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2011 IL App (3d) 100183-U

Order filed July 19, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-10-0183
	)	Circuit No. 09-CM-3486
	)	
MICHAEL VANDERPLOEG,	)	Honorable
	)	Marilee Viola,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

¶ 1           *Held:* The evidence was sufficient to prove the defendant guilty of domestic battery beyond a reasonable doubt. The trial court did not abuse its discretion in sentencing the defendant to a conditional discharge for 12 months, which included a condition prohibiting him from carrying a weapon that would result in his employment as a deputy sheriff being terminated.

¶ 2           The defendant, Michael Vanderploeg, was found guilty of domestic battery (720 ILCS 5/12-3.2 (West 2008)), and was sentenced to 12 months of conditional discharge,

subject to certain conditions that included not possessing a firearm or other dangerous weapon. On appeal, the defendant argues that: (1) he was not proven guilty beyond a reasonable doubt; and (2) the sentence was excessive in that he would lose his job as a deputy sheriff if he were prohibited from carrying a weapon for 12 months.

¶ 3

### FACTS

¶ 4

On September 19, 2009, the defendant was arrested for the domestic battery of his wife, Glenda Vanderploeg. At trial Glenda recanted the written statement that she had given to police on the day of the incident.

¶ 5

Glenda's written statement had indicated that at approximately 4 p.m. the defendant had returned home from a bar and started a verbal altercation with Glenda. Glenda went to the upstairs bathroom to avoid further confrontation with the defendant and telephoned her sister-in-law. While she was on her cellular phone, the defendant pushed in the door to the bathroom, placed Glenda in a headlock, and insisted that she give him the cellular phone. Glenda tried to stand, but the defendant pushed her back down and demanded that she give him the cellular phone. Glenda reached for the house telephone, but the defendant threw it. As soon as Glenda was able to stand up, the defendant placed her in a headlock and pushed her head into her chest. Glenda was able to get away and get help from her neighbors.

¶ 6

At trial, Glenda testified she and the defendant had been married for 17 years. The defendant was employed full time with the Cook County sheriff's department and part time with the South Chicago Heights police department. Glenda testified that on September 19, 2009, she and the defendant were at home together all day and they did not

get into a verbal argument or a physical altercation. Glenda testified that she did not know who called the police and that she was never on the phone with her sister-in-law that day. Glenda did not recall giving a written statement to police but confirmed that the written statement was in her handwriting and bore her signature.

¶ 7           The State entered Glenda's written statement into evidence. The State also entered photographs of the bathroom where the alleged incident occurred into evidence. One photograph depicted a cordless telephone with the battery pack hanging out of it. The other photograph depicted a door that had a split near the locking mechanism. Glenda testified that the written statement was not true and the defendant did not cause the damage to the bathroom door. She also testified that her family did not have backs for their telephones so the batteries tended to hang out of them.

¶ 8           The State entered into evidence photographs of injuries to Glenda. The photographs depicted red marks or bruises on her chest, upper rib area, elbow, and arms. Glenda testified that the defendant did not cause any of the injuries.

¶ 9           The Vanderploegs' neighbor, Dana McCarthy, testified that on the day of the incident she was at another neighbor's party behind the Vanderploegs' home, when she heard Glenda screaming. Dana looked in the direction of the scream and saw Glenda waving her arms over her head for help. Dana walked over to the Vanderploegs' home. Dana saw the defendant in the kitchen, and he appeared "very calm." She observed "some contact scratches" on the defendant's cheeks. Dana testified that Glenda was "very hyper" and was running frantically throughout the upstairs, screaming that the defendant had hit her and placed her in a headlock. Glenda showed Dana a bruise underneath her

bra line. Glenda instructed Dana to call 911, and Dana did so.

¶ 10           Officer John Cavallero testified that he was called to the Vanderploegs' home on the date of the incident. He observed Glenda to be visibly upset, shaking, and crying. Glenda told Cavallero that she had been in a physical and verbal altercation with the defendant. Cavallero observed redness on Glenda's upper chest area, a mark on her arm, and scratches on her neck. Glenda told Cavallero that the marks on her body resulted from the defendant placing her into a headlock. Cavallero observed that the bathroom door had signs of forced entry and the telephone appeared to be broken. Glenda followed Cavallero to the police station where she made a written statement. Cavallero recorded his oral conversation with Glenda. Cavallero testified that Glenda did not appear to be under the influence of drugs or alcohol when she gave her written statement.

¶ 11           The defendant testified that at 4 p.m. on the day of the incident, he and Glenda were getting ready to go to a party. Glenda had drunk two beers, and he had opened one beer. The defendant testified that he and Glenda had gotten into a verbal argument in the kitchen that lasted approximately 35 seconds, but a physical altercation never took place. He also testified that he had been home all day and never went to a bar.

¶ 12           As a rebuttal witness, Cavallero testified that on the day of the incident, the defendant initially indicated that there was no physical altercation between himself and Glenda. After the defendant was placed under arrest, the defendant told Cavallero that Glenda had pushed him and he had pushed her away.

¶ 13           The trial court found the defendant guilty of two counts of domestic battery, one for putting Glenda in a headlock and one for pushing her. Originally, the trial court

sentenced the defendant to 12 months of conditional discharge, subject to the conditions that he: (1) not violate any criminal statute; (2) refrain from possessing a firearm or other dangerous weapon; (3) pay \$300 in fines and costs; (4) attend a domestic violence abuser services program and complete recommendations; (5) complete a drug and alcohol evaluation and comply with recommendations; and (6) have no offensive contact with Glenda.

¶ 14 On December 1, 2009, the defendant filed a motion to reconsider sentence, seeking to modify the sentence so that he would be allowed to possess a weapon during his hours of employment. On December 11, 2009, the trial court vacated the defendant's sentence and continued the sentencing hearing for the defendant to complete domestic violence services.<sup>1</sup> In the meantime, the defendant was placed on a conditional bond, with the same conditions as those imposed under the conditional discharge, except he was allowed to possess his weapon during his employment hours but was not allowed to bring it home.

¶ 15 On January 6, 2010, the State filed a motion to advance sentencing in light of the defendant's arrest and additional charge of domestic battery on January 1, 2010, wherein he allegedly struck Glenda in the face and was under the influence of alcohol. The defendant's counsel argued against the imposition of a conditional discharge because the defendant would not be allowed to carry his firearm and would lose his job. Defendant's counsel argued for an alternate sentence, indicating that the defendant had entered an

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<sup>1</sup> At that time he had successfully completed an intensive outpatient addiction program for alcohol abuse, which he attended from November 9 to December 2, 2009.

alcohol treatment facility on January 3, 2010, and was engaged in domestic violence counseling.

¶ 16 The court indicated that the defendant's employment as a deputy sheriff had been considered when the previous sentence was vacated and the defendant was given the opportunity to "get [his] issues as well as [his] marriage in order." The court indicated that it appeared the defendant had relapsed on alcohol and the court could not take a risk with the defendant carrying a weapon. The court imposed its original sentence and added 60 days to be served in an adult detention facility that was stayed pending completion of domestic violence counseling. The defendant appealed.

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant argues that he was not proven guilty beyond a reasonable doubt and his sentence was excessive. We disagree.

¶ 19 I. Guilt Beyond a Reasonable Doubt

¶ 20 The State presented enough evidence to prove the defendant guilty of domestic battery beyond a reasonable doubt. The standard of review in determining the sufficiency of the evidence to support a conviction is whether, upon 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. *People v. Wheeler*, 226 Ill. 2d 92 (2007). A criminal conviction will not be set aside by a reviewing court unless the evidence was so improbable or unsatisfactory that it creates reasonable doubt as to the defendant's guilt. *Wheeler*, 226 Ill. 2d 92. We give great deference to determinations of the trier of fact because they are in the best position to determine the credibility of

witnesses and resolve conflicts in the evidence. *Wheeler*, 226 Ill. 2d 92.

¶ 21 A person commits domestic battery if he intentionally or knowingly without legal justification and by any means, either causes bodily harm to any family or household member, or makes physical contact of an insulting or provoking nature with any family or household member. 720 ILCS 5/12–3.2 (West 2008).

¶ 22 In this case, Glenda's prior inconsistent written statement indicated that the defendant put Glenda in a headlock and pushed her. The photographs of physical injuries on Glenda's body corroborate the fact that a physical altercation took place. Dana and Cavallero both testified that Glenda was hysterical and upset upon their arrival at the Vanderploeg home on the date of the incident. Also, they each testified to observing physical injuries on Glenda. It is apparent that the trial judge, as the fact finder in this case, determined that Glenda was being truthful when she made her prior written statement and that she was lying at trial. There is nothing in the record to justify our substitution of the trial court's credibility determination. Thus, in considering the evidence in the light most favorable to the State, we hold that it was sufficient to support the defendant's conviction of domestic battery.

¶ 23 II. Defendant's Sentence

¶ 24 The defendant also argues on appeal that the trial court abused its discretion by sentencing him to a conditional discharge because his career as a deputy sheriff would be terminated if he could not carry a weapon.

¶ 25 A trial court has broad discretion in imposing a sentence, and its sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203 (2000). The trial

court's judgment regarding sentencing is given such deference because the trial judge, having observed the defendant and the proceedings, is in a better position to determine the appropriate sentence after having the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. "Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently." *Stacey*, 193 Ill. 2d at 209.

¶ 26 A trial court's sentencing decision may not be altered absent an abuse of discretion. *Stacey*, 193 Ill. 2d 203. A sentence within the statutory range is not an abuse of discretion unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d 203.

¶ 27 In this case, the defendant was found guilty of domestic battery. Domestic battery is a Class A misdemeanor. 720 ILCS 5/12–3.2 (West 2008). For a Class A misdemeanor, the following dispositions are appropriate, alone or in combination: (1) a term of imprisonment of less than one year; (2) periodic imprisonment for a definite term of less than one year; (3) probation not to exceed two years; (4) conditional discharge not to exceed two years; (5) a fine not to exceed \$2,500 for each offense, which may be imposed in addition to conditional discharge, probation, periodic imprisonment, or imprisonment; and (6) restitution to the victim. 730 ILCS 5/4.5–15, 4.5–55 (West 2010). Although a court may defer the imposition of a sentence and enter an order for supervision in some circumstances, a defendant who is found guilty of domestic battery is barred from receiving a sentence of supervision, despite the circumstances of the offense,

or the history, character and condition of the defendant. 730 ILCS 5/5-6-1(c) (West 2010). Pursuant to the Unified Code of Corrections, when a court imposes probation or a conditional discharge as a sentence, conditions "shall be" implemented that the person, *inter alia*, "not violate any criminal statute of any jurisdiction" and "refrain from possessing a firearm or other dangerous weapon." 730 ILCS 5/5-6-3(a) (West 2010).

¶ 28 Here, the trial court did not abuse its discretion in sentencing the defendant. The defendant's sentence was within the statutory range, with the court withholding a more severe punishment of imprisonment. Other than just imposing a fine or restitution, the defendant's sentence of a conditional discharge was the least restrictive option available to the court in that supervision is not available for domestic battery.

¶ 29 The court had considered the defendant's employment circumstances when it vacated its original sentence and continued the sentencing hearing. However, after alcohol counseling, the defendant relapsed with alcohol and incurred an additional charge of domestic battery of the victim just a few weeks later. The defendant's behavior certainly supports the trial court's decision to impose more than just a monetary penalty. In light of these circumstances, the trial court acted well within its discretion in imposing the conditional discharge, and consequently the mandatory condition that the defendant not possess a firearm. There is nothing in the statute that allows the court to make an exception to the firearm restriction for employment reasons, even if the firearm is not brought into the home. Accordingly, we affirm the defendant's sentence.

¶ 30

#### CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Will County is

affirmed.

¶ 32          Affirmed.