2016 IL App (2d) 141150-U
No. 2-14-1150
Order filed September 27, 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. 12-CM-4366
MANUEL BENITEZ,	)	Honorable Brian Dean Shore,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of battery, despite conflicts in the evidence; in deeming defendant's testimony not to be credible, in part because of the lack of substantiation, the court did not shift the burden of proof to defendant.

¶ 2 Following a bench trial, defendant, Manuel Benitez, was convicted of battery (720 ILCS 5/12-3(a)(1) (West 2012)), and sentenced to 18 months' conditional discharge. Defendant timely appealed. Defendant argues that the evidence was insufficient to prove him guilty of battery beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 14, 2012, defendant was charged with battery. The complaint alleged that, on December 5, 2012, defendant knowingly caused bodily harm to the victim, Guillermo Camara-Rosado (Rosado), in that he struck the victim, causing a dislocated finger.

¶ 5 The following testimony was adduced at defendant's bench trial. Rosado testified (through an interpreter) that he worked as an industrial engineer in North Dakota. Prior to moving to North Dakota, he lived in Rockford for about 12 years and worked as an engineer for G & K Service. On December 5, 2012, at about 11 a.m., he went to an auto repair shop in Rockford, and as he was looking for the manager of the shop, he saw defendant enter. Defendant said, " 'How dare you say hi to me?' " and then ran toward Rosado. Rosado thought that defendant was "going to take something out and hurt [him] with it." According to Rosado, defendant "started trying to choke [him]. He pushed [him] down against the floor, against a car." Defendant "fractured [Rosado's] finger, completely backwards this way, and just start[ed] beating [him]." Rosado identified People's exhibit 1 as a picture of his fractured finger. Rosado went outside and called 911. Defendant came outside and tried to hit Rosado with his truck. Defendant left, and Rosado waited for the police to arrive. Rosado testified that, when the police arrived, they wanted to call an ambulance. He testified: "[t]hey saw my finger, it's pretty ugly, and then all the injuries on my body. He broke my glasses, had injuries on my shoulder." Rosado told the police that his family was on the way and that he did not need an ambulance. He eventually went to a hospital.

¶ 6 Rosado further testified that he knew defendant because "[defendant] worked in the company where [he] work[ed] as an engineer. He was just a regular worker." When Rosado was asked how long he had known defendant, the following colloquy occurred:

"Q. And about how long did you know the defendant prior to the incident?

A. For—time what?

Q. For how long did you know him prior to December 5th of 2012.

A. It's a period of about five years.

Q. And when was the last time you saw him prior to this incident?

A. The last time I saw him was when he attacked me inside my property down in Cherryvale Mall.

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: Sustained.

It calls for just what—when was this.

BY THE WITNESS:

A. Had to be about six years.

Q. I'm sorry. About six years?

A. Correct.

Q. The last time you saw the defendant prior to December 5th of 2012 was six years?

A. I had seen him around on the streets.

Q. Okay. I think there might be some confusion here. So prior to December 5th, 2012, when was the last time you had seen the defendant?

A. Like I said, when he attacked me at my home.

[DEFENSE COUNSEL]: Objection, Judge.

BY [THE STATE]:

Q: When was that?

THE COURT: Sustained.

BY THE WITNESS:

A. That was about six years ago. And then he assaulted me again.

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: Sustained.

Just answer the question, please.

BY THE WITNESS:

A. I saw him in a Chinese buffet. He came in, I was sitting down with a friend. He came to my—

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: Sustained. The question is solely when? Meaning a day, a month, a year.

BY THE WITNESS:

A. (By the witness.) Okay. About two years.

Q. So prior to December 12th, I'm gonna just clarify this one last time. December 12, 2012, the last time you saw him was two years before that?

A. (By the witness.) Mm-hmm. Mm-hmm.

THE COURT: Is that a 'yes'?

THE WITNESS: Yeah."

¶ 7 On cross-examination, Rosado was asked whether defendant had ever worked for him prior to the day of the incident. The following colloquy took place:

"A. He's never worked for me.

Q. [Defendant] has never worked for you?

A. He's never worked for me. I've always worked through companies.

> Q. He did not do electrical work for you?
>
> A. He has never done any electrical work for me. What he said was he told me I know some electricity, and he fixed televisions.
>
> I have worked for a very long time in the industrial field. One time I had a contract on Broadway, and then he told me he was an electrician and he started working there. When I found out he had a lot of problems, he was crazy, that's it. So then I try to stay away from him."

He testified that "[defendant] would say that he worked for me." Rosado agreed that the last time he had seen defendant prior to the incident was two years earlier at a restaurant. He did not recall telling the officer on the scene that it had been five years; he told the officer on the scene that he had seen defendant several times at gas stations. He did not tell the officer that defendant worked for him; he told the officer that defendant wanted to work for him.

¶ 8 On redirect examination, Rosado testified that, at one time, he and defendant worked at the same company and worked on jobs together for the same company. He stated: "He worked in the production department and I worked in the engineering department." He explained: "When a machine would break down or something like that, I would go down there and fix it." He was asked whether he had ever hired defendant to do electrical jobs, and he stated: "I did one contract, he told me I want to do that job. Then he wanted to be kind of like my associate, but I decided not to have any dealings with him." He testified that he had done one job with defendant, and "[t]hat was it."

¶ 9 Frank Pobjecky, a deputy with the Winnebago County sheriff's department, testified that he reported to the scene of the battery and spoke with Rosado through an interpreter, Pobjecky's partner. Rosado was upset, and his finger appeared broken. On cross-examination, Pobjecky

testified that Rosado told him that defendant had punched him and broken his finger. Pobjecky identified Defense exhibit No. 1 as a picture of Rosado. Pobjecky testified that he did not observe any injuries on Rosado's face or arms. He did not observe choking marks on Rosado's neck. Rosado told him that he had not seen defendant in approximately five years. Pobjecky did not speak with any other witness.

¶ 10 At the close of the State's case, defendant moved for a directed finding, arguing that there was insufficient evidence of a battery. The trial court disagreed and denied the motion.

¶ 11 Defendant testified (through an interpreter) on his own behalf. He was asked how he knew Rosado, and the following colloquy occurred:

> "A. In a laundry [*sic*] company, G & K.
>
> Q. And how did you get to know him with the electric company?
>
> A. I went because I'm an electric engineer and he asked me to teach him about electricity, so I start teaching him electricity.
>
> Q. Now, let me ask you this: Did you work for Mr. Rosado or did you work with Mr. Rosado?
>
> A. Yes, yes, yes. He opened a company named Yucatan Electric.
>
> Q. And he was your boss?
>
> A. In Rockford.
>
> Q. And was he your boss?
>
> A. Yes, but not—he wasn't an electrician.
>
> Q. And when was that?
>
> A. Around 2003.
>
> Q. And how long did you work with Mr. Rosado?

A. Around—between four and five—between four, five, six years.

Q. And what did you do with him when you worked for him for those four to five to six years?

A. He was learning about electricity. He went and got the job. I did those. So, of them, in time he was learning about electricity."

Defendant testified that Rosado "[s]upposedly" owned an electric company and that he had put advertisements on vans for "Yucatan Electric." Defendant stated: "We did the proposal, the—it's a—a beauty salon here on Charters. I did his house here. He built all the frame. He asked me to do the frame, the electricity." According to defendant, he stopped working "with or for" Rosado because "[Rosado] kept the money." Rosado "stole a lot of money from [him]."

¶ 12 Defendant testified that, on December 5, 2012, he went to the auto shop because he had loaned a "plumber machine" to the owner. According to defendant, when he walked in, the following occurred:

"[Rosado] came to me and said, 'Hi, Manuel Benitez.' And his—the attitude, that attitude he usually has.

And I told him, 'Don't say hi to me.'

He hit me. He said, 'I'm gonna kill you.' He hit me right here. I fell backward. When I hit the ground, it was almost showing off, he started hitting me in my head, three, four, five, a lot of times."

Defendant testified that Rosado "attack[ed]" him, "aggravated" him, and "didn't give [him] a time to defend himself." He did not hit Rosado. Rosado left. Defendant did not call the police, because he had had troubles with the police before.

¶ 13 On cross-examination, defendant testified that he did not go to the hospital or take pictures. The following colloquy occurred:

> "Q. So there's nothing that can be shown to prove that—
>
> [DEFENSE COUNSEL]: Objection, Judge, shifting the burden.
>
> THE COURT: Overruled.
>
> BY [THE STATE]:
>
> Q. So you have no photos of what happened on that day or your injuries sustained from that day?
>
> A. (By the witness.) No."

When asked about his issues with the police, defendant discussed abuse suffered at the hands of police in both Cuba and the United States.

¶ 14 At the close of testimony, defendant renewed his motion for a directed finding, which the trial court denied.

¶ 15 Thereafter, the trial court found defendant guilty of battery. In so doing, the court noted that "[c]learly, there's some history between these two individuals. What it is exactly is is [*sic*] really not very clear, but there's clearly some hostility between the parties." The court found that the case came down to a matter of credibility. The court stated: "[Rosado] was credible in much of what he testified to. There was some inconsistencies, I'm not ignoring those. But I find totally inconsistent the testimony of the defendant in this case as to what happened in the case and the lack of any substantiation he can give to that in his testimony."

¶ 16 Defendant filed a motion for a new trial, arguing that Rosado had contradicted himself and was not credible, that there was a lack of eyewitness testimony, and that the photo of Rosado does not show signs of choking and that "[h]is glasses appear to be just fine."

¶ 17 The trial court denied the motion, and, following a hearing, sentenced defendant to 18 months' conditional discharge.

¶ 18 Defendant timely appealed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt. To sustain a conviction of battery, the State had to prove that defendant knowingly and without legal justification caused bodily harm to the victim. See 720 ILCS 5/12-3(a)(1) (West 2012). When considering a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). 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. *Id.* In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from it. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction simply because the defendant claims that a witness was not credible or that the evidence was contradictory. *Id.* The testimony of a single, credible witness may be sufficient to convict (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)), even if the witness is the victim and the defendant's version of events contradicts the victim's (*People v. Brink*, 294 Ill. App. 3d 295, 300 (1998)).

¶ 21 Defendant first argues that various inconsistencies in Rosado's testimony cast reasonable doubt on his guilt. More specifically, defendant points to Rosado's "unwillingness to be honest about his work history with [defendant] or the last time they saw each other." Admittedly, Rosado's testimony about the parties' work history was somewhat confusing. Rosado testified

during direct examination, in response to a question as to how he knew defendant, that defendant had worked as "a regular worker" in the same company where Rosado had worked as an engineer. Some confusion arose during cross-examination when Rosado was asked more specifically if defendant had ever "worked for" him and whether defendant had done "electrical work" for Rosado. Although Rosado initially responded that he worked "through companies" (as he had testified that the parties had both worked for the same employer), he also testified to having "a contract on Broadway" and that defendant "started working there." Rosado stated that "[he] did one job with him and that was it." There was no further clarification on the issue of the "contract" or the nature of defendant's "job." Nevertheless, in spite of some confusion, Rosado testified clearly that he knew defendant from being employed by the same company and that at some point later they had worked together on a project. Similarly, although Rosado was initially unsure when asked when he last saw defendant prior to December 5, 2012, the State acknowledged the confusion during his testimony and thereafter Rosado clarified that it had been two years prior to the incident. In any event, the confusion on this tangential point did not raise a reasonable doubt of defendant's guilt.

¶ 22 Turning to the central issue, defendant maintains that Rosado's testimony concerning the incident was incredible because it was "directly contradicted" by the photographic evidence and the lack of eyewitnesses. Specifically, defendant argues that, although Rosado testified that defendant broke his glasses, beat him, and attempted to choke him, the photograph taken after the incident showed the glasses intact and no evidence of trauma to his face or neck. First, we do not agree that the photograph contradicts Rosado's testimony. Although the glasses can be seen sitting on top of a baseball cap worn by Rosado, they cannot be seen in their entirety. Indeed, the fact that Rosado is not wearing the glasses arguably supports his testimony that they were

broken. In any event, because we cannot see the glasses, we cannot say that they are not broken in some way. Furthermore, we find that the lack of photographic evidence of trauma to Rosado's face or neck does not negate Rosado's testimony that defendant tried to choke him, pushed him to the floor, fractured his finger, and beat him. Rosado made no mention of being struck in the face. He testified that defendant beat him, and he referred to injuries only to his shoulder and his finger. Moreover, Rosado is wearing two long-sleeved crew-neck shirts, a jacket, and a baseball hat that is casting a shadow on more than half of his face. The injuries would not be visible. With respect to a lack of corroborating witnesses, we note that Rosado never testified that any witnesses were present. Indeed, Rosado testified that he was looking for the manager of the shop when he saw defendant enter, which would lead us to believe that no one was present. In addition, Pobjecky testified that he never spoke with anyone who identified themselves as witnesses, perhaps because there were none. As noted, however, the victim's testimony alone may be sufficient to convict.

¶ 23 Rosado's testimony established beyond a reasonable doubt that defendant struck him and dislocated his finger. The trial court was well aware of and noted that there were "some inconsistencies" in the testimony but nevertheless found Rosado's version of events to be credible. Due consideration must be given to the fact that the trial court saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (credibility findings are entitled to great weight because the trier of fact is best equipped to judge the credibility of witnesses). The inconsistencies were minor, collateral to the central issue of defendant's guilt, and were not so contradictory as to render Rosado's account of the battery improbable or unsatisfactory. *People v. Foley*, 206 Ill. App. 3d 709, 715 (1990) (where minor inconsistencies in complainant's account do not detract from reasonableness as a whole, testimony may still be clear and

convincing). Whether and to what extent the inconsistencies affected the weight of Rosado's testimony was a question for the trier of fact and will not be disturbed on review. *People v. Green*, 298 Ill. App. 3d 1054, 1064 (1998) (minor inconsistencies do not render testimony unworthy of belief but affect only its weight). Where Rosado's testimony was not so incredible as to raise a reasonable doubt of defendant's guilt, we will not disturb the trial court's credibility finding on appeal.

¶ 24 Defendant also argues that his conviction should be reversed because the State offered no evidence to rebut defendant's self-defense claim. Self-defense is an affirmative defense and, once raised, it is the State's burden to prove beyond a reasonable doubt that defendant did not act in self-defense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). Self-defense is applicable where (1) unlawful force was threatened against the defendant; (2) the defendant was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the defendant actually and subjectively believed that a danger existed requiring the use of force applied; and (6) the defendant's beliefs were objectively reasonable. *Id.* at 225. The State may disprove defendant's self-defense claim by negating any one of these elements. *Id.*

¶ 25 Here, although defendant raised some evidence for each element for the affirmative defense of self-defense through his testimony, this testimony was rebutted by Rosado's version of the events. Rosado testified that defendant was the aggressor. As already noted, the trial court made a credibility determination and determined that defendant's version of the events was not credible and that Rosado's version was credible. Rosado's testimony, viewed in the light most favorable to the State, was sufficient to prove beyond a reasonable doubt that defendant was not acting in self-defense.

¶ 26 Defendant also argues that the trial court improperly based its decision on defendant's failure to provide evidence to support his testimony and thus improperly shifted the burden of proof to defendant. Defendant notes that a conviction must be based on the strength of the State's case, not on the weakness of the defendant's case. See *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 34.

¶ 27 In support of his argument, defendant points to the trial court's comment referencing "lack of substantiation." However, looking at the comment in context reveals that the court was speaking in terms of the parties' credibility. The court stated:

> "[Rosado] was credible in much of what he testified to. There was some inconsistencies, I'm not ignoring those. But I find totally inconsistent the testimony of the defendant in this case as to what happened in the case and the lack of any substantiation he can give to that in his testimony."

The parties provided two different versions of the events. It was for the trial court to determine witness credibility, which included consideration of whether defendant's version of the events was substantiated. See *People v. Luckett*, 339 Ill. App. 3d 93, 103 (2003) (defendant's credibility, like that of any witness, is question for trier of fact). Rather than impose a duty on defendant to prove his innocence, the trial court performed its duty as fact finder.

¶ 28 Based on the foregoing, according the appropriate deference to the trial court's finding of credibility and construing the evidence in the light most favorable to the State, we cannot find that no rational trier of fact could have found defendant guilty of battery. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County. 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).

¶ 31 Affirmed.