

NOT DESIGNATED FOR PUBLICATION

No. 124,915

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF WICHITA,
Appellee,

v.

ALAN RATLIFF,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; KEVIN J. O'CONNOR, judge. Opinion filed March 10, 2023.
Affirmed.

Sam S. Kepfield, of Hutchinson, for appellant.

Jan Jarman, assistant city attorney, and *Jennifer Magana*, city attorney, for appellee.

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Alan Ratliff appeals his conviction for domestic battery, arguing there was insufficient evidence to support his conviction. While the evidence is not overwhelming, such is not required, and the district court had ample evidence to demonstrate Ratliff violated Wichita Municipal Ordinance (W.M.O.) § 5.10.025(a)(2) (2021). After reviewing the limited record on appeal, this court affirms.

FACTS AND PROCEDURAL BACKGROUND

Late in the evening of September 24, 2021, D.R. arrived home and found Ratliff already asleep, so she took a peek through his phone. D.R. testified that she found information on the phone that angered her, and she woke Ratliff and confronted him, which led to a verbal altercation. D.R. wanted Ratliff to leave her apartment and directed him to do so. D.R. testified that Ratliff was mad she had looked through his phone and became aggressive, so she used her own phone to video record their interaction "to protect [herself]."

D.R. testified that during the altercation, Ratliff "knocked down my dresser. He started throwing stuff. He threw the comforter off the bed, and then he came after me." D.R. confirmed that when Ratliff knocked down the dresser, he was yelling, cussing, and angry. She explained that the first video she recorded showed Ratliff picking up the dresser "[s]o there wouldn't be evidence that he knocked it down." She confirmed that she was sitting in their bedroom recording a second video when "he yelled something. And then he went into the bathroom, and that's when you hear the loud bang," and Ratliff had broken a cabinet in the bathroom.

On cross-examination, D.R. agreed that Ratliff had touched her just once during their argument—when he chased her to the couch and pushed her—which D.R. recorded using her phone. Ratliff's attorney asked D.R. if she had actually tripped, and D.R. responded, "No, I didn't trip." D.R. testified:

"He was in the bedroom, and I was standing in front of the bathroom door. And he had said something, and I had said something back. And then he came after me, and I ran toward—in front of the couch. And then, when my back was towards him, and then he was up behind me, like with his hands on me, and he was pushing me down like this. And I was yelling in the video, 'Get off of me.'"

D.R. testified that Ratliff "was repetitively, like, pushing me" while she was hunched over the couch, and when he stopped, D.R. "grabbed all my stuff and I ran outside." She estimated that the verbal argument lasted about half an hour, and she called the police about an hour after the argument began.

Police officers arrived and found D.R. waiting in her car. While one officer spoke to D.R. inside her apartment, another talked to Ratliff outside. The officer interviewing D.R. testified that he saw the dresser that D.R. said Ratliff had pushed over, but it was sitting upright with items on top. The officer said that D.R. had "told me she had already cleaned it up." The officer also testified that "she showed me a video on her cell phone where he chases after her, and she turns and runs towards the couch. And in the video you can see her getting, you know, forcefully going down to the couch and then kind of bumped several times." When the officer asked D.R. to describe what happened in the video, she explained that Ratliff shoved her multiple times while she told him to get off her.

At the bench trial, Ratliff did not testify and presented no witnesses or evidence. Prior to closing, the City dismissed the property damage charge, and proceeded with just the domestic battery charge. The district court found D.R. to have been a credible witness and the third video she recorded was consistent with her testimony that Ratliff pushed her several times. The district court found Ratliff guilty of domestic battery and sentenced him to six months in jail and imposed a \$200 fine. Ratliff appealed.

DISCUSSION

On appeal, Ratliff argues only that there was insufficient evidence to sustain his conviction for domestic battery because:

- (1) The video the district court relied on was unclear as to whether D.R. was pushed or had tripped;

- (2) there was no evidence to support the allegation of property damage because the dresser was "cleaned up" when the officer arrived;
- (3) D.R. had no visible injuries and did not go to a hospital for treatment; and
- (4) there was no testimony as to Ratliff's statements to the officers regarding the incident.

This court reviews a defendant's challenge to the sufficiency of the evidence to determine "whether, after reviewing all the evidence in a light most favorable to the prosecution, the appellate court is convinced a rational factfinder could have found the defendant guilty beyond a reasonable doubt." *State v. Chandler*, 307 Kan. 657, 668, 414 P.3d 713 (2018). Ratliff also challenges D.R.'s credibility, but this court does not reweigh the evidence or make credibility determinations, as that is the trial court's purview. 307 Kan. at 668.

Rather than challenge the sufficiency of the evidence, Ratliff essentially asks this court to reweigh the evidence. Each of the facts asserted on appeal was known to the district court and used in its assessment. With regard to Ratliff's objections to the video relied on by the court, D.R. testified that she did not trip—but that Ratliff pushed her down and then repeatedly pushed her. The district court was permitted to assess D.R.'s credibility. And ultimately the court found her testimony credible, and that her testimony was corroborated by the visual changes captured in the third video. See *Chandler*, 307 Kan. at 668. A victim's testimony alone can be sufficient to support a conviction provided the evidence is clear and convincing and is not so incredible and improbable as to defy belief. *State v. Race*, 293 Kan. 69, 79, 259 P.3d 707 (2011); see *State v. Ulate*, 42 Kan. App. 2d 971, 992, 219 P.3d 841 (2009). Ratliff has failed to present evidence that D.R.'s testimony was so incredible and improbable as to defy belief.

Ratliff's argument that the dresser was set upright and put back together, which contradicted D.R.'s testimony that he knocked it over—is also unpersuasive. The City

dismissed the property damage charge and did not rely on the allegation that he knocked over the dresser to support its charge against him for domestic battery. Additionally, the district court did not rely on the allegation that Ratliff pushed the dresser over in finding Ratliff guilty of domestic battery. Thus, Ratliff's argument is immaterial because he has not been convicted of anything related to the allegation that he pushed the dresser over. To the extent that this argument is intended to undermine D.R.'s credibility, this court does not reweigh credibility and is unpersuaded.

Next, Ratliff apparently argues that because D.R. had no visible injuries and was not taken to the hospital, he cannot be guilty of domestic battery. This court exercises unlimited review over the interpretation of city ordinances as they pose a question of law. *City of Wichita v. Hackett*, 275 Kan. 848, 850, 69 P.3d 621 (2003). Ratliff was charged with violating section 5.10.025(a)(2) of Wichita's Municipal Code prohibiting domestic battery. The domestic battery ordinance reads, in relevant part:

"(a) Domestic Battery, within the corporate limits of the city, is: (1) *knowingly or recklessly causing bodily harm* by a family or household member to a family or household member or knowingly or recklessly causing bodily harm by an individual in a dating relationship to an individual with whom the offender is involved or has been involved in a dating relationship or (2) *knowingly causing physical contact* by a family or household member with a family or household member or *knowingly causing physical contact by an individual in a dating relationship to an individual with whom the offender is involved or has been involved in a dating relationship when done in a rude, insulting or angry manner, is guilty of a misdemeanor.*" (Emphases added.) W.M.O. § 5.10.025(a).

Subsection (a)(1) requires a finding of "bodily harm" while subsection (a)(2) requires a finding of "physical contact." The City charged Ratliff under the subsection that required a showing that he "knowingly caus[ed] physical contact . . . in a rude, insulting or angry manner" with the alleged victim. W.M.O. § 5.10.025(a)(2). Looking to the plain language, it is clear that "physical contact" requires a "rude, insulting or angry" touching,

but it does not require physical injury to result from that touching. This is clear because subsection (a)(1) addresses instances where "bodily harm" results and subsection (a)(2) under which the City charged Ratliff has no such requirement.

Finally, Ratliff argues that somehow, because no testimony was presented about his statements to police officers on the scene of the incident, that demonstrates an insufficiency of the evidence to support his conviction. At trial, Ratliff's attorney questioned the officer who spoke to D.R. at the scene, but did not ask about any of Ratliff's statements to police, and he did not call as a witness the other officer at the scene who presumably had more contact with Ratliff. Moreover, Ratliff does not allege that he sought to introduce evidence of his statements to police and was denied. Ratliff's argument is unavailing. Additionally, issues not adequately briefed are deemed waived or abandoned, and this court declines to invent Ratliff's argument on his behalf. See *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021).

CONCLUSION

This court finds there was sufficient evidence upon which the district court could rely to have found Ratliff guilty of domestic battery beyond a reasonable doubt. Such evidence can be circumstantial and need not be uncontroverted. The district court's decision is affirmed.

Affirmed.