

NOTICE
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2018 IL App (5th) 160362-U

NO. 5-16-0362

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Shelby County.
)	
v.)	No. 15-CM-271
)	
DARREN MATHIAS,)	Honorable
)	Martin W. Siemer,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's domestic-battery conviction and sentence are reversed where the evidence demonstrated that he reasonably believed that his use of force was necessary to prevent or terminate his wife's trespass, and his use of force was reasonable.

¶ 2 The defendant, Darren Mathias, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)) in the circuit court of Shelby County. Thereafter, he filed a motion for new trial, which was denied by the trial court. The trial court sentenced him to a fine of \$400 plus costs. He appeals the domestic-battery conviction, arguing that the State failed to prove him guilty beyond a reasonable doubt. For the following reasons, we reverse the defendant's conviction and sentence.

¶ 3 The defendant was charged by information with domestic battery for an incident that occurred on December 10, 2015. The information alleged that he intentionally made physical contact of an insulting or provoking nature with Kimberly Mathias, a family member, in that he pushed her down, and she sustained a scrape to her wrist. At the time of the incident, the defendant and Kimberly were married, but divorce proceedings were pending (Shelby County case No. 12-D-87). During the marriage, and prior to the commencement of the divorce proceedings, they lived in a residence owned by the defendant's father, located in Findlay, Illinois. The residence was located on a farm owned by the defendant's father; the defendant was primarily running the farm. In addition to the residence, the defendant's father also owned other real property in the vicinity of the residence, including outbuildings. There are two structures on the farm that are at issue in this case: the marital residence and a large outbuilding, which the parties referred to as "the shop." The domestic-battery incident occurred inside the shop and was captured on video that was later admitted into evidence.

¶ 4 In the divorce proceedings, a temporary, agreed order was entered, granting Kimberly the exclusive use and possession of the marital home. This order was not introduced as an exhibit at trial and is not in the record on appeal. The parties indicated that the order was silent as to whether Kimberly had lawful possession of the shop.

¶ 5 The following evidence was presented at the May 18, 2016, bench trial. Kimberly testified that she and the defendant resided in the Findlay residence during their 21-year marriage. The shop was approximately 200 feet from the residence. An aerial photograph of the farm indicates that the shop was located at the end of a road, which

was past the driveway to the house. The defendant paid Kimberly maintenance and child support, and, pursuant to the temporary order, she used some of that money to pay the electric bill for the home and the shop. Kimberly was involved in the operation of the farm before the separation but was not involved after the separation.

¶ 6 Kimberly testified that the shop contained farm equipment that was marital property. Her father-in-law, who owned the farm and the buildings on it, had never told her that she could not enter the shop. There was no court order barring her from entering the shop. However, she did not have access to the shop because the locks had been changed. She believed that she should have access because she paid the electric bill, there was marital property inside the shop, and the shop had always been "part of the home." She was able to enter the shop on the day at issue because the door was open. The temporary order entered in the divorce case gave the defendant the right to enter the property and continue the farming operation.

¶ 7 During the divorce proceedings, the defendant accused Kimberly of dissipating marital assets. On the morning of December 10, 2015, she was inside the house when she observed the defendant "doing the same." She explained as follows:

"[The defendant was] taking some of the kids' old bicycles, different marital assets, and putting [them] in a *** trailer. *** Scrap metal still has money, and that means somebody would be getting the money from that, and I would be entitled to half of that. He did not discuss it with me prior to. He just was taking marital things from around the house and he was getting rid of them."

She wanted to document any dissipation of marital assets and went outside to take pictures.

¶ 8 After taking pictures, Kimberly entered the shop where the defendant was removing the tires off an old bicycle and told him, "You can't do this." The defendant responded that the items were junk, and he was getting rid of them. The defendant's employee, Bryan Allscheid, was in the shop working on a tractor at the time. The video showed Kimberly entering the shop and talking to the defendant. The defendant exited the shop, and she followed him outside. He then got into a backhoe, dumped more items into the trailer, and drove toward the shop. The video then showed him entering the shop, closing the door, and walking toward Allscheid while looking at his phone. He talked to Allscheid while Kimberly remained outside, taking pictures of the inside of the trailer.

¶ 9 Kimberly then reentered the shop, and she and the defendant appeared to be arguing before he turned away and got his phone out of his pocket. She was still talking to him at this point. She then walked toward him while pointing outside. In response, the defendant turned toward her, and they both gestured animatedly at each other. Kimberly testified that she asked the defendant to retrieve their son's John Deere toy tractor from the trailer because she wanted to keep it, but he refused. The video showed the defendant walking toward her, quickly turning around, and talking to Allscheid. He then pointed toward the door and walked past her while looking at his phone. Kimberly followed him. The defendant then turned at the door, walked back into the shop with phone in hand, and stood by the tractor with his phone to his ear. Kimberly, who was holding her camera,

followed him back inside the shop and stood in the doorway. She testified that the defendant told Allscheid to call the sheriff's department, and she stated that she would stand there and take pictures while she waited.

¶ 10 Kimberly testified that the defendant told her that she "wasn't to be in there" and started to physically remove her from the building. She explained that it was "one of those shove and push and grab and pull-type actions." The video showed Kimberly walking into the shop with the camera in her hand and the defendant quickly walking toward her while holding his phone to his ear. She stepped back from him and moved her camera to behind her back. He then made an emphatic pointing gesture, turned away from her, and took a few steps back toward the tractor. After he turned away, Kimberly held up her camera to take a picture. The defendant then turned and walked toward Kimberly, and her flashbulb on her camera went off. He then quickly approached her and reached out toward her with one hand. Kimberly again put her camera behind her back. He reached around her, and she transferred her camera from her left to right hand. He then pushed her away from the wall, got behind her, grabbed her upper arm, rotated her toward the door, and pushed her out the door while she physically resisted. She then went inside the house and called the sheriff's department.

¶ 11 Kimberly testified that she suffered cuts and scrapes on her right wrist as a result of the defendant's forcibly removing her from the shop and that the incident made her feel upset, angry, hurt, and violated. She was not sure exactly how her wrist was injured because it all happened so fast, but she was sure that she sustained the injury when the defendant pushed her out of the door.

¶ 12 The defendant testified that when he lived in the marital house, the shop door was kept unlocked. However, since he no longer lived in the house, the door was normally locked. He did not know if Kimberly had access to the shop when he was not there but said that she had not been in the shop since their separation in September 2012. On the day in question, he was cleaning up some scrap metal around the farm. The items that he placed in the trailer were not valuable beyond the price that he would get for scrapping them. He estimated the value of the bicycles and the John Deere wagon to be between \$20 and \$25. He gave the scrap metal to his employee, who collected the money for it, and he conceded that this "supposedly" would have been marital property.

¶ 13 According to the defendant, he was inside the shop, removing tires from an old bicycle, when Kimberly entered the shop and told him that he "can't do this." He explained that Kimberly was "trying to push [his] buttons," and he was defending himself by telling her "to leave [him] alone." He asked her to leave him alone multiple times, but she refused and kept following him. He acknowledged that he used an expletive when telling her to leave. He also asked her to leave the shop numerous times. When she entered the shop the last time, she told him that she was going to take some pictures. Before removing her from the shop, he attempted to call the sheriff's department but was unable to get a signal in the metal building. He testified that he "walked over to her, within one foot of her, and pointed and said, 'You need to get out of this building now.' " He walked back toward the tractor and was approximately 10 feet from her when he saw a camera flash. He explained that, after he saw the flash, he walked back toward her, "took ahold of her shoulders, kind of rolled her around, and pushed on basically her

shoulder blades to get her out the door." He explained that he pushed her out of the shop to get her out of his face and that he did not touch her wrists. After he removed her from the shop, he shut and locked the door.

¶ 14 Allscheid testified that he was present inside the shop when the incident occurred. He realized Kimberly had entered the shop when he heard her say, "You can't do this. This is marital property." He observed that she sounded stressed. He heard the defendant telling her to leave and that she did not belong there, but she continued to talk to the defendant. The defendant then exited the shop and Kimberly followed him. At some point, they reentered the shop and Allscheid heard Kimberly say, "this is marital property. We have *** a joint interest in it." Allscheid testified that when the defendant asked him to call the sheriff's department, he told the defendant that he did not want to get involved in the conflict. He also testified that the defendant asked Kimberly to leave "too many [times] to count. I mean, I heard him tell her to leave numerous times." He observed Kimberly following the defendant, and it appeared that the defendant was trying to separate himself from her.

¶ 15 After Allscheid told the defendant that he did not want to get involved, the defendant attempted to contact the sheriff's department himself. At that point, Kimberly exited the shop, and Allscheid heard the door close. However, she reentered and immediately said, "Well while I'm here, I'm gonna take pictures." The defendant told her to leave one final time before physically removing her from the shop.

¶ 16 Todd Shadwell, deputy sheriff with the Shelby County sheriff's department, testified that he was dispatched to Kimberly's residence after receiving phone calls from

both the defendant and Kimberly. The defendant reported he had been in an argument with his wife and had "felt the need to push her or move her out of the shed that he was in where they were arguing." Kimberly called the sheriff's department approximately two minutes later, saying that she had been in an argument with her husband, and he had pushed her. Shadwell went to the residence with another deputy. While there, he observed the scrapes on Kimberly's right wrist. He also spoke with the defendant, who said that he had been in an argument with his wife while inside the shop and that he wanted to remove her from the shop so he "pushed her out the door and shut the door."

¶ 17 After hearing the evidence, the trial court indicated that it had reviewed the exhibits and considered the testimony, that it found the witnesses for both sides credible and largely consistent, that it was undisputed that the defendant made physical contact with a family or household member, and that the contact was knowing. The court then concluded that the key issues were whether that contact was without legal justification and whether it was of an insulting or provoking nature. With regard to the legal-justification issue, the court stated as follows:

"There seems to be an attempt to make a defense in the nature of defendant had the right to be at this property; the victim did not. I believe the testimony shows that there really is no clear answer to that. The victim claims that it's part of the home, and that she had the right to that under the temporary order in the divorce case. There's nothing that establishes that. Meanwhile, the defendant has presented nothing to show that he has any greater right, other than the fact that it is property

owned by his father-in-law¹ and it's used in the course of the farming operations. The bottom line is I don't believe ownership or right to be on this property creates any legal justification under the facts of this case.

There also seems to be a defense that defendant was provoked, and, again, I'm going to find that that does not present a legal justification in this case as well. There is an argument that was going on, and it's clear from the testimony and from the video, the parties were in the midst of an argument. Blame can probably be placed on both sides as to how that argument started, but the bottom line is the argument escalated and it turned into physical contact, and not in such a way based on the testimony [that has] been presented that I believe that creates a legal justification for the contact that was made. Bottom line, I believe that the State has proven beyond a reasonable doubt that this was without legal justification."

¶ 18 As for whether the contact was of an insulting or provoking nature, the trial court stated as follows:

"One argument here seems to be that there was no injury. And the research I was able to conduct, that doesn't matter. There can be no injury at all. The key is whether the contact was of an insulting or provoking nature. If there's an issue as to whether the injury to the wrist occurred while the victim was being removed from the property, again, that's, I believe, irrelevant. To the extent it is relevant, the only testimony—direct testimony on this is from the victim who says that it

¹The trial court misspoke here as the property was owned by the defendant's father, not his father-in-law.

did happen at that time. She says it happened so fast she wasn't sure exactly how it happened. She may have scraped it on the door jam on her way out, but her testimony was that it happened as she was being removed from the property. And I believe that testimony was credible. Regardless, injury is not a necessary element, and it becomes again a matter of whether this was contact of an insulting or provoking nature.

In considering that, what I find is that there's very little case law interpreting what's insulting and what's provoking. A couple key points that I do find. Number one, it's insulting or provoking, and either *** satisfies the requirement.

Also, it's to be considered in the context of the entire situation. What may be completely innocent in one context is insulting or provoking in another. In considering the entire situation here, we have the domestic situation and ongoing divorce case with emotions running high, understandably, on both sides. The victim testified that the actions of the defendant made her feel angry, hurt, and violated. The context of the argument here dealing with property that she believed was marital property, there's an argument that it's of little value. Again, I think that's an issue that's irrelevant. There was—as the victim testified, removal of property that she believed she had some rights to. From the portion of the video that I was able to see and watch, and from considering the testimony, she followed the defendant around. She came and went. But it was verbal up unto the point she was removed from the property. What's key in my mind in watching the video and

from the testimony as well, the parties were separated for a moment. The defendant was attempting to contact the sheriff's department, and he turned around and came back. And then removed [Kimberly] after this had been going on for some time. I believe in the context of that and based upon the testimony, that can be considered insulting. It is considered insulting, and I am going to find that all elements have been established. The State has met its burden of proof beyond a reasonable doubt. And I do find the defendant guilty for those reasons."

¶ 19 On June 17, 2016, the defendant filed a motion for new trial, arguing that the State failed to prove his guilt beyond a reasonable doubt. Specifically, the defendant argued his use of force was legally justified in that Kimberly was a trespasser and had no possessory interest in the shop. The motion also argued that the physical contact was not insulting or provoking because the defendant used reasonable and minimal physical force to remove her from the premises.

¶ 20 In denying the defendant's motion for new trial, the trial court stated as follows at the July 20, 2016, hearing:

"[T]his was a really difficult case. But my understanding and reading of the case law and consideration of the evidence that was presented, weighing all the necessary factors, credibility of witnesses and having viewed the video, I do believe the State met its burden in establishing guilt beyond a reasonable doubt. In part because any contact of a provoking or insulting nature is sufficient to support the charge. And as I found at the prior hearing, the trial, I did not find that the contact was legally justified. And I did find that it was of an insulting or

provoking nature, however minimal that may have been, it still met the threshold. And that is still my position and my finding so the Motion for New Trial will be denied."

¶ 21 Thereafter, the trial court sentenced the defendant to the negotiated sentence, which was a \$400 fine plus costs, fines, and fees. The defendant appeals the conviction.

¶ 22 On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt of domestic battery. Where a criminal conviction is challenged based on the sufficiency of the evidence, it is not the function of the reviewing court to retry a defendant. *People v. Davis*, 2016 IL App (1st) 142414, ¶ 10. Instead, the relevant inquiry is 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. *Id.*

¶ 23 Here, the defendant was convicted of domestic battery pursuant to section 12-3.2(a)(2) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.2(a)(2) (West 2014)), which provides that a person commits domestic battery when he knowingly without legal justification makes physical contact of an insulting or provoking nature with any family or household member. The defendant admits that he used force to remove Kimberly from the shop. He, however, contends that he presented some evidence that his use of force was legally justified in that Kimberly was trespassing in the shop and that his use of physical force to remove her from the shop was reasonable. He, thus, argues that the burden had shifted to the State to prove beyond a reasonable doubt that the use of force was not legally justified and that the State had failed to meet this burden.

¶ 24 Where the State's evidence does not raise the issue of an affirmative defense, a defendant must present some evidence on each element of the defense. *People v. Dunlap*, 315 Ill. App. 3d 1017, 1025 (2000). After defendant adequately raises an affirmative defense, the State has the burden of proving beyond a reasonable doubt that the use of force was not justified as well as proving the elements of the charged offense. *People v. Williams*, 57 Ill. 2d 239, 242 (1974). If the State negates any one of the affirmative-defense elements, defendant's claim must fail. *People v. Jeffries*, 164 Ill. 2d 104, 128 (1995).

¶ 25 Section 7-3(a) of the Code (720 ILCS 5/7-3(a) (West 2014)) sets out the affirmative defense of defense of real property. It provides that a person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on real property (other than a dwelling), which is lawfully in his possession or in the possession of another who is a member of his immediate family or household. *Id.* Based on a careful review of the record, we find that the defendant presented sufficient evidence to raise this affirmative defense in that the evidence demonstrated that he reasonably believed that his conduct was necessary to prevent or terminate Kimberly's trespass.

¶ 26 A person commits criminal trespass to real property when she enters the property of another knowing such entry is forbidden or remains on the land of another after receiving notice to depart. 720 ILCS 5/21-3 (West 2014). The entire farm, including the marital residence and shop, was owned by the defendant's father. The trial court in the divorce proceedings entered a temporary order granting Kimberly the exclusive use and

possession of the marital home. However, the parties testified that the order was silent as to whether Kimberly was allowed access to the other buildings on the property, specifically, the shop. Although the order was silent on this issue, the evidence demonstrated that the defendant reasonably believed that he had superior access to the building. The shop was not located next door to the marital residence; the shop was detached from the house, uninhabited, and located approximately 200 feet from the residence. Pursuant to the court order, the defendant had access to the farm, which included the shop, to continue the farming operation. After the defendant moved from the marital residence, the locks on the shop door were changed, and Kimberly did not have a key. Thus, she did not have access to the shop, and the only way she was able to gain access that day was because the door was left open. Allscheid, an independent witness, testified that the defendant asked Kimberly to leave "too many [times] to count" during the encounter. The defendant also testified that he asked Kimberly to leave the shop numerous times that day, that he attempted to call the sheriff's department, and that he even shut the shop door at one point when Kimberly was outside. It was uncontested that Kimberly reentered and remained in the shop several times even though she knew that the defendant did not want her there. Thus, the evidence shows that the defendant reasonably believed that he had superior access to the shop and that Kimberly had entered and remained in the shop after receiving notice from the defendant to depart.

¶ 27 Moreover, we also conclude that the evidence demonstrated that the defendant's use of force to remove Kimberly from the shop was reasonable. Kimberly initiated the encounter with the defendant when she entered the shop to confront him with her

accusations that he was disposing of marital property. The defendant repeatedly attempted to walk away from Kimberly, but she continuously followed him around both inside and outside the shop. After she ignored his repeated demands to leave the shop, he attempted to call the sheriff's department but was unable to do so because of poor service. The defendant did not resort to physical force to remove her from the building until it became clear that she was not going to voluntarily leave. His use of force was limited to the amount needed to remove her from the shop; the physical contact ceased immediately once she was removed. Thus, we conclude that the defendant presented sufficient evidence to raise the affirmative defense, and the State failed to sustain its burden of disproving the legal justification beyond a reasonable doubt. Accordingly, we reverse the defendant's domestic-battery conviction and sentence.

¶ 28 For the foregoing reasons the judgment of the circuit court of Shelby County is hereby reversed.

¶ 29 Reversed.