

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).

2012 IL App (4th) 110158-U

Filed 7/25/12

NO. 4-11-0158

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
JONATHAN H. DAVIS,	)	No. 10CM91
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Appleton and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court held (1) the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt and (2) the trial court improperly ordered defendant to pay reimbursement for appointed counsel.

¶ 2 After a December 2010 bench trial, defendant, Jonathan H. Davis, was found guilty of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)), a Class A misdemeanor. In February 2011, the trial court sentenced defendant to two years of conditional discharge, with the condition of six days in the Livingston County jail.

¶ 3 Defendant appeals, arguing that (1) he was not proved guilty beyond a reasonable doubt, and (2) the trial court erred when it ordered him to pay reimbursement for appointed counsel. We affirm in part, vacate in part and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In March 2010, the State charged defendant with two counts of misdemeanor domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)). The charges stemmed from an incident involving defendant and Reustenna Garner, defendant's girlfriend. Count I alleged defendant committed domestic battery in that he struck Garner about the face. Count II alleged defendant committed domestic battery in that he pushed Garner.

¶ 6 During defendant's December 2010 bench trial, Curtis Bailey testified for the State as follows. During the early morning hours of March 1, 2010, he was working with Brian Martin in a garage in the Illini subdivision in Pontiac. The garage is adjacent to the Hacienda Apartments. At approximately 1:30 a.m., Bailey heard a female screaming. He could see two people approximately 75 to 100 feet away near the metal fence separating the sidewalk from the Hacienda Apartments. There were no streetlights, but he was able to see a male and a female. Bailey saw the male push the female into the fence with both of his hands and heard the female scream. The female screamed "Don't hit me. You busted my lip." The female fell back and hit the fence and then put her hands above her face. Bailey heard the female "whimper." The male then moved the female over to a bench. Bailey did not see the female attempting to hit the male. Bailey would not be able to recognize the two people again because it was too dark. On cross-examination, Bailey admitted he was only able to see "silhouettes." Bailey did not remember telling a female officer he had only heard two people arguing and had not witnessed anything else.

¶ 7 Brian Martin testified on March 1 at approximately 1:30 a.m. he was working with Curtis Bailey in a garage near the Hacienda Apartments. He heard a male and female yelling and screaming outside. He heard the female yelling to stop hitting her. He and Bailey

stepped out of the garage to investigate. Martin could see two people on the sidewalk near a bench and the fence next to the Hacienda Apartments. The male pushed the female into the bench by the shoulders. He heard the male say he was not hitting her, and the female say the male had busted her lip. Martin heard the male reply he did not bust her lip. He did not see the female swinging at the male figure but saw her try to get away. The male then stood in front of her. During the incident, Martin saw the male make an overhand punch straight down into the female's face. On cross-examination, Martin testified he saw the male figure forcibly shove the female. He could not tell if the male struck the female with an open or closed hand, or whether the punch made contact. He did not see snow or ice on the ground.

¶ 8           Officer Kristina Hall of the Pontiac police department testified she responded to a call on Illini Avenue on March 1. When she arrived, Officer Ryan Bradshaw was speaking with defendant and Garner. She did not see any injuries on the female. When she interviewed Bailey, he told her all he heard was two people arguing and did not see anything else. On cross-examination, Officer Hull stated it was cold that night but she did not observe snow on the ground.

¶ 9           Officer Ryan Bradshaw of the Pontiac police department testified he responded to a call on Illini Avenue at 1:51 a.m. on March 1. He saw a male and female on the sidewalk next to the apartments on Illini Avenue. The victim did not have any injuries to her lip.

¶ 10           The victim, Reusteena Garner, testified defendant was her boyfriend, and they had dated since 2007. On March 1, 2010, she was alone with defendant on Illini Drive at about 1:30 a.m. They had an argument, but defendant did not have physical contact with her. She screamed at defendant because she was upset at him but did not scream for him to stop hitting her. The

only physical contact with defendant occurred when she fell and he grabbed her. She fell because she swung her arm at defendant. She injured her lip when she slipped and "skimmed on the ground." Last, she testified she loves defendant. On cross-examination, Garner testified snow and ice were on the ground and ice was on the sidewalk. She fell because she was intoxicated and lost her balance.

¶ 11 Defendant testified he and Garner were on Illini Avenue on March 1 in the early morning hours. He and Garner got into an argument over his phone. Garner tried to swing at him and she fell down. Defendant tried to catch her and then picked her up to sit her on the bench. Garner never screamed "stop hitting me" or "you busted my lip." He did not strike Garner on any part of her body or in her face. On cross-examination, defendant stated ice was on the ground, but Garner did not slip on the ice. She slipped because she was drunk.

¶ 12 On this evidence, the trial court convicted defendant of the offenses charged. In February 2011, the court sentenced defendant to two years of conditional discharge, with the condition of six days in the Livingston County jail. The trial court held a hearing on February 17, 2011, as to whether defendant could be convicted on two counts of domestic battery arising out of the same conduct. The trial court merged the two domestic battery counts into a single count (count I). This appeal followed.

¶ 13 **II. ANALYSIS**

¶ 14 Defendant appeals, arguing (1) he was not proved guilty beyond a reasonable doubt, and (2) the trial court erred when it ordered him to pay reimbursement for appointed counsel. We address defendant's contentions in turn.

¶ 15 **A. Defendant's Claim He Was Not Proved Guilty Beyond A Reasonable Doubt**

¶ 16 Defendant first argues the State's evidence failed to prove his guilt beyond a reasonable doubt. Specifically, he contends the State did not prove (1) he made contact with the victim (2) in an insulting or provoking manner. We disagree.

¶ 17 *1. Standard of Review*

¶ 18 When a court reviews a conviction for sufficiency of the evidence it must determine 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322-23 (2011). "This means that we 'must allow all reasonable inferences from the record in favor of the prosecution.'" *Beauchamp*, 241 Ill. 2d at 8, 944 N.E.2d at 323 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)).

¶ 19 Where the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280, 818 N.E.2d at 308. Testimony may only be found insufficient "where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 280, 818 N.E.2d at 308.

¶ 20 The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in evidence, and to draw reasonable inferences from that evidence. *People v. Burney*, 2011 IL App. (4th) 100343, ¶ 25, 963 N.E.2d 430 (citing *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009)).

¶ 21 *2. Offense of Domestic Battery*

¶ 22 Section 12-3.2(a)(2) of the Criminal Code of 1961 (Criminal Code) states "[a] person commits domestic battery if he or she knowingly without legal justification by any means \*\*\* [m]akes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)(2) (West 2010). Section 112A-3(3) defines "family or household members" to include "persons who have \*\*\* a dating or engagement relationship." 725 ILCS 5/112A-3(3) (West 2010). Domestic battery is a Class A misdemeanor. 720 ILCS 5/12-3.2(b) (West 2010).

¶ 23 *3. Evidence Here*

¶ 24 The evidence in this case, although circumstantial, was of a character to prove defendant guilty of the crime of domestic battery. Defendant admitted he and the victim had an argument on Illini Avenue during the early morning hours of March 1. Two disinterested witnesses both testified they heard the victim scream (1) for the defendant to stop hitting her and (2) he busted her lip. They saw defendant push her, and one witness testified defendant struck the victim with an overhand punch. Defendant and the victim presented conflicting testimony: they both testified the victim never screamed and she attempted to strike defendant. The victim testified she injured her lip when she lost her balance when she attempted to strike defendant because she was intoxicated. Defendant claimed there was ice and snow on the ground which conflicted with the other witnesses who did not see any snow or ice on the ground. The record calls into question the victim's and defendant's credibility as the trial court stated, "I can't believe the victim. I can't believe the defendant." The trial court, as fact finder, resolved these discrepancies in evidence and determined the credibility of witnesses. Viewing the evidence in the light most favorable to the prosecution, we find the trial court could reasonably have found

defendant guilty of the crime charged beyond a reasonable doubt.

¶ 25           B. Defendant's Claim the Trial Court Improperly Ordered Him To Pay  
                  Reimbursement for Appointed Counsel

¶ 26           Defendant next contends the trial court erred when it entered a public defender's reimbursement order without providing defendant with notice or an opportunity to present evidence of ability to pay. Defendant requests we vacate the reimbursement order and remand for a hearing on the matter. We agree.

¶ 27    1. *Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Procedure Code)*

¶ 28           Section 113-3.1(a) of the Procedure Code provides in part, as follows:

"Whenever under either Section 113-3 of this Code or Rule 607 of the Illinois Supreme Court the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties."

725 ILCS 5/113-3.1(a) (West 2010).

¶ 29           The supreme court has held, section 113-3.1(a) requires "a public defender fee may be imposed only by the circuit court after notice and a hearing on the defendant's ability to pay." *People v. Gutierrez*, 2012 IL 111590, ¶ 26, 962 N.E.2d 437.

¶ 30 *2. Notice and Hearing on Defendant's Ability To Pay*

¶ 31 Our review of the bystander's report of defendant's February 2010 sentencing hearing does not reveal compliance with section 113-3.1(a). Additionally, the State concedes the trial court failed to give defendant notice and an opportunity to present evidence on his ability to pay.

¶ 32 Therefore, we vacate the public defender's reimbursement order and remand for a hearing in compliance with section 113-3.1.

¶ 33 **III. CONCLUSION**

¶ 34 For the reasons stated herein, we affirm the trial court's judgment in part, vacate in part, and remand with directions. Because the State successfully defended a portion of the appeal, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 35 Affirmed in part, vacated in part, and cause remanded with directions.