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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15-CF-151
)	
JUSTIN PATZER,)	Honorable
)	Donald M. Tegeler, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of armed violence predicated on aggravated domestic battery (bodily harm) by strangulation, as the victim’s testimony supported the inference that defendant impeded his breathing (and thus “strangled” him) and thereby caused physical pain (and thus “bodily harm).”

¶ 2 After a bench trial, defendant, Justin Patzer, was convicted of (1) armed violence (720 ILCS 5/33A-2 (a) (West 2014)) predicated on aggravated domestic battery by strangulation (*id.* § 12-3.3(a-5); (2) aggravated domestic battery by strangulation; (3) aggravated domestic battery based on insulting or provoking contact (*id.* §§ 12-3.2(a)(2), 12-3.3(a)); (4) domestic battery

based on bodily harm (*id.* § 12-3.3(a)(1)); domestic battery based on insulting or provoking contact (*id.* § 12-3.3(a)(2)), and (5) aggravated assault (*id.* § 12-2(c)(1)). The victim of the first four offenses was defendant's brother-in-law, Jason Weller. The victim of the fifth was Michael Whildin. The trial court merged the second, third, and fourth convictions into the first and sentenced defendant to concurrent terms of 10 years in prison for armed violence and 300 days in jail for aggravated assault. Defendant appeals, contending he was not proved guilty beyond a reasonable doubt of armed violence. We affirm.

¶ 3 Count I of the indictment against defendant alleged that, on January 27, 2015, he committed armed violence in that, while armed with a dangerous weapon, a knife, he committed a domestic battery by knowingly causing bodily harm to a family member, in that he "strangled Jason Weller *** by intentionally impeding the normal breathing of Jason Weller by applying pressure on [his] throat or neck." The other counts involving Weller were based on the same act. Count VII, for aggravated assault, alleged that defendant knowingly displayed a knife and made threats against Whildin, placing him in reasonable apprehension of receiving a battery.¹

¶ 4 At trial, Jason testified as follows. He was married to Monica Weller, defendant's sister. In the days leading up to January 27, 2015, he had exchanged text messages with defendant. In one message, defendant offered to fight Jason; Jason responded that he did not want to fight. Jason told Monica about the messages and he was present when Monica called defendant shortly before January 27, 2015, to express displeasure with his conduct.

¶ 5 Jason testified further as follows. On the morning of January 27, 2015, he and Monica were at Delnor Community Hospital because Bruce Patzer, the father of defendant and Monica,

¹ Defendant was also charged with the battery (*id.* § 12-3(a)(2)) of Abdul Khan, but the State presented no evidence on this charge and later dismissed it.

was in the intensive care unit (ICU). Jason's parents, Kip and Janice Weller, were also there, along with several of Bruce's relatives. Jason was seated on a chair in the waiting room outside the ICU. Defendant entered the room and quickly approached him. Defendant then placed his right hand on Jason's neck. At trial, Jason demonstrated by placing the portion of his right hand between the thumb and index finger on the base of his neck. Jason testified that defendant was pressing his index finger and thumb on the sides of his neck in order to force him down into the chair and keep him from getting up. As defendant did so, he raised his other hand toward Jason's face and loudly said things "along the lines of do you like to talk smack."

¶ 6 Jason testified that defendant squeezed his neck. Asked, "How did it feel in terms of your breath or breathing when *** defendant was grabbing you in that manner?," Jason testified, "I needed to get him off me to breathe. I got him off me so I could breathe." Jason testified that he planted a foot in defendant's stomach and pushed him away with his leg. Defendant had been holding him for "[a] moment. One second." Defendant came forward again with a fist raised, but Steve Patzer, Bruce's brother, hooked defendant's raised arm and spun him away from Jason. Jason stood up and left the room.

¶ 7 Jason testified that he did not suffer any injury. The contact left no marks on him.

¶ 8 Jason testified that, while in the hallway, he heard a woman's voice and looked into the waiting room. Kip was backing out of the room and defendant was following him, holding a knife in his upraised fist. Kip went down the hall in the opposite direction from Jason, and defendant emerged from the room. He and Jason looked at each other; then each started running. Jason entered an off-limits part of the ICU. After he was sure that the incident had ended, he returned to his family. He did not see defendant again that day.

¶ 9 Kip testified that, as he was sitting on a bench outside the waiting room, defendant walked by him and entered the room. Kip then heard noise from the room, got up, and entered. He saw that Jason was sitting in a chair and defendant was holding him by the upper part of the chest by the neck. Jason put up a foot and pushed defendant partway off him. Defendant pulled back one hand in a fist, but Steve hooked his elbow, pulled him away, and forced him into a chair. Kip told Jason to leave the room, and Jason did. Steve let go of defendant and backed up. Defendant stood up, reached into his pocket, pulled out a knife, and opened it. He held the knife in his fist and shouted for people to stay away from him. Defendant started toward the door and Kip backed out ahead of him. Defendant was still holding the knife and continued down the hall. Kip eventually lost sight of him and did not see him again that day.

¶ 10 Steve testified that he was standing in the hallway outside the waiting room when defendant rushed by and entered the room. Steve heard a commotion and went to the doorway. He saw defendant on top of Jason with his arms forward. Steve removed defendant from Jason, spun him around, and put him into a chair. Soon, he removed his grip. Defendant stood up, pulled out a knife, and ran out the door. Steve did not see him again that day.

¶ 11 Whildin testified that on January 27, 2015, he was working at Delnor. He heard shouting from the ICU waiting room and called security. From the doorway, he saw defendant pull out a knife and hold it in his fist. Defendant said that he wanted to kill somebody. He started to exit the room. Whildin turned and retreated. Defendant exited the room, still holding the knife. He walked by Whildin, who did not see him again. During the incident, Whildin had feared that defendant would attack him with the knife.

¶ 12 Defendant put on no evidence.

¶ 13 In argument, the State maintained in part that the evidence proved that defendant had committed armed violence in that, while armed with the knife, a dangerous weapon, he committed the felony of domestic battery based on the infliction of bodily harm to Jason, who, as his brother-in-law, was a member of his family (see *id.* §§ 12-3.2(a)(2), 12-3.3 (a-5)). The State reasoned that the evidence proved that the pressure that defendant had exerted on Jason had interfered with his breathing, as implied by Jason’s testimony that he pushed defendant off him so that he could breathe. According to the State, defendant “strangle[d]” Jason, because the aggravated-battery statute defines “strangle” in part as “intentionally impeding the normal breathing *** of an individual by applying pressure on the throat or neck of that individual.” *Id.* § 12-3.3(a-5). The brief duration of the harm was irrelevant.

¶ 14 Defendant countered that the evidence showed that Jason had not been injured; there was no physical sign of harm. Moreover, the evidence did not prove that defendant “strangled” Jason: Jason did not actually testify that he had been unable to breathe. Defendant had merely held Jason while preparing to hit him. The State replied that pain qualified as bodily harm and the evidence proved that Jason had undergone pain.

¶ 15 The court first found defendant guilty of aggravated assault, as he had displayed a knife within a few feet of Whildin and had placed the latter in reasonable apprehension of receiving a battery. The court found defendant guilty of aggravated domestic battery and simple domestic battery based on insulting or provoking contact, based on the act of placing his hand on Jason’s neck and throat. Further, the court found defendant guilty of domestic battery based on bodily harm, explaining that, by squeezing Jason’s neck to the point where Jason had to remove him in order to breathe, defendant had caused Jason “pain, if not complete discomfort.” Under *People v. Mays*, 91 Ill. 2d 251 (1982), this proved bodily harm.

¶ 16 The court then turned to the remaining counts, armed violence and aggravated domestic battery, both of which had required the State to prove that defendant had “strangle[d]” Jason (720 ILCS 5/12-3.3(a-5) (West 2014)). In finding that the State had met its burden, the court stated that defendant “intentionally impeded the normal breathing [of Jason] by applying pressure on the throat or neck. And I think that is corroborated by the testimony of Jason Weller *** that he needed him off of him in order to breathe.” The court denied defendant’s posttrial motion and sentenced him as noted. He timely appealed.

¶ 17 On appeal, defendant’s sole contention is that he was not proved guilty beyond a reasonable doubt of armed violence, because there was insufficient evidence that he had “commit[ted] a domestic battery” and “strangle[d]” (*id.* § 12-3.3(a-5)) Jason by applying pressure to his neck for no more than a second. Defendant asserts that the evidence proved not that he actually interfered with Jason’s normal breathing but, at most, only that Jason feared that he would do so. Defendant also asserts that the evidence did not prove bodily harm, given that Jason was not injured and the attack left no marks.

¶ 18 For the following reasons, we hold that the evidence was sufficient to prove the predicate offense of aggravated domestic battery based on strangulation. Therefore, we affirm defendant’s conviction of armed violence.

¶ 19 In addressing a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The fact finder is responsible for determining the witnesses’ credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the

evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 20 As noted, the pertinent statute defines “strangle” as “intentionally impeding the normal breathing *** of an individual by applying pressure on the throat or neck of that individual.” 720 ILCS 5/12-3.3(a-5) (West 2014)). The trial court found that defendant did so by squeezing Jason’s neck or throat with his hand. Defendant contends that Jason’s testimony that we quoted earlier did not prove actual impediment, because Jason “never testified that his breathing was ever in fact impaired.” He also notes that Jason conceded that the incident left neither an injury nor any marks, thus negating proof of bodily harm.

¶ 21 We disagree with defendant. First, although Jason did not testify explicitly that defendant’s attack impeded his breathing, the trial court reasonably inferred that fact. Jason did state that he pushed defendant away so that he could breathe. Moreover, he so stated in response to the question, “How did it feel in terms of your breath or breathing *when* *** *defendant was grabbing you* in that manner?” (Emphasis added.) Thus, even were Jason’s answer wholly ambiguous when read in isolation, the court could find it plain when read in context: *while* defendant was pressing on his throat, Jason experienced trouble breathing. This reasonable inference was sufficient to satisfy the statute.

¶ 22 Defendant contends next that the State failed to prove bodily harm. Defendant notes that count I charged him with committing aggravated battery in that he “caused bodily harm to Jason *** in that [he] strangled Jason.” This language tracks the statute, as aggravated domestic battery requires “domestic battery” (*id.* §§ 12-3.2(a), 12-3.3(a-5)), which, in turn requires (as pertinent here) “bodily harm” (*id.* § 12-3.2(a)(1)). Thus, the State had to prove “bodily harm.” We conclude that the State did so.

¶ 23 In *Mays*, the supreme court construed the term “bodily harm” as used in the battery statute. *Mays*, 91 Ill. 2d at 256; see Ill. Rev. Stat. 1977, ch. 38, ¶ 12-3. The court held that the term could not be equated with the word “force” as used in the rape statute. *Mays*, 91 Ill. 2d at 257; see Ill. Rev. Stat. 1977, ch. 38, ¶ 11-1. The court explained that, unlike the latter term, “bodily harm,” though not easily defined, requires “some sort of *physical pain* or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent.” (Emphasis added.) *Mays*, 91 Ill. 2d at 256. We agree with another court that this list of “examples” was not intended to be “exclusive or exhaustive.” *People v. Woods*, 373 Ill. App. 3d 171, 178-79 (2007). But even limiting ourselves to this list, we see no difficulty in applying the term “physical pain” to the serious discomfort that would be experienced when defendant impeded his normal breathing. That the attack left no apparent injury or marks did not defeat the State’s case.

¶ 24 In *People v. Lavow*, 2014 IL App (2d) 121375-U, we affirmed the defendant’s conviction of aggravated battery based on bodily harm (720 ILCS 5/12-3(a)(1) (West 2010)). The victim testified that the defendant elbowed him in the chest and “ ‘practically took [his] breath away.’ ” *Id.* ¶ 31. We held that the trial court properly inferred that the defendant had caused the victim “physical pain.” *Id.* ¶ 32. Although *Lavow* is a nonprecedential order, we find its reasoning sound and applicable here. See *People ex rel. Webb v. Wortham*, 2018 IL App (2d) 170445, ¶ 27.

¶ 25 We conclude that defendant was proved guilty beyond a reasonable doubt of armed violence based on aggravated domestic battery. Therefore, we affirm the judgment of the circuit court of Kane 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 2016)); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 26 Affirmed.