

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2012

v

RONNIE HAROLD OWENS,

Defendant-Appellant.

No. 306953
Wayne Circuit Court
LC No. 11-001920-FH

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of domestic violence, MCL 750.81(2). Defendant was sentenced to three months probation. We affirm.

I. FACTUAL BACKGROUND

Defendant and his wife, the victim, became embroiled in an argument relating to a threat from defendant's son to blow up the house. The argument soon escalated, as defendant became angry that the victim had awakened him from sleep. Defendant kicked the victim in the side, knocked her into the bedrail, and continued to kick her while she was on the floor. The victim developed bruises on her wrist, arm, hand, and leg. The victim testified that photographs of her bruises were taken "right afterwards," and the prosecution admitted these photographs, taken by the victim's son, at trial.

Eventually, the police arrived.¹ Defendant had put on his winter jacket and the victim alerted the police that defendant was carrying a gun. The police searched him and found a handgun in his coat pocket, which defendant indicated he was licensed to carry. One police officer spoke to the victim and observed that she had bruising on her left wrist and right leg. The officer testified that the victim informed him that she and defendant had been fighting for a couple of days and that at some point defendant had physically assaulted her. At trial, the officer examined the photographs of the victim's bruises and testified that they were a fair and accurate

¹ It is unclear whether the police arrived the same day of the physical assault or the next day.

representation of the bruises he had observed on the day he spoke with the victim. Defendant was convicted of domestic violence. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

Defendant contends that there was insufficient evidence to support his conviction of domestic violence because the victim provided inconsistent testimony regarding the time of the physical abuse. “Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt.” *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). This Court reviews “de novo a challenge on appeal to the sufficiency of the evidence.” *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal quotations and citations omitted). “All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

B. Analysis

In order to prove that defendant was guilty of domestic violence, the prosecution had to establish that defendant committed an assault or an assault and battery on the victim, his wife. MCL 750.81(2). “An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). A battery, in turn, is “an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person.” *Id.* (internal quotations and citations omitted). These elements were established beyond a reasonable doubt.

Defendant is correct that the victim’s testimony regarding the time of the physical assault was less than clear. However, the exact time of the physical assault is not an element of the offense. MCL 750.81(2). Rather, the prosecution merely had to prove that an assault or an assault or battery actually occurred. *Id.* As the trial court noted, there was sufficient evidence that the defendant committed an assault and battery on the victim. The victim testified that defendant physically assaulted her, hitting her and repeatedly kicking her into the bedrail. The photographs admitted at trial displayed injuries on the victim, which the fact-finder could have found were the result of defendant’s actions. Further, a police officer corroborated the accuracy of these photographs and their depiction of the victim’s injuries. The officer also testified that, consistent with her testimony at trial, the victim had reported that defendant had physically assaulted her. Since we defer to the trial court’s determination regarding the credibility of witnesses, *Unger*, 278 Mich App at 222, we decline to second-guess the trial court’s determination that these witnesses’ testimony regarding the physical abuse was credible. There was sufficient evidence to support defendant’s conviction of domestic violence.

III. EVIDENCE

A. Standard of Review

We review for an abuse of discretion the trial court's decision to admit or exclude evidence. *People v Washington*, 468 Mich 667, 670; 664 NW2d 203 (2003). We also "review for an abuse of discretion whether a trial court correctly excludes evidence because of an alleged criminal discovery violation." *People v Greenfield*, 271 Mich App 442, 454 n 10; 722 NW2d 254 (2006). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *Unger*, 278 Mich App at 217. Lastly, questions of law are reviewed de novo and a trial court's findings of fact are reviewed for clear error. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

B. Photographs

Defendant claims that the trial court erred in admitting photographs of the victim's bruises, which the prosecution failed to properly disclose during discovery. Defendant challenges that the failure to provide him with these photographs was a discovery violation and a violation of *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963). For the reasons set forth below, we disagree.

It is a well-settled principle that "[a] criminal defendant has a due process right to obtain exculpatory evidence possessed by the prosecutor if it would raise a reasonable doubt about the defendant's guilt." *People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005). However, the violation of a discovery order does not automatically require the exclusion of otherwise admissible evidence. *Greenfield*, 271 Mich App at 454 n 10; *People v Paris*, 166 Mich App 276, 281; 420 NW2d 184 (1988). A trial court has "ample discretionary powers" to craft a remedy "other than preclusion" for discovery violations. *Greenfield*, 271 Mich App at 454 n 10 (internal quotations and citations omitted); MCR 6.201(J). Furthermore, this Court has recognized that "the exclusion of otherwise admissible evidence is an extremely severe sanction that should be limited to egregious cases." *Greenfield*, 271 Mich App at 454 n 10 (internal quotations and citation omitted).

The extreme sanction of exclusion was not warranted in this case. Defendant conducted a voir dire of the photographs. Defense counsel also had the opportunity to review the photographs. In fact, defense counsel reviewed the photographs and was able to conduct a thorough cross-examination of the victim regarding the color of the bruises in the picture, the source of the bruises, and the fact that the victim had bruises on her wrists at the time of trial due to her daily activities. Thus, defendant has failed to establish that any alleged "violation caused him or her actual prejudice," *Greenfield*, 271 Mich App 442, 454 n 10, or that the trial court abused its discretion in admitting the photographs.

Likewise, defendant has failed to establish a *Brady* violation. In order to succeed on this claim, defendant must prove: (1) the state possessed evidence favorable to defendant; (2) defendant did not have the evidence and could not have obtained it using reasonable diligence; (3) the prosecution suppressed the evidence; and (4) had the evidence been disclosed, there was a reasonable probability that the outcome of the proceedings would have been different. *Cox*, 268

Mich App at 448. Most significantly, defendant has failed to establish the last prong, that there was a reasonable probability that the outcome of the trial would have been different had the photographs been disclosed before the trial. “A ‘reasonable probability’ is ‘a probability sufficient to undermine confidence in the outcome.’” *People v Lester*, 232 Mich App 262, 282; 591 NW2d 267, 276 (1998), quoting *United States v Bagley*, 473 US 667, 682; 105 S Ct 3375; 87 L Ed 2d 481 (1985).

The record reveals that there was sufficient evidence, apart from the photographs, to convict defendant of domestic violence. The victim testified that she and defendant were arguing in their bedroom when defendant kicked her several times and knocked her into the bedrail. The victim further testified that she received injuries from the physical attack, specifically bruises on her hand, wrist, and leg. Moreover, the police officer testified that the victim related the same story to him, and that he observed bruises on the victim. Considering this independent evidence establishing defendant’s guilt, we conclude that defendant has failed to establish a reasonable probability that the outcome of the proceedings would have been different. See *Cox*, 268 Mich App at 448.

C. Prior Inconsistent Statement

Finally, defendant challenges the trial court’s ruling denying his request to admit evidence of the victim’s alleged prior inconsistent statement. At trial, the victim vacillated regarding the time of the attack, stating that it occurred the day the police arrived, then stating it may have occurred the previous day, until finally admitting that she did not remember the exact day the physical attack occurred. The trial court denied defendant’s request to introduce evidence of the victim’s statement from a deposition taken in a civil case, wherein the victim testified that defendant had never physically assaulted her before the day the police arrived. On appeal, defendant argues that this ruling was in error because, pursuant to MCR 801(d), a prior statement of a witness may be introduced if it is “inconsistent with the declarant’s testimony” Defendant cites *People v Chavies*, 234 Mich App 274, 282; 593 NW2d 655 (1999), overruled on different grounds *People v Williams*, 475 Mich 245 (2006), for the proposition that “inconsistency is not limited to diametrically opposed answers but may be found in evasive answers, inability to recall, silence, or changes of position.”

Even assuming, arguendo, that the trial court abused its discretion in refusing to allow defendant to introduce the victim’s prior statement, any error was harmless. MCR 2.613(A). As noted above, the victim’s inability to remember the exact day of the physical attack was made abundantly clear at trial. She gave two different days of when the attack occurred until finally admitting that she simply did not remember what precise day the attack occurred. Thus, the deposition testimony would have illuminated nothing, as the victim’s inconsistency and potential credibility issues were made known to the fact-finder through her trial testimony. Also, as noted in the sufficiency of the evidence analysis above, there was sufficient evidence that defendant assaulted the victim, regardless of her inability to recall the exact day of the attack. Therefore,

any error in refusing to allow defendant to introduce the victim's deposition testimony about the date of the attack was harmless error not requiring reversal.²

IV. CONCLUSION

There was sufficient evidence supporting defendant's conviction of domestic violence. The trial court committed no errors requiring reversal regarding its decision to admit photographs of the victim's bruises or to exclude evidence of the victim's deposition testimony. We affirm.

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan

² Likewise, defendant's argument that he was denied a constitutional right to present a defense is meritless. Not only were issues relating to the victim's credibility presented to the fact-finder through her own contradictory testimony, defendant was "allowed to present evidence in the form of his testimony" regarding any desired defense. *People v King*, ___ Mich App ___; ___ NW2d ___ (Docket No. 301793, issued July 31, 2012) (slip op p 4). Accordingly, as defendant had ample opportunity to present a defense, "we reject defendant claim that constitutional error occurred[.]" *Id.*