

NOTICE
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2012 IL App (4th) 110112-U

Filed 9/6/12

NO. 4-11-0112

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
DONTEE DWAYNE JACKSON)	No. 10CF623
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the State presented sufficient evidence that the defendant committed aggravated battery by initiating contact of an insulting or provoking nature.

¶ 2 Following a November 2010 trial, a jury found defendant, Dontee Dwayne Jackson, guilty of aggravated battery to a pregnant person (720 ILCS 5/12-4(b)(11) (West 2010)). Thereafter, the trial court sentenced defendant to four years in prison.

¶ 3 Defendant appeals, arguing that his conviction should be reversed because the State failed to prove the physical contact he made with the victim was insulting or provoking. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2010, the State charged defendant with (1) aggravated domestic battery,

based on defendant's knowingly making physical contact of an insulting or provoking nature with Niesha Alexander, a family or household member, by strangling her (720 ILCS 5/12-3.3(a-5) (West 2010)) (count I), and (2) aggravated battery, based on defendant's knowingly making physical contact of an insulting or provoking nature with Alexander, knowing her to be pregnant, by pushing her (720 ILCS 5/12-4(b)(11) (West 2010)) (count II).

¶ 6 A. The Evidence Presented at Defendant's November 2010 Trial

¶ 7 In February 2010, defendant and Alexander began an intimate relationship. In March 2010, Alexander informed defendant that she was pregnant.

¶ 8 In June 2010, defendant and Alexander had a disagreement over the phone. As a consequence, Alexander, Cheneatha Grismore (Alexander's cousin), and Chelsea Gallegos (Grismore's "associate") went uninvited to the home where defendant was staying. Although Alexander testified she and defendant were still in a relationship at that time, defendant had since moved in with another woman, Jaquetta Shoon.

¶ 9 After Alexander, Grismore, and Gallegos arrived at Shoon's home, defendant appeared "from around the back," and he and Alexander walked to a nearby sidewalk located in front of a four-foot-high fence. Alexander and defendant had a "civil" conversation for about 10 or 15 minutes, but defendant eventually became angry and told Alexander to leave. As Alexander started walking "back across the street," still facing defendant, he "brushed his body up against" her. She described the contact with defendant as "like his shoulder bumped" hers. She told defendant not to touch her. Defendant then put his hands around her neck. Alexander testified that at this point she was "back up against the fence." Alexander explained the subsequent altercation as follows:

"[PROSECUTOR]: Okay. And so he grabbed you by your neck and pushed you. Is that what you said?

[ALEXANDER]: No, he grabbed me by my neck and I pushed up against the fence.

[PROSECUTOR]: Okay. And when he grabbed you, what was he doing? What was his hand doing?

* * *

[ALEXANDER]: It was squeezing

* * *

[PROSECUTOR]: And were you up against the fence at this point?

[ALEXANDER]: Yes.

[PROSECUTOR]: Okay. Were you able to say anything when he was squeezing your neck?

[ALEXANDER]: No.

[PROSECUTOR]: Okay. Why not?

[ALEXANDER]: I could barely breathe."

¶ 10 On cross-examination, defense counsel asked Alexander again whether defendant pushed her into the fence. Alexander responded as follows: "He put his hands around my neck before I touched the fence is what I'm saying. From him doing that, I tried to back up but then the fence was there."

¶ 11 Alexander estimated that defendant choked her for one or two minutes and eventually stopped when Grismore and Gallegos began walking toward them. Alexander

suspected that defendant was "probably" saying something while he was squeezing her neck, but she could not recall because at that time she "was trying to focus on breathing." After the incident, Alexander's neck was sore, but she did not sustain any visible injuries.

¶ 12 Grismore testified that after arriving at Shoon's house with Alexander and Gallegos, defendant and Alexander began talking in the street. Grismore—who had a clear view of Alexander and defendant—stated that their conversation was civil at first, but eventually defendant appeared to become angry because Alexander would not leave. When defendant attempted to go back to the house, Alexander started "constantly blocking him" by "standing in his way." After 15 or 20 minutes, defendant became frustrated and "put her up against the fence." Grismore explained that defendant "pushed her against the fence and then his hands was [*sic*] around her neck." Grismore did not hear defendant say anything but she did hear Alexander make a gasping noise. Defendant kept his hands around Alexander's neck for "no more than three minutes." Grismore testified that the entire encounter, from the time the women arrived at defendant's home until the time they called the police, lasted "no more than an hour."

¶ 13 Officer Evan Hurt testified that he interviewed Grismore and Gallegos on the night of the incident. Grismore and Gallegos told Hurt that while defendant had his hands around Alexander's neck, defendant was saying, "Bitch, I'll fucking kill you."

¶ 14 The trial court admitted into evidence a September 2010 letter that defendant wrote to Alexander's mother, wherein defendant stated, "I do apologize for me doing what I did that was some cowardly stuff and that[']s not me I've just been under a lot of pressurer [*sic*]." The parties also stipulated that if called, a responding officer would testify that he interviewed Alexander on the night of the incident and did not observe any redness or bruising around

Alexander's neck. Alexander refused medical attention.

¶ 15 B. The Jury's Verdict and the Trial Court's Sentence

¶ 16 On this evidence, the jury found defendant guilty of count II and not guilty of count I. In December 2010, defendant filed a motion for a new trial, arguing that the contact defendant made with Alexander by brushing against her could not reasonably be said to be insulting or provoking. The trial court denied defendant's motion, stating, "[C]ertainly that contact in pushing [Alexander] up against the fence would be sufficient for insulting or provoking conduct if the jury accepted that testimony." The court thereafter sentenced defendant to four years in prison.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues that his conviction should be reversed because the State failed to prove the physical contact he made with the victim was insulting or provoking. We disagree.

¶ 20 A person commits aggravated battery under section 12-4(b)(11) of the Criminal Code of 1961 when he commits a battery, knowing the individual harmed is pregnant. 720 ILCS 5/12-4(b)(11) (West 2010). A person commits battery when he "intentionally or knowingly without legal justification and by any means *** makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a)(2) (West 2010). " 'A particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs.' " *People v. Peck*, 260 Ill. App. 3d 812, 814, 633 N.E.2d 222, 223 (1994) (quoting *People v. d'Avis*, 250 Ill. App. 3d 649, 651, 621 N.E.2d 206, 207 (1993)).

¶ 21 When a defendant challenges the sufficiency of the evidence, we consider whether, after viewing it in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 52, 959 N.E.2d 693, 702 (2011). The trier of fact has the responsibility to determine the credibility of witnesses, to weigh their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Washington*, 2012 IL 110283, ¶ 60, 962 N.E.2d 902, 918.

¶ 22 As part of his argument, defendant claims that the only "believable" contact in this case was the "brushing past Alexander," which cannot be said to be insulting or provoking. Defendant's claim disregards certain evidence. Both Alexander and Grismore testified that defendant also put his hands around Alexander's neck. Specifically, Grismore stated that defendant "pushed [Alexander] against the fence and then his hands was [*sic*] around her neck." Grismore's testimony alone was sufficient to establish defendant made physical contact of a provoking or insulting nature with Alexander.

¶ 23 Nonetheless, defendant complains that Alexander's testimony contradicted Grismore's in that Alexander testified that (1) defendant grabbed her by her neck and Alexander pushed herself up against the fence when she tried to "pull back" and (2) the conversation between defendant and her lasted 10 or 15 minutes. Our review of the record shows that the accounts were consistent. Both women testified that while Alexander was up against the fence, defendant's hands were around her neck for one to three minutes, and she was gasping for air. As the State points out in its brief to this court, Alexander's focus during the altercation was likely on catching her breath. Likewise, Alexander's recollection that the conversation lasted 10 or 15

minutes is not inconsistent with Grismore's recollection that the "whole encounter," from the time the women arrived at Shoon's home until the time they called the police, lasted "no more than an hour."

¶ 24 Accordingly, viewing the evidence in the light most favorable to the State, we conclude that it was not unreasonable for the jury to have found that the contact defendant made with Alexander was of an insulting or provoking nature. Therefore, we reject defendant's argument that the State failed to present sufficient evidence that he committed aggravated battery to a pregnant person.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its statutory \$50 fee against defendant as costs of this appeal.

¶ 27 Affirmed.