2014 IL App (2d) 121105-UB
No. 2-12-1105
Order filed June 26, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KRISTEN SHAW, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 11-CF-417 Honorable Robbin J. Stuckert, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of aggravated domestic battery, specifically that defendant committed insulting or provoking contact: the trial court was entitled to credit the State's evidence that defendant placed a pillow over the victim's face, infer that defendant impeded the victim's breathing, and conclude, despite the victim's reaction, that her doing so was insulting or provoking.

¶ 2 After a bench trial, defendant, Kristen Shaw, was convicted of aggravated domestic battery (720 ILCS 5/12-3.2(a)(2), 3.3(a-5) (West 2010)). She was sentenced to 36 months of probation. On appeal, she asserts that her conviction should be reversed where the State failed to

prove "insulting or provoking" contact. See 720 ILCS 5/12-3.2(a)(2) (West 2010). We disagree. Thus, we affirm defendant's conviction.

¶ 3 John Compton testified that he and defendant are the parents of D.H. One night, when D.H. was four months old, Compton and defendant were arguing when they heard D.H. start to cry. Defendant went into D.H.'s bedroom and after a minute D.H. stopped crying. Compton entered the bedroom and saw that defendant was sitting on the bed and holding a pillow over D.H's face, covering his mouth and nose. Compton heard "gurgling." Compton then removed the pillow from D.H's face, using very little force. D.H. smiled; he did not have red marks or seem upset. Subsequently, defendant grabbed a second pillow and placed it on D.H.'s face without applying any pressure, and Compton removed it using no force. When Compton asked defendant what she was doing, defendant replied that it was none of his business. The next morning Compton called the police.

¶ 4 Defendant was taken to the police station and interrogated by Detective Brad Carls. In her videotaped statement, defendant denied trying to kill D.H.; she did not know why she put the pillow to his face. Detective Carls asked her how long the pillow was on D.H.'s face, and she replied, "for a second or two." Defendant said that she felt hopeless and wanted to die.

¶ 5 Defendant testified that she and Compton were arguing on the night of the incident. Compton was holding defendant by the neck and choking her when she heard D.H. crying. Compton let go of defendant's neck and she went to see D.H. Compton followed and would not let defendant take D.H. out of the room. Defendant put D.H. back in his crib. The next day, police picked her up from work and took her to the police station.

¶ 6 At trial, defendant admitted that she had previously told Compton that she thought about putting a pillow on D.H.'s face. She said that, at the time, she thought she might need to see a

doctor or take antidepressants. She never had that thought again and never touched a pillow to D.H.'s face. In her interview with Detective Carls, she did not deny placing the pillow on his face, but only because she thought that Compton could hear what she was saying.

¶ 7 The trial court credited Compton's testimony and discredited defendant's denial of the events. The court then convicted defendant of aggravated domestic battery, finding that "certainly impeding in any manner the breathing of a four-month-old is insulting and provoking." After sentencing, defendant moved to reconsider, and the court denied that motion. On appeal, we held that defendant's motion to reconsider was untimely, that the revestment doctrine did not apply, and that we lacked jurisdiction to reach the merits of the appeal. *People v. Shaw*, 2014 IL App (2d) 121105. However, the supreme court entered a supervisory order directing us to vacate that ruling and consider the merits. *People v. Shaw*, No. 117597 (Ill. May 19, 2014). We do so now.

¶ 8 As charged here, a domestic battery occurs when a person makes physical contact of an insulting or provoking nature with a family or household member. See 720 ILCS 5/12-3.2(a)(2) (West 2010). The offense becomes aggravated when the person "strangles" the victim by "intentionally impeding the normal breathing *** of an individual *** by blocking the nose or mouth of that individual." See 720 ILCS 5/12-3.3(a-5) (West 2010). Here, defendant asserts that the State did not prove beyond a reasonable doubt that defendant's conduct was insulting or provoking.

¶ 9 In evaluating an attack on the sufficiency of the evidence, we do not retry the case. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Instead, we defer to the trial court's determinations of the credibility of the witnesses, the weight of their testimony, and the reasonable inferences from the evidence. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). We must

deem the evidence sufficient if, viewing it 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. *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000).

¶ 10 Here, the trial court was entitled to credit Compton's testimony. See *People v. Slim*, 127 Ill. 2d 302, 307 (1989) (in a bench trial, trial court must resolve conflicts in the evidence). Having done so, the court rationally found that defendant had impeded D.H.'s breathing and that her doing so was insulting or provoking. As noted, Compton testified that defendant held a pillow to D.H.'s face and that D.H. was "gurgling." The court properly drew the commonsense inference that D.H.'s breathing was impeded. *People v. Brown*, 2012 IL App (2d) 110640, ¶ 23 (trial court may draw commonsense inferences). Then, the court properly drew the equally commonsense inference that, by impeding D.H.'s breathing, defendant's conduct was insulting or provoking.

¶ 11 Defendant argues conclusorily that there was no evidence that D.H.'s breathing was impeded. However, as noted, the trial court was entitled to draw that inference from Compton's testimony. Defendant also observes that, even according to Compton, D.H. smiled and did not seem upset when the pillow was removed. Defendant thus infers that D.H. had not been insulted or provoked. Defendant presumes that "even with a baby's limited communication ability he would have cried or looked distraught." However, as defendant admits, "D.H. may not have [had] the same response to insulting or provoking conduct as an adult." Thus, the trial court was not required to interpret D.H.'s reaction to the pillow's removal as evidence that he was not insulted or provoked by its presence. Indeed, the court could have inferred that D.H.'s reaction was a sign of gratitude for his unimpeded breathing, rather than a sign of approval of defendant's having impeded it.

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

¶ 13 Affirmed.