Illinois Official Reports

Appellate Court

People v. Moore, 2023 IL App (2d) 220289

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ARMANI L. MOORE, Defendant-Appellant.
District & No.	Second District No. 2-22-0289
Filed	August 16, 2023
Decision Under Review	Appeal from the Circuit Court of Kendall County, No. 21-CM-318; the Hon. Stephanie Klein, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd, Thomas A. Lilien, and Elliott A. Borchardt, of State Appellate Defender's Office, of Elgin, for appellant. Eric C. Weis, State's Attorney, of Yorkville (Patrick Delfino, Edward R. Psenicka, and Ivan O. Taylor Jr., of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE HUTCHINSON delivered the judgment of the court, with opinion. Justices Birkett and Kennedy concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant, Armani L. Moore, was convicted of domestic battery of an insulting or provoking nature and sentenced to 24 months' probation and 30 days in county jail. In this direct appeal, defendant contends that the trial court erred in admitting certain hearsay statements of the victim, Alexis May, in violation of section 115-10.2a of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.2a (West 2020)) and the confrontation clause (U.S. Const., amend. VI). Additionally, he contends that the evidence at trial was insufficient to convict him of domestic battery, due to the unreliability of Alexis's statements. For the following reasons, we affirm defendant's conviction.

¶ 2 I. BACKGROUND

¶ 3 On August 7, 2021, defendant was charged by complaint with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2020)), in that he "knowingly, without legal justification, struck Alexis May, a household member, with his hands causing redness and bruising in an insulting nature. Items were also thrown at Alexis, striking her body." In response to his discovery request prior to trial, the State indicated that "documents listed as SA1 through SA62 as well as the discs for Squad (SA01), Photos (SA02), Booking (SA03) and 911 (SA04-5)" had been tendered to defendant. Additionally, the State provided defendant with the following response:

> "The People will seek to introduce any and all statements of the accused, oral, written, or recorded and any and all statements of witnesses, oral written or recorded included in any tendered material including statements admissible pursuant to 725 ILCS 5/115-10.2a.
>
> Any squad videos tendered do contain audio, and the People will seek to introduce same.
>
> * * *
>
> The People will seek to introduce any evidence at trial listed in the disclosure that has been tendered, in addition to any necessary certified records."

During a January 5, 2022, pretrial hearing, the State indicated that it would present Alexis, two officers—Deputy Ignas Rolskis and Deputy Zach Tongate—a gas station attendant, and Alexis's mother—Rhonda May—as trial witnesses.

¶ 4 The matter proceeded to bench trial on April 28, 2022, wherein the State called Alexis as its first witness. Alexis acknowledged that she was in a three-year relationship with defendant on August 7, 2021, and that they lived together in an Oswego apartment. She testified that the relationship ended on August 7, 2021, "the day of our incident." On the day of the incident, Alexis was at the apartment with defendant between the hours of 3 p.m. and 4 p.m. As to the State's questions regarding the specifics of the charged conduct, the ensuing investigation, and her interactions with Rhonda, Alexis responded "I don't recall" to each one. After Alexis failed to recall a written statement to police, the State showed Alexis People's exhibit 1 (document SA12 in the State's disclosed materials), her August 7, 2021, written statement to the Kendall County Sheriff's Office. Alexis testified that she did not recognize the written statement and could not remember writing it. The State then engaged Alexis in the following exchange regarding her signature:

"Q. Okay. Well, let me ask you this, down here at the bottom, where it says signature, is that your signature right there?

A. It looks like it.

Q. Okay. Is that your signature?

A. It could be.

Q. It could be. So you could have written this; is that fair to say?

A. Sure.

Q. Now, [Alexis], you knew that it was important to be honest with officers back on August 7, 2021; is that fair to say?

A. Yes.

Q. Okay. And you knew it was correct to be 100 percent truthful with them?

A. Yes.

Q. And you knew it was in your best interests to be honest when you wrote a written statement; is that fair to say?

A. Yes.

Q. [Alexis], that written statement that I just showed you, People's Exhibit 1, did that also look like your handwriting?

A. Not really, no.

Q. It didn't look like your handwriting at all?

A. No.

Q. But it looked like your signature maybe?

A. Maybe, yeah."

¶ 5 Alexis was shown People's exhibits 2A, 2B, and 2C, which were photographs she recognized to be of her, but she could not recall if they accurately depicted how she looked on August 7, 2021. She could not recall if the responding deputies took the photographs in her apartment on August 7, 2021. She acknowledged that People's exhibits 2B and 2C depicted photographs of her left shoulder. When asked if those photographs fairly and accurately showed how her left shoulder looked on August 7, 2021, Alexis responded, "I mean, if that's what the picture shows, then yes."

¶ 6 Alexis testified that she went to the Kendall County Sheriff's Office on January 12, 2022, and met with Deputy Pearson to recant her August 7, 2021, written statement. Regarding that statement, she acknowledged that she told Pearson that she was "emotional and [her] head wasn't in the right place and [she could not] recall anything from that day." Alexis agreed that Pearson offered her the opportunity to examine the statement, but she did not want to see it. Alexis confirmed that it was her testimony at trial that she could not recall what happened on August 7, 2021.

¶ 7 On cross-examination, Alexis answered "I don't know" or "I don't recall" to every question posed by defense counsel regarding defendant's charged conduct as well as her statements to police and Rhonda.

¶ 8 The State next called Deputy Rolskis of the Kendall County Sheriff's Office to testify. He recalled receiving a dispatch on August 7, 2021, that a domestic battery had occurred at defendant's Oswego apartment. Rolskis arrived at the parking lot of the location and was waved down by Rhonda. After speaking with Rhonda, Rolskis spoke to Alexis. He testified

that, during that initial conversation, Alexis told him that "she had gotten into a verbal argument" with defendant. Defense counsel then made a hearsay objection, to which the State countered:

> "Judge, it's not hearsay. So this is a situation where the State is put in a position where we have to prove up what Alexis May has already testified to, Judge. She said to all of these questions, this line of questioning, that she doesn't recall, which would make her an unavailable witness.
>
> Specifically, 725 ILCS 5/115-10.2a is what I'm looking at, your Honor. She's made herself an unavailable witness. I asked her about this statement to Officer Rolskis. She said she doesn't remember. So now the State does need to prove up that statement based on that sub-section or that statute, your Honor."

Defense counsel then posited the following response:

> "Your Honor, I would argue that she is not unavailable, and due to—she is here. She is witnessing. I understand that she's answering that she did not recall, but this goes under *** 725 ILCS 5/115-10.2a(a)(2), that the statement is more probative on the point for which it is offered, than any other evidence which the proponent can procure through reasonable efforts.
>
> It is not more probative that what is coming from Ms. May's own mouth, her own testimony, your Honor. So we would object to it still under this statute."

The trial court overruled the objection without further comment.

¶ 9 The State continued its direct examination of Rolskis. He testified that Alexis told him that defendant became angry when she moved his phone charger and he started yelling. Alexis tried to ignore defendant, which made him more upset. Defendant pushed Alexis's shoe bin and took her phone and keys. At one point, defendant would not allow Alexis to reenter the apartment, so she walked to a gas station where a female employee allowed her to use her phone to call Rhonda. The employee then gave Alexis a ride to Rhonda's house. Alexis used the employee's phone to call her mother. Rolskis recalled that Alexis told him that she and defendant were engaged in a verbal argument with mutual pushing.

¶ 10 After speaking with Alexis, Rolskis walked away to speak with Rhonda. He then returned to Alexis for a second conversation. Alexis told him that defendant grabbed her, threw objects at her, hit her with a phone charger cord, pinned her to the couch, held her by her left shoulder, and may have caused an injury to the back of her left shoulder. Rolskis recalled having observed redness on the back of Alexis's left shoulder.

¶ 11 Rolskis then left Alexis to respond to Rhonda yelling that defendant was in a black vehicle attempting to leave the parking lot. Rolskis spoke with defendant before placing him under arrest for domestic battery.

¶ 12 The State showed Rolskis People's exhibits 2A, 2B, and 2C. Rolskis testified that the photographs accurately depicted Alexis and the redness on her left shoulder on August 7, 2021. The photographs were admitted into evidence with no objection. Rolskis's bodycam footage was admitted and published in part as People's exhibit 3, with no objection.

¶ 13 On cross-examination Rolskis reaffirmed that Alexis first told him that her argument with defendant was only a verbal argument with mutual pushing. Alexis indicated that she just wanted to get her belongings. Rolskis admitted that Rhonda was yelling at Alexis before he

spoke with her for the second time. Rolskis acknowledged that he did not know if Alexis had the redness on her shoulder from a previous injury.

¶ 14 The State next called Deputy Tongate of the Kendall County Sheriff's Office to testify. Tongate took the photographs of Alexis at the apartment and observed that "[s]he had a red mark on her shoulder, like a bruise, and a lump on her shin." The State showed Tongate People's exhibit 1, Alexis's written statement from August 7, 2021. After Tongate recognized the statement as a fair and accurate copy, the State sought to admit it into evidence. Defense counsel objected, stating, "I would object on the grounds of hearsay and renew my previous objection under the admissibility of the prior statements in domestic violence." The State countered:

> "Judge, I would just renew what I stated previously.
>
> As argument to what [defense counsel] has presented, the victim in this case, Alexis May, persisted in her lack of memory on the subject matter. So she's made herself an unavailable witness.
>
> She testified that that was her, in fact, it looked to be her signature. So, your Honor, Deputy Tongate is confirming that this, in fact, was the document that was handed back to him by Alexis May back on August 7, 2021, so I would be offering it under 725 ILCS 5/115-10.2a."

The trial court admitted People's exhibit 1 over defendant's objection without further comment. Alexis's written statement read as follows:

> "I came home from work. He was already upset from playing the video game. I asked where his charger was. It was in our bedroom. He got upset because I moved his charger from the living room to our bedroom without telling him. He started yelling and calling me names. I stayed quiet and he kept going on and on and on[.] He took my phone [and] wouldn't give it back[.] [E]ventually he came back in the house and told me to get my stuff and leave. He kept my keys[,] my phone[,] [m]y car and my purse. I said I wasn't going to leave and he grabbed me[,] threw objects at me and forced me to leave while keeping my phone, keys, etc. He held me down on the couch forcefully. After I left, I walked to the gas station and got a ride from the female worker. She then took me to my mom's. He had pushed and shoved me into the wall out of anger."

¶ 15 The State next called Rhonda to testify. She testified that Alexis called her on the afternoon of August 7, 2021, from an unknown phone number and said that defendant had put his hands on her. Rhonda stated that when Alexis arrived at her Aurora home she was "scared, crying, upset." She recalled Alexis having "red marks near her neck, shoulder." Rhonda had seen Alexis the prior weekend and did not notice any injuries. Rhonda drove Alexis back to her Oswego apartment and called 911 in order for officers to meet them there so Alexis could retrieve her belongings. Rhonda's boyfriend followed them to the apartment complex. After speaking with Rolskis in the parking lot, Rhonda, her boyfriend, Alexis, and Tongate went inside the apartment, where Rhonda observed Alexis fill out the written statement. Alexis's cell phone was found in the couch cushions. Rhonda testified that she helped clean up the apartment and take things to the dumpster because "[t]here [was] stuff thrown around, broken."

¶ 16 On cross-examination Rhonda admitted that she was not happy with what Alexis had initially told Rolskis in the parking lot. She screamed at her to tell the truth about what transpired with defendant.

¶ 17 The State rested its case-in-chief, and defendant moved for a directed verdict. Following argument, the trial court denied the motion. Defendant rested without presenting evidence. The trial was continued to June 23, 2022, for closing arguments. On June 27, 2022, the trial court found defendant guilty of domestic battery. In describing its verdict, the trial court articulated the following findings:

> "The court largely found Alexis May's in court testimony to be not credible. I did not believe her when she said she did not remember what happened.
>
> The court then looks to the statements that Alexis May made to Deputy Rolskis, as well as her mother. The court finds that those statements were largely corroborated by the photographic evidence of the redness to her back, the location in which her cell phone was found, which was in the couch cushions at the apartment, the condition of the apartment itself, which contained numerous broken items, as well as the circumstances of Ms. May walking to the gas station to seek assistance from unknown individuals.
>
> The court does find that Alexis May's statements to Deputy Rolskis and Rhonda May are corroborated by other evidence in this case. The court finds them credible."

¶ 18 The trial court sentenced defendant to 24 months' probation and 30 days in the county jail. Defendant filed a motion for a new trial, arguing issues not raised in the present appeal, as well as a motion to reconsider the sentence. The trial court denied the motions, and this direct appeal followed.

¶ 19 II. ANALYSIS

¶ 20 In this direct appeal, defendant contends that Alexis's statements to Rolskis, as well as her written statement, were inadmissible under section 115-10.2a of the Code because they did not contain sufficient guarantees of trustworthiness and that their admission violated the confrontation clause. Defendant also contends that Alexis's statement to Rhonda that he put his hands on her would not have been admissible under section 115-10.2a because the statement did not contain sufficient guarantees of trustworthiness. Finally, defendant contends that the State failed to prove him guilty beyond a reasonable doubt.

¶ 21 Defendant concedes that his counsel failed to preserve in the trial court his contentions related to the admissibility of the evidence under section 115-10.2a, as he failed to raise the issue both at trial and in a written posttrial motion. See *People v. Lewis*, 223 Ill. 2d 393, 400 (2006). However, he asks this court to review the matter for plain error or, alternatively, as ineffective assistance of trial counsel.

¶ 22 Plain error occurs where the defendant shows a clear or obvious error and either (1) the evidence is closely balanced or (2) the error is of such magnitude that the defendant is denied the right to a fair trial and remedying the error is necessary to preserve the integrity of the judicial process. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003). A reviewing court typically undertakes plain-error analysis by first determining whether error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). If error is found, the court then proceeds to consider whether either of the two prongs of the plain-error doctrine have been satisfied. *Id.* at 189-90. Thus, we must first determine whether an error occurred. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008).

¶ 23 Defendant first argues that the trial court erred in admitting Alexis's statements to Rolskis and her written statement, because she was not available at trial for cross-examination to explain those statements. This, defendant argues, violated his sixth amendment right under the confrontation clause because the statements were testimonial and defendant had no prior opportunity to cross-examine Alexis.

¶ 24 Generally, we review a trial court's decisions concerning the admission of evidence only for an abuse of discretion. *In re Brandon P.*, 2014 IL 116653, ¶ 45 ("a trial court's ruling on evidentiary matters will not be reversed absent a clear abuse of discretion"); *People v. Lovejoy*, 235 Ill. 2d 97, 141 (2009); *People v. Sutherland*, 223 Ill. 2d 187, 281 (2006). However, claims under the sixth amendment often present questions of law such as whether the complained-of statements were testimonial or qualified as hearsay, and we review those questions *de novo*. *Lovejoy*, 235 Ill. 2d at 141-42; *In re Rolandis G.*, 232 Ill. 2d 13, 23 (2008) ("whether a statement is 'testimonial' is a question of law and our review, therefore, is *de novo*").

¶ 25 Section 115-10.2a states, in relevant part, as follows:

> "(a) In a domestic violence prosecution, a statement, made by an individual identified in Section 201 of the Illinois Domestic Violence Act of 1986 as a person protected by that Act, that is not specifically covered by any other hearsay exception but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the declarant is identified as unavailable as defined in subsection (c) and if the court determines that:
>
> (1) the statement is offered as evidence of a material fact; and
>
> (2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
>
> (3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence.
>
> (b) A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement, and the particulars of the statement, including the name and address of the declarant.
>
> (c) Unavailability as a witness includes circumstances in which the declarant:
>
> * * *
>
> (3) testifies to a lack of memory of the subject matter of the declarant's statement[.]" 725 ILCS 5/115-10.2a (West 2020).

¶ 26 Section 115-10.2a was enacted to comport with the confrontation clause requirements set forth in *Ohio v. Roberts*, 448 U.S. 56 (1980). *In re Rolandis G.*, 232 Ill. 2d at 23; *People v. Busch*, 2020 IL App (2d) 180229, ¶ 53.

> "Under *Roberts*, it was not a violation of the sixth amendment confrontation clause to admit out-of-court hearsay statements into evidence as long as the statements were found to be reliable, either because the evidence fell within a firmly rooted hearsay exception or because there were other 'particularized guarantees of trustworthiness.' " *In re Rolandis G.*, 232 Ill. 2d at 24 (quoting *Roberts*, 448 U.S. at 66).

Roberts was overruled by *Crawford*, which held that, under the confrontation clause, a witness's out-of-court statement could be admitted only if the witness was available for cross-

examination at trial or the defendant had a prior opportunity to cross-examine her. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). In *Crawford*, the United States Supreme Court held that "the principal evil at which the Confrontation Clause was directed" was the "use of *ex parte* examinations as evidence against the accused." *Id.* at 50. "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not." *Id.* at 51. The Court held that "[s]tatements taken by police officers" during questioning "fall squarely" within the class of statements covered by the sixth amendment. *Id.* at 52-53. In the case at bar, there is no dispute that Alexis's statements to Rolskis and her written statement were testimonial and fell squarely within the class of statements affected by *Crawford*. A testimonial out-of-court statement is admissible under *Crawford* only if (1) the witness is available for cross-examination or (2) the defendant had a prior opportunity to cross-examine her. *Id.* at 68. Thus, Alexis's testimonial out-of-court statements were properly admitted under the sixth amendment only if she was available for cross-examination at trial for purposes of the sixth amendment.

¶ 27 In the present case, both defendant and the State agree that Alexis's testimony that she did not recall the events of August 7, 2021, demonstrate her unavailability for the purposes of section 115-10.2a. See 725 ILCS 5/115-10.2a(c)(3) (West 2020). Likewise, the parties agree that her statements to Rolskis and her written statement were testimonial because the circumstances in which they were made objectively show that there was no ongoing emergency and the primary purpose was to "prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822 (2006). Whether a witness may be unavailable under section 115-10.2a but still available for the purposes of the confrontation clause was examined in in *People v. Burnett*, 2015 IL App (1st) 133610, and its holding is instructive here.

¶ 28 In *Burnett*, the defendant was convicted after a bench trial for violating an order of protection. *Id.* ¶ 1. The defendant's girlfriend testified that she had been in a five-year relationship with the defendant, that she had four children, that the defendant was the biological father of the two youngest sons, and that he also acted as a father to her two oldest sons. *Id.* ¶ 20. She had an order of protection against the defendant. *Id.* ¶ 22. She testified that the defendant drove by her hotel in his cab five times in March 2012, while the order of protection was in place. *Id.* ¶ 24. When repeatedly asked by the State about certain events that occurred on March 3, 2012, she testified that she could not remember anything from that date. *Id.* ¶ 25. The State attempted to refresh her recollection by showing a typed statement she made to police, but she repeated that she could not recall having made the statement. *Id.* She could, however, recall (1) meeting with a detective and saying that the defendant had driven by her hotel in March 2012; (2) receiving text messages from the defendant, including one during March 2012 in which he said that he saw her; (3) receiving more than one telephone call from the defendant; and (4) calling police from the front office of her hotel on the date the defendant was arrested. *Id.* ¶¶ 27-28. On cross-examination, she testified that she had no independent recollection of events that occurred during the relevant period. *Id.* ¶ 29. The defendant's counsel stipulated that the defendant's girlfriend signed the 5½-page typewritten statement to police, and the State read it, in its entirety, into the record. *Id.* ¶¶ 31-48.

¶ 29 On appeal, the defendant contended that the trial court erred in admitting his girlfriend's statement to police into evidence because its admission violated his sixth amendment right to confront and cross-examine the witnesses against him. *Id.* ¶ 72. The defendant argued that his

girlfriend was unavailable for cross-examination about the offense of which he was convicted, harassment in violation of a protective order. *Id.* In finding that the defendant's girlfriend was available for purposes of the confrontation clause, the court recounted that the charged conduct required establishment of the following:

> "The Illinois Domestic Violence Act of 1986 (Act) states that harassment, for purposes of a protective order, occurs when a defendant knowingly acts in a way that would cause a reasonable person emotional distress and which does, in fact, cause emotional distress to the protected person, and which was not necessary to accomplish a purpose that was reasonable under the circumstances. 750 ILCS 60/103(7) (West 2010).
>
> The Act states, in relevant part, that the following types of conduct are presumed to cause emotional distress:
>
> '(ii) repeatedly telephoning petitioner's *** home or residence;
>
> (iii) repeatedly following petitioner about in a public place or places;
>
> (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home ***[.]' 750 ILCS 60/103(7) (West 2010)." *Id.* ¶¶ 102-03.

The defendant's girlfriend did answer questions at trial about "telephoning," "following," and being kept "under surveillance," all of which qualified as harassment under the Act. *Id.* ¶ 104. She also responded to preliminary questions about her relationship with the defendant and sharing children with him. *Id.* The court ultimately held that, even though she testified to a lack of memory regarding specifics, "she still answered both preliminary questions, as well as a number of questions about the offense of conviction described in her statement, thereby making her available under *Crawford*." *Id.* ¶ 107.

¶ 30 Returning to the present case, Alexis testified that she had been in a relationship with defendant for three years. She said that she lived in the Oswego apartment with him. She testified that she came home from work on August 7, 2021, between 3 p.m. and 4 p.m. to find defendant in the apartment. She agreed that it was "fair to say" that her signature was on the written statement. She acknowledged that People's exhibits 2A, 2B, and 2C depicted her and were "fair and accurate photographs of how [her] *** left shoulder looked back on August 7, 2021." She testified to going to the Kendall County Sheriff's Office to recant her written statement because she "had a lot of people in my ear, and I thought that was best if I didn't, don't recall anything happening that day." On cross-examination she could not recall anything aside from recanting her written statement.

¶ 31 Defendant was charged with domestic battery pursuant to section 12-3.2(a)(2) of the Criminal Code of 2012, which states as follows:

> "§ 12-3.2. Domestic battery.
>
> (a) A person commits domestic battery if he or she knowingly without legal justification by any means:
>
> ***
>
> (2) Makes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)(2) (West 2020).

Alexis's testimony undoubtedly responded to preliminary questions concerning her relationship with defendant as a household member. People's exhibits 2A, 2B, and 2C depicted Alexis and the redness on her left shoulder on August 7, 2021. Her acknowledgment that

People's exhibits 2A, 2B, and 2C depicted what her left shoulder looked like on August 7, 2021, indicates that her left shoulder was somehow injured through some type of physical contact. Further, her testimony on cross-examination that she went to the Kendall County Sheriff's Office on January 12, 2022, to recant her written statement is proof that she provided a written statement on August 7, 2022. Her written statement is nearly identical to her second verbal statement to Rolskis.

¶ 32 Based on the foregoing, the trial court's decisions to admit into evidence Alexis's verbal statements to Rolskis and her written statements, pursuant to section 115-10.2a, did not violate defendant's sixth amendment right to confrontation.

¶ 33 We now turn to defendant's contention that Alexis's statement to Rhonda that defendant "put his hands on her" was not admissible under section 115-10.2a because it lacked sufficient guarantees of trustworthiness. Defendant concedes that the statement was nontestimonial for purposes of *Crawford* but argues that the totality of circumstances supports a finding that the statement was unreliable.

¶ 34 In *People v. Bueno*, 358 Ill. App. 3d 143 (2005), this court adopted a totality of the circumstances analysis to establish whether a hearsay statement from an unavailable witness was admissible pursuant to section 115-10.2 of the Code (725 ILCS 5/115-10.2 (West Supp. 2003)). Just as in section 115-10.2a, section 115-10.2 provides that, once unavailability is established, a hearsay statement is admissible under section 115-10.2 only if the statement is trustworthy, material, and probative and serves the interests of justice. See *id.* § 115-10.2(a); see also 725 ILCS 5/115-10.2a (West 2020). This court in *Bueno* considered the following four factors to determine whether a particular hearsay statement bears equivalent circumstantial guarantees of trustworthiness:

> "(1) whether the statement was made spontaneously to a close acquaintance shortly after the crime occurred; (2) whether the statement was corroborated by other evidence; (3) whether the statement was self-incriminating or otherwise against the declarant's interest; and (4) whether there was an adequate opportunity to cross-examine the declarant." *Bueno*, 358 Ill. App. 3d at 160 (citing *People v. Brown*, 303 Ill. App. 3d 949, 961 (1999)).

The existence of all four factors is not required for a statement to be admitted, but there must be other considerable assurances of the statement's trustworthiness. *Brown*, 303 Ill. App. 3d at 961.

¶ 35 Rhonda testified that she received the statement from her daughter via a phone call from an unknown number at approximately 4 p.m. on August 7, 2021. Shortly thereafter, Alexis went to Rhonda's house, appearing "scared, crying, upset." Rhonda observed red marks on Alexis's neck and left shoulder, marks she did not observe when she saw her only a week prior. When she went to Alexis's apartment shortly thereafter, Rhonda noticed it to be in disarray, as though an altercation had taken place. Applying the approach implemented by this court in *Bueno*, we hold that Alexis's statement to her mother that defendant "put his hands on her" contained sufficient guarantees of trustworthiness.

¶ 36 Alexis's statements to Rolskis and her written statement likewise contained sufficient guarantees of trustworthiness. She told Rolskis shortly after the incident that the fight started with her moving defendant's phone charger, upsetting him to the point where he threw items at her, hit her with the phone charging cord, and pinned her to the couch by her shoulder. Her written statement contains a nearly identical recitation of events and detailed that she had to

get help from a gas station employee to contact Rhonda after defendant took her keys and phone and kicked her out of the apartment. Both Alexis's statements to Rolskis and her written statement were made shortly after the incident. Defendant's emphasis that her original statement to Rolskis was that the altercation involved mere "mutual pushing" does not prevent her subsequent statements to the contrary from being deemed to have sufficient guarantees of trustworthiness. See *Bueno*, 358 Ill. App. 3d at 161-62.

¶ 37 We note that defendant avers in his contentions of error concerning section 115-10.2a that he received ineffective assistance of counsel. To succeed under such a theory, however, there must have been error. *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 24. The threshold step of plain-error review is determining whether an error occurred, and counsel cannot be ineffective for failing to object if there was no error to object to. *Id.*

¶ 38 Before moving to defendant's final contention, we must address two additional claims of error concerning both the State and the trial court's adherence to the strictures of section 115-10.2a of the Code. First, defendant argues that the State failed to provide him with notice of its intent to use Alexis's out-of-court statements, as required by section 115-10.2a(b). See 725 ILCS 5/115-10.2a(b) (West 2020); see also *supra* ¶ 25. However, the record belies defendant's argument. On October 7, 2021, in response to defendant's discovery request, the State provided a detailed list of items it intended to use at trial. See *supra* ¶ 3. Defendant asserts that the State should have filed a motion *in limine* to establish proper notice under section 115-10.2a(b). While we will not comment on what the State should or should not have filed, we note that the statute contains no such language to establish proper notice.

¶ 39 Section 115-10.2a(b) states as follows:

> "A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement, and the particulars of the statement, including the name and address of the declarant." 725 ILCS 5/115-10.2a(b) (West 2020).

Even if the best practice were for the State to file a motion *in limine* to further elucidate its intent to use Alexis's out-of-court statements, defendant has failed to show how he was unfairly prejudiced. Defendant was aware through the State's discovery response that it intended to "introduce any and all statements of witnesses, oral, written, or recorded included in any tendered material including statements admissible pursuant to 725 ILCS 5/115-10.2a." Defendant was aware following a pretrial hearing on January 5, 2022, that the State would introduce the testimony of the two police officers, Alexis, and Rhonda. Defendant has failed to indicate what more he could, or would, have done had the State taken the additional step of filing a motion *in limine* concerning Alexis's out-of-court statements. As we can find no prejudice to defendant resulting from the State's notice of its intention to use Alexis's out-of-court statements, we find no reversible error. The State's response to defendant's discovery request was sufficient to establish notice based on the language of section 115-10.2a(b).

¶ 40 Defendant's second argument holds more merit, even if not rising to the level of reversible error. He asserts that the trial court failed to make findings required by section 115-10.2a that

> "(1) the statement is offered as evidence of a material fact; and
>
> (2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of this Section and the interests of justice will best be served by admission of the statement into evidence." *Id.* § 115-10.2a(a).

We agree with the State's position that "the trial court is presumed to know the law and apply it properly." *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Further, we agree that the court must conduct a meaningful assessment of the probative versus the prejudicial impact of the evidence but need not fully articulate its evidentiary determinations on the record. *People v. Petrakis*, 2019 IL App (3d) 160399, ¶ 22.

¶ 41 As our foregoing analysis has revealed no error with the trial court's determination that Alexis's out-of-court statements were admissible pursuant to section 115-10.2a, we cannot agree with defendant that its failure to articulate its findings on the record was error. However, we caution trial courts in the future to make a meaningful assessment of evidentiary findings on the record when required by statute so as to avoid any confusion the parties may have regarding such findings, as well as to promote judicial economy when reviewing courts examine those findings on appeal.

¶ 42 Finally, defendant contends that the State did not prove him guilty of domestic battery beyond a reasonable doubt because (1) Alexis's statements admitted at trial recounted two competing versions of events, (2) Alexis had motive to lie, and (3) Alexis accused defendant of battering her after Rhonda pressured her to do so.

¶ 43 A reviewing court 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). When reviewing a challenge to the sufficiency of the evidence, " 'the relevant 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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Shenault*, 2014 IL App (2d) 130211, ¶ 14.

¶ 44 To prove defendant guilty of domestic battery pursuant to 12-3.2(a)(2) of the Criminal Code of 2012, the State must prove that he (1) intentionally or knowingly, (2) without legal justification, (3) made physical contact of an insulting or provoking nature (4) with a family or household member. See 720 ILCS 5/12-3.2(a)(2) (West 2020).

¶ 45 When examined in the light most favorable to the State, the evidence presented at trial was sufficient to find defendant guilty of domestic battery beyond a reasonable doubt. The evidence established that defendant, while living in the Oswego apartment with Alexis, became angry with her for moving his phone charger, which precipitated an altercation during which he threw objects at her, hit her with the phone charger cord, and pinned her to the couch by her left shoulder, which caused injury. Alexis's statements regarding the incident to Rolskis, her written statement, and her statements to Rhonda corroborated that version of events. Defendant's focus on Alexis's initial inconsistent statement that the altercation was nothing more than "mutual pushing" does not detract from the trustworthiness of her subsequent statements. See *Bueno*, 358 Ill. App. 3d at 161-62. The trial testimony and the corroborating photographs of Alexis's injuries were sufficient evidence to prove beyond a reasonable doubt that defendant made contact of an insulting or provoking nature with Alexis, a household member. We will not disturb the trial court's finding of defendant's guilt, and we affirm his

conviction of domestic battery.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, the judgment of the circuit court of Kendall County is affirmed.

¶ 48 Affirmed.