2011 IL App (2d) 100831-U & 101217-U
Nos. 2-10-0831 & 2-10-1217 cons.
Order filed March 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of DeKalb County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CM-478
JOSEPH E. PUCKETT,	)	Honorable William P. Brady,
Defendant-Appellant.	)	Judge, Presiding.

ORDER

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

Held: The trial court reversibly erred in determining that the evidence proved beyond a reasonable doubt that defendant committed the charge of unlawful interference with the reporting of an act of domestic violence, where the evidence established that defendant's conduct was not knowingly harassing under the circumstances. We reversed.

¶ 1 In this consolidated appeal, defendant, Joseph E. Puckett, appeals his conviction of unlawful interference with the reporting of an act of domestic violence. 720 ILCS 5/12-6.3(b) (West 2008). Defendant contends that he was not proved guilty of the offense beyond a reasonable doubt and

therefore, his conviction must be reversed. The State responds that the evidence was sufficient to convict defendant. We reverse.

¶ 2 On March 30, 2009, defendant was charged by complaint with the offense of unlawful interference with reporting an act of domestic violence. Specifically, the complaint alleged that, on March 27, 2009, defendant pushed Keyona Gayles and committed the offense of unlawful interference with reporting an act of domestic violence when he prevented her from completing her conversation with a 911 emergency dispatcher. The complaint did not specify the act of domestic violence that defendant committed.

¶ 3 On October 2, 2009, the State amended the complaint to include a domestic battery charge, alleging that, on March 27, 2009, defendant knowingly made physical contact of an insulting or provoking nature with Gayles, a family member, when he grabbed her by the arm and shoved her.

¶ 4 On January 15, 2009, a bench trial was held with respect to both charges. Gayles testified on the State's behalf. Gayles testified that she and defendant were engaged in an "off and on" relationship for five years. Gayles testified that her relationship with defendant had resulted in the birth of their son, also named Joseph, in late February of 2009. Gayles testified that, on March 27, 2009, she resided in an apartment on Russell Road in DeKalb. She testified that, although she and defendant had periodically lived together in the past and he had a key to her current apartment, defendant did not currently reside at this location.

¶ 5 Gayles testified that, on March 27, 2009, at approximately 8:30 P.M., she was in her apartment when defendant arrived and informed her that he desired to take their child to Chicago for the evening. Defendant proceeded to take the child into his arms. Gayles testified that she did not want defendant to take their child to Chicago at that time and that she reached towards defendant in

an attempt to take the child out of his arms. According to Gayles, when she reached for the child, defendant pushed her away with his free hand. Gayles testified that she could not recall whether she touched either defendant or the baby when she "grabbed" for him. Gayles testified that she informed defendant that she was calling the police and that she dialed 911 on her cellular phone. She testified that she called the police because she was "probably just afraid" and did not wish to get "into an argument or some crazy stuff" in front of the baby.

¶ 6 Gayles testified that defendant grabbed her cellular phone to see if she had actually called police. Gayles admitted that she often "pretended" to call police and that defendant may have believed that she was "playing" again. She testified that she was unsure whether she had a chance to speak with the emergency dispatch operator before defendant took her cellular phone. According to Gayles, when defendant realized that she had actually called the police, he put the baby down in the living room and attempted to leave the apartment. Gayles testified that she blocked his exit because she "wanted to resolve the issue." She explained that because she and defendant were both new parents, she wanted to establish how they would "go about parenting our son." Gayles further testified that she had another reason for blocking defendant's exit; he had a key to her apartment which she wanted him to return. She admitted that defendant had been in possession of the apartment key for "quite a while" and that she had a separate key for her use.

¶ 7 Gayles testified that she could not recall where her cellular phone was when she was blocking defendant's exit. She initially stated that she was unsure whether he had returned the phone to her, but later testified that she was not in possession of her phone when she blocked defendant's exit. Gayles testified that she believed that defendant "just wanted to leave." She testified that defendant moved her out of his way and proceeded to exit the premises. Gayles did not recall whether

defendant had asked her to step aside before he pushed her out of the way so he could exit. She testified that, as a result of defendant's actions, she struck a nearby closet door, causing its roller to be dislodged from the track. Gayles admitted that defendant did not push her hard and that she was not physically injured by his actions. She testified that defendant, thereafter, exited her apartment without further incident.

¶ 8 Gayles identified People's exhibit #1 as a recording of her 911 call from the evening of the incident. The recording contains three voices, identified by Gayles: her own voice, the emergency dispatcher's, and defendant's. Over objection, the trial court admitted the 911 recording into evidence. On the tape, Gayles requests help at apartment number 22. When the dispatcher asks Gayles who she is arguing with, Gayles responds, "my child's father." Gayles' voice is heard telling defendant to "leave my key." The dispatcher asks Gayles for defendant's name. As Gayles begins to spell defendant's last name, defendant can be heard saying "you better not be on no phone," and the line goes dead. The emergency dispatcher attempts to call the number back; the phone rings twice before Gayles' voicemail picks up.

¶ 9 The parties stipulated that Officer Brown of the DeKalb police department would have testified that on March 27, 2009, he responded to the dispatch triggered by Gayles' 911 call. According to the stipulation, Brown spoke with Gayles, who was not injured. He observed that Gayles' closet door was off its hinges. The State rested.

¶ 10 Defendant testified on his own behalf. Defendant testified that on March 27, 2009, he went to Gayles' apartment to visit his newborn son. Defendant testified that he was holding the child in his left arm when Gayles attempted to grab the child. According to defendant, "off instinct" he pushed Gayles away with his right arm. Defendant testified that he "didn't want any confrontation

or anything." He denied using greater force than was necessary to prevent Gayles from beginning a physical altercation.

¶ 11 Defendant testified that Gayles did not call 911 after he pushed her, but instead made the call while she was attempting to take the child from his arms. Defendant further testified that Gayles then informed him that she did not want him to take the child with him and that she was calling the police. Defendant denied that he took the phone from Gayles. He testified that he believed that Gayles may have dropped the phone when he pushed her away as she tried to take the child. According to defendant, he responded by putting the baby down and attempting to leave Gayles' apartment. He testified that Gayles attempted to prevent his departure by blocking the exit. Defendant testified that he asked Gayles to step aside so he could exit, but she refused to move, so he used one hand to push Gayles aside and proceeded to leave her apartment. As a result of the push, Gayles struck the closet door, disengaging the rollers from the track.

¶ 12 On cross-examination, defendant acknowledged that he did not schedule his visit to Gayles' apartment in advance and did not have court-ordered visitation that day. He stated that Gayles had handed him the child when he arrived at her apartment, but that she subsequently told him that she did not want him to take the baby "to the city." Defendant reiterated that Gayles called 911 before he pushed her hands away as she grabbed for the baby. Defendant denied that he grabbed the phone from Gayles or that he was responsible for terminating her call. Defendant further admitted that his voice can be heard on the 911 recording stating, "you better not be on the phone." According to defendant, he was not upset that she was on the phone, but rather that he was "confused" as to whether Gayles was actually calling police, because, on prior occasions, she had claimed to be

calling police when no call was actually underway. Defendant denied having a key to Gayles' apartment.

¶ 13 The defense rested. During closing argument, the State asserted that defendant's act of pushing Gayles aside when attempting to exit her apartment constituted the "insulting and provoking" contact necessary to convict him of domestic battery.

¶ 14 After listening to closing arguments, the trial court found defendant guilty of unlawful interference with the reporting of an act of domestic violence but not guilty of domestic battery. In acquitting defendant of domestic battery, the trial court found that the evidence concerning the incident was insufficient to sustain the charge. According to the trial court, the push that defendant employed to move Gayles away from the exit "was not contact of a significant nature." The trial court continued, "[I]t certainly caused no injury and it was a by-product of his trying to leave, so I can't find that as a basis for domestic battery."

¶ 15 Regarding the charge of unlawful interference with the reporting of an act of domestic violence, the trial court stated:

¶ 16 "Here's the way I see it happened. We have a mother with a very young child and the father would like to take the child into Chicago. Somehow it doesn't surprise me that a mother of a one or two-month-old child is not going to say, 'Oh, okay, here you go, first-time dad. You take the child into Chicago.'

¶ 17 I would imagine if I had told my wife when my daughter was a month old I'm taking the child anywhere she would have had some issues with that but certainly taking the child into Chicago, so I would understand why she would be concerned, why she would be upset, not so much as at him, but, rather, [out of] concern for the safety of the child, and I don't

> think it takes a genius to figure out that any mother with a newborn child has a difficult time dealing with the separation from that child. Whether or not the father is there doing anything illegal, I mean, obviously there's nothing illegal about him wanting to take the child to Chicago, but that's where we were."

¶ 18 The trial court acknowledged that "there wasn't anything wrong" with defendant holding his child or with Gayles wanting to have the child back. "They had some physical contact not of an aggressive nature." The trial court stated that it did not consider Gayles' act of grabbing for the child or defendant's act of pushing her away as constituting a criminal act.

¶ 19 The trial court further stated:

> "However, we move then to the issue of the reporting of domestic violence. Now, the argument is, well, there is no real domestic violence going on. Well, domestic violence doesn't require a criminal act. Domestic violence deals with abuse as defined in the Domestic Abuse Act which means physical abuse, harassment, and then a variety of other things and harassment is knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances, would cause a reasonable person emotional distress and does cause emotional distress to the victim."

¶ 20 The trial court found that the evidence established that Gayles felt distressed. Regarding defendant's harassment of Gayles, the trial court stated, "And was it necessary for him to say, 'Okay, I'm going to take the child into Chicago at that age? No, that's not the way you do things, especially where the parties aren't married, that young."

¶ 21 The trial court continued:

> "You know, I can't say anybody is going to say, 'Okay, take the child into Chicago and I'm not going to know what's going to happen to the child.' Do I think he then should have said, 'Oh, I'm going to take the child anyway?' No. Did he have a legal right to do that? Maybe, maybe not, but he shouldn't have and by saying that I think it was harassing conduct, then it gets to, okay, if there's harassing conduct which means there's domestic violence, did he do something to cause the domestic violence not to be reported."

¶ 22 The trial court then acknowledged "this isn't the normal concept of domestic violence. This isn't a slap, this isn't a punch. This is the harassing type, conduct that isn't necessarily a criminal act but still is harassing conduct."

¶ 23 Regarding whether the State had proved interference with the reporting of the act of domestic abuse, the trial court found that it "certainly sounds as if something like that occurred when you listen to the tape." Additionally, the trial court stated that a "fair reading" of Gayles' testimony is that:

> "She was on the phone and that he took the phone to see if, in fact, she was calling the police, and that to me is consistent with what is heard on the tape, that being that she was telling the 911 person what was going on and all of a sudden nothing and its consistent with her testimony that he took [the phone] and obviously there wasn't a completion of that report."

¶ 24 The trial court immediately sentenced defendant to 18 months' conditional discharge and, after Gayles stated that no child support or visitation orders existed, the trial court ordered defendant to pay child support as a condition of the discharge.

¶ 25 On February 11, 2010, defendant filed a post-trial motion challenging the sufficiency of the evidence and asking the court to reconsider the amount of child support ordered. On May 7, 2010,

the trial court held a hearing on defendant's post-trial motion. The trial court concluded the May 7, 2010, hearing by taking the post-trial motion under advisement.

¶ 26 On July 23, 2010, the trial court denied the post-trial motion insofar as it challenged the sufficiency of the evidence. According to the trial court, defendant harassed Gayles when he was "insistent" in expressing his intent "to take this kid." Defendant's attitude of "I'm taking this kid into Chicago and I don't care what you want" amounted to "harassment of some sort."

¶ 27 The trial court granted defendant's request to conduct a new hearing on the child support issue. On October 13, 2010, following an evidentiary hearing, the trial court reduced defendant's child support obligation. Defendant timely appeals the July 23, 2010, order partially denying the post-trial motion and the October 13, 2010, order regarding the amount of his child support obligation.

¶ 28 Defendant contends that he was not proved guilty of unlawful interference with the reporting of an act of domestic violence beyond a reasonable doubt. The State responds that the evidence was sufficient to find defendant guilty. Although defendant's brief states that he is also appealing the October 13, 2010, order regarding the amount of his child support obligation, the issue is not mentioned again by either party and defendant puts forth no argument regarding the issue.

¶ 29 When a court reviews the sufficiency of the evidence, the relevant question is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979); *People v. Cunningham,* 212 Ill. 2d 274, 278-79 (2004). It is the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from those facts; a reviewing

court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25 (2009).

¶ 30 In the present matter, the pertinent question is whether the trial court correctly found that defendant's statement to Gayles that he wanted to take their son to Chicago on the night of the incident amounted to the type of harassment that constitutes domestic violence under the statute. To prove the charged offense, the State must show beyond a reasonable doubt that the defendant (1) committed an act of domestic violence, and (2) prevented or attempted to prevent another from either calling 911, obtaining medical assistance, or making a report to any law enforcement official. 720 ILCS 5/12-6.3(a) (West 2008). For the purposes of this offense, "domestic violence" is defined by reference to section 5/112A-3 of the Code of Criminal Procedure. 720 ILCS 5/12-6.3(b0 (West 2008).

¶ 31 Section 5.112A-3 defines "domestic violence" as "abuse" that includes "harassment." 725 ILCS 5/112A-3(1) and (2) (West 2008). "Harassment" means "knowing conduct which is not necessary to accomplish a purpose which is reasonable under the circumstances, would cause a reasonable person emotional distress, and does cause the victim emotional distress. 725 ILCS 5/112A-3(4) (West 2008).

¶ 32 Here, the trial court found that Gayles called 911 to report an act of domestic violence, that defendant interfered with her report by taking the phone from her and terminating the call, and that the predicate act of domestic violence was defendant's statement to Gayles that he wanted to take their child to Chicago. Defendant argues that informing Gayles that he wanted to take the child to Chicago did not constitute domestic violence.

¶ 33 Defendant takes issue with the trial court's conclusion that his conduct amounted to "harassment of some sort." Defendant asserts that the trial court's findings on that issue lacked evidentiary support. Specifically, defendant points out that there was no evidence that he kept the the child from Gayles, that he was insistent on taking the child to Chicago despite Gayles' objections, or that he did not care about what Gayles wanted. To the contrary, defendant argues that the evidence adduced at trial showed that after he informed Gayles that he wished to take their child to Chicago, Gayles became upset. In response, defendant put the baby down and left Gayles' apartment without the child.

¶ 34 A guilty verdict may be supported not only by the evidence itself, but also by any reasonable inference that may be drawn from the evidence. Cunningham, 212 Ill. 2d at 279-80. A reviewing court, however, is not absolutely bound by a trier of fact's findings, and its ultimate duty is to evaluate for itself the reasonableness of a guilty verdict. Cunningham, 212 Ill. 2d at 280. Here, defendant argues that the trial court had no reasonable basis for its inferences and that its description of defendant's conduct was mere speculation.

¶ 35 The State responds that defendant's announcement that he intended to take his one-month-old child from its mother and into Chicago was not necessary or reasonable, would cause any reasonable new mother distress, and did, in fact, cause Gayles distress. In support, the State argues that the presumption of harassment in civil order protection proceedings is instructive. In civil order protection proceedings, a presumption of harassment exists for certain types of conduct including circumstances where the respondent is "improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or

making a single such threat following an actual or attempted improper removal or concealment." 725 ILCS 5/112-A3(4)(v) (West 2008). Moreover, according to both the trial court and the State, the listed examples of presumptive harassment are not all inclusive. See People v. Reynolds, 302 Ill. App. 3d 722, 726 (1999). The State concedes that the presumption does not apply here, but argues that it is nonetheless illustrative of the conduct which the General Assembly sought to prohibit under its definition of harassment. Thus, the State argues that defendant's conduct constituted harassment. The State argues that any reasonable trier of fact could have found the essential elements of the offense beyond a reasonable doubt.

¶ 36 Both parties admit that no case law exists addressing the unlawful interference statute. Defendant cites numerous cases to illustrate what constitutes harassment: People v. Taylor, 349 Ill. App. 3d 839 (2004) (This court reversed a conviction for telephone harassment where the defendant called the victim numerous times and used profanity); People v. Spencer, 314 Ill. App. 3d 206 (2000) (We held that the case presented "none of the usual indicia of harassment" where the defendant called a former girlfriend but she hung up on him after he asked if he could speak with her); People v. Wett, 308 Ill. App. 3d 729 (1999) (We rejected the defendant's challenge to the sufficiency of the evidence for harassment where the defendant had an order of protection against him and repeatedly called his ex-wife and screamed profanities); People v. Karich, 293 Ill. App. 3d 135 (1997) (We reversed the defendant's conviction for telephone harassment where the defendant called his ex-wife 6 to 12 times in a 30 minute period and berated her; this court found that the State failed to prove a necessary element of harassment, namely that the calls were made for an unreasonable purpose). The State counters that each of defendant's cited cases "lack impact and invites distinction."

¶ 37 We disagree with several aspects of the trial court's holding. First, there is insufficient evidence that defendant was responsible for the termination of the 911 call, as the trial court determined. According to Gayles, defendant grabbed the phone, but she does not recall what defendant did with the phone after grabbing it. According to defendant, Gayles dropped the phone. The 911 recording evidences that a conversation with the dispatcher ensued before the line went dead, although Gayles could not recall whether she spoke with a dispatcher on the evening in question. Nothing in the record reflects that defendant terminated the 911 call. To the contrary, both Gayles and defendant testified that defendant was confused as to whether Gayles was on the phone with the police and that defendant was attempting to verify that Gayles had actually called the police when the line went dead. Thus, we determine that there is insufficient evidence that defendant was responsible for terminating the 911 call.

¶ 38 We also agree with defendant that his conduct of informing Gayles that he intended to take their child into "the city" did not constitute harassment. In the present matter, the evidence reflects that defendant informed Gayles that he intended to take their child to Chicago. As the child was his own and no court-ordered custody or visitation order existed, defendant was legally within his rights, even if a trip to Chicago from DeKalb with a one-month old child at 8:30 P.M. is generally a bad idea. Gayles became upset and told defendant that she did not want him to take the child at this time. There is no evidence that defendant repeated his request, refused to release the child, or took the child against Gayles' will. The record reflects that defendant reacted to Gayles' protest by putting the child down in Gayles' apartment and attempting to leave without the child.

¶ 39 Defendant's action of voicing his desire to take his own child to Chicago, without more, does not constitute harassment. Even if we assume that defendant's actions caused Gayles to become

distressed, that Gayles called 911 to report the incident, and that defendant's actions caused the call to be terminated, there is insufficient evidence that his conduct of stating that he intended to take the child into the city constituted an act domestic violence, namely, harassment as defined by statute. See 725 ILCS 5/112A-3(4) (West 2008). Thus, we determine that there is insufficient evidence that defendant harassed Gayles.

¶ 40 Moreover, we take issue with the conclusion that the State proved that defendant engaged in knowing conduct that caused Gayles' distress. See 725 ILCS 5/112A-3(4) (West 2008) ("Harassment" means "knowing conduct which is not necessary to accomplish a purpose which is reasonable under the circumstances, would cause a reasonable person emotional distress, and does cause the victim emotional distress). In the current matter, the evidence reflects that defendant wished to take their son into the city. Defendant testified that he "didn't want any confrontation or anything," and both Gayles and defendant testified that before defendant made the statement, Gayles had willingly offered him the child to hold. The evidence supports that defendant did not expect nor did he intend Gayles' reaction. Indeed, when defendant realized that his conduct had distressed Gayles, he abandoned his plans to take the child to the city, put the child down, and sought to exit Gayles' apartment. We contrast this situation with other harassing conduct where a defendant's actions are designed to knowingly distress the victim. e.g. People v. Wett, 308 Ill. App. 3d 729 (1999) (This court rejects the defendant's challenge to the sufficiency of the evidence for harassment where the defendant had an order of protection against him and repeatedly called his ex-wife for no purpose other than to scream profanities at her). Case law supports that to fit within the definition of harassment, a defendant's conduct must be done for "no other purpose than to harass or annoy." See People v. Cardamone; 232 Ill. 2d 504, 510 (2009) Here, defendant's purpose was not to harass

or annoy Gayles. By all accounts, the purpose of his statement was to inform Gayles that he wished to take their son into Chicago for the evening. Although it may be true that Gayles became upset and that her distress may have been justified, there is insufficient evidence that defendant engaged in knowing conduct to harass Gayles.

¶ 41 Furthermore, this court will not establish precedent that a parent's statement of his or her plans for his or her child constitutes harassment simply because the other parent disagrees with those plans. Open communicate between parents regarding any plans for a shared child should be encouraged. An affirmative holding by this court would not foster open communication. Instead, such a holding would encourage parents to be secretive regarding a parent's plans for a child, as being forthcoming with the other parent could result in a harassment charge.

¶ 42 In the current matter, there is insufficient evidence that defendant terminated the 911 call. Moreover, the occurrence of an act of domestic violence is an element of the charged offense, and domestic violence in the form of harassment was not present in this case. Thus, defendant's conviction cannot stand. People v. Wright, 218 Ill. App. 3d 764, 776 (1991) (Due Process Clause demands that the State prove every element of the crime). Here, no reasonable trier of fact could have found all of the essential elements of the crime.

¶ 43 For the forgoing reasons, we reverse the judgment of the circuit court of DeKalb County.

¶ 44 Reversed.