2017 IL App (4th) 150632-U

NO. 4-15-0632

FILED
November 1, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
LARRY TRIBBLE,	)	No. 14CF1021
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court concluded that (1) the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated domestic battery and (2) the trial court's comments about the evidence and theories of the case did not shift the State's burden of proof to defendant.

¶ 2 Following an April 2015 bench trial, the trial court found defendant, Larry Tribble, guilty of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)). In May 2015, the court sentenced him to 14 years in prison. Defendant appeals, arguing that (1) the State presented insufficient evidence to support his conviction because the victim's testimony was not credible and (2) the trial court shifted the State's burden of proof to him. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2014, the State charged defendant with aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)). The charge alleged that on August 31, 2014, defendant

committed the offense of aggravated domestic battery in that he knowingly and without legal justification caused great bodily harm to M.T., a family or household member, by striking her with a bottle.

¶ 5 A. Defendant's Bench Trial

¶ 6 The following testimony was presented at defendant's April 2015 bench trial.

¶ 7 1. *M.T.'s Testimony*

¶ 8 M.T. testified that on August 31, 2014, she lived with her son, G.T., and defendant was visiting them. In the middle of the day, defendant called her and told her that he was going to be spending time with his family. M.T. went to see a friend, Regina T., between 3:30 and 4:30 p.m. While at Regina's home, M.T. had a few beers. M.T. received a call from G.T., informing her that defendant returned to the apartment with her other car. Regina drove M.T. home to retrieve that car because M.T. did not want defendant driving it anymore. She had previously asked him for the keys, but he refused to return them. M.T. located the car near her apartment, drove it toward Regina's home, and parked it in a nearby parking lot. About 20 minutes later, M.T. headed back home in the car she drove to Regina's and left the car defendant was driving in the parking lot.

¶ 9 When M.T. arrived home, she sat outside on the patio to drink a beer, and defendant came outside looking for the car he had been driving. Defendant could not find the car and asked M.T. where it was. M.T. told him that she did not know. Defendant proceeded to call tow companies to see if they took the car. M.T. laughed at defendant's circumstances. M.T. then went inside the apartment and saw G.T. leave to go to a friend's house just across the parking lot. M.T. recalled that defendant was standing in the kitchen drinking a beer while she was sitting on

the couch drinking a beer and looking at her phone. M.T. and defendant were no longer speaking to each other.

¶ 10 While sitting on the couch, M.T. was hit on the top of the head and fell forward. She woke up in a pool of blood on her living room floor wondering what happened—no one else was around. At that time, she did not know what hit her. Once she became coherent, she saw a beer bottle lying on the floor and concluded that defendant hit her with a beer bottle. She attempted to call 9-1-1, but she could not see her phone because she had blood running down her eyes, and she could not hear through the phone because blood was in the phone's speakers. M.T. stood up and looked for G.T. She went into the bathroom, saw her face, and was in shock. She found a neighbor who called 9-1-1.

¶ 11 G.T. came home when he saw the ambulance at the apartment building. M.T. was taken to the hospital, where she received numerous stitches in her forehead, on the top of her nose, and on her top lip. M.T. also had a broken nose in two places and chips in her bottom two front teeth. Pieces of glass from a beer bottle were removed from her forehead.

¶ 12 After the incident, defendant never returned to M.T.'s home to retrieve his possessions. Several days after, defendant called M.T. in the middle of the night and said, "I'm sorry, you know, that I did that to you. I know you probably hate me and you're never going to be able to forgive me ***." After M.T.'s nose surgery, defendant called her again to check on her to see if she was doing okay. Defendant also told M.T. in that call that he was sorry and should not have done what he did.

¶ 13 On cross-examination, M.T. was asked if she recalled speaking to Officer Luke Maurer on September 1, 2014, just after midnight, while she was in the hospital. M.T. could not recall. However, she did recall speaking with Officer Andrew Chambers at around 1:30 a.m. that

morning. She recalled Chambers asking if defendant struck her in the forehead, to which she responded affirmatively.

¶ 14 On redirect, M.T. stated she knew defendant hit her because he was the only other person in the apartment with her at that time. She also concluded she was hit with a beer bottle because it was lying on the floor when she woke up and pieces were in her forehead—but she had no recollection of actually being struck.

¶ 15 2. *G.T.'s Testimony*

¶ 16 G.T., M.T.'s 16-year-old son, testified that he lived with his mother. On August 31, 2014, defendant had been visiting them for three or four days. That day, G.T. called M.T. to let her know that defendant was home because she wanted to get her car back. G.T. saw M.T. arrive at the apartment complex's parking lot, get the car, and drive off toward Regina's house. About an hour and a half later, M.T. came back home for the evening. G.T. noted that defendant and M.T. were having a normal conversation until defendant went to look for the car. G.T. stated that defendant "would get loud with her" but that M.T. was happy and laughing. G.T. could tell defendant was getting irritated. Defendant called tow companies to see if the car was towed. G.T. thought M.T. had three or four beers while she was home. G.T. left home and saw M.T. go back inside, defendant remained outside, and no one else was in the apartment. G.T. went to a friend's house, "[n]ot even a block" away. He was at the friend's house for about 5 or 10 minutes until he noticed there was an ambulance at the apartment. He went back home and saw M.T. sitting outside covered in blood. He noticed defendant was gone.

¶ 17 3. *Regina T.'s Testimony*

¶ 18 Regina testified that she was M.T.'s friend and coworker for about five years. On August 31, 2014, around 4 p.m., M.T. had two beers at Regina's house. At some point, Regina

drove M.T. home to get M.T.'s car. M.T. drove the car back to Regina's neighborhood and parked it in a parking lot. Around 8 or 9 p.m., M.T. left Regina's home. Regina directed M.T. to call her once she got home. Twenty minutes after M.T. left, Regina attempted to call M.T., but she did not answer. Regina eventually received a message from G.T. that M.T. was in the hospital.

¶ 19 4. *Mary M.'s Testimony*

¶ 20 Mary M., M.T.'s neighbor, testified that on the night of August 31, 2014, she saw G.T. leave M.T.'s apartment. About 10 or 15 minutes later, she heard noise and arguments coming from the wall her apartment shared with M.T.'s apartment. About five minutes later, she heard M.T. crying outside of her apartment and asking for help. Mary went into the hallway and saw M.T. covered in blood. Mary called the police. Mary did not see anyone else in the area.

¶ 21 5. *Officer Luke Maurer's Testimony*

¶ 22 Maurer testified that on August 31, 2014, he interviewed M.T. in the emergency room shortly after the incident. M.T. told him that she had been drinking that day but could not remember how much she had to drink or what happened to her. Maurer observed that M.T. was very confused and dazed from either being struck or intoxicated.

¶ 23 6. *Officer Andrew Chambers' Testimony*

¶ 24 Chambers testified that on September 1, 2014, he went to the hospital to collect glass shards that emergency personnel removed from M.T.'s forehead. While at the hospital, he met with M.T. around 1:30 a.m. and observed her injuries. He noted that she had a four-inch laceration to her eye, swollen nose, and swollen lips. Chambers recalled that M.T. was able to speak to "bits and pieces" about the incident. M.T. recalled arguing with defendant, who was the only person at her house. The next thing M.T. recalled was waking up in an ambulance. M.T.

told Chambers that she believed the glass removed from her forehead came from a beer bottle. Chambers asked her if defendant struck her with a beer bottle. M.T. replied that she did not know, but that it was possible defendant had done it.

¶ 25 7. *Defendant's Testimony*

¶ 26 Defendant testified that on August 31, 2014, he was staying with M.T. and G.T. Around 2:30 p.m., he talked to M.T. while she was playing a video game. He received a message from a friend and met her at the park at 4 p.m. When defendant returned home around 6:30 p.m., M.T. was not home. Defendant went upstairs with a couple of beers to play a video game. Two hours later, he heard G.T. and M.T. downstairs. Defendant went downstairs and found M.T. on the porch. M.T. was upset that defendant left earlier that evening. Defendant testified that M.T. had been drinking and would often drink to intoxication.

¶ 27 Defendant testified further that he tried to leave but could not find the car he had been driving. He immediately started to call tow companies. M.T. denied knowing where the car was. Defendant thought M.T.'s behavior was unusual because if the car had been towed, she would have been upset. They argued for a few minutes. G.T. left the apartment. Defendant went inside and put his beer bottle on the coffee table then went upstairs to retrieve his keys and wallet. He left the apartment and went to his sister's house. He left his sister's house the next morning to go spend time with an ex-girlfriend in Iowa. He planned to go back to M.T.'s apartment to get his belongings—such as new clothes and shoes—but never did. He claimed that he never called M.T. after their argument.

¶ 28 B. The Trial Court's Findings

¶ 29 In rendering its decision, the trial court stated, in relevant part, as follows:

"I guess when we look at this, there's obviously two theories here. The State's theory being that because of the argument the defendant became angry and walked up to the victim and struck her with the bottle. Hit her on the back of the head, and then the front, or across the top of the head, or something along those lines. The defendant's theory is that he left and that because of her intoxication she stood up and fell over and landed on the bottle.

***

It's a question of which theory is more plausible. And if the State's theory is proof beyond a reasonable doubt or not.

Now, the defendant's testimony here today is, well, you know, we had this spat and I lived with this other woman, I came back, it was a bad idea, we weren't getting along, so I decided to leave. I went to my sister's and hung out. There was also some other woman from Iowa that calls or texts, or something, and says, hey, why don't you come see me for a while. So I decided to do that. Okay. It's possible, I suppose. But I guess what really kind of causes a lot of questions in my mind is that the defendant has all these brand new clothes and shoes, and he's just going to leave them at the other woman's house and, oh, I'll just get them later. That doesn't make any sense to me at all. If the defendant *** had walked away that night, went to his sister's, decided he was going

to go to Iowa for a while, it makes no sense to me that he wouldn't come back, not knowing that [M.T.] was injured, according to his testimony. He would have come back and got his stuff. He didn't do that, he just left. Left all his stuff. And that, frankly, doesn't make a whole lot of sense to me. It frankly, calls into question the credibility of the defendant's testimony. [M.T.'s] credibility, frankly, on the other hand, I think is almost enhanced by the fact that she can't remember what happened to her. If this was some sort of vendetta—this was not argued by counsel but suggested by the defendant during his testimony—then why wouldn't she just say, he walked up to me and hit me in the head with a bottle, instead of, I don't really remember. *** Because she doesn't do that, I think she's being honest, frankly, because she can't remember, because of the extent of her injuries. She doesn't have a clear memory of what happened to her.

But the physical evidence is so clear to me that she got hit in the head with a bottle that broke, and that the defendant was the only one there. I find her testimony credible, I don't find his very credible, and therefore, I do believe that the State has proven that the defendant hit her in the face with a bottle, causing these massive injuries, and that they were, in fact, family or household members. So I believe the State has proven the charge beyond a

> reasonable doubt, and the defendant will be found guilty of the single charge in the indictment."

The court later sentenced defendant to 14 years in prison.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Defendant argues that (1) the State presented insufficient evidence to support his conviction because the victim's testimony was not credible and (2) the trial court shifted the State's burden of proof to him. For the following reasons, we disagree and affirm.

¶ 33 A. Sufficiency of the Evidence

¶ 34 Defendant argues that this court should reverse his conviction because the State's evidence was insufficient to support his conviction. We disagree.

¶ 35 When a reviewing court considers a challenge to the sufficiency of the evidence, it must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the required elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. The trier of fact has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. Accordingly, a reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 36 Defendant first argues that the State's evidence was insufficient because the State primarily relied on M.T.'s testimony, which defendant argues was not credible because it was unreliable and inconsistent with the testimony of other witnesses and the physical evidence. Defendant points to the inconsistencies between the testimony of M.T. and that of Chambers regarding the interview Chambers conducted with M.T. in the hospital. However, as the State notes, M.T. sustained severe injuries to her head just prior to when Chambers questioned her. As a result, it is hardly surprising that M.T. did not remember the conversation verbatim.

¶ 37 Second, defendant argues M.T.'s recollections rely on inferences she made based on physical evidence. For example, M.T. believed defendant hit her on the head with a beer bottle because there were glass pieces from a bottle on the floor and in her forehead when she woke up and because defendant was there when it happened. Defendant, citing *People v. Novak*, 163 Ill. 2d 93, 102, 643 N.E.2d 762, 767 (1994), suggests this was inadmissible lay witness opinion testimony. We disagree. Illinois Rule of Evidence 701 states as follows:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Ill. R. Evid. 701 (eff. Jan. 1, 2011).

¶ 38 M.T.'s testimony meets each of the elements under Rule 701 to be proper lay witness opinion testimony. M.T.'s testimony explained why she believed defendant struck her in

the head with the bottle, was helpful to determining that fact, and was not based on any specialized knowledge.

¶ 39 Although M.T. testified that she had no *actual* recollection of being struck on the head, she did testify that as time went on, she remembered more from that night. Based on what she remembered, she believed defendant struck her in the head with a beer bottle. M.T. remembered that (1) defendant was the only other person in the apartment, (2) she was sitting on the couch as he was in the kitchen, (3) she had an argument with defendant, (4) she woke up in a pool of blood with pieces of glass around her, and (5) the hospital removed pieces of glass from her forehead. Based on these circumstances, it was reasonable for M.T. to testify and conclude that defendant hit her in the head with a beer bottle. Her explanation was helpful to the trier of fact.

¶ 40 Defendant also suggests that physical evidence contradicts M.T.'s testimony and that her injuries are better explained by her falling onto a beer bottle. The defendant made the same argument at trial, suggesting M.T. was intoxicated and fell onto a beer bottle. Although inconsistencies are present in the trial testimony as to exactly how much M.T. had to drink and which way her body was lying when she woke up, the circumstantial evidence was overwhelming that defendant, in fact, struck her in the head with a beer bottle.

¶ 41 The circumstantial includes the following. Defendant and M.T. were in a relationship, and on the night in question, had an argument over a car. Defendant's testimony suggests that he knew M.T. was being untruthful about the location of the car because she would have been upset if it was actually towed. Once G.T. left the apartment, M.T. went inside the apartment and was drinking a beer on the couch. She recalled defendant coming back inside the apartment and drinking a beer in the kitchen. The next thing M.T. remembered, she was struck

on the head. She woke up in a pool of blood and rushed around the apartment to find someone to help her. No one else was there.

¶ 42 Mary, M.T.'s neighbor, heard an argument and noise coming from the shared wall between their apartments. Defendant was nowhere to be found. It was later discovered that defendant left all of his belongings at M.T.'s house and left for Iowa. M.T. also testified that defendant called her twice after the incident and apologized.

¶ 43 Defendant argues that the State's evidence only established his presence at M.T.'s apartment the night she sustained her injury and that mere presence is insufficient to establish guilt beyond a reasonable doubt (citing *People v. Boyd*, 17 Ill. 2d 321, 327, 161 N.E.2d 311, 315 (1959)). We disagree. Defendant's presence was not the sole evidence used to convict him. As previously explained, the circumstantial evidence against defendant was overwhelming.

¶ 44 The trial court, as the trier of fact, was well aware of these circumstances and any inconsistencies in the testimony. The court had the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. See *Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found defendant guilty beyond a reasonable doubt of aggravated domestic battery.

¶ 45 B. The State's Burden of Proof

¶ 46 Next, defendant argues that the trial court erred by shifting the burden of proof to defendant. In support, he argues that the trial court's credibility findings somehow shifted the burden of proof to defendant to disprove that he caused the injury to M.T. We disagree.

¶ 47 Defendant recognizes that he forfeited this issue because trial counsel did not object at trial or raise the issue in a posttrial motion. Defendant urges us to review his claim

under the plain-error doctrine. The State argues that defendant failed to establish that the trial court relieved the State of its burden of proving the elements of the offense. We agree with the State.

¶ 48 The plain-error doctrine bypasses forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87, 830 N.E.2d 467, 479 (2005). Under both prongs of the plain-error doctrine, the defendant bears the burden of persuasion. *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). First, we choose to address whether error occurred at all.

¶ 49 "[T]he State bears the burden of proving beyond a reasonable doubt each element of a charged offense and the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 52, 1 N.E.3d 888. This burden remains with the State throughout the entire trial and never shifts to the defendant. *People v. Howery*, 178 Ill. 2d 1, 32, 687 N.E.2d 836, 851 (1997). Accordingly, the defendant is presumed innocent throughout the course of the trial and does not have to prove his innocence, testify, or present any evidence. See Ill. S. Ct. R. 431(b) (eff. July 1, 2012). The trial court is presumed to know the law and apply it properly; however, this presumption can be rebutted when the record contains strong affirmative evidence to the contrary. *Howery*, 178 Ill. 2d at 32, 687 N.E.2d at 851. Whether the trial court applied the correct legal standard is a question of law, which we review *de novo*. *NC Illinois Trust Co. v. Madigan*, 351 Ill. App. 3d 311, 314, 812 N.E.2d 1038, 1040 (2004).

¶ 50 Defendant argues that the trial court shifted the State's burden to him because it assigned guilt to him based on the credibility of his testimony. We disagree. The court found

M.T.'s testimony credible and tested defendant's theories with logic and other evidence in the case. A trial court is free to comment on the implausibility of the defense's theories, as long as it is clear from the record that the court applied the proper burden of proof in finding the defendant guilty. *Howery*, 178 Ill. 2d at 34-35, 687 N.E.2d at 852. Therefore, a trial court's "efforts to sustain the defense theory cannot be viewed as improperly diluting the State's burden of proof and placing it onto the defendant." *Id.* at 35, 687 N.E.2d at 852.

¶ 51 Further, our review of the record is devoid of "strong affirmative evidence" that the trial court shifted the State's burden to defendant. See *id.* at 32, 687 N.E.2d at 851. In reaching its decision, the court commented upon the State's evidence and theories, the defendant's evidence and theories, and the burden of proof. The court's comments about defendant's testimony indicate that the court thoroughly considered and tested defendant's theories and credibility in deciding this case. Indeed, we appreciate that the trial court explained how it reached its decision in this case. Accordingly, we reject defendant's contention that this experienced trial court somehow misunderstood or abandoned the appropriate burden of proof. The record is clear that the court knew and properly applied the burden of proof. The court's comments do not support a claim that it erroneously shifted the burden to defendant. Having determined that no error occurred, our plain-error analysis ends here.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 54 Affirmed.