2016 IL App (2d) 140920-U
No. 2-14-0920
Order filed December 12, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CM-2547
DESHAWN L. GREEN,	)	Honorable Brian Dean Shore,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of domestic battery: the jury was entitled to find that defendant made contact with the victim, as it could credit the victim's statement to the police over her trial testimony, and that, given the context, the contact was insulting or provoking; (2) defendant showed no reversible error, and thus no plain error, in the State's failure to perfect its impeachment of a witness: defendant was not prejudiced, as the State's failure tended to reinforce the witness's testimony and the State did not further rely on the purported impeachment.

¶ 2 Following a jury trial in the circuit court of Winnebago County, defendant, Deshawn L. Green, was found guilty of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)) and was sentenced to 80 days in the Winnebago County jail, with 40 days' credit for time served.

Defendant argues on appeal that the State failed to prove his guilt beyond a reasonable doubt. Defendant alternatively argues that plain error occurred when the State attempted to impeach a witness with a prior inconsistent statement, but failed to perfect the impeachment with evidence of the statement. We affirm.

¶ 3 The prosecution was based on the charge that "defendant [k]nowingly and without legal justification, made physical contact of a provoking nature with Christine [L.,] a family member of *** defendant, in that *** defendant pushed his body into her trying to force her out of the way." At trial, Christine testified that, on July 26, 2014, her family was gathered for her grandson's fourth birthday party. Christine's daughter, Melissa, was present, as was defendant, who was married to Melissa. An argument arose between defendant and Melissa. Christine testified that defendant started to leave the party as a result of the argument. Defendant had consumed alcohol and Christine was concerned about him leaving the party by car with his children. She followed defendant to the driveway and he got out of his car. While Christine was speaking with defendant, Melissa came running out the front door, as did Christine's friend, Jeannine Hasenfang. Defendant and Melissa were yelling at each other. Hasenfang took hold of Melissa's arm. Christine put her arm in front of defendant so that he and Melissa "couldn't get real close to each other." Christine testified that defendant did nothing to her. She denied that he tried to move her out of the way.

¶ 4 Christine testified that Hasenfang called the police. Christine spoke to the police when they arrived. Asked whether she gave the police a statement, Christine responded:

> "I didn't realize I did, but I do know now. I didn't realize it was a statement I was giving. I said I didn't want to press charges, and I was told by the police that I didn't

have a choice, that the State took it upon themselves to press charges. So I didn't think I made any statement."

¶ 5 Christine acknowledged that she signed a written statement prepared by a police officer that stated, in pertinent part, as follows:

> "[Defendant] went into the car with the keys and said he was leaving. I tried to tell [defendant] not to drive because he was drunk. [Defendant] eventually got out of the car and Melissa came out yelling at [defendant] and [defendant] tried to get to Melissa yelling at her. I stepped in between and [defendant] used his body pushing into me trying to move me out of the way. Melissa went back into the house and you guys (police) showed up and [defendant] walked away."

She testified that she did not read the statement.

¶ 6 Hasenfang testified that defendant did not push Christine. She explained that she called the police because defendant was unable to drive and that she believed that the police would be able to give him a ride home. She wanted to keep defendant and Melissa away from one another so that their argument would not escalate. The prosecutor asked Hasenfang whether she had told a police officer that defendant pushed her and Christine. Hasenfang responded that she had not.

¶ 7 Frank Ventre, a deputy with the Winnebago County sheriff's department, testified that he met with Christine and Hasenfang. Ventre took Christine's statement. He wrote down what she had told him and he had her read the statement before she signed it. Hasenfang told Ventre that she saw defendant push Christine. Ventre did not recall whether Hasenfang told him that she herself had been pushed by defendant.

¶ 8 We first consider whether the State presented sufficient evidence to sustain defendant's conviction. A reviewing court will not set aside a criminal conviction 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). When we review a challenge to the sufficiency of the evidence, " '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 is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 9 Section 12-3.2(a)(2) of the Criminal Code of 2012 provides:

> "A person commits domestic battery if he or she knowingly without legal justification by any means:
>
> ***
>
> (2) Makes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)(2) (West 2014).

It is undisputed that Christine was a household member for purposes of section 12-3.2(a)(2). See 720 ILCS 5/12-0.1 (West 2014). However, defendant disputes the sufficiency of the evidence that he made physical contact with Christine. There was no testimony at trial that defendant made physical contact with Christine, and both Christine and Hasenfang testified to the contrary. However, Christine signed a written statement indicating that defendant had pushed into her with his body. Pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2014)), a written statement signed by a witness that is inconsistent with his or her testimony at trial is admissible not merely for purposes of impeachment, but as substantive

evidence. *People v. Brothers*, 2015 IL App (4th) 130644, ¶ 65. Furthermore, notwithstanding recantation by the witness, the signed statement can support a conviction regardless of whether there is corroborating evidence. *People v. Douglas*, 2014 IL App (5th) 120155, ¶ 28. It is for the trier of fact to decide whether the written statement or the witness's inconsistent trial testimony is truthful. Here, the jury was entitled to credit the statement.

¶ 10 Defendant also argues that, even if the State proved beyond a reasonable doubt that he made physical contact with Christine, the evidence was insufficient to establish that the contact was insulting or provoking. Defendant does not argue that, in order to prove battery, the State is required to present the victim's testimony that he or she was insulted or provoked. Citing our decision in *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49, defendant acknowledges that evidence of the victim's reaction may give rise to an inference that the defendant made physical contact in an insulting or provoking manner. Defendant argues, however, that there was no such proof here. The argument is unpersuasive. In *Fultz*, we stated, "the trier of fact may take into account the context in which a defendant's contact occurred to determine whether the touching was insulting or provoking." *Id.* We relied on *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55, which held that " '[t]he victim does not have to testify he or she was provoked; the trier of fact can make that inference from the victim's reaction at the time.' " *Fultz*, 2012 IL App (2d) 101101, ¶ 49 (quoting *Wrencher*, 2011 IL App (4th) 080619, ¶ 55). Neither *Fultz* nor *Wrencher* held that evidence of the victim's reaction is the sole alternative to the victim's testimony the he or she was insulted or provoked. Here, the State presented evidence from which the jury could find that defendant pushed into Christine with his body during the course of a heated argument with Christine's daughter. In context, the jury could infer that the contact was an act of physical

aggression that could be deemed insulting or provoking. We thus conclude that the State presented sufficient evidence to sustain defendant's conviction.

¶ 11 We next consider defendant's argument that he is entitled to a new trial because the State failed to perfect impeachment of Hasenfang. Defendant did not raise the issue in his motion for a new trial. Ordinarily, a criminal defendant's failure to raise an issue in his or her posttrial motion forfeits appellate review of the issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant argues, however, that the issue he raises is reviewable under the plain-error rule, which permits review of a forfeited error "where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence" (*People v. Herron*, 215 Ill. 2d 167, 178 (2005)) or "where the error is so serious that the defendant was denied a substantial right" (*id.* at 179).

¶ 12 Generally, "the first step in determining whether the plain-error doctrine applies is to determine whether any reversible error occurred." *People v. Miller*, 2014 IL App (2d) 120873, ¶ 17. We conclude that the State's failure to perfect impeachment of Hasenfang was not reversible error. A prosecutor may not ask a witness questions for purposes of impeachment unless the prosecutor is prepared to supply proof of the impeaching information. *People v. Olinger*, 112 Ill. 2d 324, 341 (1986). Accordingly, the State must possess "a good-faith basis to ask the cross-examination questions, as well as the intent and the ability to complete its impeachment." *People v. Williams*, 204 Ill. 2d 191, 212 (2003). However, "[t]he incomplete impeachment of a witness is reversible error only when the unfounded insinuation is substantial, repeated, and definitely prejudicial." *People v. McCoy*, 2016 IL App (1st) 130988, ¶ 59. That is not the case here. The State's examination of Hasenfang insinuated both that defendant committed a battery against her and that her testimony was inconsistent with her

contemporaneous account of the incident underlying the charge against defendant. The only repetition of the insinuation was the obligatory—but unsuccessful—attempt to perfect the impeachment with Ventre's testimony. The failed attempt took place in the jury's presence and might very well have reinforced Hasenfang's testimony that defendant did not make physical contact with her and that she did not tell the police otherwise. Significantly, during closing argument, the prosecutor made no reference to Hasenfang's testimony or to any statement Hasenfang made to Ventre.

¶ 13 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 14 Affirmed.