THIRD DIVISION
July 29, 2015

No. 1-14-0120

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. 12 C3 30499
	)	
HELEN BREIDENBACH,	)	Honorable
	)	Kay M. Hanlon,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justice Mason concurred in the judgment.
Justice Hyman specially concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm defendant's conviction for retail theft where the evidence showed that defendant stole a watch and two bracelets and did not commit the offense under compulsion.

¶ 2 Following a jury trial, defendant Helen Breidenbach was convicted of retail theft and sentenced to 24 months' probation and 30 days in jail. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that she did not commit the offense under compulsion. We affirm.

¶ 3 At trial, Sean Carlberg testified that he was working as a loss prevention officer for Kohl's department store at 1500 S. Elmhurst Road in Mount Prospect on August 2, 2012. He could monitor and maneuver the store's cameras from his office, but they did not record or transmit audio. At 12:50 p.m., while monitoring the cameras, he saw defendant and a man, later identified as defendant's boyfriend, Gus Farlis, in the jewelry department. Defendant removed a bracelet from its packaging, folded the bracelet in paper, and placed it in her purse. Farlis was not near her at that time. Defendant and Farlis then looked at watches. While Farlis was in a different aisle with his back to her, defendant carried several watches to the fragrance department and concealed one of them in the same manner as the bracelet. Defendant and Farlis purchased two other watches and browsed the cosmetics, intimates, and accessories departments. They returned to the jewelry counter and spoke with a salesperson. Farlis left the area and defendant concealed another bracelet in the same manner as the other merchandise. She left the store, followed by Farlis, without paying for the watch or bracelets. Carlberg detained her but let Farlis leave without asking him any questions. Defendant admitted the theft and asked "[i]sn't there something we can do about this?" She said that she worked as a flight attendant for 18 or 19 years and would lose her job if convicted of a felony. Defendant never mentioned that Farlis forced her to steal items or that she was afraid of him, but told the arresting officer that her father had died three weeks earlier and that the items she stole were for family members in Greece, none of which was true.

¶ 4 The jury viewed a video of the incident, which lasted approximately 23 minutes. Carlberg acknowledged focusing the camera on defendant rather than Farlis. Defendant published five frames from the video. Three frames showed defendant near Farlis, and in one frame they

appeared one to two feet away. The fourth frame showed Farlis holding a watch. In the fifth frame Farlis stood with his hands on his hips, facing defendant. The video was admitted into evidence but is not in the record on appeal.

¶ 5 Defendant testified that the man in the video was Gus Farlis, an illegal immigrant who she dated since 2007 and married after the present arrest. They were separated at the time of trial. Defendant stated that she was afraid of Farlis, who beat her 35 to 40 times, hit her face, and spit on her face. Farlis stole from her, verbally and mentally abused her, and threatened to kill her and her family. Defendant told others that her bruises were caused by airplane turbulence and never went to the hospital, sought counseling, or fought back despite self-defense training. She stated that Farlis had "a terrible hold" on her when she was lonely and recovering from cancer. In the past, defendant consented when Farlis told her to steal items that he could sell to support his drug habit. As a result, defendant was arrested and pled guilty to an unrelated retail theft two years before trial.

¶ 6 Defendant further testified that during the present incident, Farlis pretended to talk on a cell phone while telling her to steal. Farlis said "[s]teal this, it's more expensive than that," "[t]ake some more," and "[c]ome on, let's go, hurry up, steal this, steal that." According to defendant, Farlis displayed "domineering" body language and was angry that she did not steal more merchandise. Farlis watched her but did not want her to steal while he was nearby. Defendant testified that if she refused, Farlis would “beat [her] to a pulp.” However, defendant objected when Farlis told her to take an expensive watch and to steal an item after asking a salesperson to remove it from a display. Despite being afraid, defendant said "[n]o, I can't do that, that's ridiculous" and Farlis walked away. Defendant testified that she walked away from

Farlis while they were in the store, but due to fear she did not leave or alert salespersons, customers, security personnel, or police. She stated that she could have paid for the stolen merchandise but worried about maxing out her credit card, as she supported Farlis and her disabled mother and brother. After Carlberg detained her, defendant told him that Farlis "had something to do with" the theft. Later, she told police the theft was "a cry for help" after her father died and that she intended to give the jewelry to her friend's nieces in Greece. Defendant maintained that she said this to avoid "the ramifications of what might have happened later" if Farlis confronted her. Defendant left Farlis when he told her to steal again after the present arrest.

¶ 7 At defendant's request, the trial court instructed the jury regarding the affirmative defense of compulsion. The jury found defendant guilty of retail theft. Based on defendant's prior conviction, the offense was sentenced as a Class 4 felony. The court sentenced defendant to 24 months' probation and 30 days in jail.

¶ 8 On appeal, defendant contends that the evidence failed to establish she did not commit retail theft under compulsion. Defendant argues that a history of threats and abuse made her "a doormat" for Farlis, who had taken "toxic control of her life." Defendant also claims her conduct is consistent with studies showing that women are often reticent to report abuse.

¶ 9 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing 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. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, conflicts

in the testimony, or the credibility of witnesses. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Rather, a defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 10 To sustain a conviction for retail theft, the State must prove that the defendant knowingly took possession of, transferred, or carried away merchandise offered for sale in a retail mercantile establishment with the intention of retaining the merchandise or permanently depriving the merchant of possession, use, or benefit without paying full retail value. 720 ILCS 5/16-25(a)(1) (West 2012); *People v. DePaolo*, 317 Ill. App. 3d 301, 307 (2000). On appeal, defendant admits that she committed retail theft and only contests the issue of compulsion.

¶ 11 The compulsion defense requires a defendant to show that she committed an offense under threat of imminent death or great bodily harm and reasonably believed harm would be inflicted if the offense was not performed. 720 ILCS 5/7-11(a) (West 2012); *People v. Pegram*, 124 Ill. 2d 166, 172 (1988). When the defendant presents evidence raising the compulsion defense, the State must disprove compulsion beyond a reasonable doubt. *Pegram*, 124 Ill. 2d at 173. Compulsion is a question of fact for the jury to resolve. *People v. Serrano*, 286 Ill. App. 3d 485, 492 (1997). Compulsion does not apply where the defendant could withdraw from the offense or the threat was not imminent. *People v. Orasco*, 2014 IL App (3d) 120633, ¶ 24; *People v. Brown*, 341 Ill. App. 3d 774, 782 (2003).

¶ 12 We find the evidence sufficient to establish beyond a reasonable doubt that defendant did not act under compulsion. Initially, we note that defendant's failure to withdraw from the theft negates compulsion. Defendant testified that she walked away from Farlis and spoke with

salespersons, a security guard, and police, but chose not to leave the premises or clearly explain that Farlis forced her to steal. *People v. Colone*, 56 Ill. App. 3d 1018, 1020-21 (1978) (defendant failed to contact police and did not warn the intended victim of a robbery despite speaking privately with her). Additionally, defendant could have paid for the stolen merchandise but declined because she worried about maxing out her credit card. Defendant also could have withdrawn when Farlis walked away after she objected to a proposed theft, but she stole other items while alone and eventually joined him again. *People v. Scherzer*, 179 Ill. App. 3d 624, 645-46 (1989) (defendant failed to withdraw when he willingly returned to the scene of criminal activity).

¶ 13 Defendant's compulsion defense also fails because the evidence shows that she lacked a reasonable belief in imminent harm. Defendant's evidence of compulsion consisted of her testimony that Farlis ordered her to steal, adopted domineering body language, and appeared angry when she did not steal more merchandise. Defendant also testified that Farlis previously beat her, threatened her, and made her steal. As a result, defendant feared that Farlis would "beat [her] to a pulp" if she refused to commit the present offense. However, no immediate threat was apparent from Farlis' conduct in the store. The video of the incident is not in the record on appeal. Testimony in the record indicates that although Farlis and defendant appeared together in at least five frames, the video lasted 23 minutes, focused mostly on defendant, and lacked audio. *Orasco*, 2014 IL App (3d) 120633, ¶ 28 (testimony that defendant "was just doing what he was told [does] not constitute compulsion, absent an impending threat."). Defendant testified that she feared "the ramifications of what might happen later," which shows an apprehension of future injury but not a reasonable belief in imminent harm. *People v. Robinson*, 41 Ill. App. 3d 526, 529

(1976) (no imminent harm where defendant "was concerned with what [the other offender] would do to him in the future if he fled."). Further, although Farlis told defendant to steal on past occasions, during the present incident defendant twice objected to proposed thefts without consequence. Defendant refused to steal at all when Farlis told her to shoplift again following her arrest and testified that she later kicked Farlis out of her house, conduct that the jury could reasonably conclude was inconsistent with compulsion. *People v. Jackson*, 100 Ill. App. 3d 1064, 1068 (1981) (no imminent threat where defendant was shown a gun, ordered to commit a robbery, and previously beaten for refusing a similar demand). The jury heard defendant's testimony about her relationship with Farlis, where she explained that she was accustomed to obeying him and lying about abuse, even to police. The jury could weigh defendant's testimony and credibility in deciding whether compulsion existed during the present offense. In view of the record, we cannot say the evidence was so improbable or unsatisfactory as to raise a reasonable doubt that defendant did not act under compulsion.

¶ 14 Notably, defendant improperly introduces studies regarding violence against women and the frequency with which abuse is unreported. Such sources do not qualify as relevant authority on appeal and will not be considered. See, *e.g.*, *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531–32 (1993). While we are not unsympathetic to the plight of abused women, the defense of compulsion here depended entirely on the credibility of defendant's testimony which the jury weighed and was entitled to reject. Without expert testimony or other evidence to corroborate defendant's claims, the articles she cites for the first time on appeal are irrelevant.

¶ 15 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 16 Affirmed.

¶ 17 JUSTICE HYMAN, specially concurring:

¶ 18 I specially concur. I submit that this case presents a scenario that occurs much too often. I write briefly to make two observations.

¶ 19 First, for battered women who stay silent about their suffering, women like Helen Breidenbach, the defense of compulsion offers little refuge. Breidenbach testified about her fear of Farlis, the numerous beatings by him, and her mindset on the day of the Kohl's incident. But the viability of the defense of compulsion depends on the defendant's reasonable belief in imminent harm, and in this context, imminent has been interpreted as referring to something near or close at hand or something likely to occur at any moment. See People v. Brown, 341 Ill. App. 3d 774, 782 (2003) (no evidence presented of threat of immediate harm); People v. Jackson, 100 Ill. App. 3d 1064, 1068 (1981) (threat of future injury is not enough to raise the defense of compulsion. But Breidenbach's brief (no reply was filed) argues only the sufficiency of the evidence and does not raise the issue that the meaning of "imminent" in the context of battered women syndrome. That will have to wait for an appropriate case to be resolved.

¶ 20 Secondly, I disagree with the majority's treatment of Breidenbach's statistical data as irrelevant authority to be ignored. Supra ¶ 14.Breidenbach cites to three articles to rebut arguments by the State regarding the behavior of battered women, relying on Vulcan Materials Co. v. Bee Construction, 96 Ill. 2d 159, 166 (1983) and People v. Mehlberg, 249 Ill. App. 3d 499, 531-32 (1993). I believe these studies constitute relevant authority under both Vulcan and Mehlberg, and can, and should, be considered.

¶ 21 Both Vulcan and Mehlberg admonish appellate courts against taking judicial notice of critical evidentiary material likely to resolve an issue which was not presented in the trial court. In Mehlberg, for example, the articles attempted to interject expert opinion rather than offer information "intended to assist this court in reviewing issues related to a complicated scientific field," which can be considered. Id. at 561. The studies Breidenbach cites, unlike those in Vulcan and Mehlberg, convey information only and nothing more. She does not state or otherwise suggest that the articles be considered as expert opinion or evidence.

¶ 22 In summary form, the Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women, by Patricia Tjaden and Nancy Thoennes, provides statistics such as 22.1 % of surveyed women reported they were physically assaulted by a current or former spouse, cohabiting partner, boyfriend or girlfriend, or date in their lifetime; 1.3 % of surveyed women reported experiencing such violence in the previous 12 months; and about 1.3 million women are physically assaulted by an intimate partner annually in the United States. This study investigated the use of medical services by female victims of assault and discovered that less than about 30% of the women injured during their most recent physical assault sought medical treatment. The study did not include questions regarding reporting to law enforcement agencies. Breidenback also presented statistics from two articles published in established medical journals recognizing and addressing problems facing these "hidden victims" of domestic abuse.

¶ 23 These materials were meant to raise awareness of unreported domestic abuse and its consequences. For the purposes of this case, that was an uncomfortable reality worth being recognized.