

IN THE COURT OF APPEALS OF IOWA

No. 1-797 / 09-1233
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LUIS M. GARCIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan A. Callahan, District Associate Judge.

Defendant appeals from his conviction of domestic abuse assault causing bodily injury. **AFFIRMED.**

Ta-Yu Yang, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

SACKETT, C.J.

The defendant, Luis Garcia, appeals from his conviction of domestic abuse assault causing bodily injury, a serious misdemeanor. He contends the court erred (1) in denying his motion to dismiss when the complaining witness failed to appear, and (2) in denying his motion for judgment of acquittal that claimed the evidence was insufficient. We affirm.

In September of 2008 Waterloo police were called to a residence based on a reported assault. The first officer to arrive made contact with the complaining witness, Ms. Lazaro, and several family members, all of whom spoke little English. The officer observed marks on her face and forehead and a bruise on her arm. Minor children provided some limited translation so the officer could talk to the complaining witness. She then went to the police station and gave a statement through an interpreter. Photographs were taken of her injuries, which included bruising and abrasions on her face.

The State charged Garcia with domestic abuse assault causing bodily injury, a serious misdemeanor. Garcia turned himself in. Lazaro appeared late for a deposition, but it was rescheduled so that a neutral interpreter could be provided for her. She later was deposed.

Lazaro was subpoenaed for trial, but she had not appeared by the time the trial commenced. The State presented testimony from the officer who had responded to the initial call. He testified Lazaro had visible injuries on her face and forehead when he arrived that she indicated were the result of Garcia hitting her. Over defense objections for lack of foundation, the photographs taken at the

police station were admitted, and the officer testified they accurately showed the injuries he observed.

Because Lazaro still had not appeared by the time the officer finished testifying, at about 2:10 p.m., the State requested a short recess to secure her presence. Defense counsel objected to the State's request for time to have officers go to bring Lazaro to the courthouse and moved for a dismissal "if the State cannot produce the witness." The court noted, "if there isn't any more evidence in the case in chief, there may be difficulty, indeed with the State's case." The court set a ten-minute recess.

After about fifteen minutes, the State had not produced Lazaro, and asked the court "for a little more time." Defense counsel resisted and moved for a dismissal, stating in part, "I believe, your honor, without the victim's testimony, the government cannot withstand the burden, and I would move for the dismissal of the case right now." The court stated its intention to continue the trial until the next morning and to send Lazaro to jail if she had not appeared by then. While informing the jury of the plan to continue the next day, the court was told an officer had found Lazaro and was bringing her to the courthouse.

Lazaro testified both she and Garcia had been at a cookout and had been drinking. After returning home, they got into an argument and Garcia hit her in the face.

At the close of the State's evidence the court gave defense counsel the opportunity "to make a motion for directed verdict." Counsel stated, "I would like to move that the State has not sustained its burden for producing sufficient

evidence to produce a guilty plea, and I would request that the case be dismissed on that basis.” After the State’s response detailing the evidence in support of each element, the court denied the motion. The court opined, “In this case, I think the testimony of Miss Lazaro alone is sufficient to establish the elements that we’re dealing with.” The jury found Garcia guilty.

On appeal, Garcia first contends the district court abused its discretion in denying his motion to dismiss “for the failure of the State’s subpoenaed witness to appear and the unreasonable delay while the State attempted to re-serve and produce the witness.” We review a ruling on a motion to dismiss for correction of error at law. *State v. Hammock*, 778 N.W.2d 209, 210 (Iowa Ct. App. 2009).

When the State asked for a brief recess to have time to find and produce Lazaro, defense counsel asked that the case be dismissed. The court set a brief recess and did not rule on Garcia’s motion to dismiss. After the recess of approximately fifteen minutes, the State asked for “a little more time.” Defense counsel renewed his motion to dismiss. The court again did not expressly address Garcia’s motion to dismiss, but determined instead it would continue the case until the next morning. The court had the jury brought back in to announce its intention to continue the case. The jury had been out for just under twenty-five minutes. While informing the jury of the plan to continue the next day, the court was told an officer had found Lazaro and was bringing her to the courthouse. The court sent the jury out again for about ten minutes, when Lazaro arrived to testify. The total time from the end of the officer’s testimony until Lazaro took the stand was about forty minutes.

Garcia contends the court erred in [impliedly] denying his motion to dismiss. He argues the court should have dismissed the case “in the furtherance of justice.” Iowa Rule of Criminal Procedure 2.33(1) allows only the prosecuting attorney or the court to move for a dismissal; a defendant cannot even join in the State’s motion. See *Manning v. Engelkes*, 281 N.W.2d 7, 9 (Iowa 1979). However, even if Garcia had the right to bring the motion he would fail. “[F]urtherance of justice [means] justice to society [the People] as well as to a criminal defendant.” *State v. Lundeen*, 297 N.W.2d 232, 235 (Iowa Ct. App. 1980) (citation omitted). A dismissal that “arbitrarily cuts those rights without a showing of detriment to the defendant is an abuse of discretion.” *Id.* (citations omitted). “[T]he State is entitled to the same judicial impartiality and fairness as any other litigant in our courts.” *Id.* (citation omitted). Justice requires “a fair opportunity for each side to present its case must be afforded.” *Id.* (citation omitted). The actions of the district court in delaying the trial for less than an hour so that the State could produce its witness was not an abuse of discretion. See *State v. LaGrange*, 541 N.W.2d 562, 565 (Iowa Ct. App. 1995) (determining the court abused its discretion in denying a request for a continuance “where a witness’s testimony went directly to a point in issue, and was reasonably procurable”). We affirm on this issue.

Garcia further contends the court erred in denying his motion for judgment of acquittal because there was insufficient evidence as a matter of law to convict him of domestic abuse assault causing bodily injury. The State contends error was not preserved because the motion was too general. From the State’s

response to the motion and the court's ruling on the motion we recognize the court and the State understood the motion and it was specific enough. See *State v. Williams*, 695 N.W.2d 23, 27-28 (Iowa 2005).

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 6.907. Evidence is sufficient to withstand a motion for judgment of acquittal when, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences in the State's favor, "there is substantial evidence in the record to support a finding of the challenged element." *State v. Reynolds*, 670 N.W.2d 405, 409 (Iowa 2003). Substantial evidence means evidence that "could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Id.* (citation omitted).

Garcia challenges witness credibility, inconsistent statements, and Lozano's actions. The credibility determinations, weighing evidence, and reconciliation of conflicting evidence are jury functions. See *Williams*, 695 N.W.2d at 28.

The function of the court, on a motion to direct a verdict of acquittal, is limited to determining whether there is sufficient evidence from which reasonable persons could have found the defendant guilty as charged. It is not the province of the court, in determining the motion, to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury Any inconsistencies in the testimony of a . . . witness are for the jury's consideration, and do not justify a court's usurpation of the factfinding function of the jury.

Id. (citation omitted).

The jury was instructed the State had to prove (1) Garcia did an act intended to cause pain or injury, (2) he had the apparent ability to do the act, (3)

his act caused bodily injury to Lozano, and (4) the act was between household members or parents of the same child. Lozano testified she and Garcia fought and Garcia hit her in the face. She also testified they live together and have a child together. The first officer on the scene testified he observed injuries on Lozano's face that are reflected in the photographs taken at the police station. We conclude the district court did not err in denying Garcia's motion for judgment of acquittal and submitting the case to the jury, because there was substantial evidence in the record that, if believed, could convince a rational fact finder Garcia was guilty beyond a reasonable doubt. We affirm on this issue.

AFFIRMED.