2014 IL App (2d) 140570-U
No. 2-14-0570
Order filed December 23, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CM-3532
DANIEL LARSON,	)	Honorable John A. Noverini,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant acted knowingly and thus was guilty of domestic battery: given the victim's testimony and the surrounding domestic dispute, the trial court was entitled to find that defendant threw a phone at the victim, rather than tossed it to her, and thus was aware of the practical certainty of the resulting battery.

¶ 2 Following a bench trial, defendant, Daniel Larson, was convicted of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1)(a), (2) (West 2012)), and he was sentenced to one year of conditional discharge. On appeal, defendant argues only that the State failed to prove beyond a reasonable doubt that he acted knowingly. For the reasons that follow, we affirm.

¶ 3 The facts relevant to resolving the issue raised are as follows. In August 2013, Carrie Johnson shared her home with defendant, her boyfriend at that time. Both Johnson and defendant described their relationship as unstable, in that Johnson had accused defendant of cheating on her.

¶ 4 Starting at about midnight on August 26, 2013, defendant and Johnson called the police three or more times, alerting them to various domestic disputes occurring between them. On the last occasion, at around 3 a.m., defendant called the police because Johnson had damaged defendant's personal items.

¶ 5 When the police arrived, they separated defendant and Johnson. Johnson remained upstairs while defendant, whom the police described as agitated and intoxicated that entire night, remained in the kitchen with the police. At one point, Johnson came downstairs to retrieve her cell phone, but, before she could get her phone, Officer Tom Murray ordered her to go back upstairs. Defendant, who was standing at the opposite end of the kitchen, grabbed the cell phone off the kitchen counter, walked down the hallway, and stopped at the foot of the stairs. Defendant then threw the cell phone at her.

¶ 6 According to Johnson, she was standing seven stairs, or approximately three or four feet, away from defendant when he threw the phone. When defendant threw the phone, he said, "[H]ere's your phone, you fucking slut." Defendant threw the phone underhand at Johnson "pretty fast," meaning "fast enough [so] that [she] could not get out of the way." The phone hit Johnson in the mouth, causing it to bleed and swell. Johnson screamed and started to cry.

¶ 7 Murray testified that, after Johnson started going back upstairs, defendant took the phone off of the kitchen counter, walked past Murray 7 to 10 steps, and stood at the bottom of the stairs. Although defendant had called Johnson derogatory names that night, including referring to her as a "slut," Murray did not recall defendant calling Johnson a bad name while defendant was standing at the bottom of the stairs. Murray, who could see only defendant at this point, saw defendant

"fling" Johnson's phone underhand or "maybe a little more to the side." Murray could not estimate the speed at which defendant threw the phone.

¶ 8 Defendant testified that, as Johnson proceeded to go back upstairs, she hollered out that she wanted her cell phone. Defendant, who saw the phone sitting on the counter, grabbed the phone off of the counter, walked past Murray, and was going to hand the phone to Johnson. However, because Johnson was partially up the stairs, on the seventh step perhaps, defendant tossed it to her underhand. Johnson failed to catch the phone, it bounced off of her hand, and it hit her in the mouth.

¶ 9 After defendant threw the phone, he was placed under arrest. Murray indicated that defendant seemed "nonchalant" about hitting Johnson and was "surprised" that he was arrested.

¶ 10 Based on this evidence, the trial court, without making any explicit findings of fact, found defendant guilty of two counts of domestic battery. Defendant was sentenced, and this timely appeal followed.

¶ 11 On appeal, defendant argues that he was not proved guilty beyond a reasonable doubt of domestic battery. "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In considering a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, " 'the relevant question is 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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not

substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 12 To prove defendant guilty of domestic battery, the State needed to show that a battery occurred and that defendant and Johnson had a domestic relationship. Specifically, as relevant here, the State needed to establish that defendant knowingly and without legal justification and by any means (1) caused bodily harm to any family or household member or (2) made physical contact of an insulting or provoking nature with any family or household member.[1] 720 ILCS 5/12-3(a) (West 2012) (battery); 720 ILCS 5/12-3.2(a) (West 2012) (domestic battery); see also *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011).

¶ 13 Defendant takes issue only with whether he acted knowingly. A defendant "acts knowingly" if "he is consciously aware that his conduct is of such nature" that it is "practically certain" to cause the result proscribed by the offense. See 720 ILCS 5/4-5 (West 2012). In assessing whether defendant acted with knowledge, we note that a defendant is presumed to intend the probable consequences of his actions and need not admit that he acted knowingly. *People v. Lind*, 307 Ill. App. 3d 727, 735 (1999). Whether a defendant acted knowingly often must be inferred from circumstantial evidence. *People v. Hall*, 273 Ill. App. 3d 838, 842 (1995). Circumstantial evidence is proof of certain facts and circumstances from which the trier of fact may infer other connected facts that human experience dictates usually and reasonably follow. *People v. Grathler*, 368 Ill. App. 3d 802, 808 (2006).

¶ 14 The sole limitation on the use of circumstantial evidence is that the inferences drawn from the evidence must be reasonable. *Id.* "Circumstantial evidence is sufficient to sustain a

[1] The complaint charged defendant with knowingly causing bodily harm and knowingly making contact of an insulting or provoking nature.

conviction if it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Gomez*, 215 Ill. App. 3d 208, 216 (1991). That is not to say that each link in the chain of circumstances must be proved beyond a reasonable doubt. *Id.* Rather, it is sufficient if all the circumstantial evidence taken together satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *Id.*

¶ 15 Here, we believe that that threshold has been met. The evidence established that defendant and Johnson had been arguing for several hours in the early morning of August 26, 2013. At that time, the couple's relationship was unstable at best. When the police were at Johnson's home at around 3 a.m., they needed to separate the couple by sending Johnson upstairs and staying with defendant in the kitchen. Murray, who remained with defendant, described defendant as intoxicated and agitated, and he also indicated that defendant used derogatory terms repeatedly that morning when he was talking about Johnson. While the police were still at Johnson's home, Johnson came downstairs, wishing to retrieve her cell phone. Rather than allow Johnson to look for her phone, the police ordered her to go back upstairs. At that point, defendant saw Johnson's phone on the kitchen counter. Instead of telling the police about this, defendant grabbed the phone and proceeded to the stairs. Although, according to Johnson, defendant called her a derogatory name when he was standing there, we find it immaterial whether defendant said anything at all. That is, regardless of what defendant might have said, defendant, while standing only three or four feet away from Johnson, threw the phone at her. Although defendant described the throw as a "toss," the fact that the phone struck Johnson in the face, causing her lip to swell and bleed, suggests that it was much more than that. Indeed, Johnson, who was the only person other than defendant who testified about the speed at which the phone was thrown, stated that defendant threw the phone with such force that she could not get out of the way. Viewing all of the evidence in the light most favorable to the State, a rational trier of fact could have inferred that defendant

was aware of the practical certainty that he would hit Johnson with the phone. Thus, we simply must conclude that the State proved beyond a reasonable doubt that defendant acted knowingly.

¶ 16 Defendant claims that Johnson should not have been believed, because her testimony differed from his and Murray's on some tangential matters. Specifically, defendant notes that Johnson's testimony conflicted with the other testimony on where defendant was standing when she came downstairs, how many police officers were in the kitchen, and whether defendant yelled a derogatory term at her before he threw the phone.[2]

¶ 17 When, as here, the trial court does not express factual findings, we must presume that the trial court resolved all issues and controverted facts in favor of the prevailing party, which, here, is the State. See *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990). "Thus, we must take questions of testimonial credibility as resolved in favor of the [State], and must draw from the evidence all reasonable inferences in support of the judgment." *Id.* In doing so, "[we] will neither presume that error occurred in the trial court nor assume that the trial court misunderstood the applicable law." *Id.* at 955. Here, despite any tangential inconsistencies, the trial court was entitled to credit Johnson's testimony. See *People v.* Cunningham, 212 Ill. 2s 274, 283 (2004). This was especially so where defendant's theory was implausible, particularly his suggestion that, after fighting with Johnson for several hours and being agitated and intoxicated, he wished nothing more than to kindly give Johnson the cell phone for which she was looking. We presume that the trial court properly rejected defendant's theory as such. See *People v. Hart*, 214 Ill. 2d 490, 520 (2005).

¶ 18 For these reasons, the judgment of the circuit court of Kane County is affirmed.

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[2] Defendant also claims that he and Murray saw defendant throw the phone short. Neither the record nor defendant's statement of facts supports this.

¶ 19 Affirmed.