2019 IL App (1st) 171636-U

No. 1-17-1636

Order filed June 14, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 9336
	)	
JOHNNY RUSH,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for domestic battery is affirmed where the evidence was sufficient to sustain his conviction.

¶ 2 Following a bench trial, defendant Johnny Rush was found guilty of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and sentenced to four years' imprisonment. On appeal,

defendant contends that the evidence was insufficient to sustain his conviction because the State's only witness was not credible. We affirm.[1]

¶ 3 On May 18, 2015, defendant was arrested and charged with sixteen counts of aggravated criminal sexual assault, one count of aggravated battery, one count of aggravated domestic battery, two counts of domestic battery, and one count of aggravated unlawful restraint, stemming from an incident with his girlfriend, W.H. The case proceeded to a bench trial, at which the following evidence was adduced.

¶ 4 At trial, W.H. testified that as of May 17, 2015, she had been dating defendant for two years while he was "back and forth out of jail." On that day, she went to defendant's apartment, located near the intersection of 55th Street and South Halsted Street, where he lived with his father and his stepmother. While in defendant's bedroom, an argument began about W.H. talking to other men and "always talking back to [defendant.]" After W.H. told defendant that she was not going to be with him anymore, he punched her in the face. She hit him back and fell to the floor. As she fell, a knife or a razor blade fell out of her pocket. She stated that defendant, believing she was going to cut him, punched her in the face again about three or four times. Defendant's father then came to the bedroom door, and defendant said to him: "Stay the *** out of my business. This don't have nothing to do with you." Defendant slammed the bedroom door and continued to hit W.H. Defendant then told W.H. to take her clothes off. She refused, and he hit her again and then choked her. She stated that he choked her until she passed out and urinated on herself. At some point, W.H. took her clothes off and she observed defendant put a condom

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

on. Defendant then had vaginal and anal sexual intercourse with W.H. Afterwards, W.H. tried to leave, but defendant would not let her. She stated that he made her spend the night with him.

¶ 5 The next morning, defendant looked at her and said "look what you made me do to your face." He then asked if she wanted anything from the store and she responded "cocoa butter, witch hazel, and some noodles." After he left, she went to the kitchen to get some water and put something cold on her face. In the kitchen, she encountered defendant's stepmother and asked her for help. After defendant's stepmother checked to make sure defendant was gone, W.H. left the apartment, ran down the alley, and called the police. She asked the police to take her home but did not tell them she had been sexually assaulted because she was "so shook up." Later that evening, she went to the hospital and spoke with police officers again. She testified to the following injuries: two black eyes, a "busted" nose, a busted lip, scratches on her neck, and bruises on her chest and arm.

¶ 6 On cross-examination, W.H. stated that she had known defendant for about four years when this incident occurred but that she told police that she had only been dating him for two months. She also told the police that she and her boyfriend had been in a fight and that he had hit her. She further told them where he lived, though she did not know his actual address. She stated that it was about 2:00 a.m. when she went to defendant's apartment that night.

¶ 7 The State then submitted into evidence photographs of W.H. taken on the day of the incident.

¶ 8 At the close of the State's case, defendant moved for a directed verdict. The trial court directed a verdict on all sixteen counts of aggravated criminal sexual assault.

¶ 9 Defendant called Chicago police officer Brown as a witness.[2] Brown testified that about 4:30 p.m. on May 17, 2015, he and his partner, Officer Joseph Gray, responded to a call at 5500 South Halsted Street. There, they spoke with W.H., who told them that she needed a ride home and that she and her boyfriend had been in a fight. Brown stated that he did not recall her telling them that she was choked to the point of losing consciousness and that she urinated on herself. At the time, the only visible injury Brown saw on W.H. was a swollen lip. W.H. did not tell the officers that she had been sexually assaulted. The officers looked for the offender in the immediate area but did not find him. The defense then rested.

¶ 10 The trial court found defendant guilty of two counts of domestic battery, merging the counts. In announcing its ruling, the court noted: "It's clear to me – well, given this Officer's testimony called by the defense, that if he saw the injuries depicted in the photographs the State put in from 1 to 9, were present on her, they would have brought her to the hospital. They did not, and it is – observations was a swollen lip, presumably, from a punch in the face." The court found defendant not guilty of aggravated domestic battery, aggravated battery, and aggravated unlawful restraint.

¶ 11 Defendant moved for a new trial, which the court denied. Following a hearing, the court sentenced him to four years' imprisonment. Defendant filed a motion for reconsideration, which the court denied.

¶ 12 On appeal, defendant argues that the State failed to present sufficient credible evidence to prove beyond a reasonable doubt that he committed domestic battery. He contends that W.H.

[2] The first name of Officer Brown does not appear in the record.

was not a credible witness because her testimony was uncorroborated or contradicted by the testimony of Officer Brown.

¶ 13 When faced with a challenge to the sufficiency of the evidence, we must determine whether, "after viewing the evidence in a light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt." *People v. White*, 2017 IL App (1st) 142358 ¶ 14. "All reasonable inferences from the evidence must be drawn in favor of the prosecution." *People v. Hardman*, 2017 IL 121453 ¶ 37. It is the fact finder's role "to assess the credibility of witnesses, weigh and resolve any conflicts in the evidence, and draw reasonable conclusions from the evidence." *People v. Church*, 2017 IL App (5th) 140575 ¶ 21. For that reason, upon review, we will not substitute our judgment for that of the fact finder. *People v. Simpson*, 2015 IL App (1st) 130303 ¶ 44. However, the great deference given to the trier of fact's determinations is not without limits; the reviewing court may reverse a conviction where the evidence "is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 14 In this case, to sustain a conviction for domestic battery, the State needed to prove beyond a reasonable doubt that defendant knowingly, without lawful justification, caused bodily harm to "any family or household member." 720 ILCS 5/12-3.2(a)(1) (West 2014). Defendant does not dispute that W.H. qualified as "any family or household member" for purposes of the statute. 720 ILCS 5/12-0.1 (West 2016). Accordingly, we need only address whether there was sufficient evidence to prove beyond a reasonable doubt that defendant caused bodily harm to her.

¶ 15 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant hit W.H. causing bodily harm. W.H. testified that,

following an argument, defendant punched her in the face multiple times. After leaving his apartment the following morning, she called the police and told them that she had been in a fight with her boyfriend and asked them to drive her home. Brown testified that he observed that W.H. had a swollen lip but otherwise did not recall any obvious injuries to her. Photographs taken at the hospital later that evening and introduced into evidence, show injuries to W.H.'s face and neck. This is sufficient evidence for a reasonable trier of fact to conclude that defendant caused bodily harm to W.H. and, thus, sustain his conviction for domestic battery.

¶ 16 Regardless, defendant argues that the evidence was insufficient because W.H.'s testimony was not credible. Specifically, he points out that the trial court did not find her testimony credible as to the counts of sexual assault and argues that the trial court should not have found any of her testimony credible.

¶ 17 We initially note that defendant's argument is essentially asking us to substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact"). A reviewing court will not reverse a conviction simply because defendant claims that a witness was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). As stated previously, it is the trier of fact's role to determine the credibility of witnesses, the weight to be given to their testimony and to resolve any inconsistencies and conflicts in the evidence. *Church*, 2017 IL App (5th) 140575, ¶ 21; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Moreover, "[m]inor inconsistencies *** within one witness' testimony may affect the weight of the evidence but does not automatically create a reasonable doubt of guilt."

People v. Joiner, 2018 IL App (1st) 150343, ¶ 62. In addition, "the trier of fact may accept or reject all or part of a witness' testimony." *Id.*

¶ 18 Based on its ruling, the court found W.H.'s testimony that defendant punched her in the face credible. In doing so, the court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. As mentioned, this court will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). This is not one of those cases.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.