

domestic battery because the State failed to prove beyond a reasonable doubt that he strangled S.D., who was his girlfriend and mother of his two children. He also challenges the propriety of various pecuniary penalties imposed by the trial court and contends that he is entitled to a *per diem* credit for the time he spent in presentence custody.

¶ 3 Defendant was charged by indictment with attempted murder, aggravated domestic battery by strangulation, domestic battery, violation of an order of protection, and unlawful restraint. At trial, 23-year-old S.D. testified that she is defendant's girlfriend and the mother of their two children, ages three and two. She then recounted two prior incidents of domestic violence involving defendant, which the court had deemed admissible after hearing the State's pretrial motion to admit proof of other crimes. S.D. described an incident on August 10, 2009, in which defendant punched her face in the parking lot of the domestic violence courthouse at 555 West Harrison Street and was arrested, and an incident on May 6, 2010, in which defendant "smacked" and punched her face before defendant's friend intervened.

¶ 4 Regarding the incident at bar, S.D. testified that on December 7, 2010, she and her two children lived with her mother in Markham, and defendant lived with his mother in Chicago. That evening, she and her children accompanied defendant to his friend's house where he drank and socialized. She did not have any alcohol. About 11 p.m., she, defendant and the children left the friend's house. Defendant was driving S.D.'s Honda Accord, and after they dropped off a friend named Herb, they returned to the expressway where S.D. reminded defendant that she was going back to her mother's house after defendant drove himself home. At that point, defendant "smacked" her face and said "bitch, you're not going no where until I'm ready for you to go." Defendant then exited the expressway at 59th Street and proceeded toward Morgan Street where

he stopped the car in a nearby alley, punched S.D.'s head, squeezed her face and punched her jaw. When S.D. opened the passenger door and tried to step out, defendant pulled her back inside. He also demanded her cell phone, but she hid it in her pants.

¶ 5 Defendant then drove to a gas station and went inside, leaving S.D. and her two children in the car, but with no keys. She used her cell phone to call her uncle for help, then went inside the gas station and asked the attendant for ice because her head and face were sore. Afterwards, she, defendant and the children drove back to the alley because she told defendant that she had dropped her cell phone there. Once in the alley, defendant stopped the car, climbed over the center console, and straddled her in the passenger seat. S.D. testified that defendant choked her with both his hands and bit the tip of her nose. She could not breathe and thought that she was going to die, and eventually "passed out." She awakened to find defendant sitting in the driver's seat punching her head. S.D. pleaded to go to the hospital, but defendant drove back to the gas station where he filled a bag with snow for her head. Meanwhile, she called her uncle to see how far away he was from the gas station and flagged down a police car which then pulled up behind her car. The police officers arrested defendant and S.D.'s uncle arrived shortly thereafter.

¶ 6 S.D. further testified that she told her uncle and the officers what had happened, namely that defendant had "jumped" on her. She did not relate every single detail or go to the hospital for her injuries because she just wanted to go home. After defendant's arrest, S.D. visited defendant twice at Cook County Jail. She acknowledged that in January 2009, she had obtained a court order of protection against defendant for no contact whatsoever, but then modified the order to "no unlawful contact" in July 2009. She stated that she did not try to run away while

defendant was in the gas station because she did not want to leave her children behind, and she did not tell the gas station attendant that defendant had beaten her because she was afraid.

¶ 7 S.D. also identified photographs of her injuries (People's Exhibit Nos. 1 through 8), which showed bruises, a bite mark on her nose, a swollen face and jaw, and scratches on her neck, throat, and arms. She acknowledged on cross-examination that she gave the police a written statement on December 9, 2010, but stated that she did not read the entire statement and only signed each page because she was tired and wanted to go home. Following S.D.'s testimony, the court admitted the photographic exhibits into evidence, along with certified copies of the no contact order of protection and the subsequently modified no unlawful contact order of protection.

¶ 8 After the State rested its case-in-chief, defendant made a motion for a directed verdict, which the trial court granted as to the charge of attempted first degree murder only. Defendant's case-in-chief then proceeded by stipulation.

¶ 9 The parties stipulated that, if called, a Cook County Sheriff would testify that S.D.'s name appeared on the inmate visitation schedule for defendant on the following dates: February 7, 2011, March 28, 2011, and May 3, 2011. The parties further stipulated that, if called, Chicago police officer Zepeda would testify that shortly after 1:30 a.m. on December 8, 2010, he responded to the area of 1000 West 59th Street and spoke to S.D., who refused medical treatment and showed no signs of injury.

¶ 10 Following the arguments of counsel, the trial court found defendant guilty of aggravated domestic battery by strangling S.D., domestic battery by causing bodily harm, and violating an order of protection. In reaching that determination, the trial court specifically noted that the case

came down to a matter of credibility and found that S.D. was reasonably credible. The court stated that S.D.'s testimony was corroborated to some extent by the photographs depicting the scratches on her wrists and arms and "on her neck in particular." Defendant subsequently filed a motion for a new trial and a supplemental motion for a new trial, arguing the lack of corroborative evidence of S.D.'s injuries, which the trial court denied.

¶ 11 In this court, defendant first contends that his aggravated domestic battery conviction should be reduced to domestic battery because the State failed to prove beyond a reasonable doubt that he strangled S.D. Defendant does not dispute the sufficiency of the evidence relating to the elements of domestic battery or his other convictions, but argues that there was no evidence corroborating S.D.'s testimony that he strangled her, as required to sustain a conviction for aggravated domestic battery.

¶ 12 When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This standard gives "full play to the responsibility of the trier of fact fairly to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (quoting *Jackson*, 443 U.S. at 319).

¶ 13 To sustain a conviction for aggravated domestic battery in this case, the State was required to prove that defendant committed a domestic battery (720 ILCS 5/12-3.2(a) (West 2012)) and strangled S.D. (720 ILCS 5/12-3.3(a-5) (West 2012)). For the purposes of subsection

(a-5) of the aggravated domestic battery statute, "strangle" means "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 2012).

¶ 14 Here, S.D. testified to her encounter with defendant on the night of December 7, 2010, and described his assault on her which resulted in the injuries depicted in the photographs that were admitted into evidence. This testimony included her description of how he choked her with both hands so she could not breathe. The testimony of a single witness, if positive and credible, is sufficient to convict, even if it is contradicted by defendant (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)), and, in this case, the trial court found S.D. to be a reasonably credible witness. Although that testimony need not be corroborated by physical evidence or other witnesses (*People v. Herron*, 2012 IL App (1st) 090663, ¶ 23), the trial court also found that her testimony was corroborated to some extent by the photographs of her injuries, and that defendant was proved guilty of aggravated domestic battery.

¶ 15 We find nothing in the record that would allow us to disturb the judgment of the trial court. *Siguenza-Brito*, 235 Ill. 2d at 228. Based on S.D.'s description of the incident at bar and the photographs of her injuries, it was reasonable for the trial court to determine that defendant strangled S.D., notwithstanding defendant's contrary assertions on appeal. *Siguenza-Brito*, 235 Ill. 2d at 229. Considering the evidence in the light most favorable to the State, we find that the evidence at trial was sufficient to permit the trial court to conclude that defendant committed an act of domestic battery when he knowingly, without legal justification, made physical contact of

an insulting or provoking nature with S.D. (720 ILCS 5/12-3.2(a) (West 2012)), and committed an act of aggravated battery when he strangled her (720 ILCS 5/12-3.3(a-5) (West 2012)).

¶ 16 Defendant also challenges the propriety of various pecuniary penalties imposed by the trial court and contends that he is entitled to a \$5-per-day credit against his fines for the time he spent in presentence custody. He correctly points out that the mittimus reflects that he spent 614 days in pretrial custody and that the trial court stated on the record that a \$230 statutory credit applied to offset the imposed \$230 in creditable fines, yet the fines and fees order does not reflect the trial court's oral pronouncement to that effect. The State concedes, and we agree, that defendant's \$200 domestic violence fine and \$30 children's advocacy center fine are subject to a \$5-per-day credit for the time he spent in presentence custody (725 ILCS 5/110-14(a) (West 2012); *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19), and direct that the order be corrected to reflect that credit. We also agree with the parties that defendant's \$5 electronic citation fee should be vacated because it is only applicable to violations of the Illinois Vehicle Code, which is not the case here. 705 ILCS 105/27.3e (West 2012).

¶ 17 For the reasons stated, we amend the fines and fees order as indicated, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 18 Affirmed as modified.