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2011 IL App (3d) 100390-U

Order filed November 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the 12th Judicial Circuit Will County, Illinois |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-10-0390 |
| |) | Circuit No. 09-CM-3511 |
| DANIEL L. GOLEMBIEWSKI, |) | Honorable |
| Defendant-Appellant. |) | Marilee Viola |
| |) | Judge Presiding |

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant and victim were "family members" within the meaning of the domestic battery statute, where the victim testified that she and defendant were boyfriend and girlfriend.

¶ 2 Defendant, Daniel L. Golembiewski, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)) against Alissa Rago. The trial court sentenced defendant to 14 days in jail, 24 months conditional discharge, and ordered him to pay \$500 in fines. On appeal, he argues that (1) the State failed to establish that he and Rago were "family members," as required by the domestic

battery statute, and (2) he is entitled to \$10 in presentence credit against his fines. We affirm defendant's conviction and modify the mittimus to reflect the appropriate credit against his fines.

¶ 3 In September 2009, defendant was charged by criminal complaint with domestic battery against Rago for throwing a table at her. The complaint alleged that Rago was defendant's "family or household member." A bench trial was held in February 2010.

¶ 4 At trial, Rago testified that on August 11, 2009, she and defendant were boyfriend and girlfriend and had been in a relationship for nine months "on and off." She lived with defendant for about two months, from February to April 2009. She was not living with defendant in August 2009.

¶ 5 Rago testified that she was at defendant's house on August 11, 2009. At approximately 8:30 p.m., she and defendant got into an argument. During the argument, Rago pushed over a wooden table in the living room. Defendant then picked up the table and threw it at Rago. The table hit her in the chest and arms. After that, Rago proceeded to leave, but defendant kept pushing her down. Defendant was yelling at her and using profanity. Defendant stopped pushing Rago when she was outside of defendant's house. Rago got in her car and drove home. She did not call the police that night because she was "too stressed out" and upset. Rago called the police the next day.

¶ 6 On August 12, 2009, Officer Wojowski of the New Lenox Police Department came to Rago's house. Rago talked to him about what happened the night before. Another police officer came and took photographs of her. Several of the photographs showed bruises on her left arm. The bruises were caused by the table that defendant threw at her. Photographs of her right leg were also taken. They showed a bruise caused by defendant pushing her down.

¶ 7 Officer Wojowski testified that he is a police officer for the Village of New Lenox. On August 12, 2009, he was called to meet with Rago at her parents' house. He observed a dollar-sized

dark brown and reddish bruise on Rago's arm. The bruise appeared to be fresh, no more than a few days old. After seeing the bruise, Wojowski called an evidence technician to take photographs of Rago.

¶ 8 Rago told Wojowski that she waited to call police about the incident because she was "stressed out." Rago told her that defendant picked up a table and threw it at her and then pushed her down the hallway.

¶ 9 Defendant testified that he and Rago were watching TV in his living room on August 11, 2009. Rago became angry when she found out he was talking to an ex-girlfriend. As Rago yelled at defendant, he got up and walked to the kitchen. He came back to the living room and broke up with Rago, telling her, "I'm done." Rago then kicked over a coffee table in the living room. As defendant was picking up the table, Rago pushed it out of his hands. Defendant then went outside and waited for Rago to leave. Several minutes later, Rago left. As she walked to her vehicle, Rago told defendant, "I'm going to fuck your life up."

¶ 10 Defendant testified that his argument with Rago was entirely verbal. He denied throwing a table at Rago, pushing her or making any other contact with her. He did not observe any bruises on Rago on August 11, 2009, but thought that she could have had bruises from falling off a horse because she works with horses.

¶ 11 After hearing the evidence, the trial court found defendant guilty of domestic battery. The trial court sentenced defendant to 14 days in jail and 24 months conditional discharge and ordered defendant to pay \$500 in fines and costs, including \$110 in domestic violence fines. Defendant filed a motion for a new trial, which the trial court denied.

¶ 12

I

¶ 13 Defendant first argues that the court erred in finding him guilty of domestic battery because there was insufficient evidence that he and Rago were family or household members on August 11, 2009.

¶ 14 Section 12-3.2(a)(2) of the Criminal Code of 1961 (Criminal Code), provides, in pertinent part:

"A person commits domestic battery if he intentionally or knowingly without legal justification by any means:

(2) Makes physical contact of an insulting or provoking nature with any family or household member as defined in subsection 3 of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended." 720 ILCS 5/12-3.2(a)(2) (West 2008).

Subsection (3) of section 112A-3 of the Code of Criminal Procedure provides that "Family or household members" include "persons who share or formerly shared a common dwelling" and "persons who have or have had a dating or engagement relationship." 725 ILCS 5/112A-3(3) (West 2008). Subsection 3 of section 112A-3 further provides that "neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship." 725 ILCS 5/112A-3(3) (West 2008).

¶ 15 The General Assembly intended the domestic violence provisions to address the particular problems of abuse in intimate relationships. *People v. Young*, 362 Ill. App. 3d 843, 850 (2005). A "dating relationship" is "a serious courtship." *Alison C. V. Westcott*, 343 Ill. App. 3d 648, 653 (2003). It is "a relationship that [is] more serious and intimate than casual." *Id.* "[A] 'serious

courtship' must be, at a minimum, an established relationship with a significant romantic focus." *Young*, 362 Ill. App. 3d at 851.

¶ 16 A relationship that is brief and nonexclusive, consisting of one only date, is not a "dating relationship." See *Allison C.*, 343 Ill. App. 3d at 653. A relationship lasting for more than a month during which time the participants consider themselves boyfriend and girlfriend and engage in sexual relations constitutes a "dating relationship." *Irvine*, 379 Ill. App. 3d at 123.

¶ 17 When a defendant challenges the sufficiency of the evidence, it is not the function of a reviewing court to retry the defendant. *People v. Taylor*, 381 Ill. App. 3d 251, 256-57 (2008). Rather, a reviewing court must consider 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. *Id.* at 257.

¶ 18 Here, Rago testified that she and defendant were boyfriend and girlfriend on August 11, 2009, and had been in a relationship "on and off" for a period of nine months, during which time she and defendant lived together for two months. Defendant never disputed that he and Rago were in a dating relationship on and before August 11, 2009.

¶ 19 When we consider the evidence in the light most favorable to the State, we find that Rago and defendant were engaged in a "dating relationship" when defendant committed battery against Rago. Because defendant and Rago were in a dating relationship, they were "family members" within the meaning of the domestic battery statute.

¶ 20

II

¶ 21 Defendant also argues that he is entitled to a credit of \$10 toward the domestic violence fines he was assessed because he spent two days in custody prior to sentencing. The State agrees.

- ¶ 22 We modify the mittimus to reflect a \$10 credit toward defendant's domestic violence fines.
- ¶ 23 The order of the circuit court of Will County is affirmed in part and modified in part.
- ¶ 24 Affirmed in part; modified in part.