

2014 IL App (2d) 130344-U  
No. 2-13-0344  
Order filed June 24, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of De Kalb County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CM-315
	)	
RANDY BRINEGAR,	)	Honorable
	)	William P. Brady,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction of domestic battery was affirmed where the trier of fact could reasonably have found that he choked his girlfriend and did not act in self-defense.
- ¶ 2 Defendant, Randy Brinegar, was convicted of one count of domestic battery in violation of section 12-3.2(a)(1) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.2(a)(1) (West 2012)). He appeals, challenging the sufficiency of the evidence supporting his conviction—specifically, whether the State negated his claim of self-defense beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 On March 4, 2012, defendant was arrested and charged by complaint with two counts of domestic battery. The first count alleged that he violated section 12-3.2(a)(1) of the Code in that he caused bodily harm to his girlfriend, Laurie Phillips, by choking her with his elbow. The second count alleged that he placed his hands on Phillips' neck in violation of section 12-3.2(a)(2) of the Code, which prohibits making "physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)(2) (West 2012). The matter proceeded to a bench trial on January 18, 2013. Officer Robert Russell and Phillips testified for the State. Defendant called Russell in his case-in-chief and also testified on his own behalf. The State then re-called Russell as a rebuttal witness.

¶ 5

### Testimony of Officer Russell

¶ 6 Officer Russell of the Sandwich police department testified that on March 4, 2012, at approximately 10 p.m., he was dispatched to the scene of a domestic disturbance at an apartment on West First Street. Upon meeting with Phillips, he noticed that she was crying and had a red mark on her neck. He identified People's Exhibit 1 as a photograph of Phillips' neck taken on the date in question. He said that the red spot on Phillips' neck in the photograph was consistent with an object being placed there. He also identified People's Exhibit 2 as a photograph of defendant's hands from the date of the incident.

¶ 7

Russell testified that he spoke to defendant outside the apartment. Defendant told him that he had been at the bars drinking and that Phillips became upset when he came home drunk. Defendant had an argument with Phillips during which she "wrecked his place," threw a beer can at him, threw his phone on the ground, and pushed him onto the couch. Defendant told Russell that in order to get Phillips off of him, he used his elbow and pushed against her neck. Russell

placed defendant in custody for domestic battery after defendant admitted to pressing against Phillips' neck.

¶ 8 Russell was shown Defendant's Exhibit 1, which consisted of three photographs taken after the incident. Two photographs in Defendant's Exhibit 1 were smaller-scale versions of the photographs depicted in People's Exhibits 1 and 2—specifically, the photographs of Phillips' neck and defendant's hands. The third photograph in Defendant's Exhibit 1 depicted defendant's neck and chest. The collar on defendant's t-shirt was stretched in this picture, and Russell testified that defendant appeared "disheveled." There also appeared to be a red area on defendant's right shoulder in the photograph. Russell circled this red area on a photograph marked as Defendant's Exhibit 1A, which was a larger-scale version of the photograph of defendant's neck and chest in Defendant's Exhibit 1. Russell did not know how the red mark on defendant's shoulder got there or whether it was there before this incident. Russell admitted that what he saw and photographed that night could have been signs of a struggle between two people. The trial court interjected that there were "significant differences in the coloration" between the various photographs admitted into evidence, apparently due to having been printed with different printers and enlarged to different sizes. Therefore, the court noted, the pictures "don't have complete accuracy as to coloration."

¶ 9 Russell testified that he did not observe any red marks on defendant on the night of the arrest consistent with having been struck in the face. He also said that he wrote in the police report that he observed that Phillips had been drinking alcohol. He did not recall how he knew this, but something in her demeanor indicated to him that she had been drinking. He also did not recall her level of intoxication, but he testified that it was enough for him to include it in his report.

¶ 10

Phillips' Testimony

¶ 11 Phillips testified that on March 4, 2012, she lived with defendant, who was her boyfriend at the time. At 12:30 p.m., defendant went to a dart league at a bar. She and defendant had plans to go to dinner after defendant returned from playing darts, which usually was around 4 or 4:30 p.m. However, at about 5:10 p.m., defendant called her and said that he was not coming home, but was instead going to Plano, Illinois. She asked him why he was not coming home, and he said that he was upset. She asked him to come home to talk, but he said that they would talk later. She could tell from the way that defendant was speaking during this conversation that he had been drinking.

¶ 12 Phillips testified that at approximately 6 or 6:30 p.m., she decided to go looking for defendant. She first went to defendant's friend's home in Plano, but defendant was not there. She then went to a bar and saw defendant's truck. She did not go into the bar, but stood on the sidewalk finishing her cigarette. When defendant walked out of the bar, she offered to drive him home so that he would not get a DUI. Defendant replied that he was not ready to go home, and he got in his truck and left. She believed that he was intoxicated because he was not standing straight and had slurred speech.

¶ 13 Phillips testified that she then followed defendant to his friend's house, where she briefly spoke with defendant again. Defendant indicated that he was leaving, and he got in his truck. Phillips then returned home. She estimated that she had been gone for 45 minutes to 1 hour looking for defendant and that she was back home by 7:30 p.m. at the latest.

¶ 14 According to Phillips, defendant returned home around 9:30 p.m. and appeared to be intoxicated. Phillips was upset because defendant had broken their dinner plans, and they argued about where he had been all night and why he would not come home. She admitted that she

yelled at him, but denied attacking him in any way. She testified that she was sitting on the couch in the living room asking him about where he had been and “it was like he just snapped.” He said: “You want a piece of this? You want a piece of me? I’ll give you a piece of me.” Defendant, who was left-handed, then came at her, put his right arm on her chest, and choked her with his left hand. She was able to breathe, but there was a point at which it became difficult. He would not let go, and she tried to get his hand off her throat. She then kicked him and was able to get away. She ran to her neighbor’s residence, and somebody called the police. She admitted drinking two beers that day at around 3:00 p.m.

¶ 15 Phillips was shown People’s Exhibit 1, and she testified that defendant caused the mark on her neck depicted in the photograph. This mark was in the area immediately below her throat on the right half of her body, and she claimed that defendant used his hand to choke her as opposed to only one finger. She subsequently testified that there were actually two marks depicted in People’s Exhibit 1 that were caused by defendant, and she circled those marks on the exhibit. She did not know whether it was defendant’s arm across her chest or his hand on her throat that had left the marks. She admitted that her chest sometimes naturally gets red when she does not take her blood pressure medication, but she believed that she was taking her medication at the time of the incident.

¶ 16 Defendant’s Testimony

¶ 17 Defendant testified that on the evening in question, he returned home after having been in Plano. According to defendant, Phillips was angry because they had not gone out to eat and because he did not come home when she wanted him to. He explained that he sat on the couch while she stood up and screamed at him, calling him a “lying bastard,” “a piece of shit,” and an “F-ing liar.” He responded: “Yep, I am. Yes, I am, I am.” She did not like his response, so she

slapped his face a couple of times, hitting both sides of his face before attempting to slap him a third time. He put his hand up to avoid her, and she grabbed an ashtray and threw it all over him. She grabbed his shirt and started “slapping and pulling and yanking and carrying on.” They rolled around and ended up between the couches and the coffee table. He told her to let go of him and kept trying to push her away. She finally let go and asked him where her phone was. He said that he did not know, and she then threw his phone and broke it into pieces.

¶ 18 Defendant testified that in the process of pushing Phillips to get her off of him, his hand, arm, and forearm made contact with her. He did not know where his hands and arms had landed on her body because he and Phillips were “tossing around and everything.” While he probably did touch her neck area to get her off of him, he testified that at no time did he put his hand around her throat to choke her.

¶ 19 Defendant was shown Defendant’s Exhibits 1 and 1A, which he testified depicted that Phillips had pulled on his shirt. He believed that the red mark on his shoulder area depicted in the photographs was caused either by Phillips or by something in the front room. Defendant was shown another picture in Defendant’s Exhibit 1 depicting scrapes on his hands. He testified that he is a welder, so he may have had those scrapes before the incident with Phillips. Defendant did not express an opinion about whether Phillips was intoxicated that night, but he did testify that she threw a beer can at him. He admitted that he had been drinking throughout the day before the scuffle with Phillips.

¶ 20 At the conclusion of evidence and closing arguments, the trial court found defendant guilty of both counts of domestic battery. The court explained: “If the evidence presented solely was the testimony of Miss Phillips and [defendant], there is no way that I could determine beyond a reasonable doubt whether the evidence supported a finding—or that the evidence

supported a finding of guilty.” Nevertheless, the court explained, while defendant testified that Phillips slapped him in the face, Russell testified that he had not seen any marks on defendant’s face. Although the court found that defendant testified with more particularity than Phillips as to what transpired, it noted that particularity in testimony sometimes raises questions that challenge a witness’s credibility. The court found it significant that defendant was “crystal clear that he did not put a hand on Miss Phillips’ throat,” but that the photographs showed “a single marking there consistent with a thumb mark off to the right side of her throat.” The court continued: “I don’t know how that marking gets there without there being a hand placed on the throat. It doesn’t make any sense to me for a marking specifically like that to be there without a hand to the throat, and it is consistent with the complainant’s testimony as to what happened.” While the court realized that “different people may come to different conclusions,” the court found that the State proved domestic battery beyond a reasonable doubt.

¶ 21 Defendant filed a motion to reconsider on February 13, 2013. On March 1, 2013, the trial court denied that motion and proceeded to sentencing. On count one (bodily harm), the trial court sentenced defendant to 18 months of conditional discharge, 30 days in jail, and assessed certain fines and costs. The jail sentence was stayed pending defendant’s completion of a domestic abuse program. The court vacated the guilty finding on count two (contact of an insulting or provoking nature) upon entering a sentence on count one. Defendant timely appeals.

¶ 22

## II. ANALYSIS

¶ 23 The sole issue in this appeal is whether the State negated defendant’s claim of self-defense beyond a reasonable doubt. When a defendant challenges the sufficiency of the State’s evidence, a reviewing court must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt.” (Emphasis in original and internal quotation marks omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). “[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt.” *Cunningham*, 212 Ill. 2d at 279. “In conducting this inquiry, the reviewing court must not retry the defendant” (*Cunningham*, 212 Ill. 2d at 279), but must “carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness” (*Cunningham*, 212 Ill. 2d at 280). “[T]he fact finder’s decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court.” *Cunningham*, 212 Ill. 2d at 280.

¶ 24 Defendant was convicted of domestic battery under section 12-3.2(a)(1) of the Code, which provides that “[a] person commits domestic battery if he or she knowingly without legal justification by any means \*\*\* [c]auses bodily harm to any family or household member.” 720 ILCS 5/12-3.2(a)(1) (West 2012). Defendant does not dispute that Phillips was a member of his household and that he caused her bodily harm. However, he disputes that he acted without legal justification. He argues that he acted in self-defense consistent with section 7-1(a) of the Code, which provides, in relevant part: “A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other’s imminent use of unlawful force.” 720 ILCS 5/7-1(a) (West 2012).

¶ 25 Because defendant testified that Phillips attacked him, it was the State’s burden to prove beyond a reasonable doubt that defendant’s actions were not justified as self-defense. *People v. Denny*, 221 Ill. App. 3d 298, 301 (1991). Self-defense consists of six elements: (1) force is threatened against a person; (2) that person is not the aggressor; (3) the danger of harm is

imminent; (4) the force threatened is unlawful; (5) the person threatened actually believes that (a) danger exists, (b) the use of force is necessary to avert the danger, and (c) the kind and amount of the force that he uses are necessary; and (6) these beliefs are reasonable. *Denny*, 221 Ill. App. 3d at 301. The State carries its burden of proof to contradict the defendant's claim of self-defense by negating any one of these elements. *People v. Belpedio*, 212 Ill. App. 3d 155, 161 (1991). The question whether a defendant acted in self-defense is a question of fact for the fact finder. *Denny*, 221 Ill. App. 3d at 301.

¶ 26 Applying these standards, we hold that the trial court, as the trier of fact, could rationally have found that the State negated the second element of defendant's claim of self-defense by proving beyond a reasonable doubt that defendant was the aggressor. Phillips testified in no uncertain terms that defendant acted as the aggressor. She explained that defendant "snapped" during an argument, put his right arm on her chest, and choked her with his left hand. Looking at a picture of herself taken on the date of the incident, she testified that defendant caused two marks that were visible in the picture. The trial court justifiably relied on the corroborative evidence to conclude that Phillips' testimony was more credible than defendant's. Specifically, the court reasonably doubted defendant's claim that Phillips initiated the violence by slapping him several times where Russell, the responding officer, observed no marks on defendant's face. Additionally, while defendant admitted to "probably" touching Phillips' neck area, the trial court could have reasonably found that the photographs admitted into evidence indicated that Phillips had been choked, which defendant denied doing. Accordingly, the trial court reasonably concluded that in light of the corroborative evidence, Phillips' testimony was credible and the State proved its case beyond a reasonable doubt.

¶ 27 Defendant emphasizes that the trial court admitted that if the evidence at trial only consisted of defendant's testimony and Phillips' testimony, the court could not have concluded beyond a reasonable doubt that the State proved its case. Defendant advances numerous arguments on appeal about why Russell's testimony and the photographs should not have tipped the scales in favor of believing Phillips' version of the events. However, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *People v. Brown*, 2013 IL 114196, ¶ 48. As we stated previously, and as we explain in greater detail below in addressing defendant's specific arguments, the trial court could have rationally found that Russell's testimony and the photographs corroborated Phillips' testimony.

¶ 28 Defendant attempts to minimize the importance of the fact that Russell did not observe any red marks on defendant's face after the incident. The trial court found that Russell's testimony contradicted defendant's claim that Phillips acted as the aggressor by slapping him on both sides of his face. Defendant suggests that "[n]ot seeing any red marks on defendant's face was not of sufficient significance to support Phillips' account of the events, where Russell did observe evidence of the use of force on the defendant's person." It is true that defendant's shirt appears from the photographs to have been stretched and that he had a red mark near his right shoulder area. It is also true that Russell testified that he saw signs of a struggle between two people. However, this evidence corroborates Phillips' testimony that she tried to get defendant's hand off of her throat and kicked him to get him away. Phillips admitted to scuffling with defendant, so the fact that defendant looked like he had been in a scuffle did not necessarily cast doubt on Phillips' testimony. Defendant also criticizes the trial court's reliance on this portion of Russell's testimony because there were no pictures taken of defendant's face after the incident.

While none of the pictures introduced at trial depicted defendant's face, the trial court reasonably concluded that Russell's testimony about the absence of red marks on defendant's face corroborated Phillips' testimony and undermined defendant's credibility.

¶ 29 Defendant additionally offers several reasons why he believes that the trial court erred in finding that the photographs corroborated Phillips' testimony and called his own story into question. He first claims that the trial court misstated the evidence by asserting that defendant was "crystal clear that he did not put a hand on Miss Phillips' throat," yet the photographs showed "a single marking there consistent with a thumb mark off to the right side of her throat." The trial court reasoned, "I don't know how that marking gets there without there being a hand placed on the throat." Defendant notes that while he denied choking Phillips, he admitted that he probably touched her neck area in his attempt to get her off of him. We find nothing unreasonable in the trial court's conclusion that the photographs depicting marks on Phillips' body corroborated Phillips' testimony and cast doubt on defendant's testimony. There is a meaningful difference between "choking" a person and merely "touching" a person's neck area. The trial court was entitled to find that the photographic evidence was consistent with Phillips having been choked.

¶ 30 Defendant also argues that the location of the marks on Phillips' neck—specifically, the apparent thumb mark on the right side of her throat—was inconsistent with Phillips' testimony that she was choked with defendant's left hand. Defendant insists that, had Phillips been choked, she would have had red marks on the *left* side of her throat as well as additional marks where each of defendant's fingers touched her. Again, the trial court was entitled to find that the photographic evidence was consistent with Phillips having been choked. To conclude that there should have been marks on the left side of Phillips' throat would require us to impermissibly

assume facts not in the record about how defendant could have or did position his hands while choking her. Additionally, because there is no way to know how many pressure points defendant applied, we cannot accept defendant's hypothesis that there should have been marks from each of his fingers if he indeed choked her.

¶ 31 Defendant next argues that the trial court erred in finding that the various photographs corroborated Phillips' testimony where the coloration was inconsistent and unreliable. The trial court recognized that the photographs were "subject to some varying levels of interpretation because of the coloration" and that there were "two pictures of the same area that show[ed] completely different levels of redness." Indeed, the court admitted that it did not know how red Phillips' breastbone area was. Defendant introduced into evidence the smaller version of the photograph of Phillips' neck, which showed more redness than the larger-scale photograph admitted by the State. Defendant now argues that the photographs, some of which he introduced into evidence, "should not have been relied on to any degree to find defendant guilty because they were not reliable." The trial court properly noted for the record that the accuracy of the coloration in the photographs was questionable. Indeed, we note that Phillips' pink shirt was notably darker and more vivid in the version of the photograph introduced by the defense. Nevertheless, both photographs of Phillips depicted an area of redness in the center of her throat and a darker spot on the right side of her throat. The trial court appropriately considered the accuracy of the coloration, and we cannot conclude that the court erred in relying on the photographs.

¶ 32 Defendant additionally notes that the redness on Phillips' throat as depicted in the photographs was "in an area that Phillips admitted turns red because of medication she was taking." However, Phillips unambiguously testified that defendant caused the redness. She also

testified that while her chest sometimes naturally gets red when she does not take her blood pressure medication, she believed that she was taking her medication at the time of the incident. There was no evidence to suggest that Phillips' chest was red in the photographs due to a medical issue.

¶ 33 Finally, defendant asserts that this case is similar to *People v. Eichelberger*, 81 Ill. App. 3d 1012, 1015-16 (1980), in which the appellate court reversed a battery conviction because the complainant's testimony was "so implausible and contrary to human experience as to cast reasonable doubt of defendant's guilt" and the eyewitness's testimony was unreliable and contradicted by both the victim and the defendant. *Eichelberger* is not factually analogous to the present case. In *Eichelberger*, the complaining witness claimed that defendant punched him in the face and broke his nose, yet a police officer at the scene did not observe the complainant's supposed injuries. *Eichelberger*, 81 Ill. App. 3d at 1015. Additionally, the complainant did not tell the officer that defendant had punched him in the face, but rather said that he had been pushed or shoved. *Eichelberger*, 81 Ill. App. 3d at 1015. Nor did the complainant, who purportedly had a broken nose, go to the hospital until five or six hours after the incident. *Eichelberger*, 81 Ill. App. 3d at 1015. Finally, the complainant did not sign a criminal complaint against the defendant until a month and a half after the incident. *Eichelberger*, 81 Ill. App. 3d at 1015. Unlike the complainant in *Eichelberger*, Phillips immediately reported her injuries to police, and the responding officer noted injuries consistent with Phillips' report. We cannot conclude that Phillips' testimony was implausible or contrary to human experience. Accordingly, *Eichelberger* does not support reversing defendant's conviction.

¶ 34 Viewing the evidence in the light most favorable to the State, we hold that the trial court reasonably could have accepted Phillips' testimony as true beyond a reasonable doubt. *See*

*Cunningham*, 212 Ill. 2d at 279. Her testimony established the elements of domestic battery and negated defendant's self-defense claim beyond a reasonable doubt.

¶ 35

### III. CONCLUSION

¶ 36 For the reasons stated, we affirm defendant's conviction of domestic battery.

¶ 37 Affirmed.