

NOTICE

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2014 IL App (4th) 121115-U

NO. 4-12-1115

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JONATHAN A. CHAMBERS,)	No. 11CF197
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that the trial court did not abuse its discretion by restricting defendant's cross-examination of one of the alleged victims.

¶ 2 Following a September 2012 bench trial, the trial court found defendant, Jonathan A. Chambers, guilty of intimidation (720 ILCS 5/12-6(a)(1) (West 2010)) (count I) and domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)) (count II). The court later sentenced defendant to concurrent prison terms of three years on count I and two years on count II.

¶ 3 Defendant appeals, arguing only that the trial court abused its discretion by unduly restricting defendant's cross-examination of one of the alleged victims. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In count I, the State charged defendant with intimidation in that, with the intent to

cause Coartney Barton not to report the domestic battery upon Stephanie Prater that Barton witnessed, defendant communicated to Barton a threat to harm her if she reported the domestic battery. The State also alleged in count I that defendant was eligible to be sentenced to an extended term because of his previous conviction for aggravated battery. In count II, the State alleged that defendant committed the offense of domestic battery by knowingly making physical contact of an insulting or provoking nature with Prater, a household member, by pushing her. The State also alleged in count II that defendant was eligible to be sentenced to an extended term because of his previous conviction for obstructing justice.

¶ 6 At defendant's September 2012 bench trial, Prater testified that on the night of July 26, 2011, she and Barton went to the motel where defendant was living to retrieve Prater's clothes from defendant, with whom she had recently broken up. Upon their arrival, defendant refused to return the clothes and claimed he did not have them. After a brief argument, the women left the motel and started walking toward a grocery store to purchase cigarettes. Defendant followed them and continued the argument. He then pushed Prater twice in her back. The pushes knocked her off balance, but she did not fall to the ground. When Barton told defendant that she was going to call the police, defendant threatened to beat her up if she did so. Defendant then left and the women continued walking toward the grocery store.

¶ 7 During cross-examination, Barton testified that the walk to the grocery store took 5 to 10 minutes and that during that time Barton did not use her cellular phone to call the police. Barton's cross-examination then continued as follows:

"Q. So the [5], 10 minutes you are walking up there is that when you decide you're going to call the police?

A. Yes.

Q. And is that because you still didn't get the clothes and this would be a good chance to get [defendant] in trouble?

A. No. Because he hit her. He pushed her.

Q. Now he hit her?

A. He pushed her.

Q. He pushed her. Then you go in County Market.

You are there. You buy some cigarettes. Buy anything else?

A. Just cigarettes.

Q. Come outside and decide let's call the police on [defendant]?

A. We talked about it the whole way there.

Q. Got your stories straight?

A. Yep.

[ASSISTANT STATE'S ATTORNEY]: Objection.

THE COURT: What's the objection?

[ASSISTANT STATE'S ATTORNEY]: That's argumentative, judge. That's something—if [defense counsel] wants to argue that, that's fine; but that's not a proper question.

THE COURT: Sustained.

[DEFENSE COUNSEL]: And then did you meet the police at County Market?

A. Yes."

mony. Prater explained that after defendant pushed her, she and Barton talked about the matter as they walked to the grocery store. Once they arrived there, they decided to call the police, who later met them at the grocery store.

¶ 9 Defendant testified and denied pushing Prater and threatening Barton.

¶ 10 On this evidence, the trial court convicted defendant, noting, in part, that the court found Barton "very credible" and "there is really very little doubt in my mind as to factually what happened that evening." At another point in the court's remarks, it observed that it found "the testimony of Ms. Prater and Ms. Barton to be credible." Regarding defense counsel's argument that the victims did not call the police right away, the court observed that it made perfect sense that they would wait until they were in a public place for their own safety before calling the police, particularly in light of the threat that defendant made.

¶ 11 The trial court then sentenced defendant as stated, and this appeal followed.

¶ 12 **II. DEFENDANT'S CLAIM THAT THE TRIAL COURT UNDULY RESTRICTED DEFENSE COUNSEL'S CROSS-EXAMINATION**

¶ 13 Defendant's sole argument is that the trial court abused its discretion by unduly restricting defense counsel's cross-examination of Barton. Specifically, defendant contends that the court erred when it sustained the prosecutor's objection to defense counsel's question of Barton as "argumentative" when counsel asked Barton whether she and Prater attempted to get their stories straight during the 5 to 10 minute delay in calling the police as they walked to the grocery store. We disagree.

¶ 14 Defendant concedes that a trial court's ruling regarding allegations of improper questions in cross-examination is reviewed for an abuse of discretion. See *People v. Lindmark*, 381 Ill. App. 3d 638, 659, 887 N.E.2d 606, 624 (2008). However, citing *People v. Blue*, 205 Ill. 2d 1, 14, 792 N.E.2d 1149, 1156 (2001), defendant contends that where the credibility of a wit-

ness is a crucial issue, a defendant must be afforded the widest latitude to establish a witness' bias or motivation. Defendant asserts that is the situation in the present case because defense counsel was prohibited from fully questioning Barton concerning a matter that could have suggested that she was biased against defendant and had a motive to fabricate.

¶ 15 Defendant's contentions fail for several reasons. First, the question at issue was argumentative, and the trial court did not abuse its discretion in so concluding. In defendant's posttrial motion, he raised the same argument regarding his cross-examination that he has raised in this court. The trial court denied that motion, explaining that "what the record does not show but what was pretty apparent during the trial was the tone of the question and the building up, I guess, in the courtroom I would say of tension with regards to the question." The court deemed the question argumentative "not only in the words [used] but [in] the way it was presented." The court further observed that the argument defendant wanted to make "was pretty well fleshed out during the testimony. I mean, it was pretty clear to the court that that was the direction that [defense counsel] wanted to go. The argument could still have been made and I believe was made that the two witnesses basically made this up [before going to] the grocery store."

¶ 16 Given the trial court's remarks denying defendant's motion for a new trial, we conclude the following observation from Professor Michael H. Graham's treatise on evidence is particularly on point:

"Whether a particular question is argumentative is often not easily determined. The relationship between counsel and the witness, volume, tone of voice, inflection, emphasis, and gestures all affect the determination. Everything considered, it is thus not surprising that what is an ar-

gumentative question in one court is often considered perfectly proper cross-examination in another." M. Graham, *Graham's Handbook of Illinois Evidence* § 611.23, at 571 (10th ed. 2010).

¶ 17 Second, although defense counsel could have rephrased the question, he chose not to do so. In other words, the trial court never barred defense counsel from questioning Barton about any aspect of what she and Prater did as they walked to the grocery store or what they discussed. The court simply sustained the State's objection to the form of the question—deeming it argumentative, which it was—but never prohibited defense counsel from pursuing the same line of inquiry in a different fashion.

¶ 18 Third, and perhaps the major reason why defense counsel did not further pursue the matter, is that the witness answered the question. That is, when defense counsel asked Barton if the delay in contacting the police was to get "your stories straight," Barton responded, "Yep." Only then did the State object on the ground that the question was argumentative, which the trial court sustained. Nonetheless, the State never moved to strike Barton's response, so the trier of fact—in this case, the experienced trial court itself—could properly consider Barton's answer and give it whatever weight the trial court deemed fit.

¶ 19 If the State truly believed itself aggrieved by Barton's answer, it needed to move to strike it. In *People v. Outlaw*, 388 Ill. App. 3d 1072, 1088, 904 N.E.2d 1208, 1223 (2009), the defendant attempted to challenge on appeal the admission of a detective's testimony that was volunteered on the defendant's cross-examination of the detective and constituted improper evidence. This court rejected that argument, noting that defense counsel did not move to strike the detective's response in cross-examination and had therefore forfeited any objection to the alleged

error. *Id.* Similarly, here the aggrieved party was the State, which objected to the defendant's cross-examination of Barton on the ground that the question was argumentative. Even though the trial court agreed with the State, when the State failed to move to strike Barton's answer to that improper question, the answer was permitted to stand. Thus, the answer was before the trial court, as trier of fact, for whatever weight the court sought to give it, just as if the State had never objected at all.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 22 Affirmed.