2019 IL App (2d) 170073-U
No. 2-17-0073
Order filed August 28, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. AARON P. STOWELL, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lee County. No. 16-CF-120 Honorable Ronald M. Jacobson, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of unlawfully communicating with a witness, as defendant, with the requisite intent, communicated "knowingly false information" to the victim, specifically that he did not hit her; it was irrelevant that the victim also knew the information to be false.

¶ 2 After a bench trial, defendant, Aaron P. Stowell, was convicted of unlawfully communicating with a witness (UCW) (720 ILCS 5/32-4(b) (West 2016)) and domestic battery (subsequent offense) (*id.* § 12-3.2(a)(2)). He was sentenced to 30 months' probation on the

former conviction and 5 years' imprisonment on the latter. Defendant appeals, contending that he was not proved guilty beyond a reasonable doubt of UCW. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State filed a five-count amended information against defendant. Two counts are pertinent here. Count II alleged that, on or about June 23, 2016, defendant committed UCW in that he communicated with Yvonne Murray, the victim of the domestic battery, by calling her on the phone four times "with the intent to influence her into filing a false police report with the Dixon Police Department claiming the domestic battery she reported on June 23, 2016, did not occur." Count III alleged that he committed the domestic battery by holding her down and striking her in the back of the head and that he had three prior convictions of domestic battery.

¶ 5 We summarize the pertinent trial evidence. Clay Whelan, a Dixon police lieutenant, testified as follows. On June 23, 2016, slightly before noon, he and two other officers met with Murray at her mother's house. Murray had no shoes on. She said that there had been a disturbance with defendant, her boyfriend, at their apartment. Whelan obtained a recorded statement from Murray, and she and the officers proceeded to the apartment. Murray waited outside while the officers spoke with defendant.

¶ 6 Whelan testified that he felt a bump on the left side of Murray's head but found no other marks. The bump was about an inch high and was consistent with being struck there.

¶ 7 Murray testified on direct examination as follows. On June 23, 2016, she was residing with defendant. That morning, she called 911 and reported that they had been arguing and he had become violent. Later that day, she told Whelan that defendant had pushed her into a couch, choked her, and punched the back of her head three times. Whelan felt the bump on her head. The next morning, she recorded a statement at the police station.

¶ 8 Murray identified four recorded phone calls that defendant made to her on June 23, 2016. Murray testified that, at the time, defendant was very upset at being in jail for nothing, and he wanted her to tell the truth. Portions of the calls were played in court and admitted into evidence. Murray identified the voices as those of defendant and herself. We summarize the pertinent portions of the calls.

¶ 9 In the first call, made at approximately 4:37 p.m., defendant asked Murray, "Guess where I am?" She responded, "Well, whose fault is that? You were the one that hit me." She said that *she* did not hit *him*. He responded that he had not hit her either and that she knew it. Murray responded, "Are you kidding?" and reminded defendant that the officer had felt the bump on her head. Defendant then told Murray that she needed to get help for her anger "issues." He said that her "scare tactics" had led to his being arrested and charged. She told him that he was getting what he deserved for pinning her and choking her. Defendant then asked Murray, "So this is what you want? You want to take me away? You want to take me from my children and ruin everything I've worked for?" Murray responded that it was not her fault.

¶ 10 Defendant then asked Murray, "You are not going to go and tell them you filed a false police report?" Murray responded, "Why would I tell them I filed a false police report?" Defendant told her that she was going to "ruin [his] life" and "destroy [his] children" just because she could not control herself. He told her that he had never touched her and she knew it. He accused her of lying to the police. She denied it and she said that he was lying.

¶ 11 In the second call, made at approximately 8:09 p.m., defendant told Murray that they had both been under stress in the last few days and that they should not take it out on each other. Defendant accused Murray of being "irrational." She asked what he was talking about. He said that it was about his being in jail. She responded that that was his fault. He asked whether she

really wanted to ruin his life with a 20-year prison term. She said that he had ruined his life himself. He again denied having done anything to her. He added that what she was doing to him was worse than what his previous girlfriend had done by falsely accusing him and thus sending him to prison.

¶ 12 Defendant told Murray that if she did not recant he would have no choice but to "go to trial and prove [her] mental instability." She responded that Whelan had felt the bump on her head, and she added, "So go ahead and tell them that I'm crazy. Whatever makes you happy." Defendant accused her of ruining his life. She retorted that he had ruined his own life by pinning her on the couch and hitting her. She said, "Have fun sleeping on your cot!" and hung up.

¶ 13 In the third call, made at approximately 8:29 p.m., defendant told Murray that he loved her and that they had helped each other through hard times. He said that she was going to ruin his life and his children's lives; she would ruin her own life too, because she had no job, no money, and nowhere to go. He said that he had trusted her but she was betraying him. Defendant continued that he had left prison a year ago and was now back in jail; this was his "last chance." He added that he had "done so much" for them, and he asked, "This is the thanks I get?" He noted that he was scheduled to finish parole in November, and he told Murray that she was not supposed to "turn" on him. To all of this, Murray replied, "You're funny."

¶ 14 Murray then told defendant that she had not filed a false police report and would not get herself into trouble by telling the police that she had. Defendant said that an attorney had told him that whether to charge her would be solely up to the State's Attorney and that she would get "a little bit of probation," which was better than his getting a long term in prison. Murray said that she was "not going down" for defendant. Again, he accused her of lying and she denied it.

¶ 15 In the fourth call, made at approximately 8:49 p.m., defendant told Murray that he loved her and missed her. He said that he was scheduled to complete parole in November and probation two months afterward. Also, he was set to start a new job. He told Murray that friends had warned him that she would get him into trouble but that he had told them that he loved her and trusted her. He added that, because she was pregnant, she was being irrational. Murray replied that she was not being irrational. Defendant pleaded with her not to ruin his life. He told her that he had kept a roof over their heads and had paid her bills; with his new job, she would not have to find work, at least not full-time. If he did not get the help that he needed from her, he would not have that chance to provide for her.

¶ 16 Defendant told Murray that he had trusted her and that if she did not help him she would be "signing [his] death warrant." Murray responded that, if he loved her, he would just "spend [his] time and know what [he] did." Defendant replied that he "didn't do anything" and did not touch her. Murray disagreed. Defendant said that, if she had "any kind of heart" for him or his children, she would help. He finished by saying that he would "forgive" her for her acts.

¶ 17 After the calls were played in court, Murray testified on cross-examination as follows. On June 23, 2016, defendant did not push her onto a couch, choke her, or strike her in the head. She lied when she told the police that he had done these things. She did have a bump on her head, but it was from contact with a shower-curtain rod. On June 24, 2016, she told Whelan that she had filed a false police report. She explained that she and defendant had argued and she had ripped a necklace off his neck.

¶ 18 The State rested. Defendant called Murray, who testified as follows. On June 23, 2016, after she spoke to the police but before defendant called her from jail, she called her cousin David Reuter. She told him that what she had reported to the police "didn't really happen." The

next morning, she decided to recant. Her decision was not influenced by defendant's phone calls. She had made the false report only because she had been angry at him.

¶ 19 After hearing arguments, the trial court found defendant guilty of domestic battery and UCW. On the UCW charge, the court explained as follows. In his phone calls, defendant, "without stating it out loud, *** tried every possible means to convince [Murray] to say that it never happened." He was not successful, but, "[a]s the time prayed [*sic*] on [Murray's] understanding of what a conviction would result in, in terms of her relationship with [defendant], things changed, and that was exactly what [defendant] intended." Defendant "used lots of means of pressure. He got angry at her. He tried to appeal to her sense of conviction [*sic*] that would destroy his family life. In fact, at one time *** he said, You're signing my death warrant or something to that effect."

¶ 20 The court denied defendant's posttrial motion and sentenced him as noted. He timely appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant contends solely that the evidence did not prove him guilty beyond a reasonable doubt of UCW. As pertinent here, the UCW statute reads:

> "A person who, with intent to deter any party or witness from testifying freely, fully and truthfully to any matter pending in any court *** communicates, directly or indirectly, to such party or witness any knowingly false information or a threat of injury or damage to the property or person of any individual or offers or delivers or threatens to withhold money or another thing of value to any individual commits a Class 3 felony." *Id.* § 32-4(b).

¶ 23 In considering a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). The fact finder is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 24 A person commits UCW if, with the intent to affect a person's testimony in one of the specified ways, he performs one of the specified acts. 720 ILCS 5/32-4(b) (West 2016).

¶ 25 Defendant concedes that the State proved his intent. He acknowledges that he sought to induce Murray to forgo giving incriminating testimony against him. He argues, however, that the State did not prove that he committed a statutory *actus reus*. He maintains, and the State essentially concedes, that there was no evidence that he made any "threat of injury or damage to the property or person of any individual" or "offer[ed] or deliver[ed] or threaten[ed] to withhold money or another thing of value to any individual." *Id.*

¶ 26 Defendant and the State disagree, however, on the sufficiency of the proof that, with the intent to induce Murray not to incriminate him, he communicated any "knowingly false information." *Id.* Defendant contends that, because this language "is paired with the act of making a threat," the false information must be "used in the same manner as a threat and induce the witness to decline to testify or to testify untruthfully." Defendant notes that the only false information that he told Murray was that he did not batter her. (Defendant does not actually concede that this information was false, but the trial court so concluded, as it found him guilty of

domestic battery.) He reasons that his statements that he did not hit her could not have deceived her into changing her testimony, because she obviously knew what had happened between them.

¶ 27 Defendant's argument requires us to construe the UCW statute. Statutory construction raises a question of law, which we review *de novo*. *People v. Williams*, 239 Ill. 2d 503, 506 (2011). We seek to effectuate the intent of the legislature. *Id.* Ordinarily, the best indication of this intent is the statutory language itself and, if it is unambiguous, we apply it straightforwardly. *Id.*

¶ 28 As pertinent here, the statute requires proof that (1) with the intent to affect a person's testimony in a specified way, (2) the defendant communicated to the person any "knowingly false information." 720 ILCS 5/32-4(b) (West 2016). The statute unambiguously says that the State need prove only that a defendant *intended* a given result, not that he *produced* that result. Thus, the State did not need to prove that, by telling Murray that he never hit her, defendant actually induced her to recant. It needed to prove only that he intended that effect.

¶ 29 In its finding of guilt, the trial court stated that defendant "tried every possible means to convince [Murray] to say that it didn't happen." "Every possible means" surely covers defendant's use of information that he knew was false. That defendant might have had little reason to hope that she would believe his lies, much less that his lies would cause her to recant, did not prevent the inference that he gave it his best try. And, that he used means of pressure that the statute did not proscribe did not negate finding that he used proscribed means as well.

¶ 30 Once the court reasonably found that defendant lied to Murray about whether he had battered her, it could hardly have found any intent *other* than to deter her from testifying freely, fully, and truthfully against him. Defendant made this intent very explicit throughout all four calls. Indeed, practically *everything* that he said to Murray, with the possible exceptions of

"hello" and goodbye," was intended to deter her from so testifying. Thus, the evidence was sufficient to convict defendant of UCW.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Lee County is affirmed.

¶ 33 Affirmed.