

**NOTICE**

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2016 IL App (4th) 150619-U

NO. 4-15-0619

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 18, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

AARON FRIMEL,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Champaign County
DEREK CAETANO-ANOLLES,	)	No. 13OP566
Respondent-Appellant.	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* Petitioner presented sufficient evidence for the circuit court to find by a preponderance of the evidence a course of conduct by respondent, and the court did not abuse its discretion by denying respondent's posttrial motion.

¶ 2 In November 2013, petitioner, Aaron Frimel, filed *pro se* a verified petition for a stalking no contact order against respondent, Derek Caetano-Anolles. Both petitioner and respondent were graduate students at the University of Illinois at Urbana-Champaign. In July 2014, the Champaign County circuit court granted petitioner a two-year plenary stalking no contact order against respondent. Respondent filed a posttrial motion, which the court denied in July 2015.

¶ 3 Respondent appeals, asserting the circuit court erred by (1) finding petitioner presented sufficient evidence to grant the stalking no contact order and (2) denying his posttrial motion. We affirm.

¶ 4

## I. BACKGROUND

¶ 5

On November 27, 2013, petitioner filed his petition against respondent under the Stalking No Contact Order Act (Act) (740 ILCS 21/1 *et seq.* (West 2012)). The petition noted numerous incidents of vandalism against petitioner's vehicle, but only as to the last incident, did petitioner state he saw respondent commit the act of vandalism. At a hearing on that same day, the circuit court denied petitioner's emergency stalking no contact order because the petition had failed to tie respondent to the other acts of vandalism and the Act required two acts by the same person.

¶ 6

On December 17, 2013, the circuit court held a hearing on petitioner's request for a plenary stalking no contact order. Respondent's counsel, Harvey Welch, was present but did not pay the appearance fee. After petitioner and Welch came to an agreement about the terms of the order, the court defaulted respondent and entered a two-year plenary stalking no contact order. On January 13, 2014, respondent with new counsel filed a motion to vacate the December 2013 plenary stalking no contact order. After a January 28, 2014, hearing, the court granted respondent's motion to vacate the plenary order and entered an emergency stalking no contact order, which was valid from January 28, 2014, to February 11, 2014. Respondent did not object to the emergency stalking no contact order. The court ended up continuing the emergency order numerous times during the lengthy evidentiary hearing on the plenary stalking no contact order.

¶ 7

On February 11, 2014, the circuit court commenced the evidentiary hearing on the request for a plenary stalking no contact order. For the first time, petitioner appeared with counsel. Petitioner testified on his own behalf and presented the testimony of Gary Frimel, his father; Harini Iyer, his girlfriend; and Urbana police officers Michael Hedgier and Sarah Links. In his case in chief, petitioner also presented two photographs of his damaged vehicle.

Respondent testified on his own behalf and presented the testimony of Brian Farber, executive director for the University of Illinois senate committee on student discipline; Welch, respondent's former attorney; and Urbana police officers Matthew McKinney and Douglas Pipkins.

Respondent also presented photographs of petitioner's car, Iyer's apartment complex and the area around it, and some of the figurines from his hobby. Additionally, he presented several maps and a sign-in sheet for one of his classes. During respondent's cross-examination, petitioner presented five more exhibits, which included four photographs and a list of text messages between respondent and Iyer. Petitioner testified in rebuttal and discussed the four new photographs. The evidence relevant to the issues on appeal is set forth below.

¶ 8 Petitioner testified he met Iyer in the fall 2011 when she was dating another man in petitioner's Ph.D. program named Gus Lawrence. In June 2013, Iyer introduced respondent to petitioner. The encounter was brief, consisting of a hello and a handshake. After petitioner and Iyer began dating in July 2013, petitioner came in contact with respondent again when respondent and Iyer were coming back from lunch. Petitioner and respondent shook hands, and petitioner mentioned respondent's figurine hobby. They both laughed and parted ways. The next time petitioner saw respondent, petitioner and Iyer were eating ice cream together on the steps of the Krannert Center in August 2013. Petitioner testified he and Iyer were sitting close together and may have been holding hands. Respondent came up and said something to Iyer that did not make sense to petitioner. Respondent then walked away and ran into a bike rack. According to petitioner, he tried to make eye contact with respondent, but respondent would not look at him.

¶ 9 On September 27, 2013, at around 9 a.m., petitioner noticed his red Mazda had been keyed. He had parked it overnight on a street near his home. The car had X's keyed onto the doors on the driver's side of the car. He also later noticed some X's on the hood near the

windshield. Petitioner decided not to notify the police and got touch-up paint for the car. On October 4, 2013, petitioner found his two passenger-side tires were deflated. Again, on October 7, 2013, petitioner found both of his passenger-side tires were deflated. On that date, petitioner reported the tire deflation and the previous deflation and keying. From October 8 through October 26, 2013, petitioner's tires were deflated between 10 to 12 times. Petitioner did not report those incidents to the police. On October 27, 2013, petitioner noticed his front license plate was missing when he came out of work around 9 p.m. The next morning, he noticed his rear license plate was missing. Petitioner testified he looked for the license plates but did not find them. On October 30, 2013, and November 12, 2013, petitioner again found his tires deflated and did not report it to the police. Petitioner did note he was talking to a University of Illinois police officer at the time. From September 27, 2013, to November 12, 2013, all of the incidents occurred while the car sat outside petitioner's home.

¶ 10 On November 15, 2013, petitioner parked his car at Iyer's apartment, and the next morning, he discovered his passenger tires had been deflated again. This time he called the police. Officer McKinney was one of the responding officers. According to petitioner, Officer McKinney pointed out the windshield wipers were missing and the front driver's side tire was also deflated. After the officers left, petitioner attempted to fill up the front passenger tire, but it would not inflate. Petitioner noticed superglue on the rim of the tire. He then looked around the car and found superglue on the back tire and on the area between the front grille and hood of the car. Petitioner called the police again to report the superglue. He tried to remove the superglue but, in the end, had to replace the valve stems on the tires. Two days after the November 16, 2013, incident, petitioner rented a garage in which to park his car at his home. After that, if petitioner was not using his car, he kept it in the garage. On the night he got the garage,

petitioner awoke around 3 a.m. because his dog was barking intensely. As petitioner walked into the kitchen, he heard someone trying to open his back sliding door. Later that day, he noticed his lawn chairs were missing from his back porch. He later found them in a Dumpster located a few hundred feet from his home.

¶ 11 After the sliding door incident, petitioner contacted Gary, his father, who was on vacation at the time. Gary cut his vacation short and went to petitioner's home around November 23, 2013. Petitioner removed his car from the garage and parked it on the street. Gary sat across the street in a school parking lot and watched the car. No damage occurred while the car was near petitioner's home. On the evening of November 25, 2013, petitioner and Gary decided to park petitioner's car at Iyer's apartment. Around 9 a.m. on November 26, 2013, petitioner and Iyer exited her apartment together and looked at petitioner's car. The car's hood had no damage to it at that time. Iyer then went to her mailbox, and petitioner went to Gary's van. Petitioner did not find Gary in the van. When petitioner looked over at Iyer, he noticed Gary was across the street, motioning to him. Petitioner raced to Iyer at the mailboxes and said "he's here." Petitioner then walked toward his car. Petitioner watched respondent walk along the passenger side of petitioner's car and then walk next to the car's hood, running his hand over the hood. Respondent then saw petitioner, Iyer, and Gary and walked between a car and tree toward a muddy path between a building and a fence. Petitioner took off after respondent, and Gary was behind petitioner. Petitioner caught up to respondent and started yelling at him. Respondent's face changed expression, and he tried to take a swing at petitioner. At that point, Gary stepped in between them. Petitioner denied holding respondent up against a fence. Petitioner told respondent to stay away from him, Iyer, and his car. Respondent responded it was the normal way he walked. Gary told respondent to leave, and respondent did.

¶ 12 When petitioner and Gary returned to petitioner's car, they noticed a large scratch on the hood where respondent had run his hand across it. Respondent sent petitioner an e-mail later that night. Besides the e-mail, petitioner has not had contact with respondent since the November 26, 2013, keying incident. Moreover, since the November 26, 2013, incident, petitioner's car has not suffered any more damage, and the tires have not been deflated. The car still has the same tires it did in September 2013. From September 27, 2013, to November 26, 2013, petitioner feared for his own safety. Petitioner further testified he had obtained an emergency stalking no contact order, and respondent had been arrested for violating it.

¶ 13 Gary testified he came to petitioner's home to find out who was damaging petitioner's car. For three days, he parked petitioner's car in different places and observed it from his van. During that time, nothing happened to the car. On the evening of November 25, 2013, they parked petitioner's car in the number two spot in the parking lot of Iyer's apartment and parked Gary's van about two spots away. Nothing happened before sunrise. At sunrise, Gary left his van and drove petitioner's car to "Einstein's" for breakfast. While Gary was there, he observed respondent walking down Lincoln Avenue. Gary had discussed respondent's appearance with petitioner and had looked at photographs of respondent on the Internet. Gary recognized respondent based on the jacket he was wearing, which respondent had on in a photograph.

¶ 14 After seeing respondent, Gary drove petitioner's car back to the number two spot at Iyer's apartment. He parked the car and walked across Gregory Street to see if respondent was walking down that street. Gary observed respondent walking on the east side of Gregory Street. At the intersection of Western Avenue and Gregory Street, respondent started to cross Western Avenue and then he looked left. After looking left, respondent turned to the left and started

walking down Western Avenue. At that point, Gary started heading toward petitioner's car and observed respondent pull something out of his pocket. Gary got behind Iyer's apartment so respondent could not see him. There, he met petitioner and Iyer. They watched the car, and respondent went on the right side of the car and then cut in front of the car. As he walked along the front of the car, respondent dragged his hand across the car's hood. After that, respondent ducked down underneath some trees and started walking in a grassy area between buildings. Gary testified it was not a normal path someone would take. The area had no sidewalk or regular path, and it was damp and muddy.

¶ 15 When respondent saw the three of them, he picked up his pace. Gary and petitioner took off after respondent. They had words, and respondent took a swing at petitioner. Respondent stated it was the regular path he took to school. Before the incident, Gary said petitioner's hood had a few marks on it, and afterward, the car had a large scratch on the hood. On November 26, 2013, Gary told the police respondent had taken a swing at petitioner. After the incident, Gary looked up respondent's address on the Internet and put respondent's home under surveillance so the police could arrest respondent.

¶ 16 Iyer was in the same graduate program at the University of Illinois as respondent, and they had been friends for three years. Iyer and respondent went out to lunch regularly and discussed science matters and personal issues. They also texted each other. Iyer would also see him at departmental social events. She did not recall telling respondent she was dating petitioner, but petitioner did come up in conversation. Iyer described three times during which she, petitioner, and respondent were together. Like petitioner, she described the first two times as normal. During the Krannert Center meeting, Iyer said respondent looked agitated and was flustered. She described his behavior as odd and noted he bumped into the bike rack as he left.

¶ 17 Iyer also testified about a picnic in May 2013, which both she and respondent attended. Iyer had brought a male friend with her to the picnic. Respondent appeared hurt and was not talking like he normally did.

¶ 18 Iyer never told respondent where she lived, but about five months before the November 2013 keying incident, she ran into respondent near her apartment building. They talked, and she pointed out her apartment building. Respondent stated he was walking home. According to Iyer, respondent also stated he was going to stalk her now that he knew where she lived. However, Iyer never felt respondent was a danger to her or petitioner.

¶ 19 Before November 26, 2013, she and petitioner came to suspect respondent as the person behind the vandalism after eliminating other possibilities and considering the incident involving the superglue. Iyer explained respondent had a hobby of gluing small figurines to push pens and then leaving the figurines around campus for others to find. The figurines are very small, and he placed them where they could not be easily seen. After they suspected respondent might be the person causing the car damage, Iyer texted respondent she would no longer be having lunch with him.

¶ 20 On the morning of November 26, 2013, Iyer was at her mailbox when she heard petitioner say "he's here." She looked over and saw respondent crouching behind Gary's van, trying to escape toward a space between two buildings. From her vantage point, she could not see petitioner's car. According to Iyer, respondent had no reason for being there.

¶ 21 Officer Hedgier testified he was one of the officers who arrested respondent on November 27, 2013. He located respondent on the sidewalk in the 800 block of Church Street. Officer Hedgier believed Gary's name was on the dispatch ticket as the person who called in respondent's location. When the officers located respondent, he had a laptop bag with him.



After respondent's arrest, Officer Hedgier searched the laptop bag and found a regular size bottle of superglue in a zippered compartment of the bag. Respondent told the officers the superglue was his and he used it for his hobby. Officer Hedgier also recalled seeing a figurine. However, Officer Hedgier could not recall if respondent had keys with him, or if respondent had a second bottle of superglue. Additionally, Officer Hedgier remembered respondent saying he was physically assaulted, but respondent did not point out any marks or injuries.

¶ 22           Officer Links testified she responded to petitioner's report of damage to his vehicle on November 26, 2013. When she arrived at the scene, she spoke with petitioner and Gary. She briefly talked with Iyer, who said she did not see anything. Officer Links observed a large scratch on the car's hood. After talking with petitioner and Gary, she attempted to locate respondent but could not find him. According to Officer Links, during that initial contact with Gary and petitioner, they did not mention respondent swung at petitioner.

¶ 23           On November 29, 2013, respondent came to the police department and asked to speak with Officer Links. Respondent stated it was all a misunderstanding and he wanted to tell his side of the story. On direct examination, Officer Links testified respondent stated he had been grabbed by Gary. On cross-examination, Officer Links testified respondent said he was assaulted by petitioner. Specifically, petitioner put his hands around respondent's neck and told him to stay away from him, Iyer, and his car. Officer Links looked for marks on respondent's body and did not see any. When Officer Links talked with petitioner and Gary again, they described a confrontation between respondent and them.

¶ 24           Respondent also initially told Officer Links he had been pushed into a wall but later said he had been pushed into a fence. When asked whether respondent could describe the route he took to work that morning, Officer Links stated the following: "Not—not really. The

route wasn't direct, and he wasn't able to give me direct streets." She further testified, "I—I tried to get a little bit more information about the route, but there was not a lot of information that he—he could provide that was direct route." Moreover, when Officer Links asked respondent why he was actually walking away from the direction that would take him to his work that morning, respondent stated he cut through various lots on his way to work. Officer Links did not recall if respondent ever stated why he was in the area between the two buildings. However, he did not mention his figurines during the interview. Respondent did mention he thought petitioner was jealous of his relationship with Iyer, and petitioner had previously told him to stay away from Iyer. Additionally, Officer Links did not receive any keys belonging to respondent from the arresting officers.

¶ 25           Officer McKinney testified he responded to petitioner's report of damage to his car on November 16, 2013. When he examined petitioner's vehicle that day, he did not observe any superglue on the tires and hood. He also did not see the missing windshield wipers. However, Officer McKinney did not recall looking at the grille of the car or removing the valve caps.

¶ 26           Officer Pipkins testified he searched respondent after his arrest and did not enter any keys into evidence. He further testified respondent denied damaging petitioner's car. However, respondent did not mention his figurines or any reason for being near Iyer's apartment the day before.

¶ 27           During his testimony, respondent denied committing all of the acts of vandalism alleged by petitioner. He also explained he usually walked to work and class and did not take the shortest routes because he checked on his figurines. Respondent got the figurine idea from a London artist and had been doing it for two to three years. He had about 100 figurines on

campus and kept a map of where they were located. He walked in the alleyway near Iyer's apartment three to four times a week because he had figurines northwest of Iyer's apartment and near the intersection of Green Street and Lincoln Avenue, which was southeast of Iyer's apartment.

¶ 28 Respondent further testified he never wanted to date Iyer. They were just friends. He never watched or followed Iyer without her knowledge. After Iyer introduced petitioner to respondent, she said petitioner and she were just friends. However, later on that same day, petitioner approached him and told respondent he did not want him spending time with Iyer.

¶ 29 On November 26, 2013, respondent left his house around 8:50 a.m. and had a 10 a.m. meeting at the Institute of Genomic Biology, where he worked. He walked to work that day. Respondent cut through the parking lot at Iyer's apartment to get to an alleyway. Respondent's plan was to check his figurines at the corner of Green Street and Lincoln Avenue, which was the normal route he took to get to work. Respondent denied even noticing a red car parked in Iyer's parking lot. As he entered the alleyway, he saw Iyer at the mailboxes talking to two people who had their backs facing him. Respondent waved at Iyer, and she waved back. He did not approach her since she was talking to the other people. When he entered the parking lot for the apartment complex southeast of Iyer's, he could hear running behind him. Respondent heard someone say, "hey you," and turned around. Petitioner rushed at him, put his hands on respondent's neck and arm, and pinned respondent up against a "wall." Petitioner yelled at him to stay away from Iyer. Respondent said Gary also came at him and pinned him up against the "wall." Respondent denied taking a swing at petitioner. During the incident, respondent asked what was going on and also stated it was the way he walked every day. Respondent did not suffer any visible injuries. Petitioner and Gary let respondent go and walked down the alleyway.

As they walked down the alleyway, respondent saw Iyer at the entrance to the alley. Respondent stood there for three minutes and then headed straight to work.

¶ 30 Shortly after the incident, respondent texted Iyer, but she did not respond. He did not call the police because he thought he could handle the situation himself. At around 7 p.m. that day, respondent e-mailed petitioner, and petitioner did not respond. The next day, the police arrested respondent on his walk to work. He did have keys on him when he was arrested. Respondent admitted that, as a result of University of Illinois disciplinary proceedings, he was prohibited from having contact with petitioner and the building where petitioner worked on campus.

¶ 31 On rebuttal, petitioner's counsel asked petitioner questions about petitioner's exhibit Nos. 3 through 6, which counsel had used in cross-examining respondent. The only objection raised by respondent's counsel was that the line of questioning, based on the photographs, was beyond the scope of respondent's case. Respondent did not assert the photographs were surprise evidence. Petitioner testified he believed the photographs were taken by Gary a few days before November 26, 2013. Petitioner further testified he believed he gave the photographs to the police. They took the photographs in case any damage was done to petitioner's car. In petitioner's exhibit No. 4, the license plate on the rear of the red Mazda is YB6 DOU. The license plate on the front of the car in respondent's exhibit No. 4 is YG5 P4W.

¶ 32 On July 15, 2014, the circuit court granted petitioner's petition for a stalking no contact order against respondent, which is effective until July 15, 2016. The court orally explained its findings and its credibility determinations as to many of the witnesses. On August 14, 2014, respondent filed a timely posttrial motion, asking the court to vacate the judgment and deny the petition or, in the alternative, grant a rehearing. Respondent raised numerous claims of

error, including a claim petitioner's exhibit Nos. 3 through 6 could not have been taken when petitioner stated they were. In October 2014, respondent filed a motion to compel discovery and a motion to continue the posttrial motion, noting he had requested but not received the digital copies of petitioner's exhibit Nos. 3 through 6. On November 25, 2014, the circuit court ordered petitioner to make Gary's cellular telephone (cell phone) available to respondent's counsel within 60 days. In January 2015, petitioner filed a motion to reconsider, stating Gary no longer had the cell phone used to take the photographs in question and claiming the photographs were not altered. After a February 4, 2015, hearing, the court ordered Gary's new cell phone be turned over to respondent's expert within 14 days. On February 17, 2015, petitioner filed an emergency motion for a protective order, asserting Gary's new cell phone contained confidential information related to Gary's profession and asking the court to limit respondent's expert's examination of the new cell phone to the digital photographs. On March 4, 2015, the court entered an order prohibiting respondent's expert from disseminating any information on the cell phone not related to the evidence in this case. The court also ordered petitioner to turn the cell phone over to respondent's expert within five days. On March 31, 2015, respondent filed a supplemental memorandum in support of his posttrial motion. In April 2015, petitioner filed a memorandum in opposition to the posttrial motion, and respondent filed a reply to petitioner's memorandum.

¶ 33 On June 10, 2015, the circuit court held an evidentiary hearing on respondent's posttrial motion. Respondent presented the testimony of Sarah Perry, Champaign County assistant State's Attorney; Officer Links; and John Lockard, evidence technician for the Urbana police department. Petitioner testified on his own behalf.

¶ 34 Perry testified she was assigned to prosecute Champaign County case No. 13-CM-1329, which was a criminal-damage-to-property charge against respondent for his alleged

actions on November 26, 2013, involving petitioner's red Mazda. She did not recall receiving any photographs that were purportedly taken before November 26, 2013. Perry did not recognize the photographs that were identified as petitioner's exhibit Nos. 3 and 4 at the hearing on the petition for a stalking no contact order. She further testified she received many documents from petitioner during the criminal proceedings. Moreover, Perry testified no one in the criminal case disputed that the car was damaged, and thus photographs of the car before the keying incident were irrelevant.

¶ 35           Officer Links testified she took photographs of petitioner's entire car on November 26, 2013. She did not recall petitioner or Gary showing her photographs of the car taken a few days before the keying incident. If they would have shown her photographs, she probably would have included them in her report. She, too, did not recall receiving photographs of petitioner's car that were taken before November 26, 2013. Likewise, Officer Links did not recognize the photographs that were petitioner's exhibit Nos. 3 and 4. She had gone through the Urbana police department files related to the case and did not find the photographs at issue. The only photographs found were the ones she took on November 26, 2013. Additionally, Officer Links did not recall asking petitioner if he had any photographs of his car before the November 26, 2013, incident and did not believe she asked Gary for any such photographs.

¶ 36           Lockard testified that, as the police department's evidence technician, he receives photographs from officers either through e-mail or from the camera they used. Lockard then downloads the photographs onto the department's K drive. In response to a subpoena by respondent, Lockard searched the K drive and police files for any photographs related to petitioner's car and only found the ones taken on November 26, 2013, by Officer Links.

¶ 37           Petitioner testified that, a few days after the November 26, 2013, incident, he

went to the Urbana police department and handed the photographs at issue to someone at the front desk. He told the person his car had been keyed, and Officer Links was the responding officer. Petitioner did not receive a receipt for the photographs. He also did not recall which computer and printer he used to print the photographs. Petitioner was also unaware of whether the printer kept a log.

¶ 38 On July 9, 2015, the circuit court pronounced its ruling on respondent's posttrial motion. In 10 pages of transcripts, it cited specific testimony from the record supporting its judgment and credibility findings. As to the contested photographs, the court found they were not newly discovered evidence because respondent could have obtained them before trial through discovery. The court also emphasized the evidence supporting its judgment and respondent's lack of credibility.

¶ 39 On July 31, 2015, respondent filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, we have jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

## ¶ 40 II. ANALYSIS

### ¶ 41 A. Stalking No Contact Order

¶ 42 Respondent first challenges the circuit court's granting of a plenary stalking no contact order against him and in favor of petitioner. Specifically, he argues (1) petitioner's evidence failed to establish a course of conduct and (2) the reasons given by the circuit court for its credibility findings were not supported by the evidence.

¶ 43 Under the Act, "a stalking no contact order shall issue" when the court finds the petitioner has been a victim of stalking. 740 ILCS 21/80(a) (West 2012). For the purposes of the Act, " '[s]talking' means engaging in a course of conduct directed at a specific person, and he

or she knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress." 740 ILCS 21/10 (West 2012). " 'Course of conduct' means 2 or more acts, including but not limited to acts in which a respondent directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other contact, or interferes with or damages a person's property or pet." 740 ILCS 21/10 (West 2012).

¶ 44 In proceedings under the Act, the standard of proof is a preponderance of the evidence. 740 ILCS 21/30(a) (West 2012). "Proof by a preponderance of the evidence means that the fact at issue \*\*\* is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006). This court will not overturn a circuit court's determination a preponderance of the evidence shows a violation of the Act unless such a determination is against the manifest weight of the evidence. *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 12, 30 N.E.3d 557. " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *McNally*, 2015 IL App (1st) 134048, ¶ 12, 30 N.E.3d 557 (quoting *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 22, 993 N.E.2d 594).

¶ 45 1. *Course of Conduct*

¶ 46 Respondent first contends petitioner failed to show a "course of conduct." While petitioner presented evidence respondent vandalized petitioner's car on November 26, 2013, petitioner failed to show respondent committed other acts of vandalism against petitioner. Petitioner disagrees, asserting he presented ample circumstantial evidence showing respondent



was the person who vandalized his vehicle on multiple dates from September to November 2013.

¶ 47 " 'Circumstantial evidence is the proof of facts and circumstances from which a [fact finder] may infer other connected facts which usually and reasonably follow, according to the common experience of mankind.' " *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 26, 974 N.E.2d 914 (quoting *Housh v. Swanson*, 203 Ill. App. 3d 377, 381, 561 N.E.2d 321, 323 (1990)). In the context of civil actions, our supreme court has emphasized "the use of circumstantial evidence is *not* limited to those instances in which the circumstances support only one logical conclusion. Instead, circumstantial evidence will suffice whenever an inference may reasonably be drawn therefrom \*\*\*." (Emphasis added.) *Mort v. Walter*, 98 Ill. 2d 391, 396, 457 N.E.2d 18, 21 (1983). Accordingly, "[c]ircumstantial evidence does not need to exclude all other possible inferences or support only one logical conclusion." *Olson*, 2012 IL App (2d) 110818, ¶ 26, 974 N.E.2d 914. "However, circumstantial evidence can only support an inference that is reasonable and probable, not merely possible." *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799, 804 (2006).

¶ 48 In this case, petitioner provided ample evidence of other acts of vandalism against his car. Moreover, petitioner presented sufficient circumstantial evidence respondent was the individual who committed some or all of the other acts against petitioner. First, once respondent was observed damaging petitioner's vehicle on November 26, 2013, no more acts were committed against petitioner. It is reasonable to infer that, if the acts were committed by someone else, they would have continued after respondent's arrest and the emergency stalking no contact order. Moreover, the acts against petitioner's car occurred both at his apartment and Iyer's apartment, ruling out random acts by people in petitioner's neighborhood. Additionally, the November 16, 2013, incident involved superglue, and respondent had superglue in his bag



posttrial motion, the circuit court recognized Iyer did not introduce petitioner as her boyfriend but noted the evidence supporting a finding respondent knew petitioner and Iyer were dating. As highlighted by the circuit court, petitioner testified he and Iyer were sitting close together and may have been holding hands when respondent approached. Respondent then said something that did not make sense to petitioner and ran into a bike rack. Iyer gave similar testimony about respondent's behavior. Additionally, the record shows that, while Iyer testified she never stated petitioner was her boyfriend, she did talk about petitioner with respondent. Moreover, respondent himself testified that, after he first met petitioner, petitioner later approached him that same day and told him that he did not want respondent spending time with Iyer. Accordingly, sufficient evidence was presented for the circuit court to find respondent knew Iyer was dating petitioner, forming a basis for the court's finding respondent was jealous of petitioner.

¶ 53           Second, respondent challenges the circuit court's statement about Officer Links' testimony. The court noted that, when respondent met with Officer Links, he did not know the route he took to work and offered her no street names. During its ruling on the posttrial motion, the court quoted Officer Links' testimony and noted respondent first testified he struggled to orally explain his route because she had not provided him with a map. The court also noted that, after his initial meeting with Officer Links, respondent created a detailed map of his route.

¶ 54           The circuit court's description of the testimony presented at the hearing is based on the record. Officer Links had testified respondent was not really able to describe the route he took to work. She stated the route was not direct, and respondent could not provide any direct streets. When Officer Links pressed him for details, he could not provide a lot of information that was a direct route. She also asked respondent why he was walking away from the direction of his office when he was at Iyer's apartment building, and respondent just stated he cut through

various lots on his way to work. As noted by the circuit court, respondent made no mention of his figurines or hobby. The fact respondent could not give a direct route to his work and failed to mention a reason for not using a direct route when asked why he was walking in a direction away from work clearly harms respondent's credibility. Thus, on the testimony presented, the court could have properly found Officer Links' testimony was harmful to respondent's credibility.

¶ 55 Last, respondent points out the circuit court's statement that it found "very interesting that [respondent] couldn't even admit that he was arrested." In ruling on its posttrial motion, the circuit court pointed out respondent's testimony on cross-examination, in which he was not forthcoming with admitting his arrest for violating the order of protection. Respondent notes he admitted on direct examination he was arrested in connection with the keying incident. The keying arrest is separate from his arrest for violating the temporary stalking no contact order. The circuit court further stated, "[r]espondent's inability to honestly answer questions was striking throughout the proceedings." Thus, the court was pointing out an instance of respondent not immediately giving an honest answer to a question, and it is irrelevant that respondent acknowledged a different arrest during his testimony. Accordingly, we find the circuit court's statement about respondent's failure to immediately acknowledge his arrest was not improper and did not undermine the court's credibility finding.

¶ 56 In this case, the circuit court's credibility findings were not against the manifest weight of the evidence.

¶ 57 B. Posttrial Motion

¶ 58 Respondent challenges the circuit court's denial of his posttrial motion. "The purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the

court's previous application of existing law." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004). In his posttrial motion, respondent raised numerous contentions of error but, on appeal, he only raises the matter of petitioner's exhibit Nos. 3 through 6. A circuit court's decision to grant or deny a motion to reconsider lies within its sound discretion, and this court will not disturb that decision absent an abuse of discretion. *Stringer*, 351 Ill. App. 3d at 1140, 815 N.E.2d at 481. "A circuit court abuses its discretion when its ruling 'is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23, 957 N.E.2d 413 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001)).

¶ 59 Respondent insists the issue is not one of newly discovered evidence. However, respondent sought and obtained discovery for evidence supporting his false-testimony allegation based on the photographs at issue. Moreover, at respondent's request, the circuit court held an evidentiary hearing on respondent's posttrial motion, and respondent presented the testimony of three witnesses. Additionally, both in the circuit court and on appeal, respondent relies heavily on petitioner's postjudgment actions. If this issue did not involve newly discovered evidence, then respondent would not have needed discovery and an evidentiary hearing. Respondent presented new evidence in addition to the photographs themselves in his attempt to show petitioner and Gary fabricated some of their testimony. However, respondent could have presented such evidence at the hearing on the petition for a stalking no contact order if he would have requested the photographs before the hearing.

¶ 60 In a similar situation, the reviewing court stated the following:

" 'Nothing has been presented as new evidence discovered since the trial that could not have been obtained before trial by the

diligent use of pretrial discovery procedures or even by the use of adequate pretrial investigation. As a protection against false or perjured testimony and as an aid generally in the search for truth in the trial of cases, the legislature and the court have provided broad and liberal avenues of discovery in civil cases. A litigant may elect to use these tools that have been provided. If instead he chooses to use the trial itself as a pretrial deposition to discover the testimony of a witness, he should not be rewarded with a new trial wherein he may present contradictory evidence discovered after trial which could have been discovered before trial by diligent preparation. It is a primary requisite to the allowance of a motion for a new trial on the grounds of newly discovered evidence that such evidence was not discoverable prior to trial by the exercise of ordinary diligence.' " *Lannert v. Ramirez*, 214 Ill. App. 3d 1102, 1105-06, 574 N.E.2d 238, 240 (1991) (quoting *Kaster v. Wildermuth*, 108 Ill. App. 2d 288, 293, 247 N.E.2d 431, 433-34 (1969)).

While this case involved the failure to make a pretrial request for photographs instead of deposing a witness, the situation is similar and respondent should not be rewarded for his failure to request the photographs before the hearing on petitioner's petition for a stalking no contact order.

¶ 61 For example, during the original hearing, petitioner testified he believed he had given the photographs to the police. The fact respondent was able to provide impeachment

evidence to the contrary after trial is a result of respondent's failure to utilize discovery. Further, respondent's assertions the photographs had been doctored based on (1) the lack of minor scratches on the hood of petitioner's car that Gary had mentioned in his testimony, (2) the lack of reflections on petitioner's hood that are present on neighboring cars, and (3) the different license plates on petitioner's car could have all been easily raised if respondent did pretrial discovery. Almost all of the evidence respondent sought to use to support his posttrial argument could have easily been discovered with due diligence before trial. Even the obtaining and analyzing of the cell phone would likely have been shorter if done before trial. Accordingly, the circuit court did not abuse its discretion by finding respondent had failed to present newly discovered evidence warranting a new trial.

¶ 62 Respondent asserts the case law regarding newly discovered evidence should not be applied to him based on the following language from *Herington v. Smith*, 138 Ill. App. 3d 28, 31, 485 N.E.2d 500, 502 (1985): "The court, however, has inherent power and responsibility to safeguard the integrity of the judicial process. Where perjured testimony so permeates that process as to constitute a fraud upon the court, false testimony by a material witness may alone be sufficient to warrant a new trial." In *Herington*, 138 Ill. App. 3d at 31, 485 N.E.2d at 502, the trial judge had found those very circumstances present, and the reviewing court noted that judge "was present throughout the circuit court proceedings and is far more qualified to assess the materiality of testimony than a court of review."

¶ 63 However, in this case, after finding respondent was not entitled to relief for newly discovered evidence, the circuit court noted its judgment was based on a number of factors and recited the evidence supporting its decision and respondent's lack of credibility. It then denied respondent's posttrial motion. Here, the circuit court gave no indication it found the alleged false

testimony permeated the judicial process to the point of constituting a fraud on the court. Such a conclusion is not arbitrary or unreasonable. Petitioner's and Gary's testimony about the incident on November 26, 2013, was corroborated by Iyer, who testified petitioner's car was fine before respondent was observed near it and she then saw respondent crouching down trying to hide after the incident. Moreover, as we discussed in our course-of-conduct analysis, other circumstantial evidence supported a finding respondent committed some other acts of vandalism against petitioner's car.

¶ 64 Additionally, as petitioner notes, petitioner's counsel used the photographs at issue during his cross-examination of respondent. Moreover, respondent's counsel never objected to the photographs themselves, just the line of questioning involving the photographs, and that objection was just that the questions were outside the scope of respondent's case. Respondent's counsel never raised the element of surprise during the hearing. Further, petitioner offered explanations for most of the impeachment evidence. The circuit court was present during the entire posttrial proceedings and witnessed the parties' behavior and the testimony at the evidentiary hearing. While we do not condone a party's presentation of false evidence or delay in providing requested discovery, the circuit court in this case did not find petitioner's actions so egregious as to warrant a different outcome, and the cold record does not show the circuit court's decision was unreasonable or arbitrary.

¶ 65 Accordingly, we find the circuit court did not abuse its discretion by denying respondent's posttrial motion.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 68 Affirmed.