

No. 1-12-2861

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 M1 205476
)	
MARY FARRAJ,)	Honorable
)	Thomas Byrne,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and REYES concurred in the judgment.

O R D E R

¶ 1 **Held:** Defendant's assault conviction affirmed over claim of insufficient evidence.

¶ 2 Following a bench trial, defendant, Mary Farraj, was convicted of assault (720 ILCS 5/12-1(a) (West 2010)) and sentenced to two years of mental health probation. On appeal, defendant contends that the court erred in denying her motion for a directed finding, and that the evidence was insufficient to sustain her conviction.

¶ 3 The incident giving rise to the charges in this case took place between 5 and 6 p.m. on March 8, 2012, outside the residences of two neighbors in the 5300 block of West Rosedale Avenue in Chicago. The victim, Karen Finnern, testified that she was returning home from walking her dogs when she saw defendant, her next door neighbor, outside on her front porch. Defendant began threatening to "kick [her] ass[.]" yelling profanities, and making motions to the victim that she "was going to throw" her down and "stomp" on her. Defendant moved towards the victim as she was yelling, and came within 10 to 15 feet of her.

¶ 4 The victim described defendant's tone of voice as threatening and harsh, and stated that she felt afraid and did not feel safe when the comments were made. The victim testified that she did not say anything to defendant prior to the threats, or make any motions towards her, and she did not know why defendant would say that she wanted to "kick [her] ass." The victim stated that, at the time of the incident, she was near the street and the edge of her own property, not on defendant's property, and that she walked away into her own house. The victim stated that she does not usually come outside her residence when defendant is outside, because defendant will make comments, spit, or say things under her breath. During cross-examination, the victim acknowledged an ongoing feud between her and defendant, but stated that she had never threatened defendant.

¶ 5 Carl Ortman testified that defendant is his next door neighbor, and that the victim lived two houses down. On March 8, 2012, between 5 and 6 p.m., he was inside his house when he heard a "commotion" and went to the front door. Through his screen door, he saw defendant and the victim having a "fairly loud discussion" and heard words being exchanged. He testified that defendant looked "animated," *i.e.*, "waving her arms[,] *** stomping pretty violent[.]" and yelling, while the victim was "standing there" with her dogs and speaking in a "relatively calm"

voice. Defendant stepped off her porch towards the street where the victim was standing, and twice stated that she was going to "kick [the victim's] ass." The victim walked away, and defendant went back inside her house. Ortman stated that the victim was "towards the street" closer to defendant's home than her own home, and that she "might have been a step or two" off the street "towards [defendant's] driveway." When asked how he felt when defendant was telling the victim he was going to "kick her ass," Ortman stated that unfortunately it was something that was "kind of normal" in the neighborhood, and he was used to hearing it.

¶ 6 The State rested, and the defendant moved for a directed finding. The court denied the motion as to the assault charge, and granted it as to the separate charge of disorderly conduct.

¶ 7 Defendant testified that on the date and time in question, she went to get her mail from the corner of her porch and saw the victim standing in front of her house. The victim asked defendant why she was smiling and laughing. Defendant stated that she had "a right to laugh and *** to smile[,]" and the victim told her "you are crazy and the whole neighborhood is going to go against you." Defendant was "angry," and she responded that she would "kick her butt." She felt "threatened" by the victim's comments, but did not feel that people were going to come up and attack her at that moment. Defendant stated that she did not actually intend to commit a battery on the victim, unless "she came at [her]." During the incident, defendant did not leave her porch, and stated that she was about 15 feet away from the victim, who was standing in front of her house.

¶ 8 At the close of evidence and argument, the trial court found defendant guilty of assault. In announcing its decision, the trial court noted that defendant's testimony was contradicted by the testimony of the victim and Ortman, and found that defendant "was not being forthright" in her testimony. The court concluded that defendant told the victim she was going to "kick her

ass" while coming towards her and motioning with her hands and feet "with the purpose of putting [the victim] in reasonable apprehension of receiving a battery[.]" thus rejecting defendant's claim that the threat was used to fend off an attack or protect herself.

¶ 9 In this appeal from that judgment, defendant first challenges the trial court's denial of her motion for a directed finding. A motion for a directed finding in a bench trial asserts only that the evidence is insufficient to find defendant guilty as a matter of law. *People v. Withers*, 87 Ill. 2d 224, 230 (1981). Here, the court entered a finding in favor of defendant on the disorderly conduct charge, and denied it as to the charge of assault. Following that, defendant presented evidence through her own testimony, and failed to renew her motion at the close of this evidence. By this omission, defendant waived any error resulting from the court's ruling, and thus, no further review is warranted. *People v. Cazacu*, 373 Ill. App. 3d 465, 473 (2007).

¶ 10 Defendant next challenges the sufficiency of the evidence to sustain her conviction. In reviewing the sufficiency of the evidence in a criminal case, our inquiry is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Martin*, 2011 IL 109102, ¶ 15. In making this determination, we view the evidence in the light most favorable to the prosecution and allow all reasonable inferences from that evidence to be drawn in its favor. *Martin*, 2011 IL 109102, ¶ 15. It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the facts presented. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). This court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). For the reasons that follow, we do not find this to be such a case.

¶ 11 A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery. 720 ILCS 5/12-1(a) (West 2010). Words alone are generally insufficient to constitute an assault, but when accompanied by some action or condition, a violation of the statute may be found. *People v. Floyd*, 278 Ill. App. 3d 568, 570-71 (1996).

¶ 12 In this case, the court found the combination of defendant's words and actions sufficient to prove defendant guilty of assault. Viewing the evidence in the light most favorable to the prosecution, the record shows that defendant confronted the victim, her neighbor, as she returned home from walking her dogs. The victim testified that she did nothing to provoke defendant, who came off her porch and walked towards her, threatened to "kick [her] ass[.]" and made motions towards the victim to indicate that she would throw her down and stomp on her. The victim testified that defendant's tone of voice was threatening, and that she was frightened as a result. Based on this evidence, we conclude that the trial court could reasonably find that the victim was placed in reasonable apprehension of receiving a battery by defendant, and that defendant was therefore proved guilty of assault beyond a reasonable doubt. *People v. Peterson*, 41 Ill. App. 3d 1067, 1068-69 (1976).

¶ 13 Defendant disagrees, asserting that that the victim was impeached as to whether she had said anything to defendant prior to her saying that she would "kick her ass," and where she was at the time the incident took place. These arguments presumably go to whether defendant was legally authorized to threaten the victim to protect herself or her property.

¶ 14 In support of these arguments, defendant points to Ortman's testimony, in which he stated that he heard a loud discussion between the victim and defendant, and that defendant "might have been a step or two" off the street "towards [defendant's] driveway" during the incident.

She notes that this testimony contradicts the victim's testimony that she had not said anything to defendant prior to her threat, and that she was on the street and her own property during the incident.

¶ 15 We first observe that defendant made no claim at trial that she had a right to defend her property, and, in fact, in defendant's own testimony, she acknowledged that the victim was standing on her own property during the incident. Moreover, defendant's claims, in essence, challenge the credibility determinations made by the trial court. *People v. Berland*, 74 Ill. 2d 286, 306 (1978). As noted above, this court will not substitute its judgment regarding the weight and credibility of the testimony for that of the trial court which had the opportunity to observe the witnesses, unless the proof is so unsatisfactory as to create a reasonable doubt of defendant's guilt. *Berland*, 74 Ill. 2d at 305-06.

¶ 16 The testimony of the victim and Ortman was substantially consistent and, although Ortman testified that he heard the victim say something during the course of the incident, and that the victim "might" have been a step or two off the street towards defendant's driveway, these minor discrepancies do not destroy the credibility of either witness regarding the elements of the offense, nor do they raise a reasonable doubt of defendant's guilt. *People v. Reed*, 80 Ill. App. 3d 771, 779-80 (1980).

¶ 17 We note that nothing in Ortman's testimony indicated that the victim was speaking in a threatening nature to defendant. To the contrary, he stated that Ortman was just "standing there," and her tone of voice was calm, while defendant made aggressive movements towards the victim, and her tone of voice was "very angry." In addition, the trial court noted that defendant's testimony was contradicted by the victim and Ortman, and found that defendant "was not being forthright" in her testimony. After reviewing the evidence in the light most favorable to the

prosecution, we cannot say that the trial court's determination was so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Bradford*, 194 Ill. App. 3d 1043, 1047 (1990).

¶ 18 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.