

2014 IL App (2d) 121110-U  
No. 2-12-1110  
Order filed March 27, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kendall County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CM-910
	)	
MATTHEW VILMIN,	)	Honorable
	)	John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Burke and Justice McLaren concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of domestic battery, as the alleged inconsistencies in the victim's testimony did not require the jury to discredit her account of the offense.
- ¶ 2 After a jury trial, defendant, Matthew Vilmin, was convicted of one count of domestic battery based on insulting or provoking contact (720 ILCS 5/12-3.2(a)(2) (West 2010)) and acquitted of one count of domestic battery based on bodily harm (720 ILCS 5/12-3.2(a)(1) (West 2010)). The counts were based on the same alleged act. Defendant was sentenced to 24 months'

probation. On appeal, he argues that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 We recount the trial evidence. The complaining witness, Lisa Gibbs, testified on direct examination as follows. On Sunday, August 28, 2011, she lived in Plano and worked six days a week at the American Legion hall there. At that time, she had been in an intimate relationship with defendant for about four years. The examination continued:

“Q. Did something happen to the relationship in August of 2011?

A. Yes.

Q. And what was that?

A. We had an altercation and I ended the relationship.

Q. And do you recall approximately when the relationship ended?

A. It was on August 28, 2011.”

¶ 4 Gibbs testified that, on August 28, 2011, at about 11:30 a.m., she left work to watch a tractor pull, scheduled for 1 p.m., in Sheridan. She was driving her “seven-seat passenger van,” which had no trunk but a “bench seat” in back. Gibbs first bought some beer, then drove to a friend’s house, where she drank two beers. They met another person, and Gibbs drank a third beer while her friend drove them to the tractor pull. Later on, Gibbs returned to her friend’s house. She then drove home, arriving at about 5:30. She called defendant and told him that she was “coming out at that time” to pick up property that she had stored on his farm in Kendall County.

¶ 5 Gibbs testified that, at about 6 p.m., she arrived at defendant’s home, drove up the gravel driveway, and pulled up just in front of the barn, where her possessions were stored. Defendant had come walking out of his house. As Gibbs exited the van, defendant stood at the opening of

the barn. Several plastic tubs containing Gibbs' possessions were "sitting there." Defendant started to take the tubs out of the barn and hand them to Gibbs, who then put them into her van.

¶ 6 Gibbs testified that, at one point, defendant handed her the "metal things" from "one of those shelving things that go around the toilet in the bathroom to hold towels and things." The unit also included some glass shelves. Gibbs told defendant that she did not want the "metal things," and she dropped them onto the ground. She and defendant were about two or three feet apart, with the open van in back of her. As Gibbs picked up a plastic tub, defendant pushed her with both hands, one hand on the top of each of her biceps. As a result of the push, Gibbs' head hit the back of the bench seat, her back "popped," and she landed in the back of the van.

¶ 7 Gibbs testified that she was "stunned" by the unexpected push and knew that she "had to get out of there." She exited the van, closed the back doors, went around to the driver's door, entered, and locked the doors. Gibbs drove off; the engine flooded, but she eventually left and did not return. As she started off, defendant was trying to shove "the metal thing" through the window. Gibbs had not retrieved all of her things. She went to her friend's house.

¶ 8 Gibbs testified that she did not call the police that night. She explained that, "[a] few days prior" to August 28, 2011, "when it initially started that I was going over to get—just get my stuff, and I was saying some stuff to him and apparently I was very loud. We were standing outside, and he said if you don't quit yelling, I'm gonna punch you in the mouth." Defendant added that there was nothing that she could do about it, because "this is private property. And if [she called the police], [he] would just tell 'em that [she] had provoked [him]." Therefore, when Gibbs left defendant's property on August 28, 2011, she "didn't think [the police] would come out, I figured he knew what he was talking about."

¶ 9 Gibbs testified that, on Monday, August 29, 2011, a coworker noticed bruises on Gibbs' arms where defendant had pushed her. Gibbs had not seen the bruises before. The next evening, she called her ex-husband, a sheriff's deputy in South Dakota. Based on his advice, the next morning, Gibbs went to the Plano police station. A Kendall County sheriff's deputy was called in and spoke to her. After lunch, Gibbs spoke to a different deputy. She wrote out a statement. The officer photographed her injuries. The court admitted six of the photographs.

¶ 10 Gibbs testified that, on that day, she went home to feed her cats and saw that the possessions that she had left at defendant's property were sitting in her front yard. Defendant had never contacted her to tell her that he would be dropping them off.

¶ 11 On cross-examination, defendant's attorney asked Gibbs, "you stated [on direct examination] that you're no longer in a relationship with [defendant], correct?" Gibbs responded, "After that day." The following exchange ensued:

“Q: So it's your testimony today that you broke up with Matt because of what he did to you that day, correct?

A: No.

Q: No? So, what you're telling me, it's not your testimony, you did not just say when the prosecutor was asking you questions that your relationship ended on August 28th?

A: I was getting but [*sic*] we started a few days before that.

Q: Okay.

A: And—

Q: Let me talk to you about what happened a few days before that. When did this conversation about the relationship dissolving take place?

A: It was a few days prior. I'm assuming it was probably Monday 'cause it was my only day off."

¶ 12 Gibbs testified that she did not see defendant between Monday, August 22, 2011, and Sunday, August 28, 2011, when she went alone to his farm. She could not recall whether her possessions had been stored in one building or two, but at least some had been stored in the barn. When she showed up, defendant was walking toward the barn. He started handing items from the barn to Gibbs, who put the items into her van. According to Gibbs, "[t]here was never any argument." Neither she nor defendant yelled or threatened the other.

¶ 13 Gibbs testified that, when defendant handed her the metal shelves, she said that she did not want them and dropped them onto the ground. There were glass shelves also; Gibbs told defendant that she did not want "the unit." Gibbs then reached down and picked up a plastic tub, which was "[a]bout three by two" and had a handle on each side, and held it "long ways." At that point, defendant pushed her into the back of the van. She exited, went to the driver's door, got in, and drove off; she could not recall where defendant was at this time.

¶ 14 Gibbs testified that, after she left, she drove to her friend's house. Her friend had a cell phone, and Gibbs generally carried her own. Gibbs had been married to her former husband for "five years 25 years ago," but he had not been a policeman then. She had talked to him on occasion since.

¶ 15 Defendant's attorney examined Gibbs further on her delay in calling the police:

"Q. And you believed that because this incident took place on private property, you couldn't call the police?

A. Yes, I did.

Q. After he pushed you, were you afraid?

A. Yes, I was very afraid.

Q. It didn't occur to you to call the police?

A. Can I answer honestly?

Q. Yes.

A. Because I was afraid that he could find me and then I wouldn't be here sitting today was why I initially did not call the police."

¶ 16 David Geisen, a Kendall County sheriff's deputy, testified that, on the morning of August 31, 2011, he took a report from Gibbs about the incident. Gibbs had bruising on both biceps. Geisen could not recall whether Gibbs directed him to any other injuries. In the afternoon, Gibbs returned, and a different deputy photographed the injuries.

¶ 17 The State rested. Defendant testified on direct examination as follows. He lived with his mother on a farm. He and Gibbs had had a "brief" relationship, "on and off" for about 3½ years. Asked whether he had been dating Gibbs on August 28, 2011, defendant testified, "I believe I called her up and told her I didn't want to see her no more." Asked, "Did you call her on August 28, 2011?," he testified, "It was right around that time. I don't remember the exact date." He ended the relationship because he had "caught her in too many lies, just had enough of it."

¶ 18 Defendant testified that, on August 28, 2011, he was at home when his mother told him that Gibbs had pulled in. Defendant went to meet her. Gibbs wanted to talk about their relationship. Defendant told her that he did not want a relationship with her anymore and headed back inside. Gibbs walked up to the house and pounded on the door. Defendant answered. Gibbs said that she wanted her "stuff." She was slurring her words and smelled "like alcohol." Defendant knew that she meant her speakers and the plastic tubs. The speakers were in the tool shed. The tubs, 10 or 11 in all, were in the barn, as was the metal-and-glass shelving unit.

¶ 19 Defendant testified that he went to the shed while Gibbs drove up in front of it. He entered the shed, got the speakers, and handed them one at a time to Gibbs. He and Gibbs were not arguing or yelling. Next, defendant opened the barn, and Gibbs drove up in front of it. He retrieved the plastic tubs and gave them to her. He and Gibbs were not arguing or yelling.

¶ 20 Defendant testified that, after he retrieved the metal parts of the shelving unit, he returned to the barn to get the rest of the unit. When he came outside, he saw parts of the shelving unit lying on the ground next to the van. He handed the parts to Gibbs. She “threw ‘em over in the pile.” He asked her why she was not taking the unit; she responded, “I don’t want it.” Defendant turned around, shut the door, and told Gibbs to leave. Gibbs started swearing at defendant as he walked toward his house. She told him “to go do something to [his] mother,” then got into her van and left, spinning her tires.

¶ 21 Defendant testified that, when Gibbs drove away, she left some of her possessions behind. The next day, defendant loaded them onto his truck, drove to her residence, left the items on the sidewalk, and drove back home.

¶ 22 Defendant testified on cross-examination as follows. On August 28, 2011, Gibbs did not call him before her visit, and he did not speak to her until then. They had started ending their relationship before that date. However, asked whether they had argued three or four days earlier, defendant testified, “No argument.” He denied ever telling Gibbs that the police could not do anything on his private property. Their relationship started to break up because she had been lying to him, such as saying that she had been too sick to attend an event with his family.

¶ 23 Defendant testified that, after his mother told him that Gibbs had driven up, he went out the door, by which time Gibbs was there. They stood out front talking; Gibbs wanted to get back together with defendant. Defendant returned inside. Shortly afterward, he heard Gibbs pounding

on the door, and he went back out and asked her what she wanted. She said that she wanted to get her things. Asked whether he later told an investigating police officer that Gibbs had pounded on the door, defendant testified that he had not but that the officer “never asked.”

¶ 24 Defendant testified that, when he handed Gibbs the glass shelves, she threw them onto the pile of metal parts from the shelving unit. He was not upset when she said that she did not want the unit. He did not push her; after her remark, he turned around, walked to his house, and did not look back. He knew that she drove off quickly, because she spun her tires. Although Gibbs left some property behind, defendant did not call her that night or the next day, but left the remaining tubs in front of her house. He did not talk to her after August 28, 2011.

¶ 25 Defendant testified on redirect examination that, on or about August 31, 2011, a police officer spoke to him about an accusation of domestic violence. Defendant told the officer that he had not committed any domestic violence. The officer did not ask about Gibbs’ pounding on his door, and he did not tell the officer that fact. Defendant testified that he did not call Gibbs before he dropped off her remaining possessions, because he “didn’t have any reason to call her.”

¶ 26 In rebuttal, Gibbs testified that, on August 28, 2011, she called defendant in the morning. She called again in the afternoon after she had decided to go to Sheridan, but she could not reach him. She called at 5:30 p.m. and told him that she was coming over to get her things. When she arrived, she backed up in front of the barn. Asked whether she went to defendant’s house, Gibbs testified, “No, I don’t believe so. \*\*\* No, I did not go to the house.”

¶ 27 Gibbs testified that, when she arrived at defendant’s home, he knew why she was there. On August 28, 2011, she did not talk to him about getting back together; that conversation occurred “a few days prior.” Asked whether defendant went back into the house before she started retrieving her possessions, Gibbs testified, “I don’t believe so.” Further, she had never

pounded on his door. After she told defendant that she did not want the shelving unit, he did not walk away; rather, “[t]hat was when he shoved [Gibbs] back into the van.”

¶ 28 The jury convicted defendant of domestic battery based on insulting or provoking contact, but acquitted him of domestic battery based on bodily harm. The trial court denied defendant’s posttrial motion and sentenced him to 24 months’ probation. He timely appealed.

¶ 29 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of domestic battery. To obtain the conviction, the State had to prove that defendant, knowingly and without legal justification, made “physical contact of an insulting or provoking nature with any family or household member” (*id.*). Defendant concedes that, because he had been in a dating relationship with Gibbs on August 28, 2011, the State proved that she was a “family or household member” (720 ILCS 5/12-3.2(a)(2) (West 2010)). See 720 ILCS 5/12-0.1 (West 2010). He does not contend that the State failed to prove that the alleged contact was knowing and without legal justification. Defendant argues, rather, that the State failed to prove that he committed the offending act. Although Gibbs testified that he pushed her in the biceps, defendant asserts that that testimony was so inherently infirm that the jury could not credit it beyond a reasonable doubt. For the reasons that follow, we disagree.

¶ 30 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 trier of fact 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).

¶ 31 Defendant raises several reasons why Gibbs' testimony was legally insufficient. Some of these reasons address Gibbs' narrative of the background to their confrontation. Defendant notes that he and Gibbs gave differing accounts of the events leading up to their meeting on August 28, 2011. According to Gibbs, defendant had threatened her a few days earlier; she had already decided to end the relationship by August 28, 2011; and she called defendant in advance to remove her possessions from his farm. According to defendant, there had been no prior threat; Gibbs arrived unannounced and pleaded to continue the relationship; and, when he refused, she became vengeful, giving her an incentive to fabricate a crime. Defendant contends that Gibbs' story was inconsistent and far-fetched. Of course, defendant also makes direct challenges to Gibbs' testimony that he pushed her. We turn to these arguments in roughly the order that defendant presents them, reorganizing the presentation slightly for clarity.

¶ 32 Defendant contends first that Gibbs' account of when and why she and defendant ended their relationship was fatally inconsistent. He argues that, in the State's case-in-chief, Gibbs initially testified that the "altercation" of August 28, 2011, caused her to end the relationship; that she then testified that she called defendant a few hours before the "altercation" (implying that she had already decided to end the relationship); and that, during her rebuttal testimony, on cross-examination, Gibbs first testified that the relationship had ended after the confrontation, but then testified that the breakup had started a few days earlier. Defendant contends that, aside from making her less credible, Gibbs' inconsistencies "bolstered" his testimony that he had broken up with Gibbs several days earlier and that Gibbs came to his home unannounced. He also contends that the weaknesses in Gibbs' account supported his theory that she fabricated a charge of battery in order to gain revenge on him for scorning her.

¶ 33 We cannot say that any inconsistencies in Gibbs' testimony created more than issues of credibility for the jury to resolve. In the State's case-in-chief, asked *approximately* when the relationship ended, Gibbs testified that it was August 28, 2011. Although her statement, "We had an altercation and I ended the relationship" could have been taken as a statement of cause and effect, it did not need to be so taken. The remainder of Gibbs' direct examination implied that the relationship had deteriorated severely by the time that she called defendant to get her things back and make the split final. Moreover, on cross-examination, Gibbs clarified that the breakup had "started a few days prior." In the State's rebuttal, Gibbs reiterated her account of this process, including the argument approximately six days before the alleged battery.

¶ 34 We cannot say that any inconsistencies in Gibbs' account made her testimony inherently implausible. The discrepancies are not severe and might have resulted in part from how the questions were asked. Moreover, they concern the background to the alleged battery and not the incident itself. Even discounting Gibbs' version of the back story, the jury would not have been compelled to reject her version of the events of the evening of August 28, 2011.

¶ 35 Defendant argues second that Gibbs' account of her interaction with defendant immediately before the alleged battery was inherently implausible in that she testified that she and defendant "did not speak a single word to each other the entire time" before the incident with the shelving unit. He contends, "Human experience suggests that there would have been some communication \*\*\* at some point before the alleged shove."

¶ 36 Defendant's citations to the record do not support his assertion that Gibbs testified that they did not communicate at all between her arrival and the incident with the shelving unit. Neither does our review of Gibbs' entire testimony. On the pages that defendant cites, Gibbs testified about how defendant started to take items from the barn and hand them to her; that they

were not yelling or arguing at that point; and that, when she parked in front of the barn, they did not have a conversation “at that time.” This testimony fell short of implying that Gibbs and defendant did not speak at all until the shelving-unit incident. It was not inconceivable that they would forgo conversation at first; under Gibbs’ account of the events preceding her visit, defendant would have known why she was there and neither he nor Gibbs would have been in the mood to say much.

¶ 37 Accordingly, defendant’s second argument rests on a dubious premise. Moreover, even if Gibbs did not accurately summarize their level of verbal interaction shortly before the alleged battery, that would scarcely have made her testimony on other matters inherently unworthy of belief.

¶ 38 We turn to defendant’s third attack on the sufficiency of the evidence. He focuses on Gibbs’ delay in reporting the alleged offense to the police. Gibbs admitted that she waited three days to report the incident. Defendant contends that (1) the delay undermined the credibility of her report and her testimony; and (2) her credibility was further sapped by the implausibility of the reasons that she gave for the delay. Although, defendant’s arguments were sound ones to make to the jury, but we cannot say that they required the jury to entertain a reasonable doubt.

¶ 39 As to the delay itself, Gibbs testified that she did not realize the extent of her injuries until the next day and that she spoke to her ex-husband before contacting the police. The jury could have inferred that her initial hesitancy had been overcome by other factors, such as the fact that her injuries were more serious than she had thought and the realization, possibly from talking to her ex-husband, that she could successfully press charges against defendant.

¶ 40 Gibbs’ testimony about why she delayed arguably raised a credibility issue, but the jury could reasonably have credited it. Defendant notes that Gibbs testified that she was initially

scared to report the incident because she feared that defendant would retaliate. He contends that this testimony was inconsistent with her later conduct, as she had no less reason to be afraid of him three days later. However, a reasonable jury could conclude that Gibbs' fear was counterbalanced by her increased hope of success after speaking with her ex-husband. Also, she simply might have decided in the interim that her initial fear was excessive.

¶ 41 Defendant also notes that, despite allegedly fearing him, Gibbs voluntarily drove by herself to his home on August 28, 2011. However, although the drive followed the angry confrontation a few days earlier, it preceded the alleged battery. The jury could have reasonably concluded that, even had Gibbs been relatively unafraid of defendant when she drove out to his property, his attack on her afterward made her more afraid. (Also, according to her testimony, during her visit, she did not stray far from her vehicle and was able to drive away soon.)

¶ 42 Finally on Gibbs' delay in reporting, defendant notes that she testified that she believed his earlier assertion that the police would not do anything about an incident occurring on his private property. Defendant asserts that "[i]t would take a shocking lack of common sense for any adult to believe that police are unable to intervene in domestic disputes on private property."

¶ 43 Defendant's interpretation of the evidence was not the only one the jury could have chosen. According to Gibbs, defendant also told her that he would just tell the police that she had provoked him, and, as a result, she "didn't think [the police] would come out." The jury could reasonably have concluded that Gibbs thought not that a battery on private property could not be a crime, but rather that pursuing a "he said-she said" matter with the police would be fruitless. The jury could also infer that her attitude changed soon afterward, as a result of talking with her ex-husband (now a law-enforcement officer), discovering her bruises, or just

reconsidering her situation. Defendant has not convinced us that anything more than a jury question was involved.

¶ 44 We turn to defendant's fourth challenge to the evidence, which involves several arguments related to Gibbs' alleged injuries from defendant's battery. First, defendant observes that Gibbs did not notice the bruises to her biceps until the day after and did not decide until then to claim that he had pushed her. Defendant reasons that, at that point, Gibbs "saw an opportunity to retaliate against defendant and \*\*\* she called her ex-husband for advice on how to do so."

¶ 45 Defendant's argument treats this court as a second jury whose task it is to reweigh the evidence and decide which inferences to draw. That is not our duty, as we must defer to the jury's choice of whom to credit and what reasonable inferences to draw from the evidence. See *Lamon*, 346 Ill. App. 3d at 1089; *Hill*, 272 Ill. App. 3d at 603-04.

¶ 46 Defendant attacks the injury evidence in a second way: he notes that the jury acquitted him of domestic battery based on bodily harm, and he contends that the acquittal, combined with the weaknesses in the photographic evidence (including the delay between the incident and the taking of the photographs), raises a reasonable doubt of whether he pushed Gibbs at all.

¶ 47 Defendant's argument is unpersuasive. Although the jury did not find that defendant caused Gibbs' bruises by pushing her, it could still have found that he did push her. We must evaluate the evidence in the light most favorable to the prosecution. See *Ward*, 154 Ill. 2d at 326. Moreover, even if the two findings were somehow contradictory, logically inconsistent verdicts are no ground to reverse. See *People v. Hill*, 315 Ill. App. 3d 1005, 1011 (2000), *overruled on other grounds*, *People v. Jones*, 207 Ill. 2d 122, 133-34 (2003).

¶ 48 In the last part of his fourth challenge, defendant notes that Gibbs testified that, when he pushed her into the van, she hit her head and heard her back "pop." Defendant observes that

there was no other evidence that Gibbs injured her head or back or that she mentioned these injuries to Geisen. He asserts that this “casts further doubt” on her testimony that he pushed her. We see nothing more than a routine jury question. We can take judicial notice that people often hit their heads on hard objects or experience momentary sensations in their backs without suffering serious injury or seeking medical help.

¶ 49 Fifth and finally, defendant asserts that, in contrast to Gibbs’ testimony, his testimony was consistent, plausible, and unimpeached. Citing *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981), defendant contends that the jury’s decision to reject his testimony was unreasonable. Even accepting defendant’s characterization of his testimony, his argument fails.

¶ 50 Defendant misstates the law. Gibbs’ testimony contradicted his, and the jury did not have to reject hers merely because his was not inherently implausible. *Brown* states only that, “[w]here the testimony of a witness is *neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded[,] even by a jury.*” (Emphasis added.) *Id.* Here, defendant’s testimony was contradicted by the positive testimony of Gibbs. *Brown* does not support defendant. Indeed, *Brown* recognizes that witness credibility is typically for the jury. *Id.*

¶ 51 In sum, the alleged weaknesses in the State’s evidence, even considered collectively, do not persuade us that a reasonable fact finder could not have found him guilty beyond a reasonable doubt. Therefore, the judgment of the circuit court of Kendall County is affirmed.

¶ 52 Affirmed.