

FOURTH DIVISION  
October 30, 2014

No. 1-13-1966

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 12 DV 76758
	)	12 DV 77760
	)	
ELFEGO REYES,	)	Honorable
	)	Ursula Walowski,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Epstein and Taylor concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence sufficient to convict defendant of domestic battery. Court did not apply erroneous or lower burden of proof. Defendant has failed to show *Brady* violations.

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¶ 2 Following a bench trial, defendant Elfego Reyes was convicted of domestic battery and sentenced to two years of sex offender probation. On appeal, defendant contends that the evidence was insufficient to convict him beyond a reasonable doubt. He also contends that the trial court erroneously applied a lower burden of proof. He lastly contends that his right to due process was violated by *Brady* discovery violations.

¶ 3 Defendant was charged with three counts of domestic battery for allegedly making physical contact of an insulting nature with minor and household member I.C. – placing his penis into her vagina, touching her breast with his hand, and touching her vagina with his hand – between December 28, 2010, and June 1, 2012. Defendant was also charged with domestic battery for allegedly shoving Nancy Rojas against the wall on or about July 23, 2012.

¶ 4 On September 12, 2012, the court issued a search warrant for a certain mobile telephone in police possession. The warrant complaint of the same day alleged that the telephone was defendant's, that he had been arrested on August 15 on I.C.'s allegations, that I.C.'s telephone had been examined with the consent of Rojas, I.C.'s mother, and that an officer "was unable to locate any messages to/from [defendant]'s cellular phone" on I.C.'s telephone. The warrant and its complaint were filed with the clerk of the circuit court on September 13, 2012.

¶ 5 At trial, Nancy Rojas testified that she has three children, defendant is the father of one of her two sons, and she lived with defendant for four years. When Rojas came home at about 11 p.m. on July 22, 2012, defendant grabbed her and told her to sit down, then struck her face before leaving home. Rojas called the police. At about 3 p.m. on July 23, Rojas was coming home from the courthouse, where she had filed a complaint supported by "pictures and the medical report." On the porch, defendant insulted and then shoved Rojas; she fell against some

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paint cans and had bruises and scratches on her right arm. I.C., Rojas's 14-year-old daughter, came outside, told defendant not to hit Rojas, and helped Rojas to her feet. Rojas identified photographs of her right arm, including "scratches from where he grabbed me and some bruises from the fall," taken by a friend of Rojas. Rojas called the police and defendant was arrested.

¶ 6 On cross-examination, Rojas admitted that she "did not have any papers" to reside in the United States and that defendant is a citizen. However, Rojas denied that either she or defendant proposed marriage and that they argued about or even discussed marriage. When counsel asked Rojas if she knew a Ms. Delgado, Rojas replied that "she is the paramour, the lover, of the defendant" and "they were in cahoots." Rojas repeatedly denied telling Delgado two days before "this incident" that she needed to commence domestic violence proceedings against defendant so she could "get papers under the Federal Domestic Violence Act."

¶ 7 Rojas denied having any contact with defendant, other than seeing him in court, after July 23. On the court's examination, Rojas at first testified that she never returned to defendant's home after the 23rd but then clarified that she returned on the 24th with others to retrieve her property from the home, finding it "already empty." She took her "personal belongings" such as her clothing and that of her children, but also the refrigerator and the air-conditioner from her bedroom. While she broke into defendant's locked bedroom, she denied taking money from the room, instead removing "the pornography [he] had in his room, because of the abuse of my daughter." As Rojas worked, she left teenage I.C. in defendant's home, but defendant's mother did not work and was often in the home.

¶ 8 Rojas denied signing defendant's name to "various title documents, to transfer titles of cars to [her] name." When confronted with certain documents, she denied that the signatures on

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one document were hers. However, she admitted signing two other title-transfer documents of August 2, 2012, including signing in defendant's name as seller as well as her own as buyer. She maintained that she did not meet defendant but signed at "the dealer" with defendant's permission and she purchased the two cars from him "with my own money."

¶ 9 I.C. testified that she was born in December 1997 and lived in the home of defendant, Rojas's boyfriend, for several years along with Rojas, her brothers, and defendant's son. Defendant was the father of one of I.C.'s brothers and she considered him a stepfather. When I.C. was 13 years old, defendant "touch[ed] her sexually \*\*\* more than once." The first incident was on an afternoon in the spring or early summer of 2011, when nobody was home but her and defendant. She was in Rojas's bed watching television when defendant entered and sat on I.C.'s adjacent bed in the same room, asked her if she was a virgin, then pushed her down on the bed and touched her leg. She pushed back, and he left the room. Defendant had sex with I.C. nine times while she was 13 years old and they were home alone. The first time he had sex with her, he pushed her onto the bed, put his hand on her leg, and kissed her on the mouth, then after briefly getting up to close the bedroom door removed her shorts and underwear and put his penis into her vagina. She told him to stop, and he did. She saw blood on the bed sheets and was bleeding from her vagina. When she returned from washing herself in the bathroom, defendant had removed the bed sheets and was bleaching them. In other incidents, defendant touched her breasts. In April 2011, defendant gave I.C. a vibrator; when he asked her the previous day if she wanted one, she replied affirmatively because she thought he was joking. Defendant last had sex with I.C. when she was 14 years old; in defendant's bedroom, he touched her breast and vagina with his hand, as well as touching her with his penis, despite her objection to having sex with

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him. On the court's examination, I.C. testified that she did not want to have sex with defendant on any of the nine instances and "felt guilty \*\*\* about my mom, that she was with him." I.C. denied having sex with anyone but defendant.

¶ 10 I.C. did not report these incidents until June 26, 2012, when she told her uncle and aunt. Her uncle had become suspicious and "wanted to check my phone," and I.C. told her uncle that defendant's telephone would contain "a lot of messages about me and him." She told her uncle and aunt at that time because she was angry at defendant for striking Rojas. I.C. admitted that she's "undocumented" but denied that Rojas "told you that you need to get documents."

Defendant's mother lived in defendant's home when I.C. lived there; because she did not work, she took care of I.C.'s brother who was her grandson. A woman named Delgado was a tenant in their building, and I.C. had been in her apartment because her children played with one of I.C.'s brothers. While Rojas was at work, I.C. would often go to a nearby park with a friend.

¶ 11 Defendant made a motion for a directed finding, which the court denied.

¶ 12 Leonila Delgado testified that she was a tenant in defendant's apartment and denied being defendant's lover. She paid defendant rent and denied being allowed to stay in her apartment in exchange for sexual favors. On or about June 21, 2012, Rojas was with Delgado "doing my nails" when she said that she and defendant "were not doing great as a couple; that they had been facing lots of trouble" and she wanted to bring defendant "to court" so she could collect alimony or child support and because she had been advised "that if there was a case of abuse or maltreatment, she could gain documents." Rojas never said that defendant had hit her. Delgado witnesses the incident on the evening of the 22<sup>nd</sup>: when Rojas came home, defendant verbally confronted Rojas but she jumped on him and he fell to the ground – he never struck or pushed

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her – before he told her to leave and then left himself. Then, over a four-day period, Rojas returned daily to defendant's home with four men and a woman and removed "everything," including a refrigerator, air conditioner, and television, into two trucks. Delgado had never seen defendant strike or push Rojas. Defendant's mother lived with him and was home "every day." I.C. left one of her brothers with Delgado daily while she went to a nearby park with a friend.

¶ 13 Guadalupe Camacho, defendant's mother, testified that she lived with defendant in July 2012 and did not work because she took care of the young child he had with Rojas as he and Rojas worked. Camacho never saw defendant go into a bedroom with I.C. nor strike or push Rojas. After defendant was arrested and "forbidden to come to the house," Rojas came to the house on three days with three men and a woman and "emptied the house" including a television, refrigerator, and kitchen supplies.

¶ 14 Defendant testified that he and Rojas had a relationship and thereby a son born in 2010, and she moved into his home that year. Rojas did not have "legal documents to be in the United States" and pressed defendant for marriage throughout their relationship. He refused, and they argued over the matter. On July 21, 2012, during one of these arguments, Rojas told defendant that she was not going to leave his home, though he had asked her to leave several times. On the 22<sup>nd</sup>, when Rojas came home and he asked her again to leave, she pushed him and "tried to grab me," and he raised his hand to protect himself but did not strike her. She told him that she was calling the police "because I hit her" and he left his home. After Rojas called the police, defendant also called the police. When he returned home, Rojas was not there but the police were; he explained events, but the police told him that he could not approach or communicate with Rojas. He left but was later arrested at the home of a friend where he was staying.

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¶ 15 Defendant did not see Rojas after July 23 and did not give her permission to remove his refrigerator or air conditioners from his home. "She took the title of the two cars, and she signed." When shown the title-transfer documents, he denied that he signed either document or gave her permission to sign in his name. He also denied that she paid him for either car and explained that one was his but the other was his son's car. The title documents had been in a drawer in his bedroom, but she had entered his bedroom by breaking the lock. Defendant denied ever hitting or shoving Rojas or any other woman. He denied having "sex of any sort" or "any contact \*\*\* of a sexual nature" with I.C. as well as ever being alone with I.C. His home had four bedrooms, and he denied that I.C. shared Rojas's bedroom as I.C. testified; instead, Rojas's sons shared Rojas's room and I.C. had her own bedroom. Defendant's mother lived with him and was home every day as caretaker so that I.C. was not left without adult supervision. He denied having a relationship (beyond landlord-tenant) with Delgado.

¶ 16 Following closing arguments, the court found defendant guilty of the three counts of domestic battery against I.C. and not guilty of domestic battery of Rojas. The court found Rojas's testimony neither clear nor credible, noting her emotionality and confusion, and found Delgado credible as to the incident of the 22<sup>nd</sup>. The court found I.C.'s testimony clear and credible, that the reference to a vibrator was unlikely to have been fabricated, and that she had sex with defendant though she did not want to. The court saw no successful impeachment of I.C.; that is, no evidence that Rojas "put her up to anything" nor that "she had any sort of motive against" defendant. By contrast, "the defense showed a lot of motive and bias" of Rojas. While the court believed Camacho was not "lying for her son, obviously, she was not there 24/7." The court

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conceded that I.C. "was not corroborated, really" but noted that a conviction can be based on the testimony of a single witness and reiterated that he found I.C. credible and unimpeached.

¶ 17 Counsel filed a post-trial motion arguing insufficiency of the evidence and that the State committed a *Brady* violation by not providing the defense (1) the notes of the Assistant State's Attorney (ASA) who conducted the felony review of the allegations regarding I.C. and chose not to bring felony charges against defendant, and (2) information from I.C.'s Facebook account contradicting her testimony, though said information was in police or State possession. The motion also argued that defendant could receive only a single conviction for domestic battery because there "was nothing in the charges or the evidence to distinguish the alleged acts." Attached to the motion was a two-page printout made on January 31, 2013, and appearing to be I.C.'s Facebook "page." Defendant highlighted allegedly impeaching material on the printout, including what purported to be a conversation about an existing romantic relationship between I.C. and an unidentified correspondent.

¶ 18 At the motion hearing, after arguments of the parties, the court denied the motion. As to the *Brady* claim, the court found that felony-review notes are generally not admissible at trial or subject to *Brady* disclosure unless it is proven that they are material. The court said regarding the Facebook printout, "I don't even know what to make of it. I don't know what this is. I have no idea who posted this. \*\*\* To me, this is irrelevant, not impeaching of" I.C. While acknowledging defendant's argument that "this is proof \*\*\* that she lied about her age and her sexual relations prior to the Defendant's actions," the court reiterated that "I don't see this as proof of anything." On the one-act-one-crime argument, the court found that the State alleged a timeframe and I.C. testified to a timeframe, and that the law does not require "especially in a sex case, especially

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with a minor, [the] State does not have to have a specific date and time" but only an alleged timeframe supported by the evidence. As to sufficiency of the evidence, the court noted the argument that I.C. is not credible and was impeached but noted that it heard the evidence of I.C.'s admission that she was angry with defendant for hitting Rojas and found this non-impeaching. The court also found it incredible that defendant and I.C. lived in the same home for years but were never alone together as defendant testified and argued, and also found it incredible that Camacho was always home as argued. Returning to its finding that I.C. was credible, the court noted her demeanor and that she "is a child" and reiterated that the "State does not have to prove specific dates and times" especially for "sexual abuse victims that are underage."

¶ 19 Following extensive evidence and arguments in aggravation and mitigation, the court sentenced defendant to two years of sex offender probation with fines and fees, and this appeal timely followed.

¶ 20 On appeal, defendant first contends that the evidence was insufficient to convict him of domestic battery.

¶ 21 In reviewing a challenge to the sufficiency of the evidence, we determine, after taking the evidence in the light most favorable to the prosecution, whether the fact finder could rationally find every element of the offense beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. We generally refrain from substituting our judgment for that of the fact finder on issues involving the weight of evidence or witness credibility because the fact finder resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences. *Id.* We will not reverse a conviction merely because the defendant argues that a witness was not credible. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. The fact finder need not be satisfied beyond a reasonable doubt as to

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each link in the chain of circumstances; instead, all the evidence taken together must satisfy the fact finder beyond a reasonable doubt of the defendant's guilt. *Id.* Similarly, the fact finder need not disregard inferences that flow normally from the evidence or seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 22 The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Alexander*, 2014 IL App (1st) 112207, ¶ 44, citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999). "[A] complainant's testimony need not be unimpeached, uncontradicted, crystal clear, or perfect in order to sustain a conviction." *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 84, quoting *People v. Soler*, 228 Ill. App. 3d 183, 200 (1992). A fact finder judges how any flaws in part of a witness's testimony affect the credibility of the entire testimony, and may reject entire testimony but is not required to do so, so that a witness's credibility is not inherently destroyed by giving testimony that is contradictory or otherwise questionable. *People v. Flemming*, 2014 IL App (1st) 111925, ¶ 60, citing *People v. Cunningham*, 212 Ill. 2d 274, 282-83 (2004). "Where the record is not such that the only inference reasonably drawn from flaws in the testimony is disbelief of the whole, a reviewing court should bear in mind that the fact finder had the benefit of watching the witness' demeanor." *Cunningham*, 212 Ill. 2d at 284.

¶ 23 Here, the evidence supports a reasonable conclusion that defendant repeatedly committed battery upon I.C., in the form of unwanted physical contact of a sexual nature, when I.C. was the daughter of his girlfriend Rojas and both I.C. and Rojas lived in his home. I.C. testified clearly to that effect. The trial court acknowledged that I.C. was angry at defendant when she first revealed

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his actions and that there was no corroboration of her substantive allegations, and it was wholly within the court's power as finder of fact to nonetheless find her overall testimony credible. We find no impropriety in the trial court discounting testimony that defendant and I.C. were never home together, and Camacho was always home, during the years when I.C. resided with defendant; that is, it is reasonable to infer that there were nine opportunities for defendant to be alone with I.C. during that time. On this evidence, taken in the light most favorable to the State as we must, a reasonable finder of fact could conclude that defendant committed domestic battery.

¶ 24 Defendant also contends that the trial court erroneously applied a lower burden of proof. However, the court's statements indicated by defendant as the basis for this claim do not support such a grave allegation. I.C.'s age or degree of maturity is a proper consideration in the court's weighing of her testimony within the reasonable-doubt standard, and we will not presume the court applied a different standard merely by referring favorably to I.C.'s age. As the court noted, the State is generally not required to prove specific dates for offenses. *People v. Smith*, 337 Ill. App. 3d 819, 824 (2003). Similarly, a witness's inability to recall the dates of unwanted sexual contact goes to the weight of her testimony and is not inherently impeaching. *People v. Williams*, 223 Ill. App. 3d 692, 697 (1992); *People v. Findlay*, 177 Ill. App. 3d 903, 911 (1988).

¶ 25 Lastly, defendant contends that his right to due process was violated by *Brady* discovery violations, in that the State did not disclose felony-review notes or disclose that no incriminating messages were found on I.C.'s telephone.

¶ 26 Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution must disclose evidence that is favorable to the accused and material to either guilt or punishment. *See also* Ill. S. Ct. R.

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412(c) (eff. March 1, 2001). The standard for materiality under *Brady* is whether there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed; that is, whether the undisclosed evidence could reasonably place the case in such a different light as to undermine confidence in the conviction. *People v. Harris*, 2013 IL App (1st) 111351, ¶ 50. However, it is not a *per se* violation of *Brady* whenever the State fails to disclose evidence that might prove helpful to the defense, because prosecutors have the discretion to determine whether disclosure is required and the responsibility to weigh when the point of reasonable probability is reached. *Id.*, ¶ 51, citing *Kyles v. Whitley*, 514 U.S. 419, 436-37 (1995). To establish a *Brady* violation, a defendant must show that (1) the undisclosed evidence is favorable to the defendant because it was impeaching, (2) the evidence was suppressed by the State, and (3) the defendant was prejudiced because the evidence is material to guilt. *People v. Green*, 2012 IL App (4th) 101034, ¶ 39. Information has not been suppressed by the State when it is readily available to the defense from another source and there is nothing for the State to disclose. *People v. Snow*, 2012 IL App (4th) 110415, ¶ 39 (witness's plea agreement is public information).

¶ 27 Supreme Court Rule 412(j) provides that "[d]isclosure under this rule and Rule 413 shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the State or members of its legal or investigative staffs." Ill. S. Ct. R. 412(j)(i) (eff. March 1, 2001). Therefore, except for notes regarding witness statements, which are subject to *in camera* examination by the court to protect privileged information, felony-review notes are generally privileged. *People v. Harper*, 279 Ill. App. 3d 801, 810-11 (1996), citing *People v. Szabo*, 94 Ill. 2d 327 (1983).

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¶ 28 Here, defendant has not made any allegation that there were notes of witness statements in the felony-review notes, but instead contends that the felony-review notes as a whole should have been disclosed under *Brady*. Under Rule 412(j)(i), this is incorrect. As to defendant's *Brady* claim regarding the failure to disclose the absence of incriminating messages on I.C.'s telephone, he is raising it for the first time on appeal, if at all.<sup>1</sup> Moreover, the absence of any messages from defendant on I.C.'s telephone was mentioned in the search-warrant complaint, which was in the records of the clerk of the circuit court, so that we cannot conclude that the State suppressed this information. We conclude that the State did not violate defendant's rights by not disclosing the felony-review notes or the absence of messages from defendant on I.C.'s telephone.

¶ 29 Accordingly, the judgment of the circuit court is affirmed.

¶ 30 Affirmed.

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<sup>1</sup> The argument section of defendant's brief contends a *Brady* violation regarding the felony-review notes only. However, the "Brady Violation" portion of his fact section mentions the telephone claim, and the State joins issue thereon in its brief.