2016 IL App (2d) 141105-U
No. 2-14-1105
Order filed December 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. VICTOR TORRES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kendall County. No. 14-CM-181 Honorable Steven L. Krentz, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of domestic battery, specifically that defendant and the victim were in a dating relationship such that the victim was a "family or household member": defendant stayed at the victim's apartment regularly over a period of months, and both the victim and a third party referred to defendant as the victim's boyfriend.

¶ 2 Defendant, Victor Torres, appeals his conviction of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)). He contends that the evidence was insufficient to prove beyond a reasonable doubt that the victim was a "family or household member" for purposes of section 3.2(a)(2) of the Criminal Code of 2012 (Code) (*id.*). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with domestic battery in connection with a March 12, 2014, incident in which he allegedly hit the victim, Danielle O., in the face with his hands. In July 2014, a bench trial was held. Neither defendant nor Danielle testified.

¶ 5 Danielle's neighbor, Tammy Hoffman, testified that her apartment was next to Danielle's apartment. She had known Danielle for about six months. When initially asked how frequently she would see defendant at Danielle's apartment, Hoffman answered: "[t]hey were together." She said that defendant did not live at the apartment, but he stayed there. When asked if she knew what the relationship was between the two, Hoffman answered: "She's his boyfriend [*sic*]." An objection was overruled. Hoffman had seen defendant at Danielle's apartment over 50 times in six months, mostly on the weekends. Hoffman never saw them act affectionately.

¶ 6 On March 12, 2014, Hoffman saw Danielle and defendant enter Danielle's apartment at around 4 or 5 p.m. Hoffman's apartment shared a wall with Danielle's apartment and, at around 8:30 p.m., she heard screaming, crying, and yelling coming from Danielle's apartment. Hoffman recognized the voices and heard Danielle say "help" and "leave." She heard defendant say "[g]o ahead and scream, nobody is gonna help you." The screaming and shouting continued for 25 minutes before Hoffman called 911. Hoffman then stepped outside to smoke a cigarette and called over a neighbor, David Benefiel.

¶ 7 Benefiel was outside smoking a cigarette when Hoffman called him over. He could hear noises coming from Danielle's apartment. He had seen Danielle and defendant at Danielle's apartment in the past. He recognized Danielle's voice and heard her say "[g]et off me" and "[p]lease stop hitting me." When the police arrived, Danielle came to the door, and Benefiel and Hoffman could see that she was crying and had a bloody lip.

¶ 8 Kendall County sheriff's deputy Robert Lechowicz was dispatched to the scene. He could hear screaming and arguing from inside of Danielle's apartment. When Danielle opened the door, she seemed out of breath. She had cuts underneath her left eye and by her nose, her mouth was bleeding, and she had a swollen lip. She denied that anything had happened and said that her boyfriend had left the apartment before Lechowicz arrived. There was no objection to Lechowicz's testimony about Danielle referring to her boyfriend.

¶ 9 Lechowicz found defendant hiding in a bedroom closet. Defendant provided vague answers to questions and said that he and Danielle were arguing about his cell phone and that she was injured by biting it. A cell phone with a cracked screen was found at the scene. Danielle did not allow Lechowicz to take photos of her injuries.

¶ 10 The trial court found defendant guilty. The court found that Danielle was a household member for purposes of the Act because she had a dating relationship with defendant. The court credited Hoffman's testimony that defendant stayed at Danielle's apartment and had been seen there at least 50 times over six months. The court placed little weight on Lechowicz's testimony that Danielle referred to defendant as her boyfriend, stating, "I'm not gonna find that's sufficiently admissible or reliable for me to rely on as conclusive of their relationship."

¶ 11 Defendant moved for a new trial, arguing that the evidence was insufficient to prove the existence of a dating relationship. The court denied the motion, stating that it found that there was a dating relationship based on the credibility of the witnesses, the frequency of contact, and Danielle's reference to defendant as her boyfriend. Defendant was sentenced to 60 days in jail and ordered to pay $500 in fines and costs, including a $210 domestic violence fine. He appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that he was in a dating relationship with Danielle such that she could be considered a family or household member under the Code.

¶ 14 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to 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.' " (Emphasis in original.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 15 A person commits domestic battery when he or she knowingly, without legal justification, makes physical contact of an insulting or provoking nature with any family or household member. 720 ILCS 5/12-3.2(a)(2) (West 2014). A family or household member includes persons who have a dating or engagement relationship. 725 ILCS 5/112A-3(3) (West 2014). Neither a casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a dating relationship. *Id*.

¶ 16 There is no express definition of a "dating relationship." However, we have interpreted a "dating relationship" to be a "serious courtship." *Alison C. v. Westcott*, 343 Ill. App. 3d 648, 653 (2003). "[S]erious courtship" has been further interpreted to mean "an established relationship with a significant romantic focus." *People v. Young*, 362 Ill. App. 3d 843, 851 (2005). A relationship that is brief and nonexclusive, consisting of only one date, is not a "dating

relationship." See *Alison C.*, 343 Ill. App. 3d at 653. But a relationship lasting for more than a month, during which time the participants consider themselves boyfriend and girlfriend and engage in sexual relations, constitutes a "dating relationship." *People v. Irvine*, 379 Ill. App. 3d 116, 123 (2008).

¶ 17 In *Alison C.*, the plaintiff petitioned for an order of protection, and the defendant moved to dismiss, arguing in part that the parties were not involved in a "dating relationship." There, the parties attended the same high school. The defendant telephoned the plaintiff and invited her to lunch, and the plaintiff agreed. The parties left the school grounds and, after driving around for about 10 minutes, the defendant drove to a deserted parking lot and sexually abused the plaintiff. The trial court denied the defendant's motion to dismiss, and the defendant appealed. We reversed, finding that the parties were not engaged in a "dating relationship" because they had spoken on the phone only one time and went on only a single lunch date. Thus, their relationship was "brief and not exclusive." *Alison C.*, 343 Ill. App. 3d at 653.

¶ 18 In *Young*, the defendant appealed from his conviction of two counts of domestic battery, arguing that the State failed to prove beyond a reasonable doubt that the victim was a family or household member. The victim had met the defendant at a homeless shelter and testified that their relationship was social in that they went out for a beer and watched a football game. They had spent the night at the same homeless shelter on the evening before the incident leading to the defendant's arrest. The evening of the incident, the defendant attacked the victim and tried to kiss her. On appeal, we held that the evidence failed to establish that the two were in a dating relationship. We noted that the only direct evidence of "romantically oriented behavior" was limited to the defendant's attempt to kiss the victim and that any inference that their relationship had been consummated because they spent the night together was negated by the fact that it was

at a homeless shelter. *Young*, 362 Ill. App. 3d at 852. We also emphasized the victim's choice of the word " 'social' " to describe the relationship as direct evidence of an absence of a romantic focus. *Id.*

¶ 19 In contrast, in *Irvine*, the defendant was convicted of domestic battery. The victim testified that she and the defendant were ex-girlfriend and ex-boyfriend, their relationship lasted about six weeks, and they had had a sexual relationship. The First District affirmed the conviction, holding that the relationship qualified as a serious courtship. The court found *Alison C.* and *Young* distinguishable, noting that *Young* involved a social relationship instead of a dating relationship and that, in *Alison C.*, the parties went on one date. *Irvine*, 379 Ill. App. 3d at 125.

¶ 20 Here, there was sufficient evidence for the court to find beyond a reasonable doubt that defendant and Danielle were in a dating relationship. Unlike in *Alison C.* and *Young*, where the evidence showed brief or purely social encounters, here there was evidence that defendant was seen at Danielle's home at least 50 times over six months, and a neutral witness viewed him as Danielle's boyfriend. Although the court did not deem "conclusive" the evidence that Danielle referred to defendant as her boyfriend when speaking to Lechowicz, there was no objection to that evidence, and it was further evidence of a dating relationship. Based on the circumstantial evidence, the court could reasonably conclude that defendant and Danielle were in a dating relationship. Hence, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that Danielle was a family or household member for purposes of the Code.

¶ 21 III. CONCLUSION

¶ 22 The judgment of the circuit court of Kendall 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).

¶ 23 Affirmed.