2018 IL App (2d) 170161-U
No. 2-17-0161
Order filed May 22, 2018

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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 Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CM-3936
JOHN ACEVES,	)	Honorable Kathryn D. Karayannis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: At defendant's trial for domestic battery, the trial court did err in limiting the cross-examination of the State's witnesses, and the State proved defendant guilty beyond a reasonable doubt.

¶ 2 Defendant, John Aceves, appeals from his convictions for domestic battery of his son, E.A. He argues that the trial court improperly limited his cross-examination of the State's witnesses and that the evidence was insufficient to convict him. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with two counts of domestic battery. Count 1 alleged that defendant knowingly caused bodily harm to his son, E.A., by "pull[ing] [E.A.] by the hood of his sweatshirt causing an abrasion to his neck." See 720 ILCS 5/12-3.2(a)(1) (West 2014). Count 2 alleged that defendant knowingly made physical contact with E.A. of a provoking nature by "pull[ing] the hood of [E.A.'s] sweatshirt." See 720 ILCS 5/12-3.2(a)(2) (West 2014). The alleged incidents occurred on or about October 17, 2015.

¶ 5 Defendant's case proceeded to a bench trial. The State presented evidence that, on October 16 and 17, 2015, defendant and E.A. had disputes that involved physical contact. The incidents on both dates were subject to conflicting accounts, not only from defendant and E.A. but also from occurrence witnesses Diana Rivera, defendant's fiancé, and A.A., E.A.'s younger sister and daughter of defendant. E.A. testified that defendant physically injured him during the October 17 incident. Leonor Morales, the mother of E.A. and A.A., saw E.A. on October 17 shortly after the incident. She testified that she observed physical injuries to E.A. yet did not take him to the hospital until several hours later. The defense's theory was that E.A. and Morales fabricated an account of abuse so that custody of E.A. would be changed from defendant to Morales.

¶ 6 The State's witnesses at trial were E.A., Morales, and Montgomery police officer David Gray. The defense witnesses were A.A., Rivera, and defendant.

¶ 7 A. Incident on October 16, 2015

¶ 8 E.A. was 15 years old at the time of trial. He resided with defendant at the time of the incidents in October 2015 and also for several years beforehand. Prior to residing with defendant, E.A. resided with Morales. Shortly after the October 2015 incidents, E.A. began residing with Morales again and had remained so as of trial in summer 2016.

¶ 9 E.A. testified that, in mid-October 2015, he resided with defendant, A.A., Rivera, and Rivera's daughter. According to E.A., Rivera was "always mad about something" because he was "always supposedly a bad child" doing "bad things." Rivera was more of a disciplinarian than defendant and had "strict rules" for E.A. Defendant and Rivera frequently took E.A.'s phone away for violation of the rules. In mid-October 2015, they had taken his phone away because of poor grades, and Rivera was "[going] around telling everybody that [he] was doing bad and [he] was doing drugs." When E.A. arrived home on the evening of October 16, 2015, defendant and Rivera were in the yard entertaining guests with a bonfire. Sitting at the bonfire, E.A. heard Rivera speak unfavorably about him to the guests. E.A. confronted her and the two exchanged words. Upon hearing this, defendant told E.A. to go inside the house. When E.A. refused, defendant "grabbed [his] hoody, *** dragged [him], *** shoved [him] to the steps and *** threw [him] up to the door." More specifically, defendant grabbed the hood of E.A.'s sweatshirt and pulled him out of his seat. Defendant then walked toward the house, "tugg[ing]" on E.A.'s hood and forcing him to keep pace. When they reached the stairs to the door, defendant pushed E.A. up to the door. E.A. went inside and then down the stairs to his basement bedroom. He decided that he no longer wanted to live with defendant. He then went to defendant's bedroom and recovered his phone. He slept that night in his basement bedroom.

¶ 10 E.A. admitted telling police that Rivera verbally abused him on the night of October 16 but not that defendant grabbed him by the hood and shoved him up the stairs. E.A. explained that those details "[p]robably slipped [his] mind."

¶ 11 Rivera testified that defendant was awarded custody of E.A. and A.A. about four years prior to October 2015. E.A. and A.A. lived with defendant and Rivera during those four years. Previously, Morales had custody of the children. Rivera initially could recall only one visit that

Morales had with the children since custody changed to defendant. This was when E.A. and A.A. went to see Morales while she was "in rehab." Rivera then recalled an occasion when Morales came to the house to see the children.

¶ 12 Rivera testified that she had a close relationship with E.A. and felt like "another mom" to him. About two weeks before the incident on October 16, she and defendant had taken away E.A.'s phone because his grades were poor. On the evening of October 16, she and defendant hosted a family gathering. Rivera and E.A. spoke in the kitchen. E.A. asked for his phone back, and Rivera replied that he needed to improve his grades first. Later, outside at the bonfire, E.A. developed an "attitude," and defendant told him to go inside. E.A. complied and went inside. According to Rivera, defendant did use any physical force to get E.A. inside.

¶ 13 Defendant testified that, in October 2015, E.A. and A.A. had been living with him and Rivera for about 5 years. During that period, there was no "communication [or] visits" from Morales. Defendant testified that he had a good relationship with E.A.

¶ 14 Defendant stated that, at a family gathering on October 16, E.A. became upset because he thought that defendant and Rivera were telling others about E.A.'s grades. Defendant told E.A. to go inside. When E.A. refused, defendant "reached and grabbed his arm by his hand and *** pulled him up." Defendant "pulled [E.A.] kind of like towards the door and we had to walk up a couple of steps to get in the back door." E.A. was not fighting against him but was "kind of dragging his feet like he didn't want to go in." Defendant denied that he treated E.A. roughly or threw him up the steps to the door. Defendant had been drinking that night but was not intoxicated.

¶ 15 A.A. was 12 years old at the time of trial. She testified that she saw no incident between E.A. and defendant on the night of October 16.

¶ 16 B. Incident on October 17, 2015

¶ 17 E.A. testified that, on the morning of October 17, 2015, he took a garbage bag for his clothes. He no longer wanted to live with defendant. When he was ready to leave, he told defendant that Morales was on her way to pick him up. Defendant replied E.A. was " 'not going anywhere." ' E.A. was through the doorway when defendant forcefully grabbed him from behind by the hood of his sweatshirt and pulled him back through the doorway. Defendant angrily yelled at E.A. as he held him against the wall by pushing on his chest and neck. After holding E.A. for about 30 to 45 seconds, defendant "threw [him] down the [basement] stairs" by pushing him from the side. The staircase was straight and consisted of 12 or 13 wooden stairs without carpeting. E.A. "rolled down" most of them before catching himself on the railing. As he grabbed the railing, he swung to the side and hit the wall. At first he did not feel any pain, but later his left hand "got swollen because [he] twisted it wrong or something." E.A. testified that he did not observe A.A. in the vicinity when defendant pulled him by the hood and pushed him down the stairs.

¶ 18 E.A. stated that, after being pushed down the stairs, he went to his basement bedroom. Defendant followed him down. Defendant had found out that E.A. recovered his phone and used it to call Morales. The phone was in the front pocket of E.A.'s sweatshirt and defendant saw its display light up as Morales texted E.A. Defendant asked for the phone. E.A. refused, and the two struggled as defendant attempted to get the phone. The two pushed each other. At one point, defendant "picked [E.A.] up and slammed [him] on the bed." E.A. ended up face down on the bed with his knees on the floor. Defendant was on E.A.'s back as E.A. stretched out his right arm, phone in hand, to keep the phone away from defendant. Eventually, defendant stood up and ripped a piece of wood "siding" or "trim" from the middle of the wall. E.A. described the piece

as about 18 inches long, 2 inches wide, and 1/2 inch thick. Defendant struck E.A. on the head with the board. E.A. did not recall feeling any pain at that point; he might have "blacked out." E.A. stood up. He and defendant pushed each other for several seconds, after which E.A. punched defendant in the face two or three times. Defendant fell to one knee and told E.A. that he could leave if he wished. E.A. ran up the stairs and out the door.

¶ 19 According to E.A., A.A. came down into the basement "a little bit after everything started happening." He could not recall exactly when she arrived, but he heard her scream, " 'Bobby, stop it, Eddie stop it,' " while he and defendant were struggling on the bed. A.A. was standing on the basement steps and "angled around," looking at the bed. E.A. testified later on rebuttal that he first observed A.A. "after the physical altercation" between defendant and him.

¶ 20 E.A. testified that, after he left defendant's house, he phoned Morales. He felt pain in his head, which was "pounding." Morales picked him up down the street. "They" were calling Morales and threatening to contact the police if she did not bring E.A. back. E.A. and Morales then drove to E.A.'s grandmother's house. They remained there for several hours before going to a restaurant. At 9:00 p.m., Morales returned E.A. to defendant's home. This was pursuant to an agreement that Morales reached with defendant. The agreement was that E.A. would spend that night (Saturday) at defendant's, Morales would spent time with him E.A. on Sunday, and on Monday defendant and Morales would go to court where he would sign custody of E.A. over to her.

¶ 21 E.A. testified that, when they arrived at defendant's home that evening, he was outside with his friends and Rivera. E.A. could see that defendant was drunk. As E.A. walked down the driveway, defendant started cursing and demanding his phone. Rivera approached Morales' car. Morales said, " 'We're not going to deal with this," and directed E.A. back into the car. They

then drove to the hospital because E.A.'s head began hurting again. E.A. had a "big bump" on the top of his head from where defendant struck him with the board. He had been feeling pain in his head since that morning's incident, but did not want to seek treatment because he did not want to get defendant in trouble. At some points during the day, the pain subsided. However, when defendant confronted E.A. again as Morales attempted to drop him off, E.A. became scared and the pain in his head returned.

¶ 22 When they arrived at the hospital, the police were already there. E.A. and his mother spoke to them. The police took photographs of his injuries. The photos, which the State introduced into evidence, include a full-body photo of E.A. and close-up photos of his head, neck, left hand, and right leg. The photos show E.A.'s sweatshirt torn at the neck. His head, neck, left hand, and right leg all have abrasions. The hand also appears swollen. E.A. testified that the bodily injuries and ripped clothing shown in the photos were sustained during his struggle with defendant on October 17. According to E.A., the injury to his head was from defendant hitting him with the trim, the injury to his neck was from defendant holding him by the neck against the wall, the injury to his right leg was from him "jumping over the bed," and the injury to his left hand was from the "altercation" with defendant.

¶ 23 E.A. testified that he is currently living with Morales, which he prefers to living with defendant. E.A. denied, however, that he was testifying against defendant because he wanted to live with Morales. He did not want to be in court testifying against his father, but it was defendant who "chose to have this done."

¶ 24 E.A. stated that he told the police that defendant struck him with a piece of wood. He admitted, however, that he "probably" did not include that detail in his written statement to police. He explained that the detail could have "slipped [his] mind" in the course of being

interviewed by several officers. E.A. did not save the piece of wood trim because "it's not usually something you grab when you run out [of] the house." E.A. claimed that there was a white line on the wall of his room where the trim had been. E.A. conjectured that defendant burned the trim because he was always having fires.

¶ 25 On cross-examination, E.A. was asked why he decided on the night of October 16 that he would live with Morales rather than defendant. He claimed that he did not make that decision because his phone was taken away or because Rivera was talking about him. Defendant and Rivera "had always taken [his] phone away so it didn't really upset [him]." E.A. was "just tired of that household." According to E.A., defendant and Rivera had "always told him [he] could leave whenever [he] wanted." E.A. decided he would live with Morales even though he had not seen her in "quite a while." When defense counsel asked E.A. whether, as of October 2015, Morales was even permitted to have contact with him, the State objected based on relevancy. Defense counsel argued that the question concerned "motive." The trial court overruled the objection, stating that it would give the defense "a little bit of latitude" but "[did not] want to get into a custody dispute." E.A. then stated that, as of October 2015, Morales was not permitted to see him.

¶ 26 On further cross-examination, the defense asked E.A. why he decided "out of the blue" to leave defendant's home. E.A. replied that he was "always tired of the things [defendant] was saying to [him]." E.A. "just finally got tired of it." He denied that he was "tired of the rules" at defendant's home. He added, "I know the rules and just stuff I had to do with the house. It comes with any household." The defense asked E.A. what kind of household rules defendant had. E.A. answered that he had to "keep [his] grades up ***, help around the house, keep the basement clean." The defense then asked, "In fact you weren't keeping your grades up. You

actually had gotten a couple Fs, right?" The State made a general objection on grounds of relevance. Defense counsel argued that the question related "to the motives of how this came about." The trial court sustained the objection, commenting, "I'm not getting into what the rules were, whether he thinks he was following them or not."

¶ 27 E.A. testified further on cross-examination that he currently preferred to live with Morales because "[t]hings are going much better" there. Asked if Morales had "strict rules," E.A. answered, "She has rules. Not as strict as theirs." The defense then asked E.A. whether Morales allowed him to "smoke pot with her." The State objected generally based on relevance. The trial court asked defense counsel to explain the relevance. Counsel stated:

> "The relevance is this whole [*sic*] was orchestrated by him and his mom because his mom had lost custody, wanted to get him back and she got him back now and mom let's him do anything he wants. Judge, I have it on his Facebook page, she smokes pot with him."

¶ 28 The trial court sustained the objection:

> "Whether she let's him do what he wants or not, is that really relevant to whether or not he's—Objection sustained. We are not getting into everything allegedly he's doing with his mom or not doing with his mom. The objection is sustained."

¶ 29 Counsel asked to make his offer of proof through questioning of E.A., but the trial court disallowed that method. Counsel proceeded to recite what he anticipated E.A. would say on cross-examination. Counsel stated that, if questioned, E.A. would testify to several posts on his Facebook page that reference his smoking "bud" with his "mom." The earliest of these posts was dated November 8, 2015 (the month after incidents) and the latest was dated June 7, 2016. In a post dated June 29, 2016, a user asked E.A. if his "mom [would] buy us beer if we give her

money." When defense counsel mentioned that one of the posts contained "code that makes no sense," the court cut short the offer of proof and ruled that the subject matter of the offer was not relevant.

¶ 30 Following this ruling, the defense again asked E.A. whether he "smoke[d] pot" with Morales. The State again objected, stating that the query "ha[d] nothing to do with this [case]." The court sustained the objection, agreeing that whether E.A. "smokes pot with his mom now" was irrelevant.

¶ 31 Morales testified that, late in the morning of October 17, 2015, she spoke to E.A. on the phone. She then drove to a gas station and picked him up. E.A. was hysterical and crying. He had "bruises all over his body" and his "clothes were torn." Specifically, his hooded sweatshirt was ripped at the neck and side pockets, and he had bruising or redness on his head, face, hands and legs. Morales took E.A. to her parents' home where she lived. Defendant phoned her and said that he was "done" with E.A. Defendant and Morales agreed that they would go to court on Monday and arrange for defendant to give up custody of E.A. to Morales. They further agreed that Morales would return E.A. to defendant's home at 9 p.m. that day. After she and defendant spoke, Morales spent the day with E.A. at her parents' home. She did not take E.A. to the hospital during that time because he begged her not to. Later, she drove E.A. to defendant's home as she had agreed. When E.A. exited the car, defendant, who was drunk and angry, cursed at him. At Morales' direction, E.A. got back into the car. Defendant threatened to report Morales for kidnapping. She drove off with E.A. and took him to the hospital. The hospital staff called the police and child welfare authorities

¶ 32 On cross-examination, Morales stated that, prior to October 17, 2015, she had not seen E.A. for about two months. She denied that she "lost" custody of E.A. and A.A. Rather,

defendant "took" custody of the children when she was "gone." Morales denied that she was "gone" because she was in jail. Rather, she was "taken into a facility center for women to—for counseling and stuff like that because [she] had been in a program." Morales clarified that it was a "drug program." She then admitted that, in 2015, she was convicted of possession of a controlled substance and placed on probation. In 2016, she violated her probation and was sentenced to a jail term.

¶ 33 The defense then asked Morales whether her probation violation was based on her "test[ing] positive for multiple illegal drugs." The State made a relevancy objection. Defense counsel asserted that the question was relevant to show "[d]rug addiction." The trial court sustained the objection.

¶ 34 Defense counsel continued with additional questions about Morales' criminal history. For instance, Morales testified that she was convicted of forgery in 2010 and "originally got placed into drug court." Counsel continued as follows, drawing an objection:

> "Q. You failed to successfully complete—
>
> MR. KINSELLA [ASSISTANT STATE'S ATTORNEY]: Your Honor, I'm going to object. Whether or not this offense exists is permissible for defense counsel to get into. But the specifics of the sentence and what was a part of the sentence or conditions on the sentence, that's—defense counsel is not permitted to get into that. It's not relevant.
>
> THE COURT: Mr. Zuelke.
>
> MR. ZUELKE [DEFENSE ATTORNEY]: Judge, I think drug addiction is relevant to somebody's credibility. I thought that was permissible legally. I don't have the case right now to cite.

MR. KINSELLA: Your Honor, if I may respond.

THE COURT: You may.

MR. KINSELLA: Thank you. There is no evidence or anything to suggest that drug addiction has anything to do with this. Defense counsel has merely elicited testimony that there are prior convictions for criminal offenses. There's nothing to suggest that drug addiction or any addiction or anything is relevant to this matter.

THE COURT: The objection is sustained."

¶ 35 Defense counsel proceeded to ask Morales whether she had been convicted of retail theft. She claimed that she was unaware of that conviction.

¶ 36 Later, defense counsel revisited Morales' previous assertion that, as of mid-October 2015, she had not seen E.A. for a couple of months. Counsel asked specifically as follows, drawing an objection:

"Q. But in any event the reason you had not seen [E.A.] for at least a couple months before this is because you did not have custody. In fact you were not allowed to have visitation with him, correct?

MR. KINSELLA: Objection, your Honor. It's been asked and answered.

THE COURT: Sustained."

¶ 37 Morales further testified that E.A. has lived with her since shortly after the incident on October 17.

¶ 38 The parties later stipulated that Morales was convicted in February 2013 of retail theft and sentenced to one year of conditional discharge.

¶ 39 Officer Gray testified that he interviewed defendant at his home shortly after 9 p.m. on the evening of October 17, 2015, regarding the incident from earlier that day. According to

defendant, he demanded E.A.'s phone as punishment for his poor grades. When E.A. refused to give up the phone and attempted to leave the house, defendant grabbed E.A. by the backpack to prevent him. The two then went down into E.A.'s basement bedroom where the argument continued. When E.A. tried to walk away, defendant grabbed him by the hood of his sweatshirt. E.A. tried to punch defendant but did not connect. The two then pushed and shoved each other. During the struggle, they fell onto the bed. Defendant eventually gave up and told E.A. that he could leave.

¶ 40 After interviewing defendant at his home, Gray went to the hospital to interview E.A., who was being treated in the emergency room. Gray observed abrasions on E.A.'s head, neck, arms, and legs. Gray was shown the photographs previously introduced by the State. He testified that the injuries shown in the photographs were consistent with what he observed on E.A. on October 17.

¶ 41 In his interview with Gray, E.A. said that defendant struck him on the head with an "unknown object." E.A. made no mention of a piece of wood trim. Gray testified that he did not recover E.A.'s sweatshirt as evidence. After speaking with E.A., Gray arrested defendant for domestic battery.

¶ 42 A.A. testified that, on the morning of October 17, she saw E.A. attempt to leave the house with two backpacks in order to go with Morales. Defendant grabbed E.A.'s backpack and pulled him back into the house. Asked if defendant did so in a rough manner, A.A. replied that defendant "just pulled it backwards." Defendant was not angry but was talking calmly with E.A.

¶ 43 A.A. stated that, after defendant stopped him from leaving, E.A. went down into the basement. A.A. did not see defendant throw or push E.A. down the stairs. Several minutes later, Rivera told defendant that E.A. was packing his bags again. Defendant went into the basement

and A.A. followed. Defendant demanded E.A.'s phone, which he was not supposed to have because he was "grounded." E.A. refused to give up the phone and tried to punch defendant. The punch did not connect. As E.A. tried to leave, defendant restrained him by the hood of his sweatshirt. The two fell onto the bed and struggled over the phone. Defendant held E.A.'s arm and tried to grab the phone from his pocket. Defendant eventually gave up and let E.A. go. E.A. went upstairs and left the house.

¶ 44 A.A. denied that defendant held E.A. against the wall, threw him on the bed, or struck him in any way. According to A.A., there was no trim on the wall for defendant to remove. During their struggle in the bedroom, defendant was upset with A.A. but did not yell or curse at him. Defendant was in E.A.'s room about five minutes before E.A. left. A.A. agreed that she loves defendant and does not want to see anything bad happen to him.

¶ 45 Rivera testified she left defendant's house early on October 17 and did not see E.A. between the evening of October 16 and the evening of October 17. At 9 p.m. on October 17, Morales came to the house to drop off E.A. At the time, defendant had consumed a couple of beers but was not intoxicated. Defendant asked E.A. where his phone was, and E.A. replied that Morales had it. Defendant said he needed the phone. Morales replied that defendant would not get the phone and directed E.A. back into the car. Defendant did not yell or curse at them, but he told Morales that she better return E.A. because defendant had custody of him.

¶ 46 Rivera stated that, after Morales left, she and defendant called the police. When the police arrived, they said that Morales was on her way to the hospital. Later that night, defendant was arrested. E.A. returned home still later. Rivera asked E.A. what happened earlier that day. E.A. became angry and accused her of doubting him. He grabbed a trophy and threw it at her. The trophy hit the wall. Rivera ran upstairs and called the police. That evening, E.A. stayed

with Rivera's parents. When she picked E.A. up the next morning, October 18, she again asked him what happened between him and defendant the previous day. E.A. confessed to Rivera that defendant had not hit him and that he made the accusation because he wanted to live with Morales.

¶ 47 Defendant testified that, on the morning of October 17, he discovered that E.A. had recovered his phone, called Morales, and packed his bags in order to run away. As E.A. was attempting to leave the house, defendant grabbed the hood of his sweatshirt and pulled him back. Defendant did not pull so hard that E.A. tumbled or fell. E.A. then dropped his bags and went downstairs to his basement room. Defendant did not push or throw him down the stairs. E.A. came back upstairs to eat breakfast and then went back down. Defendant could hear E.A. speaking on his phone. Defendant went downstairs, saw that E.A. had the phone in his pocket, and told him to hand it over. E.A. refused. He tried to swing at defendant but defendant grabbed his arm. The two fell onto the bed. Defendant continued to hold E.A.'s arm as he was still trying to swing at him. Defendant also tried to get the phone from E.A.'s pocket. Defendant eventually let E.A. go and he ran out of the house.

¶ 48 Defendant denied holding E.A. against the wall or hitting him. Regarding E.A.'s claim that defendant took a piece of trim off the wall and hit him, defendant testified that there was trim at the base of the wall but not farther up the wall. Defendant acknowledged telling the police that he and E.A. pushed each other.

¶ 49 Defendant testified that Morales called him later on October 17 to say that she had picked up E.A. Defendant told her that he was willing to give up custody of E.A. Defendant testified that he so agreed because he was tired of arguing with E.A. Defendant believed that E.A. wanted to live with Morales "for the rules that she has."

¶ 50 During their conversation, Morales agreed to return E.A. to defendant's home at 9 p.m. that day. When Morales arrived with E.A., defendant was outside with Rivera. When E.A. got out of the car, defendant asked him where his phone was. E.A. did not respond, and Morales began yelling at defendant to leave E.A. alone. E.A. ran back to the car and Morales yelled that she was taking E.A. to the hospital. Defendant told Morales to return E.A. because defendant still had custody of him. Defendant stated that he had been drinking that day but denied that he was intoxicated.

¶ 51 C. The Trial Court's Ruling

¶ 52 The trial court found defendant guilty on both counts of domestic battery. The court found that defendant struck E.A. with some kind of object, and the court considered it immaterial whether the object was, as E.A. claimed, a piece of wood. The court made no specific finding on whether defendant pushed E.A. down the steps, as he testified.

¶ 53 The court included detailed credibility findings. The court found E.A. credible based in part on his "demeanor and mannerisms" as the court observed them. The court recognized that there were "some things that [E.A.] did not outline specifically to the police," but the court did not consider these "major inconsistencies." The court accepted E.A.'s explanation that he delayed in seeking medical treatment because he did not want to get defendant in trouble. The court also found Morales' "emotional" testimony credible.

¶ 54 The court found A.A. not credible based on inconsistencies between her testimony and that of other witnesses. For instance, A.A. testified (as the court recalled) that defendant's "conversations [with E.A.] were "calm *** when defendant himself admitted that he was angry and that this was clearly a confrontation between the two." Rivera was not credible because she never informed the police of E.A.'s supposed recantation on October 18.

D. Posttrial Motion

¶ 55 Defendant filed a posttrial motion challenging the trial court's rulings on cross-examination of E.A. and Morales and arguing that defendant was not proven guilty beyond a reasonable doubt. Defendant included with the motion several screenshots of the Facebook pages he would have questioned E.A. about had the court allowed.

¶ 56 The court adhered to the rulings it made on cross-examination of E.A. and Morales. First, the court "knew that [E.A.] wanted to live with his mother," but the court continued to believe that E.A.'s particular reasons for that preference were not relevant. The court further noted that, even if it had considered E.A.'s reasons, it would not have found the Facebook posts probative as to those reasons. The court elaborated that drug use by E.A. and Morales "months after" defendant's arrest in October 2015 did not establish that E.A.'s motive for accusing defendant in October 2015 was that he wanted freedom to do drugs.

¶ 57 Second, the court found no error in its limiting cross-examination on whether Morales was permitted visitation with E.A. as of October 2015. The court considered it nonsensical to suggest that a change of custody was Morales' motive at trial, given that defendant was willing, even before his arrest in October 2015, to transfer custody to Morales and, moreover, that she had custody of E.A. ever since.

¶ 58 The court continued to find E.A. credible even "knowing that he wanted to go live with his mother" and even "knowing that he allegedly had smoked marijuana with his mother."

¶ 59 The court denied the posttrial motion and sentenced defendant to 18 months of conditional discharge.

¶ 60 Defendant filed this timely appeal.

¶ 61 II. ANALYSIS

¶ 62 A. Limitation on Cross-Examination

¶ 63 Defendant contends that the trial court violated his constitutional right to cross-examination by restricting his questioning of E.A. and Morales. We disagree.

¶ 64 1. General Principles

¶ 65 The right to confront witnesses and the related right to cross-examination are protected by both the Illinois and United States Constitutions. See U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. 1, § 8. "The exposure of a witness' motivation is an important function of the constitutionally protected right of cross-examination." *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). The right to cross-examination is not absolute and may be required to yield to other legitimate interests. *People v. Foskey*, 136 Ill. 2d 66, 89 (1990). "A trial judge retains wide latitude to impose reasonable limits based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *Klepper*, 234 Ill. 2d at 355. "The latitude allowed on cross-examination is within the sound discretion of the circuit court, and a reviewing court will not interfere unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant." *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). The reviewing court need not "isolate the particular limitation on cross-examination to determine whether reversible error has occurred." *Klepper*, 234 Ill. 2d at 355-56. The court "look[s] to the record in its entirety and the alternative means open to the defendant to impeach the witness." *Id.* at 356. "Thus, if a review of the entire record reveals that the fact-finder has been made aware of adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because the defendant has been prohibited on cross-examination from pursuing other areas of inquiry." *Id.* In short, "[t]o determine the constitutional sufficiency of cross-examination, a court looks not to what a defendant has been

prohibited from doing, but to what he has been allowed to do." *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999).

¶ 66 2. E.A.'s Residential Preference

¶ 67 We address first defendant's claim that the trial court erred in limiting his cross-examination of E.A. directed at exposing his reasons for wanting to reside with Morales.

¶ 68 Defendant agrees that it was clear at trial that E.A. wanted to reside with Morales. He contends, however, that he was prejudiced by being barred from exploring E.A.'s particular reasons for that preference. Defendant submits that "the details as to why [E.A.] wanted to [live with Morales] were crucial to the defense because they would have demonstrated *** the full extent of E.A.'s bias and motive to lie against his father." Here defendant identifies two instances of alleged error. The first was when the trial court sustained the State's objection to defendant's question whether E.A. had received "a couple Fs," in violation of defendant's household rules. The second instance was when the trial court disallowed the defense from asking E.A. whether Morales allowed him to smoke pot with her. According to defendant, "[w]hat the rules at [defendant's] house were, *** especially when compared to the rules (or lack of rules) at his mother's house, went to the heart of the defense theory."

¶ 69 As we construe defendant's argument, as made below and on appeal, his position is that Morales' household rules provided a motive for E.A. not only to fabricate in his initial accusation against defendant in October 2015, but to continue that fabrication at the summer 2016 trial.

¶ 70 In our view, the trial court's rulings were appropriate efforts by the court to maintain the proper focus in the case. Prior to those rulings, the trial court said it would permit defense counsel "a little bit of latitude" to explore domestic issues without "get[ting] into a custody

dispute." Through those rulings, the trial court kept the criminal trial from devolving into a quasi-custody hearing where parenting styles were compared. Counsel retained, however, reasonable scope to develop his theory that E.A. falsely accused defendant because E.A. wanted to live with Morales. Thus, as we explain, there was no manifest prejudice to defendant.

¶ 71 First, even before defense counsel asked about E.A.'s grades, E.A. had testified that defendant's household rules were "strict," that E.A. had not kept up his grades as required, and that his phone had been confiscated as punishment. While E.A. denied that he was "tired of [defendant's] rules" when he decided to leave defendant's house, the record as developed provided defense counsel a significant basis for attacking that claim given that E.A.'s violation of those rules led ultimately to the conflict that sparked this case. Specifically, Rivera testified that E.A. asked her on October 16 for return of his phone but was rebuffed because his grades were not yet as required by the household rules. E.A. covertly reclaimed the phone anyway, and defendant later confronted him over it.

¶ 72 The defense had further grist for argument in the complaints that E.A. voiced at trial about defendant's house. E.A. testified that, on the night of October 16, Rivera—who he claimed was always angry at him—made critical remarks to others about his grades. E.A. claimed to have decided that night to leave defendant's home because he "was just tired of that household." He specified at another point in his cross-examination that he "was always tired of the things [defendant] was saying to [him]." These statements provided counsel a substantial basis for arguing that E.A. falsely accused defendant in order to escape a domestic climate that E.A. could no longer tolerate.

¶ 73 E.A. also acknowledged under cross-examination that Morales' household rules were less strict than defendant's. Although defense counsel was not permitted to explore in what manner

her rules were less strict than defendant's, E.A.'s clear frustration with defendant and Rivera, and clear preference for living with Morales, provided counsel ample material for questioning E.A.'s motives in accusing defendant.

¶ 74 3. Drug Addiction

¶ 75 Defendant claims that the trial court erred in barring him from cross-examining E.A. and Morales on whether they were drug addicts.

¶ 76 Defendant is correct that "drug addiction of a witness at the time of testifying or at the time that an event occurred is a proper subject of cross-examination and may be used in an attempt to diminish a witness' credibility." *People v. Kliner*, 185 Ill. 2d 81, 130 (1998). "The effect of addiction on the ability to observe, accurately reflect and retain what was observed, and the general power and inclination towards truthfulness, all bring into focus the concern over the credibility of the addict's testimony." *People v. Galloway*, 59 Ill. 2d 158, 163 (1974).

¶ 77 Nonetheless, defendant's claims of error fail. He argues that cross-examination of E.A. regarding his drug-related Facebook posts was relevant to whether both Morales and E.A. were addicts. The problem for defendant is that proof of drug addiction was not the purpose for which he sought at trial to cross-examine E.A. on the Facebook posts. He claimed only that the posts were probative of Morales' lax household rules and, by extension, E.A.'s motives for accusing defendant. Defendant thereby forfeited all other proposed grounds for admission. See *Salcik v. Tassone*, 236 Ill. App. 3d 548, 555 (1992) ("When a party offers evidence, it must also offer all possible theories under which the evidence may be admissible since it is not the trial court's duty to sort out such theories; the trial court's duty extends only to ruling upon the arguments presented.").

¶ 78 Defendant also claims that he was improperly barred from asking Morales about her failed drug tests and failure to complete drug court. Defendant forfeited this contention by failing to make an offer of proof as to the testimony he anticipated would show that Morales was not just a user of drugs but also an addict. Case law recognizes the difference between drug use and drug addiction. Drug addiction is the "habitual" (*People v. Lewis*, 25 Ill. 2d 396, 399 (1962)) or "compulsive" (*People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 52) use of a substance. See *People v. Thompkins*, 121 Ill. 2d 401, 441 (1988) (witness' twice-weekly usage of cocaine did not establish that she was "an addict or an habitual user of cocaine."); *People v. Kegley*, 227 Ill. App. 3d 48, 55 (1992) (single use of drugs did not amount to addiction). "When a line of questioning is objected to or denied by the trial court, the defendant must set forth an offer of proof either to convince the trial court to allow the testimony or to establish on the record that the evidence was directly and positively related to the issue of bias or motive to testify falsely." *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007). Failure to make an offer of proof results in forfeiture of the contention. See *People v. Staake*, 2017 IL 121755, ¶ 51-53 (the defendant failed to make an offer of proof after the trial court limited cross-examination of the State's witnesses). We reject defendant's contention because he failed to preserve it.

¶ 79 Defendant also states that it was "clear from the evidence that [Morales] was an addict based on her criminal convictions and the fact that she had been placed into drug court." To the extent that defendant is asserting here that Morales was proved a drug addict based simply on her 2015 drug conviction and placement into drug court, we find his contention forfeited on two grounds. First, defendant did not make this argument in the trial court. See *People v. Valdez*, 2016 IL 119860, ¶ 33 (issues not raised in the trial court are forfeited on appeal). Second, defendant cites no authority to suggest that this evidence alone established Morales as a drug

addict. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (failure to cite authority results in forfeiture of the issue).

¶ 80 4. Morales' Visitation

¶ 81 Defendant also contends that he was "denied the ability to properly confront [Morales] about the fact that she was not allowed to have visitation with E.A., which would have created a strong incentive for her to lie to get custody of her son." When defense counsel asked Morales whether, as of October 2015, she was allowed visitation with E.A., the State objected that the question had been asked and answered. The trial court sustained the objection. As the State recognizes on appeal, the question was in fact not repetitive because Morales had not previously been asked whether she was allowed visitation with E.A. The State's objection was, therefore, erroneously sustained.

¶ 82 The error is not reversible, however, because there was no manifest prejudice to defendant. See *People v. McKinney*, 260 Ill. App. 3d 539, 550 (1994) (error in disallowing question as repetitious was not prejudicial to the defendant). Morales testified on cross-examination that, in October 2015, she no longer had custody of E.A. and had not seen him for about two months. Although defendant was not permitted to ask Morales whether she was allowed visitation with E.A. as of October 2015, that subject was addressed on cross-examination of E.A., who testified that Morales had not been permitted to see him. This aspect of E.A.'s testimony was not contradicted. Thus, despite the trial court's erroneous ruling, defendant had an adequate basis for arguing Morales' bias.

¶ 83 Based on the record as a whole, we hold that defendant was not deprived of his constitutional right to cross-examine Morales and E.A.

¶ 84 B. Sufficiency of the Evidence

¶ 85 Defendant challenges the sufficiency of the evidence to support his convictions of domestic battery.

¶ 86 In reviewing a criminal conviction, we view the evidence in the light most favorable to the State and consider whether a rational trier of fact could find all essential elements of the offense proven beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. We do not retry the defendant or reweigh the evidence. *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 80. We generally defer to the credibility judgments of the fact finder because, having observed the demeanor of the witnesses as they testified, it was in a superior position to assess their credibility and resolve conflicts in their testimony. *People v. Radojcic*, 2013 IL 114197, ¶ 34. An exception to this deference exists when the witness' testimony is "so fraught with inconsistencies and contradictions" that the reviewing must conclude that witness was not credible. *People v. Schott*, 145 Ill. 2d 188, 206-07 (1991). We reverse a criminal conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it leaves a reasonable doubt of the defendant's guilt. *Lloyd*, 2013 IL 113510, ¶ 42.

¶ 87 At trial, defendant argued that any physical contact he made with E.A. was justified as an exercise of reasonable parental discipline. The common-law rule that parents may reasonably discipline their children, even by means of corporal punishment, provides a legal justification for an otherwise criminal act such as domestic battery. *People v. Green*, 2011 IL App (2d) 091123, ¶¶ 14, 16. Defendant agrees, however, that "throwing someone down the stairs or hitting him in the head with a piece of wood" would not constitute reasonable parental discipline. He denies that he committed either act.

¶ 88 Defendant specifically attacks, as we address below, E.A.'s testimony that defendant removed a piece of wood trim from the basement wall and struck E.A. with it. Curiously,

defendant does not specifically address E.A.'s testimony that defendant pushed him down the stairs. Defendant may have felt it unnecessary to address that testimony because the trial court was silent on whether the evidence proved that defendant pushed E.A. down the stairs. However, as the court found E.A. generally credible, we may assume that the court accepted his testimony that defendant battered him in that manner also.

¶ 89 The only aspect of defendant's argument that can be construed as an attack on E.A.'s testimony that he was pushed down the stairs are defendant's remarks on the photos introduced by the State. Defendant asserts that, apart from the head wound—which E.A. attributed to the blow from the piece of trim—the photos show no "significant" or "unusual" injury. Defendant suggests, not that E.A.'s injuries were too minor to support a battery conviction, but that they were minor enough to have been incurred "for a variety of innocent reasons." In our view, the State proved that E.A.'s particular injuries were criminally inflicted. E.A. testified rather specifically to how he was injured during his struggle with defendant. For instance, he testified that his left hand was "twisted" during his fall down the stairs and later became swollen. The hand indeed appears swollen in the photos.

¶ 90 Defendant urges skepticism given that E.A. and Morales waited for several hours to seek medical treatment for E.A.'s injuries. The trial court found credible E.A.'s explanation that he did not want to get defendant in trouble. The court did not err in accepting that reasonable explanation.

¶ 91 Defendant also attacks the credibility of Morales, who attested to E.A.'s injuries as she observed them shortly after the October 2017 incident. Defendant notes Morales' criminal record and her "exaggerated" (defendant's term) account that, when she picked up E.A., his clothing was torn and he had bruises "all over his body." Upon further questioning, however,

Morales specified where E.A. had bruising or redness and where his clothing was torn. Her account of E.A.'s condition was corroborated by both E.A. and the photos introduced by the State. Defendant suggests that the photos show no "obvious tear" in E.A.'s clothing, but we disagree. A close-up of E.A.'s neck shows a tear at the neck of the sweatshirt. As for Morales' criminal record, it was no bar to the trial court finding her credible. We are not prepared to upset that credibility determination.

¶ 92 We move to defendant's specific challenge to E.A.'s testimony that defendant struck him with a piece of wood trim. The trial court found that defendant struck E.A. with some type of object, whether wood or otherwise, and the photo of E.A.'s head supports this finding. Defendant asserts, however, that E.A.'s testimony was not credible because (1) he failed to tell police that defendant struck him with a piece of wood, and in fact admitted to Officer Gray that he did not know what the object was; and (2) his account of the incidents on October 16 and 17 was contradicted by A.A. and defendant. These are matters on which we defer to the finder of fact. While defendant and A.A. contradicted E.A. on many significant points, including whether defendant struck E.A., the trial court assessed the whole of E.A.'s testimony and noted specifically his demeanor while testifying. The court found him credible despite his inconsistency regarding the object that defendant used and despite the testimony of A.A. and defendant. Notably, the court specifically found A.A. not credible because her testimony conflicted even with defendant's at points.

¶ 93 III. CONCLUSION

¶ 94 For the foregoing reasons, 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. See 55 ILCS 5/4-2002(a) (West 2016); *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 95 Affirmed.