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2017 IL App (3d) 160733-U

Order filed July 3, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0733
)	Circuit No. 16-CM-849
KIMBERLY RADTKE,)	
Defendant-Appellant.)	Honorable H. Chris Ryan, Jr., Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to find defendant guilty beyond a reasonable doubt.

¶ 2 Defendant, Kimberly Radtke appeals her conviction for domestic battery, arguing that the State failed to prove her guilty beyond a reasonable doubt. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant was charged with domestic battery of her husband, Robert Radtke. 720 ILCS 5/12-3.2(a)(1) (West 2016). The case proceeded to a bench trial. Robert testified that he was

married to defendant. On Saturday, July 23, 2016, Robert and defendant were at their residence with their daughter, A.R. Robert and defendant started arguing. Defendant told Robert she wanted to leave and take A.R. with her. Robert told her to leave, but not to take A.R. Defendant started placing A.R.'s belongings into garbage bags, and Robert started opening them and dumping them out. Robert then said:

“Shortly after that, she—we were in the hallway of—the upstairs hallway, and she turned around and attacked me.

*** She started punching me in the face, the right side. And then I moved my head away, and she started punching me in the neck and clawing me on my neck.

*** And then shortly after that before I realized, I was on the floor and she proceeded to bang my head against the wall.”

Robert did not fight back or initiate any physical contact with defendant. Robert then ran downstairs, called the Streator police department, and waited on the porch for the police to arrive. Robert said his face and neck were hurting and there was blood on his neck. His face felt swollen.

¶ 5 Officer Jordan Risley testified that he was a patrolman for the Streator police department. On the day in question, he was called to the Radtke residence by Robert. Risley said, “[Robert] had explained that after an argument with his wife, the argument had turned physical which she had struck him and scratched the back of his neck. And I observed scratches on the back of his neck.” Risley stated that the scratch had fresh blood. He then photographed the injuries. The

photographs were introduced into evidence. Risley did not notice any swelling or red marks on Robert's face to show that he had been punched in the face. Robert did not tell Risley that defendant had shoved his head into a wall. Risley did not speak with defendant.

¶ 6 Evie Helm testified that Robert was her best friend and she was close friends with defendant. Defendant confided in her about their marriage difficulties. On July 23, Helm was at a friend's house in Seneca having a couple of drinks when she received a text message from Robert telling her to come to Streator. Helm then called defendant to find out what was happening and defendant to come over to Helm's friend's house. Helm stated, "[Defendant] told me she got in a fight with Robert and she hit him. She took the baby, and she came over and talked to me."

¶ 7 Defendant testified that in July 2016 her marriage to Robert "was bad, and it was nearing an end as in divorce." Defendant said on July 23, she wanted to speak to Robert about an argument they had had the night before, but Robert did not want to communicate so defendant walked into the next bedroom to clean. The bedroom contained bags of old baby clothes she wanted to organize and put away. Robert began ripping the bags of clothes out of her hands. Defendant then went to the kitchen to clean some more, and Robert followed her. Robert continued to take things from her hands. Defendant said she "felt threatened," but she ignored him. Defendant stated, "[H]e followed me and he did not like me cleaning when I picked up everything so he was behind me. He reached—he reached over me. He grabbed me and he grabbed the things out of my arms. And I was—he—I was trapped and I couldn't move. And I was—I was shaking. I was moving forward trying to release myself from his grasp." Defendant denied hitting or scratching Robert. Defendant further stated that she was a black belt in taekwondo.

¶ 8 Defendant eventually freed herself from Robert. Since she did not feel safe, she took A.R. outside and left in her vehicle. She did not call the police because she felt safe at her parents' house. Defendant said she went to go see Helm, but she did not tell Helm that she hit or scratched Robert. She said, "[Helm] was [Robert's] best friend. I wanted to confide in her to tell her hey, this is your best friend. Could you help me communicate with him? Because I wanted to fight for our marriage and I thought it was fixable."

¶ 9 In finding defendant guilty, the court stated:

"The State has the burden of proof. The State must prove defendant knowingly and without legal justification caused bodily harm to Robert Radtke. All right. Bodily harm is a scratch. Blood, red, soreness. Bodily harm. Okay. Family or household member. This is the wife. Defendant is the wife. There is no question about that.

The question is whether or not she actually engaged the scratches upon the complaining witness. Between Mr. Radtke and [defendant], they're totally opposite. One says it did. One says it didn't. Okay.

So therefore, I'm left with independent. Evie Helm. Friend of the complaining witness, semi friend of the defendant. She indicated to me— indicated that the defendant told her she had hit complaining witness that night.

Amber Seibert. Friend of the defendant. Said that apparently there was a circumstance and Mr. Radtke was coming at [defendant] with the police officers around. She had to step in and intercede.

So basically what I'm left with is I have to balance the credibility of everyone that's here. When it comes down to what I have, the two major players are against each other, and I have to go to an independent. As far as I'm concerned, Evie Helm is the independent. She said that [defendant] came in and said she hit him that night. That's it. That's sufficient for this court."

¶ 10 Defendant was sentenced to one year conditional discharge and \$550 in fines and costs.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues that defendant was not proven guilty beyond a reasonable doubt. Specifically, defendant argues, "the facts show both a great inconsistency in the facts presented by the State as well as a predictable motive by Robert Radtke." Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found that defendant committed a domestic battery against her husband.

¶ 13 "When presented with 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). Instead, "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." (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "This means the reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). "A criminal 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." *Collins*, 106 Ill. 2d at 261.

¶ 14 A person commits the offense of domestic battery if he or she knowingly, and without legal justification: "(1) [c]auses bodily harm to a family or household member," or (2) "[m]akes

physical contact of an insulting or provoking nature with any family or household member.” 720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2016). Here, the State had to show that defendant caused bodily harm to Robert, her husband.

¶ 15 Here, Robert testified that defendant hit him, scratched him, and hit his head against the wall. Risley testified that he noticed scratches on defendant’s neck, and his testimony was corroborated by the photographs he took that were admitted into evidence. Further, Helm testified that defendant admitted to hitting Robert, and the trial court believed her. Defendant was the only person who testified that she did not hit or scratch Robert. Reviewing this evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that defendant “[c]ause[d] bodily harm” to Robert. See *id.*

¶ 16 Defendant contends that Robert’s “testimony was continuously impeached” and points to the fact that Robert only told Risley that defendant hit and scratched him. Further, defendant contends that the evidence shows that Robert “fabricate[d] an attack by his wife” in order to gain custody of his child should “his rocky marriage [come] to an end.” Defendant states, “It seems highly improbable that [defendant], a trained blackbelt [*sic*] in martial arts, would strike Robert Radtke in the face with a closed fist at least five times yet no marks would be left on Robert Radtke’s face.” Defendant’s argument is nothing more than an invitation for this court to reweigh the trial evidence. We decline to do so. See *People v. Buscher*, 221 Ill. App. 3d 143, 145-46 (1991) (“When reviewing a conviction based upon a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to reweigh the evidence and substitute its own judgment for that of the trial court.”). Further, we note that the court is under no obligation to accept or otherwise seek out any explanations of the evidence that are consistent with

defendant's innocence; nor is the trier of fact required to disregard any inferences that do flow from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 233 (2006).

¶ 17 In coming to this conclusion, we reject defendant's argument that Helm's testimony was not corroborated by physical evidence that defendant hit Robert. The lack of physical evidence does not "render the evidence so unreasonable, improbable, or unsatisfactory as to justify this court's reversal." See *People v. Wheeler*, 401 Ill. App. 3d 304, 312 (2010). We note, "[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of La Salle County is affirmed.

¶ 20 Affirmed.