

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Stephenson County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CM-881
	)	
KELLY BEMAN,	)	Honorable
	)	James M. Hauser,
Defendant-Appellant.	)	Judge, Presiding.

---

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices McLaren and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in convicting defendant of domestic battery: although the court stated, questionably, that defendant was guilty even if, per the victim's testimony, defendant did not touch her, the court did not actually credit that testimony; instead, as it made clear on the posttrial motions, the court credited the victim's recorded statement, which supported the conviction.

¶ 2 Following a bench trial, defendant, Kelly Beman, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)). At trial, the victim, Amber H., who was defendant's live-in girlfriend, testified that she was injured when she backed away from defendant, tripped over a large rubber tote, and fell into a window. In her recorded statement, which was admitted at trial,

Amber described how defendant grabbed her and threw her through a window. In finding defendant guilty, the trial court stated that defendant was guilty even if he “didn’t lay a hand on [Amber].” Defendant filed several posttrial motions, claiming, among other things, that the court questioned whether defendant made physical contact with Amber. The court denied the motions and stated that it “believe[d] that what [Amber] testified to on that [recorded] statement is what happened.” On appeal, defendant argues that (1) the court erred in finding him guilty, as the court found that the State failed to prove that defendant made physical contact with Amber; (2) it is irrelevant that, in denying defendant’s posttrial motions, the court stated that it believed Amber’s recorded statement; and (3) his conviction should be reversed outright, as the court’s mistaken belief regarding the evidence amounted to an acquittal and precludes another prosecution for the same offense. We affirm.

¶ 3 At trial, Amber testified that, on October 9, 2013, she and defendant got into an argument after Amber learned that another woman was calling and texting defendant. Amber left the home she shared with defendant and returned the next day to move her belongings out.

¶ 4 On October 10, 2013, as Amber was moving her things out of the house and the couple continued to argue, defendant locked the door leading from the kitchen to the closed-in porch, which was about two to six feet wide. Amber, who at that point was in the closed-in porch, began pounding on the window of the door leading into the kitchen, because she needed to get some things for work. After about 30 seconds or 1 minute, defendant opened the door and yelled at Amber, telling her that she was going to break the door. Defendant then began moving toward Amber as Amber was yelling at defendant about needing her work things. Amber testified that she got “scared,” backed up, and fell into a window that was behind her after she tripped over a “decent-[sized]” Rubbermaid tote. As she was falling through the window, defendant grabbed

her and pulled her up so that she would not fall out of the window. From the fall, Amber sustained lacerations to her arm, back, and head, and she testified that she was bleeding very badly. Amber made clear during her testimony that defendant never physically touched her before she fell.

¶ 5 An ambulance arrived, and Amber was taken to the hospital. She spoke to a police officer or emergency medical technician (EMT) during the ambulance ride, and she spoke to Officer Chris Shenberger at the hospital.<sup>1</sup> Officer Shenberger recorded the statement Amber gave him, which differed from Amber's testimony at trial. In her recorded statement, the contents of which Amber claimed at trial she could not really recall, Amber described how defendant grabbed her by the wrists, threw her out of the house, opened the door after Amber began banging on it, and then grabbed Amber by the neck and threw her out of the window.<sup>2</sup>

¶ 6 Amber admitted that her trial testimony differed from what she told Officer Shenberger, but she contended that her trial testimony reflected what really happened. Amber claimed that she lied to Officer Shenberger, because she was jealous and angry at defendant. Moreover, Amber testified that she lied because the EMT or officer in the ambulance told her that, if she claimed that defendant attacked her, she and her children would not be homeless, as they could go to a domestic-violence shelter. On October 11, 2013, a woman from a local domestic-violence shelter told Amber what to say so that she could get help from the shelter. Amber also

---

<sup>1</sup> Officer Shenberger testified that Amber must have spoken to an EMT in the ambulance, as no officer rode with her.

<sup>2</sup> At the hospital, Officer Shenberger noticed no bruising or redness to Amber's arm, neck, or wrists.

stated that, now, she is not scared of defendant, she and defendant are friends, and defendant “help[s her] out” occasionally.

¶ 7 The trial court found defendant guilty. In doing so, the court made the following statement:

“There’s clearly bodily harm in this case, as evidenced by the exhibits, some cuts, severe cuts to [Amber] shown in Exhibits 10, 11, 12, 13 and 14.

The issue then becomes whether you without legal justification by any means caused that bodily harm. These cases are always very difficult where we have a recorded statement that’s provided by somebody shortly after an event, and then we have the same person coming to court and testifying contrary to what’s in that recorded statement. If everything in the recorded statement is true, clearly you’re guilty. That’s the evidence I have here.

The question that I’m struggling with right now is is the evidence that—even without that recorded statement that the Court has in front of it right now sufficient for me to find by proof beyond a reasonable doubt that you without legal justification by any means caused this bodily harm?

And although [Amber] minimizes all of this and states that you didn’t touch her, you didn’t push her except when you were trying to pull her back in the window after she had somehow fallen through the window, breaking the window, sustaining all of her injuries, she explains it that she was backing up and tripped over a recycling bin or a Rubbermaid tote, which I will note that that tote is shown in State’s Exhibit No. 3 right by the window that was broken. What was telling to me initially in the testimony by [Amber] was that she said that you guys were arguing and you wouldn’t let her back in

the house to get her things and she was pounding on the window. She said you guys were both mad. She says she was mad and you were mad. And she's pounding on the glass window of that back door that's locked, and then you opened the door and she said then you started to come toward her and approach her. And she said at least twice that 'I was scared.'

And she then was backing up, and from her being scared and then backing up, because I think she said, 'I didn't know what he was going to do,' she fell through that window. And I think that regardless of which version is the truth here, the evidence I have in front of me, which is [Amber's] testimony and [the recorded statement], maybe you didn't lay a hand on her, but I think under the statute you without legal justification caused these injuries to [Amber], and I believe the State has proven you guilty of that fact by proof beyond a reasonable doubt and I find you guilty of the offense."

¶ 8 Thereafter, defendant filed a motion for a new trial, a motion to vacate the conviction, and a motion to reconsider. In these motions, defendant argued that he was not proved guilty beyond a reasonable doubt. Moreover, in a different context, defendant noted the court's supposition that " 'maybe [defendant] didn't lay a hand on [Amber].' "

¶ 9 Following a hearing, the court denied the motions. In doing so, the court stated:

"I did sit down and obtain a copy of the transcript and I did review that. I also was able to review or re-listen to the recorded statement that was admitted in this case, and I think that was Exhibit No. 1. I'm not entirely certain, but it was the recorded statement of, I believe, [Amber], and I believe that that was properly admitted. I believe that what she testified to on that statement is what happened.

I believe that is sufficient proof beyond a reasonable doubt, [defendant], to prove you guilty of this offense. The failure to raise your defenses, such as self defense, defense of property or defense of dwelling, I agree with the State that that was more than likely a trial strategy decision that you and your attorney made. So your motion for a new trial, your motion to set aside the verdict and vacate the conviction, your motion to reconsider the ruling, those are all denied.”

State, are you ready to proceed to sentencing?”

¶ 10 This timely appeal followed.

¶ 11 Essentially, at issue in this appeal is whether the trial court erred in finding defendant guilty even if defendant never laid a hand on Amber. In addressing that issue, we begin by observing that, to prove defendant guilty of domestic battery, the State needed to show that a battery occurred and that defendant and Amber had a domestic relationship. Specifically, as relevant here, the State needed to establish that defendant knowingly and without legal justification and by any means caused bodily harm to any family or household member. 720 ILCS 5/12-3(a)(1) (West 2012) (battery); 720 ILCS 5/12-3.2(a)(1) (West 2012) (domestic battery); see also *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). Although perhaps not explicit in the language of the statute, domestic battery requires proof of some type of physical contact between the defendant and the victim. See *People v. Abrams*, 48 Ill. 2d 446, 459-60 (1971) (in discussing difference between assault and battery, court noted, “[i]f there has been any touching or other form of physical contact with the victim, a battery has been committed”); see also *People v. Grieco*, 44 Ill. 2d 407, 411 (1970) (defining battery as “the wilful touching of the person of another by the aggressor, or some substance put in motion by him”).

¶ 12 Here, the parties do not dispute that Amber and defendant had a domestic relationship, as the evidence revealed that Amber was defendant's live-in girlfriend when the incident occurred. Rather, the dispute here centers around whether the trial court found defendant guilty of domestic battery in the absence of physical contact. Such an issue requires us to examine the court's ruling and determine whether the court properly applied the law. Because the resolution of that issue does not require us to defer to the court's reasoning, our review is *de novo*. See *People v. McCreary*, 393 Ill. App. 3d 402, 406 (2009).

¶ 13 Due process mandates that a defendant be proved guilty beyond a reasonable doubt of a crime before he is punished. *People v. Virella*, 256 Ill. App. 3d 635, 638 (1993). When a trial court finds that that standard has been met, it is presumed that the court knew the law and properly applied it. *In re N.B.*, 191 Ill. 2d 338, 345 (2000). However, if an examination of the entire record contains strong affirmative evidence that the trial court misapplied the law, that presumption is rebutted. *Virella*, 256 Ill. App. 3d at 638-39 (looking at statements the trial court made in finding the defendant guilty and following the hearing on the posttrial motions to conclude that the court misapplied the law, as those statements explained the reasons why the court found the defendant guilty); see also *People v. Howery*, 178 Ill. 2d 1, 32 (1997) (presumption rebutted if record contains *strong* affirmative evidence that court misapplied the law).

¶ 14 Here, a review of the entire record reveals that the court did not misapply the law. In finding defendant guilty, the court first noted that “[i]f everything in the recorded statement is true, clearly[, defendant,] you’re guilty.” However, the court went on to address whether defendant was guilty “even without that recorded statement.” The court then ruled that, “regardless of which version is the truth here”—*i.e.*, even if Amber testified truthfully that

defendant “didn’t lay a hand on her”—defendant was guilty. This conclusion indeed was questionable; but crucially, the court did not actually credit Amber’s testimony. Thus, the court did not actually find that defendant “didn’t lay a hand on her.”

¶ 15 And, at the hearing on the posttrial motions, the court made clear that it “believed that what [Amber] testified to on the [recorded] statement is what happened.” The court then added that “that [recorded statement] is sufficient \*\*\* to prove [defendant] guilty of this offense.” These comments establish that the court credited Amber’s recorded statement and found that defendant threw her out the window. As this finding supported defendant’s conviction, the court did not misapply the law.

¶ 16 Defendant analogizes this case to *In re Vuk R.*, 2013 IL App (1st) 132506. There, at trial, the court found the respondent guilty of aggravated battery but did not make any findings of fact. However, at sentencing, the court commented on the credibility of the witnesses at trial. Specifically, the court asserted, “ ‘on both the government’s case and the defense case, every one of those witnesses lied.’ ” (Emphasis omitted.) *Id.* ¶ 6. Given that and similar comments, the reviewing court determined that the State failed to prove the respondent guilty beyond a reasonable doubt.

¶ 17 Here, however, the court’s finding of fact supported, rather than undermined, its conclusion that the State proved defendant guilty beyond a reasonable doubt. That is, at the hearing on the posttrial motions, the court specifically credited Amber’s recorded statement over her testimony. Further, as noted, this finding did not contradict any previous finding. Accordingly, unlike in *Vuk R.*, an examination of the entire record does not affirmatively establish that the court here misapplied the law.

¶ 18 In arguing that we should discount the court's comments on the posttrial motions, defendant relies on *People v. LePretre*, 196 Ill. App. 3d 111 (1990), and *People v. Hendricks*, 145 Ill. App. 3d 71 (1986), *rev'd on other grounds*, 137 Ill. 2d 31 (1990). In both cases, however, the comments at issue were made "in the context of sentencing and were not a comment on the sufficiency of the evidence." *LePretre*, 196 Ill. App. 3d at 126 (citing *Hendricks*, 145 Ill. App. 3d at 103). Here, however, the court's comments came not at sentencing but on the posttrial motions, which raised the precise issue of the sufficiency of the evidence. Thus, in deciding whether the court misapplied the law, our review of the entire record properly extends to the hearing on the posttrial motions. See *Virella*, 256 Ill. App. 3d at 638-39; see also *People v. Weston*, 271 Ill. App. 3d 604, 616 (1995) (in considering whether trial court applied incorrect burden of proof, court noted that "[t]he decision of the circuit court will not be reversed based on an isolated statement").

¶ 19 Because we conclude that the trial court did not misapply the law, we do not consider defendant's claim that his conviction must be vacated outright because the trial court's allegedly improper finding amounted to an acquittal.

¶ 20 For these reasons, the judgment of the circuit court of Stephenson County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 21 Affirmed.