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2014 IL App (3d) 120451-U

Order filed January 8, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-12-0451
FREDERICK A. WILKINS,)	Circuit No. 11-CM-1090
Defendant-Appellant.)	Honorable Thomas W. Cunningham, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Admission of victim's prior inconsistent statement as substantive evidence did not deny defendant due process; and (2) State's evidence was sufficient to prove defendant guilty of domestic battery.
- ¶ 2 Defendant, Frederick A. Wilkins, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)) and sentenced to 24 months' conditional discharge. On appeal, defendant argues that: (1) the substantive admission of the victim's prior inconsistent statement deprived him of his right to due process; and (2) the State failed to prove beyond a reasonable doubt that he made physical contact with the victim. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged by information with domestic battery and aggravated assault (720 ILCS 5/12-2(c)(1) (West 2010)). The case proceeded to a bench trial.

¶ 5 At trial, the victim testified that defendant was her husband. On August 30, 2011, the victim spent the day with one of her girlfriends. When she returned home, defendant was visibly upset. Defendant demanded to know where the victim had been. Defendant accused the victim of infidelity and told her to leave the house. The victim reached for her cellular telephone to call her girlfriend, but defendant grabbed it first. Defendant blocked the bedroom door and would not let the victim leave. Defendant pushed the victim onto the bed as she attempted to walk past. The victim explained that defendant "walked up close enough that [she] fell on the bed," but he did not use his hands to push her. The victim explained that she suffered from Meniere's disease, which causes her to lose her balance. The victim could not remember all of what happened after she fell onto the bed, but recalled going into the living room, where defendant still would not let her leave the house.

¶ 6 In the living room, the victim sat on the couch. Defendant sat next to her, and their argument continued. Eventually, the victim got up to let her son in the house. Thereafter, she called the police to force defendant to leave the house.

¶ 7 The victim admitted that she provided the police with a statement in which she reported that defendant made physical contact with her. She made the statement because an officer told her if she did not report any contact, the police would allow defendant to return to the home. She told the officers she was not sure if she suffered any injuries because she had just finished moving and had preexisting bruises. The State admitted police photographs of the victim's

bruises into evidence. The victim said the photographs showed bruises on her thigh and inner arm. She also admitted that she lied to the police when she reported that defendant pushed her onto the bed, twisted her arm, and held her down.

¶ 8 On cross-examination, the victim stated that defendant had not caused the photographed bruises.

¶ 9 Police officer Christopher Tolly testified that he responded to a domestic disturbance call on the date of the incident. At the scene, he initially met the victim and a second woman. The victim was very upset and physically sore, and she seemed to be afraid. Tolly observed and photographed bruises on the victim's left thigh and left wrist. The victim said that she received the bruises during an altercation with defendant; she never mentioned receiving the injuries while moving. None of the officers at the scene told the victim that she was required to make a statement or sign a complaint. Tolly found defendant in a basement bedroom.

¶ 10 In a memorandum of decision, the trial court found defendant guilty of domestic battery and not guilty of aggravated assault. The court specifically found that the victim's direct examination testimony was not credible because she admitted to lying to the police and her demeanor indicated that she did not want to be testifying. Additionally, the victim's prior inconsistent statement from the date of the incident was admissible under section 115-10.1 of the Code of Criminal Procedure of 1963. 725 ILCS 5/115-10.1 (West 2010).

¶ 11 Defendant filed a motion to reconsider, arguing that the victim's prior inconsistent statement did not meet the requirements for substantive admission and the evidence was insufficient to prove defendant's guilt beyond a reasonable doubt. The court denied the motion and sentenced defendant to 24 months' conditional discharge.

¶ 12

ANALYSIS

¶ 13

I. Prior Inconsistent Statement

¶ 14 Defendant argues that he was denied his right to due process by the substantive admission of the victim's prior inconsistent statement. Defendant contends that because the testimony would not be admissible in a civil case, section 115-10.1 unlawfully protects property interests over liberty interests.

¶ 15 Initially, we note that section 115-10.1 is presumed to be constitutional and defendant bears the burden of establishing that the statute is unconstitutional. See *People v. Donoho*, 204 Ill. 2d 159 (2003).

¶ 16 Illinois courts have long held that section 115-10.1 does not violate a defendant's right to due process. See *People v. Tolliver*, 347 Ill. App. 3d 203 (2004); *People v. Wilson*, 302 Ill. App. 3d 499 (1998); *People v. Morales*, 281 Ill. App. 3d 695 (1996). The purpose of section 115-10.1 is to "prevent 'a turncoat witness' from merely denying an earlier statement when that statement was made under circumstances indicating it was likely to be true." *People v. Thomas*, 354 Ill. App. 3d 868, 882 (2004) (quoting *People v. Fauber*, 266 Ill. App. 3d 381, 390-91 (1994)). Thus, section 115-10.1 is rationally related to the legislature's interest in preventing a witness from denying an earlier, more reliable statement. See *Morales*, 281 Ill. App. 3d 695 (legislature intended the statute to be the only inquiry necessary in determining whether to admit prior inconsistent statements).

¶ 17 Notwithstanding case law that section 115-10.1 does not violate due process, defendant argues that his due process rights were violated because the section allows the substantive admission of a prior inconsistent statement in a criminal case but not a civil case. Defendant's

argument fails to persuade. The disparity at issue could not result in a due process violation. The rules of evidence in civil proceedings are irrelevant to the constitutionality of a criminal evidentiary rule. The legislature may rationally enact laws that treat civil litigants different from criminal ones. See *In re Detention of Samuelson*, 189 Ill. 2d 548 (2000). Consequently, we do not find that section 115-10.1 infringed on defendant's right to due process.

¶ 18 II. Sufficiency of the Evidence

¶ 19 Defendant argues that the State failed to prove beyond a reasonable doubt that he made physical contact with the victim where the victim disavowed her prior inconsistent statement. Further, defendant contends that the victim's prior inconsistent statement was insufficient to sustain his conviction.

¶ 20 "In reviewing the sufficiency of the evidence in a criminal case, our inquiry 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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. We will not substitute our judgment for that of the trial court on matters of witness credibility unless the evidence was so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011). In a review of the sufficiency of the evidence, it is not this court's function to retry the defendant. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009).

¶ 21 To sustain a domestic battery conviction, the State had to prove beyond a reasonable doubt that defendant knowingly and without legal justification caused bodily harm to the victim. 720 ILCS 5/12-3.2(a)(1) (West 2010). Defendant argues that the State failed to prove that he made contact with the victim because the State's case relied entirely on the victim's disavowed

prior inconsistent statement. However, a disavowed prior inconsistent statement can be sufficient to support a conviction even without corroborating evidence. See *People v. Morrow*, 303 Ill. App. 3d 671 (1999). Here, the victim's statement alone, viewed in the light most favorable to the State, was sufficient to sustain the conviction. In addition, the State provided corroboration of the statement in the form of Tolly's testimony and the photographs of the victim's injuries. Although the victim testified that she received the photographed bruises while moving, the trial court found that her trial testimony was incredible. We have no reason to find the trial court's determination irrational based on the evidence presented. Consequently, the evidence was sufficient to sustain defendant's domestic battery conviction.

¶ 22

CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 24 Affirmed.