

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) 110653-U

NO. 4-11-0653

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 30, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
STEPHEN B. CROUSE,)	No. 11CF430
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) The State proved defendant guilty beyond a reasonable doubt of domestic battery with a prior domestic battery conviction.

(2) We vacate the DNA analysis fee because it was improperly assessed.

¶ 2 In October 2010, after a jury trial, defendant, Stephen Crouse was convicted of domestic battery with a prior domestic battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(1), (b) (West 2010)). In June 2011, the trial court sentenced defendant to serve six years in the Illinois Department of Corrections. The court also ordered defendant to pay various assessments including a deoxyribonucleic acid (DNA) analysis fee (730 ILCS 5/5-4-3(j) (West 2010)).

¶ 3 On appeal, defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt, and (2) the DNA analysis fee should be vacated because he was assessed the

fee upon a prior conviction. We affirm in part, vacate in part, and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 Defendant and the victim, Rita Crouse, are married. At the time of the incident at issue, they lived together in Champaign, Illinois, with Rita's two adult children.

¶ 6 On March 18, 2011, Rita went out to dinner with her son and his friend in Danville, Illinois. She did not inform defendant of her dinner plans because he had recently resumed drinking after a two-year period of sobriety. During dinner, Rita received six text messages and three or four phone calls from defendant, to which she did not respond. According to Rita, in the text messages, defendant accused her of being out with a boyfriend.

¶ 7 At approximately 8 p.m., Rita left the restaurant to drop her son off at a friend's house for the night. An hour later, Rita returned home. At that time, she and defendant began arguing. According to Rita, defendant was intoxicated. Defendant testified to consuming six beers that night after arriving home from work. During the argument, defendant accused Rita of having a boyfriend and spending too much time with her son. In response to the accusations, Rita told defendant she was not going to live with his drinking anymore and he needed to move out. However, defendant refused to leave the house. Fearing that "it might get violent," Rita went into her daughter's bedroom and locked the door. At the time, Rita's daughter was away at college. Defendant attempted to pry open the bedroom door with a key, so Rita pushed her daughter's bed in front of the door. The two continued to argue through the door. Rita testified that defendant repeatedly cursed at her, calling her names like "fucking whore." Eventually, Rita told defendant to leave her alone or she would call 9-1-1. Sometime thereafter, Rita heard the door to their master bedroom close and assumed defendant went to bed. Rita spent the night in

her daughter's room.

¶ 8 The following day, March 19, 2011, Rita awoke around 11 a.m or noon, but she did not leave her daughter's bedroom until 1 p.m. when she needed to use the bathroom. When Rita left the bedroom, she and defendant resumed their argument. According to Rita, defendant appeared to have been drinking. Defendant testified that he consumed three beers that afternoon while watching college basketball. During their argument, defendant told Rita that he was not going to leave the house or contribute to the bills. Rita replied that if defendant was not going to help pay the bills, then he was not going to watch her television. She proceeded to unplug the living room television. In response, defendant tried to plug in the television and Rita unplugged it a second time. Rita testified that defendant then pushed her from behind. As a result of the push, Rita, who was on her knees, lost her balance and fell against the wall. Rita testified that she did not fall to the ground from the push because she was able to catch herself on the wall. She also testified that the push was "not very hard." In response to the push, Rita told defendant she was going to call 9-1-1.

¶ 9 According to Rita, a few seconds later, when she attempted to stand up to grab her cell phone, defendant struck her in the back of the head with an open hand. Rita testified that she experienced "minor" pain from being struck.

¶ 10 Following that incident, Rita successfully grabbed her cell phone. Defendant begged Rita not to call 9-1-1 and threw her phone. Rita then attempted to exit through the front door, but defendant barred her from leaving. As a result, Rita started yelling for help. Defendant, from behind, put his right hand over Rita's mouth and requested that she stop yelling. Rita grabbed defendant's hand and tried to pull it from her mouth. In the process, she "got two

scratches" on her left cheek. Rita testified that the scratches were "mildly" painful and took about a week and a half to heal. In his testimony, defendant denied scratching Rita, explaining that the red marks on her face were from rosacea. Eventually, Rita was able to exit through the front door. Defendant did not follow her outside.

¶ 11 Shortly thereafter, Tige Hall, the couple's neighbor, saw Rita standing in her driveway and stopped to help. Tige testified that Rita was visibly upset and had "scratches, redness in the face area, bruises." Rita used Tige's cell phone to call 9-1-1.

¶ 12 At approximately 3 p.m., the police arrived at the couple's residence. Police officer Jody Cherry testified that when he arrived on the scene, defendant was intoxicated and belligerent. As part of their investigation, the police took photographs of Rita's face. The photographs were later admitted into evidence at trial. Subsequently, the police placed defendant under arrest.

¶ 13 On March 21, 2011, the State charged defendant with domestic battery with a prior domestic battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(1), (b) (West 2010)). Defendant was previously convicted of domestic battery, a Class A misdemeanor (720 ILCS 5/12-3.2(a)(2), (b) (West 2010)), on December 19, 2008 (case No. 2008-CF-1969). More specifically, defendant was convicted of knowingly making physical contact of an insulting or provoking nature with Rita, in that he punched her in the back of the head. In this case, the State also charged defendant with unlawful interference with the reporting of domestic violence, a Class A misdemeanor (720 ILCS 5/12-6.3(a), (c) (West 2010)). However, the trial court later granted the State's request to dismiss that charge.

¶ 14 On May 25, 2011, a jury trial was held. After evidence was presented by defense

counsel, the trial court continued the case to the next day.

¶ 15 On May 26, 2011, the jury found defendant guilty of domestic battery with a prior domestic battery conviction. The trial court scheduled a sentencing hearing for June 29, 2011.

¶ 16 On June 2, 2011, defendant filed a motion for a new trial.

¶ 17 On June 29, 2011, the trial court denied defendant's motion for a new trial. After addressing defendant's motion, the court held a sentencing hearing. The court stated that after reviewing the testimony it "would concur completely with the verdict that the jury arrived at." In making its determination, the court specifically noted that Rita was a "very credible" witness. The court sentenced defendant, who was extended-term eligible, to six years in the Illinois Department of Corrections. The court also ordered defendant to pay a Violent Crime Victims Assistance Act fee and all fines, fees, and costs as authorized by statute. The docket entry for that date further noted that defendant was ordered to pay "a \$200 genetic marker grouping analysis fee, unless he has previously done so, and he is to receive credit of \$40 for the 8 days he spent in custody." The docket entry additionally provided that defendant must submit specimens for genetic testing to the Illinois Department of State Police or the Illinois Department of Corrections in accordance with section 5-4-3 of the Unified Code of Corrections "unless previously done so." The circuit clerk's fees and fines information indicates that defendant was assessed a \$160 DNA analysis fee.

¶ 18 On July 1, 2011, defendant filed a motion to reconsider sentence, which the trial court later denied.

¶ 19 On July 25, 2011, defendant filed a timely notice of appeal.

¶ 20 On August 12, 2011, as indicated in the docket entry for that date, \$500 of

defendant's bond fee was applied to defendant's costs.

¶ 21

II. ANALYSIS

¶ 22 On appeal, defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt, and (2) the DNA analysis fee should be vacated because he was assessed the fee upon a prior conviction.

¶ 23

A. Domestic Battery with a Prior Domestic Battery Conviction

¶ 24

Defendant asserts that the State failed to prove that he knowingly inflicted bodily harm on the victim, and thus failed to prove him guilty of the offense of domestic battery with a prior domestic battery conviction beyond a reasonable doubt.

¶ 25

In reviewing a challenge to the sufficiency of the evidence, a reviewing court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). However, in determining the sufficiency of the evidence, a reviewing court must not retry the defendant. *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses." *Wheeler*, 226 Ill. 2d at 114-15, 871 N.E.2d at 740. The reviewing court will reverse a conviction "where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *Wheeler*, 226 Ill. 2d at 115, 871 N.E.2d at 740.

¶ 26

The State was required to show that defendant knowingly, and without justification, caused bodily harm to a family or household member. 720 ILCS 5/12-3.2(a)(1)

(West 2010). Defendant does not dispute that Rita, as his wife, constitutes a "family or household member" under section 12-3.2(a)(1) of the Criminal Code of 1961. In *People v. Mays*, 91 Ill. 2d 251, 437 N.E.2d 633 (1982), the Illinois Supreme Court addressed the issue of what constitutes bodily harm within the context of the statutory section defining "battery." The supreme court determined that:

"Although it may be difficult to pinpoint exactly what constitutes bodily harm for the purposes of the statute, some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent, is required." *Mays*, 91 Ill. 2d at 256, 437 N.E.2d at 635-36.

However, direct evidence of injury is not required in order to show bodily harm, and the trier of fact may infer injury based upon circumstantial evidence in light of common experience. *People v. Durham*, 312 Ill. App. 3d 413, 419, 727 N.E.2d 623, 627 (2000).

¶ 27 If the reviewing court determines that the victim suffered bodily harm as a result of defendant's conduct, then it must decide if the defendant "knowingly" caused the harm. 720 ILCS 5/12-3.2(a)(1) (West 2010). A defendant acts knowingly if he or she is consciously aware that his or her conduct is of the nature that is it practically certain to cause the result proscribed by the offense. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 43, 955 N.E.2d 1244, 1254. In *Lattimore*, the First District further discussed intentional or knowing conduct in terms of bodily harm:

"Whether a person acted intentionally or knowingly with respect to bodily harm resulting from one's actions is, due to its very

nature, often proved by circumstantial evidence, rather than by direct proof. Intent may be inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself. It is not necessary that a defendant intended the particular injury or consequence that resulted from his conduct." (Citations omitted.) *Lattimore*, 2011 IL App (1st) 093238, ¶ 44, 955 N.E.2d at 1254.

¶ 28 In this case, three instances of physical contact are at issue. All three instances occurred on March 19, 2011. The first instance occurred when defendant pushed Rita from behind after she unplugged the television. The second instance occurred when defendant struck Rita in the back of the head with an open hand. The last instance occurred when Rita tried to pull defendant's hand from her mouth and received two scratches on her left cheek.

¶ 29 In terms of the first instance, we find that it was not unreasonable for the jury to conclude that Rita suffered pain as a result of falling into the wall after defendant pushed her. Although Rita did not specifically testify that she experienced pain, a jury could reasonably infer, from the circumstances, that being pushed and then falling into a wall would cause bodily harm. This is particularly true when considering the fact that the push occurred during a heated exchange between the couple. Based on the evidence, it is also reasonable for the jury to infer that defendant knowingly caused Rita bodily harm by pushing her from behind.

¶ 30 In terms of the second instance, Rita testified that she suffered "minor" pain after defendant struck her in the back of the head with his open hand. Defendant argues that the "minor" pain experienced by Rita is insufficient to constitute bodily harm. He further argues that

the conduct at issue constitutes "physical contact of an insulting or provoking nature." 720 ILCS 5/12-3.2(a)(2) (West 2010). We disagree. Defendant's striking of Rita in the back of the head constitutes more than physical conduct of an insulting or provoking nature. Rita testified that she felt pain as a result of being struck; she did not have to suffer prolonged pain or a high pain level in order for defendant's conduct to constitute bodily harm. Moreover, at the sentencing hearing, the trial court specifically noted that Rita was a "very credible" witness. We also find that it was reasonable for the jury to infer from the circumstances surrounding the second instance that defendant knowingly caused Rita bodily harm by striking her, particularly in light of the fact that defendant struck Rita right after she threatened to call 9-1-1.

¶ 31 In terms of the third instance, we find that it was not unreasonable for the jury to conclude that Rita suffered bodily harm from the scratches. Rita testified that the scratches on her left cheek were "mildly" painful and took about a week and a half to heal. Tige, Rita's neighbor, additionally testified that Rita had "scratches, redness in the face area, bruises." Moreover, the scratches were visible in the police photographs admitted into evidence and shown to the jury. We also find that the State sufficiently proved that defendant acted knowingly beyond a reasonable doubt. The scratching of Rita's cheek is a probable consequence of defendant's attempt to silence Rita's cries for help.

¶ 32 Based on our review of the record, we conclude that the State proved defendant guilty beyond a reasonable doubt of domestic battery with a prior domestic battery conviction.

¶ 33 B. DNA Analysis Fee

¶ 34 The State argues that this court lacks jurisdiction to consider defendant's challenge to the DNA analysis fee because it was assessed after defendant filed his notice of appeal on July

25, 2011. The State claims that the DNA analysis fee was assessed on August 12, 2011, the day that the bond was applied to costs. In making its argument, the State cites *People v. Jake*, 2011 IL App (4th) 090779, 960 N.E.2d 45. However, *Jake* is distinguishable because it involved late and collection fees assessed after notice of appeal was filed. *Jake*, 2011 IL App (4th) 090779, ¶ 24, 960 N.E.2d at 51. Unlike the DNA analysis fee, late and collection fees are not part of the criminal judgment, but instead, are imposed for not timely paying the criminal judgment. Based on our review of the record, we find that the DNA analysis fee was assessed before defendant filed his notice of appeal. Accordingly, we have jurisdiction to consider whether the DNA analysis fee was properly assessed.

¶ 35 In *People v. Marshall*, 242 Ill. 2d 285, 302, 950 N.E.2d 668, 679 (2011), the Illinois Supreme Court determined that a trial court is only authorized to order a defendant to submit a DNA sample and pay the DNA fee once, when the defendant is not currently in the DNA database. In this case, the trial court ordered defendant to pay a DNA analysis fee and submit specimens for genetic testing "unless he has previously done so." The record shows that defendant was convicted of a felony, aggravated driving under the influence (625 ILCS 5/11-501(d)(1) (West 2010)), on December 7, 2009. Defendant also points to a State Police DNA Indexing Laboratory Report, of which we may take judicial notice (*People v. Jimerson*, 404 Ill. App. 3d 621, 634, 936 N.E.2d 749, 761 (2010)), that shows, based on the 2009 conviction, defendant submitted a DNA sample for analysis and a profile was subsequently obtained. Thus, despite the court's instructions to assess a DNA analysis fee only if defendant has not already submitted to DNA testing, the circuit clerk improperly assessed a DNA analysis fee against defendant. Accordingly, we vacate the DNA analysis fee and order the \$160 refunded to

defendant.

¶ 36

III. CONCLUSION

¶ 37 For the foregoing reasons, we vacate the DNA analysis fee and remand with directions. In all other respects, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed in part and vacated in part; case remanded with directions.