

No. 1-14-3275

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 DV 20039
)	
KESTUTIS VARATIEJUS,)	Honorable
)	Callie Baird,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for domestic battery.

¶ 2 Following a bench trial, defendant Kestutis Varatiejus was found guilty of the Class A misdemeanor of domestic battery. He was sentenced to one year of conditional discharge, anger management classes, 14 days of the Sherriff's Work Alternative Program, and a mental health evaluation. On appeal, defendant maintains that the evidence was insufficient to prove him guilty

beyond a reasonable doubt because the victim's testimony was implausible, contrary to human experience, and contradicted by the other evidence. For the following reasons, we affirm.

¶ 3 Defendant was charged with one count of domestic battery for the January 19, 2014, battery of his 81-year-old roommate, Eileen Francis.

¶ 4 At trial, the victim testified that she had poor balance, was 5 feet 5 ½ inches tall and weighed about 132 pounds. She lived in a two bedroom apartment in Skokie, Illinois, with Vicki Hastings and defendant. Although defendant verbally agreed to pay \$500 per month in rent and to help the victim with some real estate that she owned, he only paid about \$100 or \$200. On the evening in question, the victim approached defendant and Hastings, who were sitting in the kitchen, and demanded that defendant either help pay the rent, or move out of the apartment.

¶ 5 Defendant repeatedly told the victim to "shut up," and escalated the argument into a physical altercation by pushing the victim in a "threatening manner." Hastings was present when the pushing started. As the victim "backed off" and raised her "hand in protection," she spilled some water she had been drinking on defendant. "It happened so quick, [she] [could not] describe it," but she "wound up" lying on the floor on her right side while defendant beat her with both of his fists. At the trial, the victim pointed to her left ear and left cheekbone, and explained that defendant hit her "in the neck, in [her] head, cheekbones, right on this bone, and in [her] ear very hard." Defendant was very strong and he hit "whatever he could" on her left side.

¶ 6 When defendant released the victim, she got up off the floor, and the police were called. After the altercation, the whole area of the victim's neck, cheekbone, and her ear "hurt a lot." Her ear was all red, and she recalled having bruise marks. After the police arrived, an officer

photographed the left side of the victim's face. At trial, when the victim was asked identify what was in the photograph, she responded, "That's my face. Well, he beat me pretty bad around the ear. I guess it doesn't show the cheek bruise." When asked to describe how her neck looked in the photograph, she responded, "It looks pretty bad, big bruise mark there. He hit me very hard to get it from a fist." She had an earache for about one month after the attack, but was not sure what caused it. She did not seek any medical care because she "thought it would go away."

¶ 7 On cross-examination, the victim testified that the spilled water was cold. When she confronted defendant about the rent, she also asked him to honor his agreement to do some manual work at her rental properties. The victim told the responding officers that she "was beat up" and defendant "had to go because [she] was afraid of him." She showed the police her face, neck, and ear, but she could not remember specific details that she relayed. She thought defendant's glasses were knocked off his face when he started pushing her.

¶ 8 On redirect examination, the victim testified that defendant was bending over her while he hit her and she was confused after everything happened.

¶ 9 On recross-examination, the victim testified that she did not know the exact number of times defendant hit her, but it was "probably" more than 10. She stated that "There was no one else in the room, and *** [defendant] [was] hovering over [her], beating [her] with both fists."

¶ 10 Skokie police officer E. McCune testified that at around 11 p.m. on the night in question, he responded to a call and went to the Skokie apartment. When he arrived, the victim was visibly upset because of an altercation with a roommate. Officer McCune observed a four-inch scratch

on the left side of her neck, and confirmed that the photograph shown to him in court was taken on the night in question.

¶ 11 On cross-examination, Officer McCune testified that the victim was offered medical attention, which she refused. The victim did not sign a complaint, so he signed it on her behalf. The victim told Officer McCune that she "was battered about her face," but did not specify that she was battered in her ear or her forehead, or that she was on the floor.

¶ 12 Defendant moved for a directed finding, which the court denied.

¶ 13 Defendant testified that he came home from work at around 9 p.m. on the night in question, and then informed the victim that he needed an additional part to complete a plumbing job for her. He told her to pick up the part because he was on a tight schedule and had to get up for work at 5 a.m. the following day. The victim then started yelling insults at him. He asked her to "go away, please" and again explained his tight schedule and early morning wakeup time. The victim went to her room, but then returned two minutes later, and started yelling at him about rent and that he should buy the part himself. She later returned to the kitchen a third time and poured hot water from the faucet on defendant's face and his chest. The victim slapped his glasses off of defendant's face so he could not see. Defendant denied ever hitting, punching, or scratching the victim.

¶ 14 On cross-examination, defendant testified that he did nothing to provoke the victim before she poured water on him. Although Hastings was present when the victim poured the water, defendant explained she could not see anything because she was 10 feet away and a cement wall obstructed her view. He did not see Hastings touch the victim. Because "old people

get upset so easily," his training as a former care giver helped him avoid becoming angry when the victim called him hurtful names.

¶ 15 The trial court found the victim to be credible and that she "described an incident that was very clear and credible. And the physical evidence, the photographs, and the officer's testimony corroborate her version of what occurred." In contrast to the victim, the trial court found defendant to be incredible, and did not believe his testimony denying any contact with the victim, or that she poured water on him and slapped him. The trial court found defendant guilty of domestic battery.

¶ 16 Defendant filed a motion for a new trial, which the court denied.

¶ 17 The trial court sentenced defendant to one year of conditional discharge, anger management classes, 14 days of the Sherriff's Work Alternative Program, and a mental health evaluation. This appeal followed.

¶ 18 On appeal, defendant maintains that no reasonable trier of fact could have found him guilty of domestic battery because the victim's testimony was implausible, contrary to human experience, and contradicted by the other evidence. Specifically, defendant contends that the victim's credibility was undermined by the photograph of her injury, his own testimony and that of the responding officer, and by her failure to seek medical treatment or to sign the complaint. Defendant further contends that the trial court overlooked the significance of the State's failure to call Hastings as an occurrence witness.

¶ 19 Where, as here, a defendant challenges the sufficiency of the evidence to sustain a finding of guilt beyond a reasonable doubt, the relevant inquiry is whether, after viewing the evidence in

the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). The trier of fact determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences therefrom, and resolves any conflicts in the evidence. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. A reviewing court may not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable or unsatisfactory that a reasonable doubt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 20 A defendant is guilty of the Class A misdemeanor of domestic battery if he knowingly without legal justification causes bodily harm to any family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2014).

¶ 21 In this case, the evidence, viewed in a light most favorable to the State, was sufficient to prove defendant knowingly caused bodily harm to a household member. The victim testified that he began pushing her in a "threatening manner" when she confronted him about his failure to help pay their rent. Although she raised her "hand in protection," she "wound up" on the floor where defendant hit her "in the neck, in [her] head, cheekbones, right on this bone, and in [her] ear very hard." Afterwards, the whole area of the victim's neck, cheekbone, and her ear "hurt a lot." Officer McCune testified that on the night in question, he observed a four-inch scratch wound on the victim's neck, which is depicted in the photograph taken by the police. The trial court found the victim to be credible and did not believe defendant's version of the events. While defendant contends that the victim's testimony was insufficient to support a finding of guilt, we note that the testimony of a single witness, if it is positive and credible, is sufficient to convict.

Alvarez, 2012 IL App (1st) 092119, ¶ 51. Based on our review of the record, we find that the evidence, viewed in a light most favorable to the State, was sufficient for a rational trier of fact to conclude that defendant knowingly caused bodily harm to a household member beyond a reasonable doubt. See *People v. Taher*, 329 Ill. App. 3d 1007, 1018 (2002) (sustaining a defendant's conviction for domestic battery based solely on the victim's testimony).

¶ 22 Defendant points out that the victim did not seek treatment for her injuries. However, bodily harm under the battery statute consists of "'physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent.'" *People v. Bishop*, 218 Ill. 2d 232, 250 (2006) (quoting *People v. Mays*, 91 Ill. 2d 251, 256 (1982)). In determining whether a defendant's actions caused bodily harm, direct evidence of injury is not required, and the trier of fact may infer injury based upon circumstantial evidence in light of common experience. *Bishop*, 218 Ill. 2d at 250. Moreover, the trier of fact may find that the State proved bodily harm without medical treatment and documentation. See *id.* Here, the victim testified that the whole area of her neck, cheekbone, and her ear "hurt a lot," after defendant hit her "very hard" in her neck, head, cheek, and in her ear. Accordingly, the trier of fact could reasonably find that the State proved bodily harm even though the victim did not seek medical treatment for the pain she felt.

¶ 23 Defendant next contends that the trial court erroneously found that the officer's testimony and the photograph of the four-inch scratch corroborated the victim's testimony. He argues that the scratch undermines the victim's testimony that he punched her with his closed fists. Here, although the victim could not recall certain precise details of the attack, such as what specifically caused the scratch, the trial court could reasonably find defendant guilty based on the victim's

testimony that defendant administered blows to her cheek, neck, and ear causing the whole area to "hurt a lot." See *People v. Gray*, 2016 IL App (1st) 134012, ¶ 53 (sustaining the defendant's aggravated domestic battery despite the victim's poor recollection and inconsistencies in her testimony, where the defendant's testimony suffered from inconsistencies and self-interest and the trier of fact resolves questions of credibility); see also *People v. Irvine*, 379 Ill. App. 3d 116, 122-123 (2008) (sustaining the defendant's conviction for domestic battery over his challenge to the sufficiency of the evidence, and noting that the "judge was the trier of fact with the power to determine the credibility of witnesses and to both evaluate the evidence and resolve any inconsistencies"). Accordingly, defendant's argument fails.

¶ 24 We are mindful of defendant's contention that the trial court overlooked the significance of the State's failure to call Hastings as an occurrence witness. Citing *People v. Deskin*, 60 Ill. App. 3d 476, 480 (1978), defendant maintains that the absence of Hastings's testimony gave rise to a presumption that her testimony would have been unfavorable to the State, and created a reasonable doubt because the State did not rebut the presumption by explaining her absence. In *Deskin*, the State failed to call the victim and a witness who could have preserved the victim's alleged lack of credibility. *Id.* The *Deskin* court noted that generally, the State's failure to call a witness who could testify to material facts raises a presumption that the testimony would be unfavorable the State. *Id.* If un rebutted, the presumption can create a reasonable doubt as to the defendant's guilt. *Id.* The court ultimately held that the missing testimony did not create a reasonable doubt because the inference is not raised where "one eyewitness does testify directly to the event and his testimony is clear and convincing." *Id.*

¶ 25 Here, unlike in *Deskin*, the victim did testify to the events, and the trial court found her to be credible. Moreover, although the missing testimony *may* give rise to an inference that the testimony would have been unfavorable to the State (*People v. Smith*, 2015 IL App (1st) 132176, ¶ 43), the trial court was "not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt" (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009)). Accordingly, we are not persuaded by defendant's argument.

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.