

2017 IL App (1st) 143445-U

No. 1-14-3445

Order filed May 3, 2017

Third Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 DV 30609
	)	
DARRY SMITH,	)	Honorable
	)	Joel L. Greenblatt,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Lavin and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the ruling of the trial court where the evidence was sufficient to support defendant's domestic battery conviction.

¶ 2 Following a bench trial, defendant Darry Smith was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and sentenced to one year conditional discharge. On appeal, defendant contends that his conviction should be reversed as the State failed to prove that his use

of corporal punishment against his great-nephew exceeded the bounds of reasonableness. We affirm.

¶ 3 Defendant was charged with one count of misdemeanor domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) in that he knowingly caused bodily harm to a family member, “G.F.,” when he struck him with a belt “5-6 times, causing welts to both right and left legs which caused swelling and broke the skin, causing minor bleeding.” The case proceeded as a bench trial.

¶ 4 G.F. testified that he was 10 years old. In early August, his uncle, whom he identified in court as defendant, “spanked” him on his leg and backside with a black belt. G.F. was wearing boxers at the time. Defendant struck him more than four times. The black belt broke, and defendant then continued striking G.F. with a pink belt. G.F. estimated defendant struck him with the pink belt “20 times.” When defendant spanked him, G.F. “didn’t feel anything but “just screamed because [he] wanted [defendant] to stop.” Defendant stopped striking him once the police arrived. The police photographed G.F.’s injuries. G.F. testified that he “didn’t feel anything when [he] touched it; but when [he] did touch it, it stings.” Defendant struck him with the black belt “all the time.” G.F. was sleeping prior to being spanked and did not know why defendant spanked him.

¶ 5 During cross examination, G.F. testified that he had known defendant all his life. Defendant “took care of [him] when [he] was a baby” and was “fun to be with.” Although a belt was used for punishment in their family, defendant disciplined G.F. in other ways prior to spanking him, such as taking away his video games and making him write a letter of apology after he played with matches. On the day defendant struck G.F. with the belt, G.F. had climbed up on some boxes in defendant’s room to get toys and a video game from a closet. Defendant

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had prohibited him from playing with the items. A week prior to the incident, G.F. suffered an allergic reaction at camp and received two shots on his thighs.

¶ 6 Officer Santi testified that, on August 11, 2014, he was dispatched to 1105 Cottonwood Lane in Mount Prospect, Illinois, based on a 911 call detailing “a man and woman yelling and possibly being hit.” When Santi arrived, he heard “yelling” coming from a second-floor window on the side of the building. Santi tried to position himself to better see or hear what was going on. He heard a man yelling “extremely loud at another subject” and what he concluded to be “a whipping of an object against [bare] skin.” Santi entered the apartment building and went to where the commotion was coming from. He was let into the apartment by “Georgio” and saw a man, identified in court as defendant, at the end of the hallway. Santi asked why he heard yelling coming from inside the apartment. Defendant told Santi he was “disciplining” his nephew, his soon to be adopted son G.F., with a belt because G.F. went into defendant’s bedroom without permission.

¶ 7 G.F. was in a bedroom wearing only his underwear. Santi testified G.F. appeared “shaken.” He was not crying but Santi stated it “seemed like he had been” earlier based on “puffy eyes and other indicators.” Santi observed welts across G.F.’s “swollen” upper thighs, redness, and “broken skin with a small amount of blood coming out.” The injuries were on both legs front and back and the left side of the thigh. Santi identified photographs taken of G.F.’s injuries as fairly and accurately representing the wounds G.F. incurred, including “[m]ultiple belt marks and broken skin” and “redness and swelling.” G.F. told Santi defendant “whipped him with a belt.” Santi found two belts “within arm’s distance” of defendant; a broken belt and a thin white belt. Defendant told Santi he used the belt that was broken to discipline G.F.. Santi described defendant as “[c]alm, collected, \*\*\* setback as why we [were] even there.”

¶ 8 During cross examination, Santi testified that he did not see defendant strike G.F. and that defendant said he only used a single belt to discipline G.F. G.F. could not specify to Santi how many times defendant struck him with the belt. Santi stated that the injuries he observed appeared to be fresh.

¶ 9 Officer Nava testified that, on August 11, 2014, he reported to the apartment on Cottonwood Lane to investigate a report of a “male hitting a female and a female screaming or something of that nature.” He arrived after “a few minutes.” While outside the building, Nava heard “noises” coming from a window, so he looked inside. He saw defendant “pull something up into the air and [hold] it above his right shoulder.” Nava identified the item as a belt. Nava saw defendant “bring the belt down from the position that he was holding it above his right shoulder down in a fast motion” and “heard crying.” Nava entered the apartment and spoke with defendant. Defendant said he was “disciplining his soon to be adopted son” because G.F. “entered his bedroom to retrieve a bag.”

¶ 10 Nava then spoke with G.F. G.F. was wearing only his underwear. He told Nava that he was hit on the back of his legs and showed Nava his injuries. There were “welts” and the “skin was swollen, and there were some breaks in the skin and there was some minor bleeding.” G.F. told Nava he received those injuries when defendant struck him with a belt. G.F. told Nava he was punished because he knew the “rules of the house” were that he could not enter defendant’s bedroom but he disobeyed in order to access gifts he had not yet received. Nava testified that defendant told him he struck G.F. with the belt “between five and six times.” Nava located a reversible belt, “one side darker brown, other side lighter tan or pink.”

¶ 11 During cross examination, Nava testified defendant was calm and cooperative. Nava did not see a second belt.

¶ 12 The court denied defendant's motion for a directed finding.

¶ 13 Defendant testified that G.F. was "biologically" his great nephew, but "legally" his nephew. G.F. had been taken from his mother. In order to "keep the family together," defendant was in the process of adopting G.F., with whom he had a "great" relationship. Defendant said G.F. had trouble focusing and ignored household rules. Defendant would therefore discipline him by taking "privileges away from him, no computers, no games, no bikes, no video games" and he would also make G.F. practice writing his name in cursive, "to keep him focused." Defendant denied disciplining G.F. with a belt prior to August 11, 2014.

¶ 14 Defendant testified that, on August 11, 2014, he placed two bags of gifts for G.F. on a shelf in defendant's bedroom that defendant could "barely reach." When defendant arrived home from work, his room "was in shambles" because G.F. had somehow climbed to reach the bags and taken out the items. One of the items in the bag was "Grand Theft Auto," a video game defendant found not "age appropriate." Defendant confronted G.F., who told him "he needed [something] out of that bag, so he was going to get it."

¶ 15 Defendant testified he explained to G.F. that he is not allowed in defendant's room without permission. Defendant testified that he had "gotten to the point that everything [he] was doing was not working," though he denied being at his "wit's end." He had tried multiple other forms of discipline on G.F. that were unsuccessful. Defendant struck G.F. with a pink leather belt "on the bottom the way we were brought up." Defendant struck G.F. over the boxers he was wearing.

¶ 16 Defendant testified he "wasn't trying to hurt" G.F. He was "trying to show him that discipline starts at home." The belt defendant used on G.F. broke because it "was thinning out." Defendant said he hit G.F. with the belt five or six times. He testified during cross-examination

that he struck the chair near G.F. “a couple times” and actually struck G.F. “[t]hree to four” times. He denied getting a second belt after the pink belt broke or that there was a black belt in the house. Defendant stopped striking G.F. with the belt before the police arrived. The week prior to the incident, G.F. went to the hospital because he suffered an allergic reaction to a shot he received at summer camp that caused “welts, swelling, things of that nature” on “his leg.” Defendant described the force he used when striking G.F. as “a medium strike.”

¶ 17 In closing, defendant argued citizens have a right to privacy, from which the right to corporal punishment derives, and corporal punishment within the bounds of reasonableness is a legal right. He argued the conduct here was more reckless than knowing with regard to causing bodily harm to a family member.

¶ 18 The court found defendant guilty of domestic battery. It reviewed the evidence, the arguments, and the language of the statute. The court called the case “one of the most heart wrenching cases” that it had been involved in, acknowledging defendant’s efforts to keep his family together. It found “all four witnesses who testified in this case to be credible.” The court stated there was “no question” that G.F. was struck with a belt. The court further stated that it was “clear” that there was only one belt. The court stated that defendant “endeavored to discipline a young boy because of this young boy’s actions because of his failure to abide by certain reasonable rules [defendant] set forth for his household.” It acknowledged defendant’s previous efforts at non-corporal punishment. The court held, however, that defendant’s actions “exceeded the bounds of reasonableness.” It pointed to the fact that defendant struck G.F. with an object, with a downward motion “so hard that the belt broke,” and caused injuries. The court found that defendant did not intend to hurt G.F. but “any reasonable person would know that by

inflicting wounds of this nature in this fashion with this object, that he knowingly caused bodily harm to the child.”

¶ 19 The court denied defendant’s motion for reconsideration. The case proceeded immediately to sentencing. The court sentenced defendant to one year conditional discharge. Defendant timely appealed.

¶ 20 On appeal, defendant contends his conviction should be reversed as he had a parental right to discipline G.F. and the State failed to prove that his actions in doing so exceeded the bounds of reasonableness.

¶ 21 The State had to prove that defendant knowingly without legal justification caused bodily harm to a family member. 720 ILCS 5/12-3.2(a)(1) (West 2014). That G.F. was defendant’s family member is uncontested. Defendant testified he was G.F.’s biological great uncle and acknowledges that he was acting *in loco parentis*, rendering him subject to the same standard of reasonableness as a parent in disciplining children. *People v. Ball*, 58 Ill. 2d 36, 40 (1974). Defendant does not argue that he did not cause bodily harm. Indeed, he could not, as the evidence of G.F.’s injuries was testified to and demonstrated by photographic evidence. To prove bodily harm, the State needed only to show that G.F. suffered “ ‘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))), which it inarguably did here. Rather, defendant argues the evidence was insufficient to show he administered a legally unjustifiable degree of corporal punishment on G.F.

¶ 22 As he did at trial, defendant argues he had a parental right to discipline G.F. This right derives from the right to privacy implicit in the United States Constitution and encompasses the right to care for, control, and discipline one’s own children. *People v. Green*, 2011 IL App (2d)

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091123, ¶ 14. The right to “ “[d]iscipline” ’ ” one’s own children has been interpreted by courts “ ‘to extend to *reasonable* corporal punishment.’ ” (Emphasis in original.) *Id.* (quoting *In re F.W.*, 261 Ill. App. 3d 894, 898 (1994)). The common law rule that parents may take reasonable steps to discipline their children is “a legal justification for an otherwise criminal act.” *Id.* ¶ 16. To negate the legal justification, the State must prove the defendant guilty of not only the elements of the domestic battery offense but also “that the discipline used exceeded the standards of reasonableness.” *Id.* Defendant asserts the State did not prove his discipline of G.F. exceeded the bounds of reasonableness.

¶ 23 When a defendant challenges the sufficiency of the evidence, the question is whether, after reviewing 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. *People v. Brown*, 2013 IL 114196, ¶ 48. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). 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.

¶ 24 As defendant points out, the fact that he used an object to discipline G.F. does not show unreasonable or excessive force. See *In re J.P.*, 294 Ill. App. 3d 991, 105 (1998) (although the use of an object when disciplining a child “raises immediate concerns,” that alone “should not blind a court to the many other factors which should and must be considered” when determining



reasonableness of the discipline). Similarly, the fact that G.F. sustained injuries, standing alone, does not demonstrate unreasonableness or excessive use of force. See *Green*, 2011 IL App (2d) 091123, ¶ 24. Defendant's discipline of G.F. was progressive, and defendant only resorted to physical discipline when other forms of discipline failed to instill in G.F. a respect for the rules of the household. Further, as defendant and G.F. both acknowledged, a belt was used as a discipline tool in their extended family.

¶ 25 Nevertheless, we hold that the trial court's finding that defendant's discipline of G.F. exceeded the bounds of reasonableness is supported by the evidence. As the court noted, defendant struck G.F. so hard over several minutes that the belt broke as a result "of the force of the blows [which] could be seen in the photographic exhibits." Further, defendant's discipline resulted in contusions, "fresh bleeding," "broken skin," and "an impression of the belt buckle." Although the court did not doubt that defendant did not intend to harm G.F., it found "any reasonable person would know that by inflicting wounds of this nature in this fashion with this object, that he knowingly caused bodily harm" to G.F. We agree and find the evidence supports the trial court's finding that this was not merely "a spanking," but rather a discipline that exceeded the bounds of reasonableness. Accordingly, as the State proved that the discipline defendant inflicted on G.F. was not legally justified, defendant was guilty of domestic battery.

¶ 26 For the forgoing reasons, we affirm the ruling of the trial court.

¶ 27 Affirmed.