

2021 IL App (2d) 181050-U
No. 2-18-1050
Order filed September 20, 2021

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent 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 Kendall County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 18-CF-18
)	
FRANK R. SZWACZ,)	Honorable
)	Robert P. Pilmer,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of a violation of an order of protection. Therefore, we affirm.

¶ 2 At issue in this appeal is whether the State proved beyond a reasonable doubt that defendant, Frank R. Szwacz, violated the order of protection entered against him on December 6, 2017, in making a phone call to Amanda Szwacz. For the reasons set forth herein, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with one count of violating an order of protection (720 ILCS 5/12-3.4 (West 2016)), alleging that he had been served with notice of an order of protection that was

entered on December 6, 2017, and that he knowingly committed an act in violation of the order of protection in that he made contact with his wife, Amanda. The charge was a Class 4 felony based on his prior conviction for domestic battery. 720 ILCS 5/12-3.4(d) (West 2016). The order of protection ordered that defendant stay away from Amanda and her minor daughter and that he refrain from both physical presence and non-physical contact, including telephone calls. Defendant waived his right to a jury trial.

¶ 5 At the outset of the bench trial, the parties stipulated to People's Exhibit 1, which contained call detail records from Sprint for Amanda's phone number ending in 8987.

¶ 6 The State called Amanda as its only witness, and she testified as follows. She had three children, and she was pregnant with another at the time of trial. Defendant was the father of one of her children. She met defendant in May 2010 through Nathan Salsbery,¹ who was her roommate at the time. She later had a romantic relationship with Salsbery, beginning approximately two and a half years before trial, but they were not in a relationship at the time of trial. She was currently in a relationship with Christopher Laney, who was the father of her other two children.

¶ 7 Amanda married defendant on September 11, 2010. On April 24, 2011, she was living on Beaver Crossing in Oswego with defendant. That day he showed signs that he had been drinking alcohol, and they got into an argument. She moved her two children at the time to the bedroom because defendant was "being a little bit aggressive," and she locked herself in the bedroom with the children. Defendant responded angrily, breaking the door and demanding she move the children someplace else. She then moved the children to the bathroom and locked that door.

¹ The report of proceedings spelled Nathan's surname as Saulsberry, but we deferred to the exhibits including text correspondence that spelled his name as Salsbery.

Defendant broke into the bathroom, whereupon he pushed her into the bathtub. Amanda did not leave that night because she loved defendant and believed they should try to work things out.

¶ 8 On June 6, 2011, Amanda was still living at the same residence with defendant. That day they got into an argument over the telephone about him and another girl. The argument continued when defendant returned home. That night, defendant wanted to have sex, and she said no. He responded by pushing her down and getting on top of her; they struggled, and she broke loose. She retrieved her phone and called 911, but defendant took the phone from her and told her she could not call the police because he would get in trouble. Amanda told him she wanted to leave and take the children to her mother's house, and he let her do so. When she was in her car in the driveway, she started crying, and then she saw police officers in the driveway. She spoke with them and ended up filing a complaint against defendant for domestic battery.

¶ 9 After the June 2011 incident, Amanda did not permanently leave defendant, but she did move out for a time, returning intermittently. She and defendant continued to have arguments and altercations because he did not want her to leave. When she tried to call 911 again, he took her phone and threw it against a dresser. On September 27, 2012, a physical altercation resulted in her hitting her head on a chair inside the bedroom. She had a very large lump on her forehead. Thereafter, she left for her mother's house with some of her belongings. When she returned for the rest of her belongings, she noticed that the belongings were damaged and broken. This resulted in another argument with defendant. She filed a domestic battery complaint against defendant as a result of her head injury, and defendant pled guilty to the complaint in January 2013.

¶ 10 On October 1, 2012, Amanda was living with her mother in Plano. She had asked defendant to watch the children while she attended school, and he watched the children that day. She left school early in response to a call from her mother saying she was uncomfortable with defendant's

treatment of the children. At home, she and defendant got into another argument. They went outside so that the children would not observe them arguing. The argument turned physical, with defendant grabbing her arm and pulling her so that she fell onto the driveway and injured her elbow. Her mother called 911, and defendant fled into the woods. The next morning he “kind of broke into” her mother’s house. The incident resulted in defendant again pleading guilty to a domestic battery complaint.

¶ 11 On May 31, 2014, Amanda was living with defendant at an apartment in Chicago, and defendant did not appear sober. She confronted him about money missing from her wallet, and when he turned to her, she smelled alcohol. She asked if he was going to rehab, and he insisted he was not doing drugs or drinking. She pressed him about rehab, and he became aggressive. Eventually she stated that he either needed to go to rehab or needed to leave, and she left the bedroom where they had been speaking. A suitcase then “came flying *** from the bedroom.” She decided to leave and grabbed her bag. As she headed toward the door, she felt something hit her in the back of the head. She fell down. When she turned around, she saw defendant standing over her holding a wooden chair. Her head was bleeding and she wanted to go to the hospital, but defendant said no because he worried that he would get in trouble if she told them what happened. She offered to make up a story about falling down. As defendant paced back and forth, she sent texts to her mother and a friend to call the cops.

¶ 12 Police and paramedics eventually arrived at the apartment. She left on a gurney and was taken to the hospital. At the hospital, a physician bled her head hematoma because it was “really, really large.” The wound was too large for stitches, so they stapled the wound and applied pressure wrapping. She also had a broken finger. As a result of the incident, defendant was charged with

aggravated domestic battery, and he pled guilty on November 21, 2014. Defendant went to prison as a result, and he was released on May 15, 2017.

¶ 13 During defendant's incarceration, he called Amanda and wrote her letters. The letters were "always reconciliation attempts" to work on their marriage and get back together. She was receptive to the idea of reconciliation, and even after his release from prison, she was making attempts to reconcile with defendant because she loved him and cared about their marriage. He said he was going to change, and she hoped that was true. Since his release, they were communicating via telephone, text message, Snapchat, and other social media including Facebook and Instagram. She had a Facebook account that she had given defendant the password to. He would often post to her account, and he would also message and block people on her account.

¶ 14 By November 1, 2017, however, she had decided her marriage to defendant was over. She contacted divorce attorneys but could not afford a retainer, so she obtained free legal advice and drew up paperwork for the divorce. She spoke to defendant about an agreed divorce, and he "seemed to want to go that route, too." She tried to get defendant to sign the papers, but he did not sign them. On December 1, 2017, she filed for divorce.

¶ 15 In December 2017, defendant had multiple phone numbers that she could use to contact him. They were 773-558-3174 and 773-962-8349 (8349 number), and defendant had used both those numbers to contact her. Prior to December 13, 2017, she had told defendant about recording their phone conversations "at least a dozen" times. She told him she was recording their conversations because of a problem with her boss, but she was really recording them because she was having issues with defendant being aggressive and his interactions with their child.

¶ 16 On December 6, 2017, Amanda was granted an order of protection against defendant, and defendant was served with the order of protection on December 8. On December 9, around 3 a.m.,

Amanda received a phone call while she was sleeping. She woke and answered, but she did not hear anyone on the other end, and so she hung up. Shortly thereafter, she received another call, and once again there was nobody on the other end. Later that morning, she looked at her call log and identified the calling number as defendant's 8349 number. She contacted the police and victim services.

¶ 17 On the morning of December 13, 2017, Amanda was at home when her cell phone rang. The time was about 8:55 a.m. The number calling was defendant's; it was from the same 8349 number he had used to call on December 9. The Sprint phone records showed that the specific calling number was 67773-962-8349. Amanda understood that "*67" made a phone call private or blocked it when used. She said hello, and she recognized the voice that answered as defendant's. Amanda was upset to receive his call; she was "not very nice" on the call. She filed a police report the following day. An app on her phone recorded the call, and her recording of the call was admitted into evidence without objection. She denied making the recording prior to December 13.

¶ 18 Following the phone call, Amanda called the Illinois Department of Corrections (DOC), and the phone records showed an outgoing call from her number to victim services at 877-776-0755, approximately half an hour after the call with defendant. She also called the police department the next day to file a police report, and they asked her to come to the station. When she went in, she talked with a police officer and offered her recording of the phone conversation with defendant. The officer did not take the recording at the time. She eventually sent the recording via email to the State's Attorney's office in late January 2018, and they forwarded it to the Oswego Police Department.

¶ 19 Amanda denied knowing, prior to the charge in this case, what a phone spoofing app was. She also denied using such an app on or before December 13, 2017, and she denied calling defendant from a number disguised as his uncle.

¶ 20 On cross-examination, Amanda testified as follows. She agreed that from May 31, 2014, to October 2017, she was still attempting to reconcile her relationship with defendant. For a period of time subsequent to defendant's release from prison, she had been living with Salsbery. Defendant was aware of her other relationships, and they were still trying to reconcile their relationship even while she was with Salsbery.

¶ 21 Amanda did not know exactly when she changed her Facebook password, but she did it when she wanted to stop talking to defendant, so it was sometime around October or November 2017.

¶ 22 On November 27, 2017, she met defendant at a Subway in Chicago. In the days following that meeting, she became angry because defendant was ignoring her phone calls. She then drove out to see him again a few days later. She denied being intimate with defendant on those days. When she met defendant, she told him that she wanted to reconcile, but she did not actually want to do so. Prior to these meetings, they had talked about a divorce, and she had sent him divorce papers to read and sign. She "really just wanted the papers signed," and sometimes defendant was "more responsive if you're sexual in nature with him." She had tried to "butter him up, essentially." She admitted to making sexual promises in her text messages to defendant and to sending him pornographic photographs. She insisted, however, that her purpose was to get the divorce papers signed.

¶ 23 On November 30, 2017, she drove to see defendant to try to get him to sign the divorce papers. He refused. She denied telling him he would have problems if he refused to sign the papers.

¶ 24 Amanda again denied using a spoofing app on her phone. She also denied using apps to hide her text conversation with defendant from Salsbery. She denied recording a phone call with defendant from September 2, 2017, and playing it for Salsbery. She denied that the phone call recording from December 13, 2017, was an incomplete recording or that she edited the call before sending it to the police.

¶ 25 In response to questions about her decision to seek an order of protection, Amanda responded that defendant had tried to kill her in the past and that he had made vague statements about what he would do if she filed for divorce. She was not “taking any chances with [her] life and [her] three children, which is why [she] filed for the order of protection.”

¶ 26 Following Amanda’s testimony, the parties offered further stipulations for foundation for phone records from T-Mobile, Sprint, and Verizon Wireless.

¶ 27 The defense first called Willis Harris. Harris was a parole agent at the DOC, and in December 2017, he was a parole agent for defendant. He drove to defendant’s residence in Chicago on the morning of December 13, 2017, and he called defendant around 8:40 a.m. Defendant came out to Harris’s car, and he estimated that defendant took 5 minutes to come out to the car. In the car, they reviewed the order of protection against defendant, and Harris notated the order of protection in his computer at 9:01 a.m. After notating the order of protection, they discussed adding a “Rule 15,” which was a blank rule, to his parole to have no contact with Amanda. He completed a document to add the rule, and defendant signed it. Adding the Rule 15 took about four minutes and took place in Harris’s car.

¶ 28 Harris also went through defendant’s history on his computer to see if he had been previously ordered to not have contact with Amanda, which took another six minutes. Then, he had defendant show him text messages from his phone. There were quite a few messages, so it

took approximately seven or eight minutes; he was not sure how long it ultimately took. Harris advised defendant to make copies of everything and save them, and he told him not to have any contact with her. He estimated the entire encounter in the car took 10 to 15 minutes.

¶ 29 On cross-examination, the State questioned Harris about the entry on his computer. Harris confirmed that entries in the computer system automatically logged the time when the reports were entered. Harris would also notate the nature of a documented conversation, with “FTF” meaning he received the information from a face-to-face conversation. The notation he made at 9:01 a.m. on December 13, 2017, did not say FTF. The only computer entry he had for defendant on December 13 that was marked FTF was at 9:33 a.m. He was not sure how much time passed between meeting with defendant and making the 9:33 a.m. computer entry, although he estimated it would have been “[w]ithin an hour, half hour.” He also did not know exactly what time his meeting with defendant on December 13 began. He could not say whether defendant had used his phone before he got in the car with him. He did not know if he was with defendant at 8:55 a.m. on December 13.

¶ 30 Defendant testified as follows. He was released from prison in May 2017, and he described his relationship with Amanda upon his release as “pretty cordial, amicable.” They were intimate, and she drove up to Chicago “constantly” to see him, “[s]o it was very good.” He was aware that she was in a relationship with Salsbery until August 2017. He agreed that prior to prison, he had had substance abuse problems with alcohol, heroin, and cocaine. He had remained sober since his release.

¶ 31 He and Amanda would communicate after his release via text message, Facebook, social media, and telephone. Amanda would text him from her phone number or via a text messaging

app. He believed the benefit of using a text messaging app was that it was easier to delete and erase messages.

¶ 32 Defendant began dating a woman named Olivia in September. Consequently, his relationship with Amanda changed from him trying to be intimate or flirtatious to asking, “when is the next time I see my daughter.” In the beginning of November, he and Amanda got into an argument when he called about visitation. She was acting “erratic,” and he asked her if she was doing drugs. She became angry and hung up. She called his parole officer, and after that, he decided to quit having contact with her.

¶ 33 Amanda tried to contact him beginning on November 27. When she first called, he did not answer but instead texted. The caller ID did not show Amanda but instead showed his uncle’s number. When he asked her why the number displayed was his uncle’s, she answered that it was a spoofing app, which he first learned about that day. They got together shortly thereafter in Chicago, and their meeting was intimate. Afterward, he “expressed to her that [he] officially wanted an absolute divorce,” and she immediately assumed there was another woman. Amanda told him she wanted to work on their relationship and that this was just a minor “hiccup” in their relationship. They met again a few days later, and they had sex in the car. Again, he told her he wanted a divorce, and she became angry with him.

¶ 34 The next day, November 30, she visited defendant and brought divorce papers with her, which she had previously emailed to him but that he had not had a chance to review. He refused to sign them, citing that she wanted him to pay for half of her college education and a portion of her loan debt. He wanted to wait until he could afford an attorney to review the divorce papers. She said that he needed to sign the papers immediately or else it would be an issue and he would regret it. She said she would contact his parole officer and throw him in jail.

¶ 35 On December 13, 2017, defendant was set to meet with Harris in the morning. He contacted Harris first to make sure he was still coming. When Harris arrived, it took defendant approximately five minutes to come down from his apartment to Harris's car. They discussed the order of protection against defendant, which he had been served with on December 8. Harris added a Rule 15 to his parole to have no contact with Amanda. Defendant denied making any calls while in the car with Harris, and he denied calling Amanda at all on December 13. In an effort to show the exact time of his meeting with Harris, defendant had contacted the security office at his building to request security camera footage, but he did not receive it. He believed that he was with Harris at the time of his alleged December 13 call to Amanda. He denied having a spoofing app on his phone or ever using a spoofing app. Defendant consented to the police searching his phones because he "wanted to prove [his] innocence."

¶ 36 Defendant had heard Amanda's recording of their call, and he recognized the conversation as having occurred on September 2, 2017. He knew the call was from September 2 because that was the only day that they argued about a Facebook post. He also stated that in that conversation, they had talked further, specifically that he had asked why she was so upset because she was no longer living with Salsbery but instead with another man whom he had helped her move in with a week or two prior to September 2. He claimed that this part of the conversation was not included in the recording because it was "edited and cut."

¶ 37 The defense next called Patrick Wicyk, who testified as follows. He was a detective with the Oswego police department, and as part of his job, he examined cell phones. He had not had the opportunity to examine defendant's two cell phones. He had received a message from defendant's counsel requesting that he examine the phones, but he declined to do so. He declined because after speaking to the State's Attorney's office, they agreed that the phones submitted may not have been

the phones used by defendant. For one, the phones were turned in months after the crime was committed. It was possible to recover things deleted on phones but not always. He had no idea whether information would have been recoverable from the phones that defendant turned in.

¶ 38 Scott Hart was an officer with the Oswego police department, and he testified as follows. He was on duty on December 14, 2017, and he met with Amanda that morning. They conversed about a phone call she alleged she received from defendant the previous day. He did not believe that she mentioned that she recorded the phone call. Had he been aware that the call was recorded he “probably would have asked to hear the copy of the recording or get a copy of it.” He understood that she wanted defendant arrested. His report did not indicate that he called defendant to ask if he called Amanda, and because it was not in the report, he had to assume he never made such a call to defendant. Hart agreed on cross-examination that he had no independent recollection of his conversation with Amanda from December 14.

¶ 39 Last, the defense called Keith Smith, who testified as follows. Smith was retired but working part time as a teacher at Elgin Community College teaching computer forensics topics such as introduction to cybercrime and introduction to computer forensics. The trial court accepted him as an expert in digital forensics. Smith did not believe that examining defendant’s phones would have been a waste of time. He was familiar with the star 67 phone service, explaining that if someone used star 67 before calling a number, the call recipient would not see the caller’s number on caller ID. Further, he had tried to use star 67 with a spoofing app, and they did not work together; the call would not even complete. Smith did not examine defendant’s phones, and he could not say who, if anyone, in this case used a spoofing app.

¶ 40 The State recalled Amanda, and she testified in rebuttal as follows. Between defendant’s release from prison and December 1, 2017, he never told her wanted a divorce. She denied doing

drugs with defendant at any time. She further denied showing him her phone with a spoofing app, using a spoofing app to make it look like his uncle was calling him, and telling him he would “regret it” if he did not sign the divorce papers.

¶ 41 The trial court orally announced its judgment on October 12, 2018. It was not making any particular judgment on the lifestyles of defendant or Amanda, while they were married or while they were going through the process of dissolution of marriage. With respect to Amanda’s testimony, the trial court had the opportunity to observe her demeanor throughout direct and cross-examination, and it found her to be a credible witness as to the matters she testified to. The trial court also found Wicyk and Hart credible, but it found their testimony “somewhat limited in regards to the issues in this matter and the court [did] not place a great deal of weight” on their testimonies. Addressing Harris’s testimony, the trial court did not believe he intended to mislead the court, but it did not find his testimony as an alibi witness was credible. Rather, it believed he was “effectively impeached on cross examination about what occurred, when it occurred, [and] the specific times that it occurred.” Turning to Smith, it did not believe that he presented any credible evidence that Amanda was the one spoofing. Lastly, the trial court did not find defendant credible.

¶ 42 The trial court found that the State had proved beyond a reasonable doubt that defendant violated the order of protection, in that he knowingly committed an act in violation of the order of protection by calling and speaking with Amanda on December 13, 2017. It did not believe the conversation between them occurred on some other date or that the recording of the conversation was edited or changed. Defendant was sentenced to five years’ imprisonment for his violation of the order of protection.

¶ 43 This timely appeal followed.

¶ 44

II. ANALYSIS

¶ 45 Defendant raises one issue on appeal: the State failed to prove him guilty of a violation of the order of protection beyond a reasonable doubt. He argues that the evidence did not support him making a phone call to Amanda on December 13, 2017. Defendant does not contest that he was validly served with the order of protection that he is accused of violating. He contests only whether he knowingly committed an act prohibited by the order of protection.

¶ 46 In support of his argument that the State failed to prove his guilt beyond a reasonable doubt, defendant cites to several parts of the record. First, he cites to T-Mobile's response to a subpoena for defendant's phone records from November 2017 through December 2017 for his 8349 number, which indicated no calls incoming or outgoing during that period. Next, he argues that the content of Amanda's recording did not support the phone call taking place on December 13, 2017, because in the recording, Amanda expressed anger about his actions on Facebook and not about his violation of the order of protection. He argues further that it was unlikely that Amanda would be putting her energy into being angry over Facebook at a time when she had just filed for divorce and obtained an order of protection against defendant. He continues that his testimony that the phone call took place on September 2, 2017, was more logical, and he testified that date was the only time they argued over Facebook. Defendant contends that Amanda changed her Facebook password prior to December 2017, so that he no longer had access to her Facebook account on December 13.

¶ 47 Defendant also argues that Amanda provided an incomplete recording of their alleged December 13 phone call. He argues that the recording "ends abruptly," suggesting the call contained additional content. He asserts that the missing content would have supported the call taking place in September 2017, because they discussed defendant helping Amanda move out of

her apartment with Salsbery, which occurred around that time. Further, defendant argues that “putting stuff” on Amanda’s Facebook page, as she accuses him of doing in the recording, would have been an “easy” violation of the order of protection to show in court, but the State did not attempt to prove such a violation.

¶ 48 Defendant next cites Harris’s testimony regarding their meeting on December 13, 2017. He argues that while Harris did not provide a “conclusive alibi,” his testimony supported that he was likely with Harris during the time of the alleged phone call.

¶ 49 Defendant characterizes as unbelievable Amanda’s testimony that when she first made a police report in this case, the officer declined to take her recording. Defendant points to Officer Hart’s testimony, who stated that Amanda did not mention a recording during her report, and if she had mentioned one, he would have requested a copy of it. Instead, he claims that Amanda waited a month before emailing an audio file to the police department, claiming it was recorded on December 13, 2017. Smith, the defense’s forensics expert, had not examined Amanda’s phone and therefore could not say whether December 13, 2017, was the recording’s creation date or its copy date or whether she had used a spoofing app on her phone. Defendant contends the trial court gave the recording too much weight given its uncertain reliability.

¶ 50 Lastly, defendant argues that he provided his mobile phones to the police and State’s Attorney’s office for forensic examination, but they declined to examine his phones. Smith testified that an examination of his phones could have revealed whether defendant had deleted calls or apps, which was relevant to whether he had called Amanda with or without the use of a spoofing app.

¶ 51 The State responds that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. The State characterizes defendant’s argument as asking us to view the evidence

in the light most favorable to defendant and ultimately to substitute our opinion for that of the finder-of-fact. Following a lengthy recitation of facts within its argument section of the brief, the State contends that it was for the trial court to assess credibility and ultimately resolve discrepancies in the evidence. The State argues that Harris was unable to corroborate defendant's alibi because he had no independent recollection of when he met with defendant and that the trial court found him incredible on the issue of when he actually met with defendant. While the trial court found Wicyk and Hart credible, it also found their testimony to be limited and did not place much weight on it. Importantly, the trial court did not find defendant credible, rejecting his testimony about the date of the phone call.

¶ 52 The State acknowledges that the record contained discrepancies between the phone records for defendant's phone and Amanda's phone. The State agrees with the arguments made in the trial court that the discrepancies were the result of one of the parties having used a spoofing app, and it argues that defendant, with a background in information technology, was the more likely party to use such an app. The State ultimately argues that the issue came down to a matter of credibility, and the trial court believed Amanda's testimony and not defendant's testimony.

¶ 53 We hold that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence, the reviewing court reviews the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 433 U.S. 307, 317 (1979); *People v. Gray*, 2017 IL 120958, ¶ 35. A reviewing court does not retry the defendant (*Gray*, 2017 IL 120958, ¶35), and it will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses (*People v. Bradford*, 2016 IL 118674, ¶ 12). It is the trier of fact's responsibility to

resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Bradford*, 2016 IL 118674, ¶ 12. A criminal conviction will not be reversed for insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *People v. Belknap*, 2014 IL 117094, ¶ 67. Further, the testimony of a single witness is sufficient to convict if the testimony is positive and credible, even when the testimony is contradicted by the defendant. *Gray*, 2017 IL 120958, ¶ 36.

¶ 54 Defendant was charged with violation of an order of protection (720 ILCS 5/12-3.4 (West 2016)), in that he knowingly committed an act—the alleged December 13, 2017, phone call to Amanda—prohibited by the order of protection entered December 6, 2017. He advances various arguments why the alleged call did not occur on December 13, but as we explain, none of his arguments taken alone or together convince us that the trial court's findings were so unreasonable, improbable, or unsatisfactory that there is reasonable doubt of defendant's guilt.

¶ 55 First, it was reasonable for the trial court to place little to no weight on the T-Mobile phone records. The T-Mobile records for the 8349 number, which show no calls incoming or outgoing from November 1, 2017, through December 31, 2017, are inconsistent with Amanda's Sprint phone records, which showed both incoming and outgoing calls for the 8349 number in December 2017. The T-Mobile records are also inconsistent with defendant's testimony that he used the 8349 number in November 2017, claiming to have last made a call on the 8349 number in mid-November. Furthermore, defendant admitted that Amanda had used the 8349 number to contact him prior to December 13, 2017, which is consistent with the Sprint records showing an outgoing call to the 8349 number on December 1, 2017. The trial court clearly placed more weight on the testimonies at trial than the inconsistent phone records, as was its prerogative.

¶ 56 As to the content of the December 13 phone conversation, defendant contends that Amanda would not have been upset about Facebook but instead it was more logical for the conversation to have taken place on September 2, 2017. The record contains no phone records from September that could corroborate a call between them taking place that day, and it is pure supposition as to what the parties should have been talking or arguing about on December 13. Moreover, the content of the call was not directly at issue. The salient issue was whether defendant called Amanda in violation of the order of protection, and the trial court concluded that he did and that the recording of the call was not from another date. Viewing the record in the light most favorable to the State, nothing in the call renders the trial court's determination so unreasonable or improbable that we must reverse. For instance, Amanda agreed on cross-examination that she was still attempting to reconcile with defendant until at least October 2017, and therefore it would be reasonable to reject the call as coming from September 2017 when, in the recording, Amanda consistently berates defendant and states that she cannot be his friend, that she cannot be cool with him, that they are "not together," that she has her "own life," that she is done fighting for or about him, and that he should "leave [her] the f*ck alone."

¶ 57 Defendant's argument that the call ended "abruptly" and that the recording had exonerating evidence removed is speculative, and the trial court did not believe defendant's testimony that the recording was edited. While the mismatch of the call length between Amanda's recording (183 seconds) and the Sprint phone records (202 seconds) reasonably raises questions as to the completeness of the recording, defendant's answer to the discrepancy—that the call was edited to exclude information that would show the call took place in September—has no basis other than his own testimony, which the trial court found incredible. Moreover, the trial court did not place

much weight on the contents of the recording, instead focusing on the ultimate question of whether defendant called Amanda in violation of the order of protection.

¶ 58 We next reject defendant’s argument that him “putting stuff” on Amanda’s Facebook page would have been an easier violation of the order of protection to prove and therefore impugns the State’s decision to prosecute him based on the alleged phone call. Whether such a violation is actually easier to prove is conjectural,² and we note that the State has wide discretion in whether and how to charge a defendant. See *People v. Henderson*, 2019 IL App (4th) 170305, ¶ 24 (a prosecutor has wide discretion in determining whether and how to charge a defendant).

¶ 59 Nor does Harris’s testimony help defendant. The trial court did not find Harris credible, and defendant even acknowledges that Harris did not provide a “conclusive alibi.” In finding Harris an incredible alibi witness, the trial court found he was impeached on cross-examination as to “what occurred, when it occurred, [and] the specific times it occurred.” This credibility determination was reasonable. Harris admitted he did not know exactly when his meeting with defendant on December 13 began, and his only logged entry for a face-to-face meeting with defendant was from 9:33 a.m. He could estimate only that he met with defendant within an hour or half-hour of that entry, and he ultimately testified that he did not know if he was with defendant at 8:55 a.m. on December 13.

² It is easy to envision a defendant claiming someone else posted on Facebook using their account—especially where, as here, the parties were sharing accounts—and unlike the recipient of a phone call who could identify the caller by their voice, a recipient of a social media post does not hear the poster’s voice or otherwise directly observe them posting.

¶ 60 In addition, Amanda’s testimony that she offered the recording to Hart but he declined to take it was not so improbable or unreasonable as to destroy her credibility as to defendant calling her on the December 13, 2017. Hart acknowledged that he had no independent recollection of his conversation with Amanda on December 14, 2017, and his testimony was based only on what was in his report from that day. For instance, the report did not say he called defendant to inquire whether he made a phone call to Amanda, and therefore he had to assume he never made such a call. He testified merely that had he been aware of the recording, he “probably would have asked to hear the copy of the recording or get a copy of it.”

¶ 61 Finally, defendant speculates as to what the phones he turned over to the police would have shown about whether he called Amanda on December 13. Wicyk testified that the phones were turned in months after the alleged crime was committed, and the phones were not examined because, for one, the phones turned over may not have been the phones defendant had previously used. It was reasonable for the trial court to accept this explanation. Smith’s testimony does little to help defendant, as Smith, despite being defendant’s expert, never examined defendant’s phones. Instead, he testified only that an examination of the phones had the potential to produce evidence that would have helped defendant’s case that he did not call Amanda on December 13.

¶ 62 We acknowledge that the record contains unresolved inconsistencies, such as the recording length being approximately 20 seconds shorter than the length of the Sprint call record.³ Both sides

³ While it was the State that had the burden of proving defendant’s guilt at trial, we note that defendant did little to answer the questions that he raised in his defense. For instance, he could have had Smith examine his phones instead of sending his purported phones to the police, or he could have requested phone call records from September 2017 to help corroborate his assertion

also suggest that spoofing apps were used in this case, although neither side offered conclusive evidence in support of the other using such an app. We remain cognizant, however, that it is not our role to retry defendant; it was the trial court's role to resolve conflicts in the evidence, and it was in the best position to observe the demeanor of the witnesses and assess their credibility. The trial court made its determination on the narrow issue of whether defendant knowingly called Amanda on December 13, 2017, explaining that it believed Amanda's testimony that defendant called her on December 13, and it did not believe defendant's testimony that the recording was from a call on another day. We have found no basis in the record to deem the trial court's credibility assessments unreasonable, and the positive and credible testimony of one witness, even when contradicted by the defendant, is sufficient to convict. *Gray*, 2017 IL 120958, ¶ 36. Mindful of our standard of review, we therefore affirm defendant's conviction for violation of the order of protection.

¶ 63

III. CONCLUSION

¶ 64 For the reasons stated, we affirm the judgment of the circuit court of Kendall County.

¶ 65 Affirmed.

that the recording actually took place between him and Amanda on September 2. Speculative inferences, such as defendant raises throughout his brief, will not render a trial court's factual findings or credibility determination unreasonable. *Cf. People v. Mpulamasaka*, 2016 IL App (2d) 130703, ¶ 71 (in reviewing the sufficiency of the evidence, courts allow all reasonable inferences from the record in favor of the State but do not allow unreasonable or speculative inferences).