FOURTH DIVISION
January 22, 2015

No. 1-12-0122

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 C6 61096
	)	
JERCOBIE FUNCHES,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.[*]
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction for aggravated domestic battery affirmed where the evidence was sufficient to establish that defendant and victim had a dating relationship.

¶ 2 Following a bench trial, defendant, Jercobie Funches, was found guilty of aggravated domestic battery, then sentenced to three years' imprisonment. On appeal, defendant contends that there was insufficient evidence to prove that he had a dating relationship with the victim necessary to sustain his conviction for aggravated domestic battery. We affirm.

[*] This case was recently reassigned to Justice Ellis.

¶ 3 The incident giving rise to the charges against defendant in this case took place on August 30, 2010, in Park Forest, Illinois. At trial, the victim, Chanthasone Khounsone, testified that, in August 2010, she had been dating defendant for one or two months. She did not have a permanent home at the time, and, on previous occasions, she and defendant spent the night together on benches in Central Park when they had nowhere else to go.

¶ 4 On August 30, 2010, she went to a secluded area of the park to engage in sexual intercourse with defendant, but when they arrived, defendant accused her of sleeping with another man and began to beat her. Defendant threw her to the ground, punched her in the face five or six times, kicked her in the stomach and legs, dragged her by her hair, and tried to choke her. Khounsone stayed in the park with defendant until police and paramedics arrived the next morning.

¶ 5 Park Forest Police Officer James Kessler testified that, about 6:30 a.m. on August 31, 2010, he went to Central Park in response to a call of a woman crying. When he arrived, he saw Khounsone sitting at a picnic table and defendant standing three feet away. He noticed that she had "very bad injuries to her face"—her eyes were "bleeding and swollen shut" and her upper and lower lips were swollen and bleeding. When Khounsone identified defendant as the man who caused the injuries, defendant said, "Yeah, but you cheated on me." Kessler arrested defendant.

¶ 6 The State also presented testimony regarding the extent of, and the treatment required to repair, Khounsone's injuries. A number of witnesses testified to the investigation undertaken at the scene, and the DNA analysis conducted on a sample of blood recovered from defendant's boot which matched Khounsone's DNA profile.

¶ 7 Defendant testified that he had known Khounsone for about a year, and they had "just started dating" about three or four weeks before the incident. Defendant described their relationship as "casual" but sexual, including "sexual encounters" in a hotel "[t]hree times a day" "every three days." Defendant also testified that they were seeing other people, but that he had gone to barbeques at the home of Khounsone's mother or sister, and, the night before the incident, Khounsone spent the night with him at his friend's house. Defendant said that Khounsone told him that her ex-boyfriend D.J. was "prostituting her" and, if she did not come back with money, he would beat her.

¶ 8 On the evening of the incident, defendant went looking for Khounsone and found her with D.J. He saw that she had two black eyes, bruises on her face, and blood on her shirt. Words were exchanged and defendant told Khounsone, "I guess you are back together" and, "So this is the one who you with." D.J. told defendant to "stay out of [his] business" and started "coming toward" him. Khounsone tried to pull D.J. back, but he pushed Khounsone to the ground and began to fight with defendant. D.J. hit defendant in the face three or four times, and, when Khounsone tried to break up the fight again, D.J. punched her twice in the face, and on the chest. After fighting for "10 to 15 minutes[,]" defendant got up and said "the hell with both of them. You can have her. I guess she like [*sic*] getting beated [*sic*] on."

¶ 9 Defendant left, and, at some point later that day, Khounsone approached him stating, "Let me explain. Let me talk. Let me talk." Defendant noticed that she had two swollen eyes, and she was bleeding from her lips. Defendant responded, "No. Go back to who you were with. I don't want nothing involved with this. *** I am noticing that you like getting beaten on. *** You were still with him the whole time. You lied to me." The two then went back to the park, and stayed in

various areas of the park until the next morning. Defendant said that he cared for Khounsone during the night. Defendant denied causing any of Khounsone's injuries.

¶ 10 After the close of evidence, the court found defendant guilty of aggravated domestic battery, and not guilty of attempted murder. In this appeal, defendant does not contest the sufficiency of the evidence to prove his guilt of the underlying battery, but contends that he was not proven guilty beyond a reasonable doubt of aggravated domestic battery because the State failed to prove that Khounsone was a family or household member within the meaning of the domestic battery statute.

¶ 11 When faced with a challenge to the sufficiency of the evidence, it is not the function of this court to retry defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, 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.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

¶ 12 To support a conviction for aggravated domestic battery in this case, the State was required to prove that Khounsone was a "family or household member" of defendant's. 720 5/12-3.2(a)(1) (West 2010). Section 112A-3 of the Code of Criminal Procedure of 1963 defines "family or household members" to include "persons who have or have had a dating or engagement relationship[,]" but not "a casual acquaintanceship [or] ordinary fraternization between 2 individuals in business or social contexts." 725 ILCS 5/112A-3(3) (West 2010). This court has determined that the legislature intended that a "dating relationship" be one that is "more serious and intimate than casual" and a "serious courtship[,]" (*Alison C. v. Westcott*, 343 Ill. App. 3d 648, 653 (2003)), *i.e.*, "an established relationship with a significant romantic focus" (*People v. Young*, 362 Ill. App. 3d 843, 851 (2005)).

¶ 13 Defendant contends that the evidence regarding his relationship with Khounsone in this case was insufficient to show that it had a "romantic focus" or to characterize the relationship as more than "casual." We disagree. The evidence below, when viewed in the light most favorable to the State, was sufficient to establish that Khounsone and defendant were in a "dating *** relationship" within the meaning of section 112A-3(3) (725 ILCS 5/112A-3(3) (West 2010)).

¶ 14 We find support for this conclusion in *People v. Irvine*, 379 Ill. App. 3d 116, 123 (2008), where the court affirmed the defendant's domestic battery conviction based on evidence that the victim and the defendant had dated for six weeks and had a sexual relationship. Similarly, in this case, Khounsone testified that she and defendant had been dating for a month or two, and, on the day of the incident, she went to the park to have sexual intercourse with him. Officer Kessler testified that, when Khounsone identified defendant as the man who had beaten her, defendant blamed Khounsone for "cheat[ing] on" him. Defendant himself testified that he and Khounsone had been dating for three or four weeks, and had a sexual relationship where they would have intercourse three times a day every three days. He also testified that he went to barbeques at the home of Khounsone's family, and Khounsone stayed with him at a friend's house on the evening before the incident. The evidence, viewed in the light most favorable to the State, supports the reasonable inference of the trial court, that defendant and Khounsone, at the very least, had an "established relationship with a significant romantic focus[,]" (*Young*, 362 Ill. App. 3d at 851) and were more than mere casual acquaintances.

¶ 15 Defendant cites *People v. Howard*, 2012 IL App (3d) 100925, and *People v. Young*, 362 Ill. App. 3d 843 (2005). In *Howard*, the victim and the defendant had a "strictly sexual" relationship, but both said that they were not dating each other. *Id.* ¶ 5. The victim and the defendant "had never spent an entire night together and did not spend much time in each other's

company outside the presence of their group of friends." *Id.* In *Young*, there was no evidence of "a romantic element" in the defendant's relationship with the victim; the defendant had only tried to kiss the victim once and they spent the night at the same homeless shelter. *Young*, 362 Ill. App. 3d at 852. Thus, the court in *Young* could not distinguish between their relationship and a relationship between two friends. *Id.* By contrast, in this case, Khounsone and defendant both testified that they had been dating for over a month. They had engaged in sexual intercourse on a number of occasions. They had spent the night together, alone, in the park. Defendant testified that he had attended barbeques with Khounsone's family. We find *Howard* and *Young* distinguishable from the facts in this matter.

¶ 16 Although defendant contends that his testimony that he and the victim were "free to date others" was unrebutted by the victim's testimony, defendant himself contradicted that characterization by his actions on the night of the offense. When the victim identified defendant as her abuser in the presence of the responding police officer, defendant told the victim, “Yeah, but you cheated on me,” suggesting he did not consider her so “free” to date other people. Other statements defendant made to the victim that night, noted above, further suggest that defendant’s attack on the victim was the product of jealousy. The record contains sufficient evidence that defendant did not consider his relationship with the victim to be as casual as he claimed at trial. Moreover, defendant points to no authority showing that a relationship must be exclusive to be classified as a dating relationship under section 112A-3(3) (725 ILCS 5/112A-3(3) (West 2010)), and we are aware of none.

¶ 17 In reaching our conclusion, we note that, even if another possible inference may be drawn from the facts below, such ambiguity does not compel reversal. *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010). The trier of fact is responsible for assessing the credibility of the witnesses,

weighing the testimony, and drawing reasonable inferences from the evidence (*Stewart*, 406 Ill. App. 3d at 525), and we will not substitute our judgment for that of the trier of fact on such matters (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Here, we find no basis for reversing the determination made by the trial court that defendant was proven guilty of aggravated domestic battery beyond a reasonable doubt. The judgment of the circuit court of Cook County is affirmed.

¶ 18 Affirmed.