2021 IL App (2d) 190172-U
No. 2-19-0172
Order filed February 22, 2021

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. 18-CF-228
JENNIFER N. VANGARSSE,	)	Honorable T. Clinton Hull,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant committed domestic battery by striking her 23-month-old daughter after seeing her jumping on the couch. Although the daughter had been told on prior occasions not to jump on the couch, defendant did not act with the aim of disciplining the daughter or preventing harm to her. Rather, defendant was in the midst of a verbal fight with the child's father and directed her anger at the daughter.

¶ 2 Defendant, Jennifer N. Vangarsse, appeals from her conviction of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2018)) stemming from an incident involving her 23-month-old daughter, N.K. Defendant argues that the State failed to prove beyond a reasonable doubt (1) the

elements of domestic battery and (2) that defendant was acting outside the bounds of reasonable parental discipline. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 28, 2018, defendant was indicted on one count of domestic battery (*id.*), a Class 4 felony (*id.* § 12-3.2(b)). The indictment alleged that defendant "knowingly made contact of an insulting or provoking nature" with N.K., a family or household member, in that "defendant pushed and/or struck [N.K.] on or about the body and/or head, having previously been convicted of Domestic Battery."

¶ 5 The following relevant evidence was presented at defendant's bench trial. On February 4, 2018, defendant and her two children, N.K. and M.K. (almost three months old), lived in an upper-level apartment of a two-story building in St. Charles. Travis K., the father of N.K. and M.K, also lived there, along with Travis's third child, P.K. (ten years old). (Defendant had a third child, 8-year-old E.K., who lived part time with her father and who was not present during the incident.)

¶ 6 Travis testified that during the early morning hours on the day of the incident, he and defendant had an argument in the kitchen. Defendant was yelling at Travis during the argument. Defendant walked out of the kitchen and Travis heard a "slap skin on skin and [N.K.] crying." N.K. sounded like she was hurt and Travis was concerned for N.K.'s safety. Travis walked toward the living room and saw N.K. lying on the couch crying. Travis followed defendant as she moved from the living room to the bedroom. He "voic[ed] [his] disagreement with what [he] heard, telling [defendant] that she hit [N.K.] and it's not okay and she hit her." Travis followed defendant into the bedroom, where they continued to argue. Defendant was upset and yelling at Travis. Travis called 911 to report what had happened with N.K., because he "felt it was the thing to do."

¶ 7 On cross-examination, Travis testified that he could not recall if he had seen any marks on N.K. after the incident. Travis agreed that N.K. was not supposed to jump on the couch, that she had jumped on the couch in the past, and that she had previously been told not to jump on the couch. Travis did not think that N.K. was still crying when the police arrived. He agreed that she has cried before when told not to do something.

¶ 8 On redirect, Travis testified that, on previous occasions where N.K. was jumping on the couch, he told her to stop and she usually would. If N.K. did not listen, Travis would pick her up and remove her from the couch.

¶ 9 Evelyn Gerardo testified that she lived on the first floor of defendant's building. On the morning of the incident, she heard a woman yelling profanities and screaming in the upstairs apartment. She also heard banging on the doors and walls. She did not hear a man yelling. She called 911 after hearing a young child start crying, because she wanted to make sure the child was okay.

¶ 10 St. Charles police officers Brian Oko and Jennifer Larsen responded to the calls. Oko spoke with defendant, along with Larsen, who told them that she was frustrated that morning because the children wanted to get out of their room and defendant "wasn't ready for the day yet." Defendant wanted to have her coffee and a cigarette before the children left their room. Defendant and Travis had gotten into an argument over a jacket. Defendant admitted to making contact with N.K. Oko testified: "She stated that [N.K.] was jumping on the corner of the L couch when—right before she was about to go out back to have her cigarette, and out of frustration for the argument that just took place between her and Travis, she placed a hand on her head—she didn't say which hand—and pushed the child down onto the couch." Oko testified that defendant never told him that she pushed N.K. down to discipline her for jumping on the couch.

¶ 11 Larsen testified that defendant told her that she and Travis were having an argument and that "at one point Travis would not stop yelling so [defendant] pushed [N.K.] over on the couch." Defendant then went out to the balcony to have a cigarette. Defendant never told Larsen that she pushed N.K. to discipline her or as a way to teach N.K. not to jump on the couch. Larsen testified that defendant told her that, several years ago, she had been convicted of battering her older daughter, who was not present in the home that day. On cross-examination, Larsen testified that she did not see any marks on N.K. and that N.K. was not crying.

¶ 12 Defendant was arrested and brought to the police station, where Oko interviewed her. The interview was recorded and played for the trial court. During the interview, defendant stated that she woke up feeling "grumpy" because she did not sleep very well. Defendant had to wake up early to take care of her baby. Defendant liked to sit outside and have a cup of coffee and a cigarette first thing in the morning. She was trying do everything she needed to do as quickly as possible so she could go outside. N.K. woke up and was screaming and crying because she wanted to get out of her bedroom. During the week, N.K. usually stays in her room until defendant makes breakfast and has coffee, but this does not happen on the weekends. Defendant stated that weekends were stressful because the days started with N.K. screaming to be let out of her room. Defendant was irritated and trying to get everything done, and Travis started playing with N.K. to keep her occupied. Defendant and Travis began arguing and defendant decided that she needed to go outside for ten minutes. Travis made a comment to defendant that made her angry because she was "already feeling like things suck right now." Defendant started yelling at Travis because she was "upset." Travis was in the kitchen and defendant went back and forth between the bedroom and living room a few times. Defendant saw N.K. standing on the corner of the couch where she should not be standing. She was bouncing on the couch, which she was not supposed to do.

Defendant told Oko: "I kind of went up to the side of her and I—and I pushed her down onto the couch, you know so that she wasn't standing and because he was screaming at me." She stated that she was "just frustrated" and that "maybe he would have something to deal with then. Um, he can deal with the child who is—who is doing what she's doing right there." Defendant stated that N.K. "fell sideways on the couch." Defendant told Oko that N.K. did not fall off the couch or hurt herself. N.K. got upset and started crying. Defendant assumed it was "because of all of the fighting that was going on." Defendant walked into the bedroom and Travis charged at defendant and grabbed her, asking her what she did. The parties continued yelling at each other and Travis yelled at her not to touch her children. Eventually, Travis called the police.

¶ 13 The State rested and the trial court denied defendant's motion for a directed finding.

¶ 14 Defendant testified that, on the day of the incident, she woke up at about 7 a.m., knowing that she had a lot of things to get done and was "in a not so great mood." P.K. and N.K. had woken up earlier than defendant would have liked. P.K. left the bedroom that she shared with N.K. to use the bathroom. P.K. closed the bedroom door behind her, because N.K. was not supposed to leave the bedroom until breakfast was ready. N.K. started crying and left the bedroom. Travis woke up and occupied N.K. in the living room. As defendant was moving back and forth between the living room and the kitchen trying to get things done, she and Travis began to argue about a jacket.

¶ 15 During the ongoing argument, defendant saw N.K. jumping on the living room couch. Travis was no longer in the living room. Defendant was standing behind the couch, in the process of trying to go outside to have a cup of coffee and a cigarette on the balcony, which was connected to her bedroom. Defendant testified that as N.K. was "going back and forth" on the couch, defendant "pushed her from one side to the other to knock her down." Defendant did not hit, slap, or punch N.K. Defendant did not scream at N.K. or push her down to hurt her. Defendant did not

push N.K. because defendant was mad at Travis. Defendant was frustrated that N.K. was still jumping on the couch after she had previously been told not to do so, and defendant pushed her down to stop her from what she was doing. N.K. cried after being pushed. N.K. often cried when she was told not to do something. Defendant testified that, after she pushed N.K., she went into the bedroom and Travis charged at her. Travis yelled at defendant and asked her what happened. The police were called and defendant spoke with them when they arrived. At that time, N.K. was clinging to defendant. Defendant told the officers that N.K. had been jumping on the couch.

¶ 16 On cross-examination, defendant testified that she could not recall whether there was a "skin-on-skin smacking noise" when she pushed N.K. Defendant agreed that, in 2014, she pleaded guilty to the offense of domestic battery in Du Page County, based on her act of striking her daughter, E.K.

¶ 17 The trial court found that the State proved beyond a reasonable doubt (1) the elements of domestic battery and (2) that defendant's act went beyond the bounds of reasonable parental discipline. The court acknowledged the affirmative defense of reasonable parental discipline and considered the factors relevant to such defense. The court found that there was no physical harm and that the psychological effects on N.K. were minimal. However, the court found that, given the circumstances, the situation was likely to reoccur. Moreover, the court gave "great weight" to the fact that defendant was acting in anger. The court stated:

> "[I]n weighing the credibility of the witnesses and considering the testimony in light of all the other testimony that's been received, I don't believe that this is a situation where she was calmly attempting to discipline the child. I think the evidence has demonstrated very clearly that she was lashing out in anger, that she was frustrated, and I understand, [defense counsel], your argument that she was frustrated with Travis. However, based upon the

> testimony that's been received, I believe that that anger and that frustration and that irritation that she talked about, even though it may have been directed at Travis, was then taken out on [N.K.] as she walked out."

The court acknowledged that it believed defendant's statements that N.K. had jumped on the couch before, that defendant had told her not to do so, and that N.K. needed to be disciplined. However, the court stated:

> "But the Court does have to look at how the striking or how the discipline occurred, and in this situation I don't believe the motivation based upon the striking was for disciplinary purposes. There was no indication that she told—at least at that point in time that she told [N.K.] to stop. There was no indication at that point in time that she had told [N.K] that if she continued to do as she was doing she would be punished. There was no indication that any point in time at that particular time that she had raised her voice or told [N.K.] to stop. In her own words she was fighting with Travis, [N.K.] was bouncing on the couch, that she was—that she, being the defendant, was getting angrier and angrier with Travis, and that it rose to such a level that she had to exit the situation, which at that point in time she may have been attempting to de-escalate it, but as she was doing so she was frustrated in her own words because Travis was screaming at her, and as she went by, although she says she just put her hand on the side of [N.K.'s] head and pushed her down, the testimony provided by Travis was that he heard a skin-on-skin smack, that he then entered the living room to find [N.K.] laying [*sic*] *** on the couch, and that the defendant was no longer in the room where it occurred. Based upon the context of those circumstances, again, the reason for the punishment or why the punishment occurred I find based upon the evidence was not

for discipline, but it was because she was angry and upset and she transferred that anger and being upset and that irritation onto [N.K.] by striking [N.K.] and hitting [N.K.]."

¶ 18 Defendant filed a motion for a new trial, arguing that the evidence was insufficient to prove the elements of domestic battery or that defendant did not use reasonable parental discipline. In denying the motion, the trial court stated: "I considered all the factors. I considered the totality. But I do not believe this was discipline. I believe that this was her lashing out in anger and acting in such a manner that it exceeded the scope." Following a sentencing hearing, the court sentenced defendant to 18 months' probation.

¶ 19 This timely appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Defendant argues that the State failed to prove her guilty of domestic battery beyond a reasonable doubt. According to defendant, the State failed to prove that she made insulting or provoking contact with N.K. and failed to prove that she was acting outside the bounds of reasonable parental discipline. We disagree.

¶ 22 In reviewing a challenge to the sufficiency of the evidence, "the question is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. McLaurin*, 2020 IL 124563, ¶ 22 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Green*, 2011 IL App (2d) 091123, ¶ 19. The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from basic facts to ultimate facts. *Green*, 2011 IL App (2d) 091123, ¶ 19. The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence and the credibility of the witnesses is the province of the trier of fact. *People v.*

Ellzey, 96 Ill. App. 2d 356, 358-59 (1968). The reviewing court must assume that the trier of fact resolved all controverted facts and issues of credibility in favor of the State. *People v. White*, 209 Ill App. 3d 844, 868 (1991). "In reviewing the evidence, this court will not retry the defendant, nor will we substitute our judgment for that of the trier of fact." *McLaurin*, 2020 IL 124563, ¶ 22. We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This standard applies whether the evidence is direct or circumstantial and whether defendant received a bench trial or a jury trial. *Green*, 2011 IL App (2d) 091123, ¶ 19.

¶ 23 A person commits domestic battery if he or she intentionally or knowingly without legal justification makes physical contact of an insulting or provoking nature with any family or household member. 720 ILCS 5/12-3.2(a)(2) (West 2018). The parental right to discipline is not a statutory affirmative defense. *Green*, 2011 IL App (2d) 091123, ¶ 16. However, the common-law rule that parents may take reasonable steps to discipline their children when necessary is, like self-defense, a legal justification for an otherwise criminal act. *Id.* To negate that justification, the State must prove the defendant guilty beyond a reasonable doubt as to the affirmative defense together with all the other elements of the offense. *Id.* To sustain a conviction of domestic battery where a claim of parental discipline has been asserted, the State must also prove beyond a reasonable doubt that the discipline used exceeded the standards of reasonableness. *Id.*

¶ 24 The right to corporally punish one's child must be balanced against the State's interest in protecting children from mistreatment. *Id.* ¶ 14. The reasonableness of, and the need for, the punishment is to be determined by the finder of fact, under the circumstances of each case. *Id.* ¶ 24. In considering whether an act of corporal punishment was reasonable, it is appropriate for the court to consider (1) the degree of physical injury inflicted upon the child, (2) the likelihood of

future punishment that may be more injurious, (3) the psychological effects on the child, and (4) whether the parent was calmly attempting to discipline the child or whether the parent was lashing out in anger. *Id.*

¶ 25 Defendant first argues that the State failed to prove beyond a reasonable doubt the elements of domestic battery. Defendant does not dispute that she made physical contact with N.K.; indeed, defendant admitted to Oko and at trial that she pushed N.K. down. Instead, she argues that her act of pushing N.K. down was not insulting or provoking but rather an act to protect N.K. from harm. A rational trier of fact could have concluded otherwise. In her videotaped statement to Oko, defendant related that she woke up feeling "grumpy" because she did not sleep very well and was irritated when N.K. woke up screaming and crying. When Travis made a comment to defendant that made her angry, an argument ensued, with defendant yelling at Travis because she was "upset." Defendant further stated: "I kind of went up to the side of [N.K.] and I—and I pushed her down onto the couch, you know so that she wasn't standing and because he was screaming at me." She stated that she was "just frustrated" and that "maybe he would have something to deal with then. Um, he can deal with the child who is—who is doing what she's doing right there." As the trial court noted, it could be reasonably inferred that defendant struck N.K. to provoke her such that Travis would have to "deal with" N.K. while defendant went outside to smoke and have her cup of coffee.

¶ 26 Defendant argues that "the majority of cases interpreting the insulting or provoking contact provision involve violent contact" with the victim. See *People v. Camacho*, 2018 IL App (2d) 160350, ¶ 31 (grabbing victim by the arm and throat); *People v. Williams*, 384 Ill. App. 3d 327, 336 (2008) (holding deadly weapon to victim's throat); *People v. Robinson*, 379 Ill. App. 3d 679, 682 (2008) (punching). However, as defendant concedes, contact resulting in physical injury is not

required. See *People v. DeRosario*, 397 Ill. App. 3d 332, 334 (2009) (the defendant, who had been stalking his ex-girlfriend during their workdays in the same building, intentionally picked a seat close near her in the building's smoking lounge and made slight physical contact with her as he sat down).

¶ 27 Defendant also attempts to analogize the present case to *People v. Craig*, 46 Ill. App. 3d 1058 (1977), a readily distinguishable case. In *Craig*, the defendant, a hospital security guard, touched the complainant as he removed a camera from her hand. *Id.* at 1059. The reviewing court reversed the battery conviction, finding that the defendant had no intention other than to enforce the hospital's no-camera policy. *Id.* at 1060. Here, by contrast, as noted above, a rational trier of fact could find that the State proved beyond a reasonable doubt that defendant intended to provoke N.K. and that the contact with N.K. stemmed from defendant's anger rather than her attempt, as she claimed, to protect N.K. from harm.

¶ 28 Defendant next argues that the State failed to prove beyond a reasonable doubt that the discipline used exceeded the bounds of reasonableness. We disagree. The trial court found that defendant's act of striking N.K. was unreasonable, giving "great weight" to the fact that defendant was lashing out at N.K. due to her anger at Travis. Indeed, the court found that defendant's action did not appear to be one of discipline at all, and the court reiterated that conclusion when denying the motion for reconsideration. There was no evidence that defendant told N.K. to stop jumping immediately before striking her. There was no evidence that defendant attempted to simply remove N.K. from the couch, as Travis testified that he had done in the past. The evidence established that defendant was angry with Travis, that she wanted to go outside to have coffee and a cigarette, and that she pushed N.K. to give Travis something to "deal with." Thus, the record supports the court's determination that defendant acted out of anger rather than discipline. In

addition, the court found that a future, more injurious punishment was likely to occur and that the event had minimal, if any, psychological impact on N.K. Given the totality of the circumstances under which the incident occurred, we agree.

¶ 29 Defendant nevertheless argues that, because her act did not leave any marks on N.K., this case is distinguishable from cases finding unreasonable acts of discipline. See *People v. Ball*, 58 Ill. 2d 36, 37 (1974) (burn-like injury on child from being hit with paddle); *Parrott*, 2017 IL App (3d) 150545, ¶ 27 (welts on child from being struck with belt); *People v. Johnson*, 133 Ill. App. 3d 881, 882-83 (1985) (marks on child from being hit with extension cord). However, the degree of injury inflicted upon the child is but one factor to consider. Indeed, the court specifically noted that N.K. did not suffer physical harm.

¶ 30 In addition, citing cases from other jurisdictions, defendant argues that anger does not automatically render parental discipline unreasonable. See *Florence v. United States*, 906 A.2d 889, 894 (D.C. 2006) (parent's act of striking daughter with curling iron was reasonable parental discipline given daughter's misbehavior and parent's attempt to get her to comply); *State v. Lefevre*, 2005-NMCA-101, ¶ 3, 117 P.3d 980 (parent's act of angrily grabbing child's hand as child reached for sibling's backpack was reasonable parental discipline though it caused bruising). However, as previously noted, the reasonableness of, and the necessity for, the discipline is to be determined by the finder of fact under the circumstances of each case. *Green*, 2011 IL App (2d) 091123, ¶ 24. Here, the trial court heard evidence that defendant acted in anger, showing a lack of disciplinary motive. Considering the evidence in the light most favorable to the State, a rational trier of fact could have found that defendant's actions were not reasonable parental discipline.

¶ 31 Accordingly, based on the foregoing, we hold that the State proved beyond a reasonable doubt (1) the elements of domestic battery and (2) that defendant acted outside the bounds of reasonable parental discipline.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 34 Affirmed.