2013 IL App (3d) 110900-U

Order filed July 3, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0900
v.	)	Circuit No. 11-CM-1032
	)	
RYAN HOWARD,	)	Honorable
	)	Marilee Viola,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The evidence at trial was sufficient to convict defendant of domestic battery. (2) Defendant's multiple convictions for domestic battery do not violate the one-act, one-crime doctrine.

¶ 2 Following a bench trial, defendant, Ryan Howard, was convicted of two counts of domestic battery. 720 ILCS 5/12-3.2(a)(2) (West 2010). He was sentenced to two concurrent terms of 12 months' conditional discharge, with the condition of 14 days in jail. Defendant appeals, arguing that: (1) the State failed to prove him guilty beyond a reasonable doubt; and (2)

his convictions for two counts of domestic battery violated the one-act, one-crime doctrine. We affirm.

¶ 3 FACTS

¶ 4 On April 5, 2011, defendant was charged by criminal complaint with two counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)) and one count of interfering with the reporting of domestic violence (720 ILCS 5/12-6.3(a) (West 2010)). The charges related to an incident on March 25, 2011, involving defendant and Madeline Kress, defendant's girlfriend. Count I alleged that defendant committed domestic battery in that he grabbed Kress about the neck. Count II alleged that defendant committed domestic battery in that he pushed Kress about the body.

¶ 5 At defendant's bench trial, Kress testified that she and defendant had dated intermittently for approximately seven years and were dating on March 25, 2011. At approximately 3 p.m. on that date, Kress and defendant got into an argument. Defendant was outside with his friend Ian when Kress yelled out the window that she had slept with the mailman. Ian remained outside, and defendant went inside the house very angry. Kress was in the family room when defendant grabbed her throat and carried her by the throat to her bedroom. Defendant then pinned Kress down on the bed for few minutes. Kress was lightheaded from being pinned down, but did not receive any bruises. After defendant released Kress, he left with Ian.

¶ 6 After defendant left, Kress was unable to locate her telephone because defendant had hidden it from her. Kress waited until her neighbors came home to use their telephone to call her mother. When Kress's mother arrived, Kress located her telephone. Kress stayed at her mother's house that night. On March 30, 2011, Kress filed a report with the police. Kress stated that she

waited to file the report because initially she did not have her telephone and was staying at her mother's house for safety. Kress admitted that she did not tell the police that Ian was present during the incident because he remained outside.

¶ 7 A week after the incident, Kress called Brenda Sipple from the State's Attorney's office and asked for the charges against defendant to be dropped. Sipple informed Kress that she could not drop the charges. Kress informed Sipple that the incident was not as serious as she first reported, but did not state that defendant had never touched her. Kress felt bad for defendant because they were trying to work things out, and defendant told her he did not want this incident on his record. At the time of trial, Kress and defendant were no longer trying to work out their relationship.

¶ 8 Deputy Omiecinski testified that he responded to Kress's report of domestic battery on March 30, 2011. He spoke with Kress, who was upset and distraught. Omiecinski did not observe any injuries on Kress. Kress informed him that the incident occurred at approximately 3 p.m. on March 25, 2011. Kress also told him that only she and defendant were present when the incident occurred.

¶ 9 Defendant moved for a directed verdict, which the trial court denied. Defendant then testified that on the day of the incident, he and Kress got into a verbal argument, but it did not get physical. After arguing, defendant took his belongings and left. Defendant was in contact with Kress following the incident. Defendant was aware that Kress attempted to drop the charges against him, but he did not encourage her to do so. Defendant acknowledged that he and Kress argued often during their relationship, but he denied any type of physical violence toward Kress previously or on the day of the incident.

¶ 10 The parties stipulated that Sipple would testify that she spoke with Kress on April 4, 2011. On that date, Kress reported that defendant had never touched her.

¶ 11 In closing arguments, the State emphasized that Kress's testimony indicated she was grabbed about the neck and pushed onto the bed by defendant. Defense counsel emphasized the fact that Kress's testimony was not credible and that defendant's testimony was both unimpeached and credible.

¶ 12 The trial court found defendant guilty of both counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)), but not guilty of interfering with the reporting of domestic violence (720 ILCS 5/12-6.3(a) (West 2010)). Defendant was sentenced to two concurrent terms of 12 months' conditional discharge, with the condition of 14 days in jail. Defendant filed a motion for a new trial, arguing that the State failed to prove him guilty beyond a reasonable doubt. The trial court denied defendant's motion. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 I. Sufficiency of the Evidence

¶ 15 Defendant first argues that the State failed to prove his guilt beyond a reasonable doubt because Kress's testimony was not credible.

¶ 16 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011); *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009). Rather, in a bench trial, the trial court remains responsible for

resolving conflicts in testimony, determining the credibility of witnesses, and drawing reasonable inferences from the evidence, and this court will not substitute its judgment for that of the trial court on these matters. *Id.* A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 17 To prove defendant guilty of domestic battery, the State had to prove beyond a reasonable doubt that defendant knowingly and without legal justification made physical contact of an insulting or provoking nature with Kress, as alleged in both counts of the criminal complaint. See 720 ILCS 5/12-3.2(a)(2) (West 2010). Thus, the State had to prove that defendant grabbed Kress about the neck (count I) and pushed Kress about the body (count II).

¶ 18 Defendant argues that Kress's testimony was not credible, noting that she did not report the incident to the police until five days later, recanted her allegations to Sipple, and lacked any physical injuries to corroborate her claims. At trial, Kress testified that she was in the family room when defendant grabbed her throat and carried her by the throat to her bedroom. Defendant then pinned Kress down on the bed for few minutes. Defendant denied making any physical contact with Kress.

¶ 19 It was for the trial court to assess both Kress's and defendant's credibility and resolve any conflicts in their testimony. Here, the trial court found defendant guilty of domestic battery, thereby believing Kress's version of events over defendant's. We find nothing in the record that would require us to substitute our judgment for that of the trial court's. See *Siguenza-Brito*, 235 Ill. 2d 213. Based on Kress's testimony that she was attempting to mend her relationship with defendant following the incident, we do not find her reporting delay or recantation unusual.

Additionally, based on Kress's description of the incident, it was reasonable for the trial court to determine that defendant grabbed her by the neck and pushed her about the body when he pinned her to the bed, despite the lack of any physical signs of injury. See *Siguenza-Brito*, 235 Ill. 2d 213. Accordingly, viewing the evidence in the light most favorable to the State, we find the trial court could have found defendant guilty of both counts of domestic battery beyond a reasonable doubt. See *Beauchamp*, 241 Ill. 2d 1.

¶ 20 II. One-act, One-crime

¶ 21 Next, defendant argues his convictions for domestic battery were in violation of the one-act, one-crime doctrine, because both counts were based on the same physical act of grabbing Kress's neck.

¶ 22 Defendant did not raise this issue before the trial court, but requests that we review the issue for plain error. Under the plain error rule, a reviewing court may consider errors when either: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant; or (2) the error is so serious that it denied defendant a fair trial and challenged the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598 (2010). However, before addressing whether defendant's claim satisfies the plain error doctrine, we must first determine whether a clear or obvious error occurred. *Id.*

¶ 23 We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Nunez*, 236 Ill. 2d 488 (2010). The one-act, one-crime doctrine prohibits multiple convictions when the convictions are carved from precisely the same physical act. *People v. Miller*, 238 Ill. 2d 161 (2010); *People v. King*, 66 Ill. 2d 551 (1977).

¶ 24 Multiple convictions and concurrent sentences are permissible where a defendant

commits several acts, even if interrelated. *King*, 66 Ill. 2d 551 (1977). An "act" is defined as "any overt or outward manifestation which will support a different offense." *Id.* at 566. For the State to properly obtain multiple convictions for closely related acts, the State must provide defendant notice of its intent to treat the conduct as separate acts by apportioning the acts to the offenses in the charging instrument and at trial. *People v. Crespo*, 203 Ill. 2d 335 (2001).

¶ 25 In this case, the State set out two distinct acts in the criminal complaint when it charged defendant with grabbing Kress about the neck (count I) and pushing Kress about the body (count II). As such, the State was not trying to portray defendant's actions as a single course of conduct, but instead differentiated between two separate acts. See *id.*

¶ 26 In addition, at trial, the State elicited testimony from Kress establishing that defendant first grabbed her throat in the family room and then dragged her to the bedroom where she was pinned down onto the bed. Not only were the two acts differentiated by the different locations, but in closing arguments the State also emphasized defendant's separate acts of grabbing Kress's neck and subsequently pushing her. Although defendant argues that Kress's testimony only established that he engaged in the single act of grabbing Kress's neck, it was reasonable to conclude that defendant pushed Kress onto the bed in order to pin her down. We must also note that this was a bench trial, and the trial court would have understood the need to allocate defendant's separate acts to the two separate charges for domestic battery. See *People v. Span*, 2011 IL App (1st) 083037. Therefore, based on the State's treatment of defendant's conduct as two separate acts both in the charging instrument and at trial, we conclude that defendant's multiple convictions were proper. See *Crespo*, 203 Ill. 2d 335.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 29 Affirmed.