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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CM-4562
)	
TEDRICK W. IVERSON,)	Honorable
)	Robert J. Morrow,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Bowman and Burke concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of domestic battery, as the trial court was entitled to credit the victim's prior written statement over her recantation at trial.

¶ 1 Following a bench trial, defendant, Tedrick W. Iverson, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)) and sentenced to one year of conditional discharge. Defendant timely appealed and now argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2008)), relating to an event that occurred on July 30, 2009. The case proceeded to a bench trial on August 23, 2010. The record does not contain a report of proceedings from the bench trial; however, the parties have supplemented the record with a joint bystander's report (as authorized by Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005)), which sets forth the following relevant evidence presented at the bench trial.

¶ 4 In the early morning of July 30, 2009, the police were dispatched to the residence of Jacqueline Payne, the complainant, in response to Payne's telephone call. At the scene, Payne provided the following written statement:

“I[,] Jacqueline Payne[,] was at home and [defendant] came over drunk from a party and I let him in and we we [*sic*] talkin, and then [defendant] wanted to have sex and then we proceeded to have sex and then he said it was my fault why he couldn't get an erection, then I told him to get up then and he did and just layied [*sic*] in the bed and then I got up and came into the laundry room to put my pants on and he came and pushed me into the water heater and then pushed me onto the floor, then he kept talking about killing me and so I got my keys and my phone and got into my car and called the police and he then proceeded to push my car [with] his car and damaging my car, then the police arrived[.]”

¶ 5 Montgomery police officer Stransky testified that, when he arrived, he saw a blue SUV, driven by defendant, backing away from a white car occupied by Payne. Payne was cooperative. She complained of soreness in her arms, but there were no visible injuries. She did not want defendant to get away with what he had done. Defendant had been drinking. There were no photos

taken of Payne. Montgomery police officer Kern testified that he was present when Payne wrote her statement. He did not tell her what to write; he told her to write what had happened.

¶ 6 Payne testified that defendant was her fiancé, that they had children together, and that on the day of the incident they were not living together. In the early morning of July 30, 2009, defendant came over. He had been drinking, and they had sex. Afterward, when defendant talked about leaving, Payne became upset because she believed that he was going to visit another woman. She tried to prevent him from leaving. When defendant got into his vehicle, she got into her own car and attempted to block him. She then called the police. She admitted that she was upset with him for cheating on her and that she wanted revenge. She also admitted that she told the officer at the scene that she and defendant had had sex, that he could not get an erection, that he blamed her for his inability to get an erection, that he had pushed her into the water heater, that he had pushed her face into the ground, and that he had said that he wanted to kill her. She also admitted that she had written the statement. However, Payne testified that she lied when she told the officer what defendant had done and that she lied when she wrote her statement.

¶ 7 Defendant moved for a directed finding as to both counts. The court granted the motion as to the count alleging bodily harm, but it denied the motion as to the count alleging contact of an insulting or provoking nature. Thereafter, the defense rested. In finding defendant guilty, the court stated that it was inclined to believe the written statement.

¶ 8 Following the denial of his motion for a new trial, defendant timely appealed.

¶ 9

III. ANALYSIS

¶ 10 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of domestic battery, because the sole evidence supporting his conviction was Payne’s unsworn out-of-court accusation, which was motivated by anger and recanted at trial.

¶ 11 We review claims of insufficient evidence to determine “ ‘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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A 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. *Id.* “[I]t is not the function of this court to retry the defendant.” *Id.* 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 A person commits domestic battery when he “intentionally or knowingly without legal justification *** [m]akes physical contact of an insulting or provoking nature with any family or household member.” 720 ILCS 5/12-3.2(a)(2) (West 2008). Defendant argues that there is a reasonable doubt that the offense occurred, because Payne testified that the written statement that she provided to the police was false. Moreover, according to defendant, other than the written statement, there was no corroborative evidence that he made “physical contact of an insulting or provoking nature” (720 ILCS 5/12-3.2(a)(2) (West 2008)). Specifically, defendant notes the absence of evidence of physical injury to Payne and of damage to Payne’s car. We reject defendant’s argument.

¶ 13 Payne's written statement was admitted pursuant to section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2008)), which provides for the substantive admission of prior inconsistent statements under certain conditions. Courts have previously held that a recanted prior inconsistent statement admitted pursuant to section 115-10.1 may serve as the basis for a conviction, even without other corroborative evidence. See *People v. Island*, 385 Ill. App. 3d 316, 347 (2008); *People v. Logan*, 352 Ill. App. 3d 73, 79-80 (2004). The trial court determined that Payne's written statement was more credible than her trial testimony, and we may not substitute our judgment for that of the trial court on this issue. See *Logan*, 352 Ill. App. 3d at 80 (appellate court could not substitute its judgment for that of the jury where it found the witness's pretrial statement and grand jury testimony more credible than her trial testimony). The lack of physical evidence of injury to Payne or damage to her car does not undermine her written statement. First, the absence of physical injury to Payne does not necessarily mean that contact did not occur. Second, the absence of testimony concerning damage to the car does not necessarily mean that there was no damage. Indeed, Stransky did not testify that there was no damage; rather there was simply no evidence of damage presented. In sum, we cannot say that the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt.

¶ 14

III. CONCLUSION

¶ 15 Accordingly, in light of the foregoing, we affirm the judgment of the circuit court of Kane County.

¶ 16 Affirmed.