

SIXTH DIVISION
April 18, 2014

No. 1-12-2344

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. 11 DV 41423
)	
ELFRI GUZMAN,)	Honorable
)	Pamela M. Leeming,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for domestic battery affirmed where evidence established defendant's guilt beyond a reasonable doubt despite trial court's finding a portion of complainant's testimony was not believable.

¶ 2 Following a bench trial, defendant, Elfri Guzman, was convicted of domestic battery and sentenced to one year of conditional discharge. The victim was Leticia Saldana Guzman (Ms. Guzman), defendant's estranged wife. On appeal, defendant contends his conviction must be reversed where the evidence was insufficient to establish his guilt, particularly where a critical portion of the complainant's testimony was found to be unbelievable. We affirm.

¶ 3 At trial, Ms. Guzman testified that on November 19, 2011, at approximately 8:35 a.m., defendant met her at their home located at 2141 Westchester Boulevard, Westchester, Illinois

(the residence). Defendant and Ms. Guzman were involved in divorce proceedings at that time, and defendant was not living in the residence. Defendant was there to pick up the keys to two vehicles—a Chevrolet Impala (Impala) and a Chevrolet Caprice (Caprice)—pursuant to an order of the circuit court in their divorce proceeding. Ms. Guzman met defendant outside of the residence; defendant appeared to be angry and was clenching his teeth. Ms. Guzman gave defendant the keys to the Impala and told him she did not have the keys to the Caprice. Defendant responded, "you're a joke." They proceeded to the garage where the vehicles were parked. Inside the garage, defendant opened the door to the Impala, and became upset when he noticed the floor mats were missing. Defendant asked Ms. Guzman about the missing floor mats. Ms. Guzman did not "get to respond because he [called her] a "f***ing b***h and he got mad." Defendant was two feet from Ms. Guzman. She testified defendant then moved toward her, "straight at my neck." Defendant placed both his hands on her neck, and "grabbed" her neck. She felt a burning pain around her neck. Ms. Guzman testified she "fought it off and I ducked under and left." After Ms. Guzman broke free from defendant, she ran into the residence. Once inside, she first telephoned her stepfather and then the police. Ms. Guzman testified the police "arrived very fast." She testified her neck was injured and "believed" the injury was on the left side.

¶ 4 A police officer photographed her neck. Ms. Guzman identified photographs in a group exhibit as depicting the "marks" and "finger marks" on her neck as a result of the incident.

¶ 5 On cross examination, Ms. Guzman did not remember when the police arrived at the residence. She said the officer did not take a photograph of the left side of her neck. Ms. Guzman denied pushing or slapping defendant that morning and denied telling the police she pushed and slapped defendant.

¶ 6 Ms. Guzman identified an image on a cell phone, and testified that both she and defendant appeared in the image, with defendant in the foreground. She did not see whether defendant had a red face in the photograph. Ms. Guzman was holding a phone in the photograph. She did not recall whether she informed the police officer on the day of the incident that defendant had said to her, "f*** you bitch," or that defendant was angry about the floor mats. At the residence, she informed the officer that defendant had grabbed her neck, but she was not specific as to whether he had used both hands, or one hand. Ms. Guzman explained that she was "in shock." Later, at the police station, Ms. Guzman informed the police she remembered defendant had used both his hands.

¶ 7 Officer Adam Rauglas of the Westchester police department testified that on November 9, 2011, he responded to a "possible domestic" call at the residence. The officer testified he arrived at the residence at approximately 8 a.m. Defendant was in a vehicle parked on the driveway and talking on his phone to his lawyer. Defendant informed Officer Rauglas that he was at the residence to pick up a vehicle, and argued with Ms. Guzman. Defendant said Ms. Guzman slapped him in the face and shoved him. Defendant's condition "appeared normal." Officer Rauglas did not see that defendant's face was red or bruised.

¶ 8 After speaking with defendant, Officer Rauglas interviewed Ms. Guzman inside the residence. Officer Rauglas testified that Ms. Guzman "was very upset, shaking and she appeared scared. And I also observed marks on the right side of her neck." Ms. Guzman reported that defendant had placed his hands on her, but could not recall whether he used one hand or two hands. Ms. Guzman's did not mention pain on the left side of her neck. Officer Rauglas did, however, observe red marks on the right side of Ms. Guzman's neck.

¶ 9 Another officer took photographs of the right side of Ms. Guzman's face and neck.

During his testimony, Officer Rauglas identified photographs which depicted the marks on the right side of Ms. Guzman's neck, including a close-up of finger marks on her neck. Officer Rauglas testified the photographs truly and accurately portrayed the red marks he had observed on Ms. Guzman's neck. Ms. Guzman told the officer that she lived at the residence, but failed to mention that, at the time of the incident, she had been sleeping at her mother's house in Franklin Park and that the residence was in foreclosure. Officer Rauglas, on cross examination, testified Ms. Guzman told him she had slapped and shoved her husband "in defense." Ms. Guzman did not tell the officers about the missing floor mats, or that defendant swore at her. At the scene, Ms. Guzman could not remember if defendant had used both hands, but she had a better recollection at the station. After consulting the police report, Officer Rauglas testified he had arrived at the residence about 10:30 a.m., rather than 8 a.m., as he had previously testified.

¶ 10 Defendant testified on his own behalf. On direct examination, he denied choking Ms. Guzman or inflicting any red marks on her body. Defendant identified a photograph on his cell phone as depicting his face as red. Ms. Guzman was in the photograph. The photograph was admitted into evidence. On cross examination, defendant testified that he and Ms. Guzman went to the garage. He observed files on the garage floor and he bent down to look through them and find the titles to the vehicles. When he stood up, Ms. Guzman pushed him. Defendant did nothing and just stood back. "I told her I didn't want to do nothing here. And then she says, I don't [want] you to come to my house and disrespect me. Then she slapped me." Defendant asserted he did not slap Ms. Guzman or put his hands around her throat. He walked back to his truck to call his sister and his attorney. Defendant did not call the police

¶ 11 After the parties rested, the trial court found defendant's testimony to be unbelievable. The trial court noted the parties had been going through a nonamicable divorce, and that Ms.

Guzman and defendant had engaged in an argument in the garage. The trial court stated:

"At this point I have determined credibility and I believe Leticia Guzman. I believe what happened. They got into an argument and the defendant became so upset he did place his hands on her. It's corroborated by the evidence before me in which the independent police officer came shortly after and took the picture. There are hand marks and finger marks on the side of the neck. I don't know why there are no finger marks on the other side, but there was more pressure on one side. But I did believe that he grabbed her by the neck. I believe she did push him and slap him at that time and ran inside."

After denying defendant's motion to reconsider, the trial court sentenced defendant to one year of conditional discharge. Defendant filed a timely appeal.

¶ 12 On appeal, defendant argues he was not proven guilty beyond a reasonable doubt because the finding of guilty was based solely on the unbelievable testimony of Ms. Guzman. Defendant asserts the finding must be reversed because the trial court had rejected Ms. Guzman's testimony that she had not slapped or pushed defendant.

¶ 13 When a defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Id.* This standard applies whether the evidence is direct or circumstantial. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A criminal conviction will not be reversed overturned unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 14 In a bench trial, the trial court as the trier of fact is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not believable or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 15 To prove defendant guilty of domestic battery, the State was required to show he knowingly, without legal justification, caused bodily harm to a family member. 720 ILCS 5/2-3.2(a)(2) (West 2011). The testimony of the victim alone may suffice to prove the elements of domestic battery beyond a reasonable doubt. *People v. Taher*, 329 Ill. App. 3d 1007, 1018 (2002).

¶ 16 Ms. Guzman, defendant's estranged wife, testified that defendant became angry, moved toward her, and grabbed her neck. She then felt a "burning pain." The police photographs showed red marks to the right side of her neck. Officer Rauglas observed that Ms. Guzman was upset and her neck was bruised on the right side. The officer did not observe any marks on defendant. The trial court found Ms. Guzman's testimony, as to defendant grabbing her neck, believable. This evidence was sufficient to find defendant guilty of domestic battery beyond a reasonable doubt.

¶ 17 Defendant asserts Ms. Guzman was the aggressor by pushing and slapping him.

Defendant notes Ms. Guzman's testimony—denying she slapped and pushed defendant and having told the police the same—was impeached by Officer Rauglas. The officer testified Ms. Guzman admitted to slapping and pushing defendant "in defense." Ms. Guzman testified she "fought off" defendant after he grabbed her neck. The trial court specifically found defendant's testimony to be unbelievable. The trial court believed Ms. Guzman pushed and slapped defendant *after* defendant grabbed her neck and then ran away. The trial court was free to choose those portions of Ms. Guzman's testimony it found to be believable, and the fact that a portion of her testimony may have been impeached is an insufficient basis to disturb the finding of guilty. See *People v. Adams*, 394 Ill. App. 3d 217, 232 (2009).

¶ 18 Defendant asserts "the court did not address which party struck first, whether one of the parties acted in self-defense ***." We disagree. The trial court found defendant to be unbelievable and then stated: "I did believe that he grabbed her by the neck. I believe she did push him and slap him at that time and ran inside." Clearly, the trial court found defendant was the initial aggressor.

¶ 19 Defendant proffers claims of alleged inconsistencies in Ms. Guzman's testimony which requires the reversal of his conviction. We find these claims are either not supported by the record, or not sufficient to overturn the conviction.

¶ 20 Defendant claims Ms. Guzman testified the police arrived at the residence at 9 a.m., whereas Officer Rauglas testified he arrived at the residence at 8:00 a.m. The record clearly shows, however, that Ms. Guzman testified she was not aware of the exact time the police did arrive. Further, Officer Rauglas himself was inconsistent as to the time of his arrival where, initially, he testified he had arrived at the residence at 8 a.m., then later that he arrived there at 10:30 a.m. Defendant asserts that Ms. Guzman testified she lived at the residence, then was

impeached by the evidence that at that time, she was staying with her mother in Franklin Park. However, Ms. Guzman explained that because the residence was in foreclosure, she went there daily to prevent vandalism, and was staying at her mother's home with her children. Defendant argues Ms. Guzman testified she informed the police that defendant called her a "f***ing bitch," and that the argument with defendant erupted over vehicle floor mats, but that Officer Rauglas testified she did not discuss these matters with him. However, Ms. Guzman, in fact, testified she could not remember discussing these matters with Officer Rauglas. Therefore, there was no impeachment on this point. Defendant contends Ms. Guzman testified about injury to the left side of her neck, but that Officer Rauglas testified he saw no bruising there and that she did not complain of pain in that area to him. There is no dispute, however, Officer Rauglas observed bruising to the right side of her neck and testified the photographs accurately depicted those bruises. Any inconsistencies as to which side of her neck hurt or had marks, does not render the conviction reversible. Defendant claims Ms. Guzman was inconsistent with regard to whether defendant used one or two hands when he attempted to choke her. Ms. Guzman, however, testified she did not specify that fact at the scene of the incident, however, at the police station, she informed the police defendant had used both hands when he attempted to choke her.

¶ 21 Finally, defendant contends the nonamicable divorce which the parties were engaged in provided a motive for Ms. Guzman to manufacture her claim that defendant grabbed her neck. Nothing in the record supports this speculation.

¶ 22 Furthermore, the trial court was aware of the reasons defendant claimed Ms. Guzman was not a believable witness. It is the responsibility of the trier of fact to accept or reject as little or as much of Ms. Guzman's testimony as it saw fit. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22 (citing *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004)). Where a trier of fact finds

the State's witnesses more believable than the defendant's denial of committing the crime, despite contradictions or omissions in the testimony of the State's witnesses, and where that finding has evidentiary support, we will not disturb it on appeal. *People v. Berrier*, 362 Ill. App. 3d 1153, 1170 (2006). The arguments defendant raises on appeal, that Ms. Guzman's testimony was untruthful and inconsistent, are the same arguments defense counsel raised in closing argument at trial and in a motion to reconsider the judgment. As the same arguments are now raised on appeal, it is not our prerogative to retry the case. See *People v. Castillo*, 372 Ill. App. 3d 11, 20 (2007).

¶ 23 Viewed in the light most favorable to the State, the evidence presented at trial was not so improbable or unsatisfactory that it created a reasonable doubt as to defendant's guilt. Accordingly, we affirm the judgment of the trial court.

¶ 24 Affirmed.