s face. Defendant contends that it would be contrary to human experience to believe that M.D. could come away from such an attack without any sort of injury or mark. He thus argues that M.D. should be found not credible, and his conviction reversed.

¶ 18 We decline to overturn the circuit court's determination that M.D was a credible witness. Initially, defendant's conclusion regarding M.D.'s credibility is not self-evident. There was no detailed evidence concerning the force with which defendant pushed M.D.'s head, where exactly defendant touched M.D's head, or what part of M.D.'s head contacted the ground. Without such

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[1]We note that defendant does not dispute that M.D. was a family or household member. He also does not argue that grabbing a person's hair and bringing them to the ground would not be "contact of an insulting or provoking nature." 720 ILCS 5/12-3.2(a)(2) (West 2016).

details, it is at least *possible* that a person could have their head pushed into a carpeted floor multiple times without receiving any injuries or markings. Such a result is certainly not so impossible that this court should reject the circuit court's credibility determination as unreasonable.

¶ 19 Furthermore, the testimony that defendant attacks as incredible does not directly support the charge under which defendant was convicted. The conduct giving rise to defendant's conviction was his initial act of taking M.D. to the ground. He does not challenge that portion of M.D.'s trial testimony. Defendant could potentially argue that M.D.'s incredible testimony regarding the head strikes rendered her entire testimony incredible.[2] Even if the circuit court had found portions of M.D.'s testimony incredible, it was under no obligation to discount her testimony entirely. *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004) ("[E]ven when a witness is found to have knowingly given false testimony on a material point, a fact finder may reject his entire testimony but is not bound to do so.").

¶ 20 In light of the evidence that tended to corroborate the fact that M.D. had been involved in some sort of altercation (see *supra* ¶ 16), the circuit court found that she was credible when she testified that defendant brought her to the ground by her hair. That credibility finding was all that was required to sustain a conviction under count I. See *Smith*, 185 Ill. 2d at 541. We do not find that the court's determination was unreasonable.

¶ 21 III. CONCLUSION

¶ 22 The judgment of the circuit court of Mercer County is affirmed.

¶ 23 Affirmed.

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[2]Defendant has not actually raised that argument, however.