No. 120958

IN THE SUPREME COURT
OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-13-4012
Plaintiff-Appellant,	)	
	)	There on appeal from the Circuit Court of Cook County, Criminal Division
v.	)	No. 11 CR 19547
	)	
MATTHEW GRAY,	)	The Honorable Nicholas Ford,
Defendant-Appellee.	)	Judge Presiding.

REPLY/CROSS-APPELLEE'S BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I. The People's Proof Established Defendant's Guilt Beyond a Reasonable Doubt.

Because it is theoretically dispositive, the People first address defendant's cross-appeal issue challenging the sufficiency of the evidence. *See People v. Carpenter*, 228 Ill. 2d 250, 264 (2008) (court of review should consider constitutionality of statute as matter of last resort and "only after the resolution of any other nonconstitutional and constitutional grounds for disposing of the case").

When reviewing a conviction to determine the sufficiency of the evidence, this Court asks "'whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.'" *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). *Jackson v. Virginia* "makes clear that it is the responsibility of the jury — not the court — to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011). The relevant question 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.'" *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson*, 443 U.S. at 319) (emphasis in *Jackson*). The reviewing court "must allow all reasonable inferences from the record in favor of the prosecution." *Id*. at 280. This same standard applies regardless of whether the evidence was direct or circumstantial. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

"This [C]ourt will not retry a defendant when considering a sufficiency of the evidence challenge." *Id*. "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." *Id*. at 114-15. "Accordingly, a jury's findings concerning credibility are entitled to great weight," and a conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *Id*. at 115; *see also United States v. Mullins*, 800 F.3d 866, 870 (7th Cir. 2015) ("Sufficiency challenges are very difficult to win because we view the evidence in the light most favorable to the verdict and reverse only if no reasonable jury could have found the defendant guilty beyond a reasonable doubt.").

Measured against this deferential standard, defendant's sufficiency challenge must fail. As defendant's jury was instructed, to establish defendant's guilt of aggravated domestic battery, the People were required to show that (1) defendant knowingly caused great bodily harm to (or choked) Tina Carthron; (2) Carthron was a family or household member; and (3) defendant was not justified in using the force he did. *See* BB95. The trial testimony satisfied each of these elements. Specifically, the testimony established that defendant choked Carthron until she "blacked out" — leaving marks on her neck — and when she regained consciousness, she saw defendant with a knife and realized that she had also been stabbed in the chest. AA40-42. Carthron later discovered that she had been stabbed in the back, too. AA46. There was no question of any alternate suspect: Carthron and defendant both testified that they were the only people present in defendant's apartment. AA38 (Carthron); AA251 (defendant). Defendant admitted at trial that he had "touched" Carthron's back with the knife he kept by his bedside and allowed that the knife may have contacted her chest, too, when he attempted to push her off of him. AA214-16. Defendant further testified that he observed the wound on

Carthron's back and said, "baby, I did cut you a little bit." AA221. Forensic evidence established that the major DNA profile from the handle and blade of a knife recovered from defendant's apartment matched Carthron, while defendant could not be excluded from the minor profile. AA171-72. Finally, defendant dialed 911 after the attack and reported that he had stabbed his "girlfriend" and that he thought "she may be hurt bad." BB9-10. Defendant also told police that a verbal altercation with Carthron became physical and that he was "defending [Laura Moore's] honor." BB13. This evidence sufficed to convict.

Indeed, defendant effectively concedes that, if believed, the People's proof was sufficient; he merely argues that Carthron's testimony should not be believed. Relying on *People v. McGuire*, 18 Ill. 2d 257 (1960), defendant first maintains that Carthron's testimony should not be believed because she was intoxicated at the time of the offense. Def. Br. 27. But the fact that a witness had been drinking alcohol, or was drunk, does not preclude the trier of fact from finding the witness credible. *People v. Bradford*, 194 Ill. App. 3d 1043, 1046-47 (1st Dist. 1990); *see also People v. Vandiver*, 127 Ill. App. 3d 63, 67 (1st Dist. 1984) (even though defendant maintained that witness was too drunk to remember anything accurately, factfinder's evaluation of witness credibility was not so unreasonable or improbable as to raise reasonable doubt of defendant's guilt).

Moreover, defendant's reliance on *McGuire* is misplaced. *McGuire* stands for the unremarkable proposition that evidence of a witness's intoxication is relevant and admissible. 18 Ill. 2d at 259. But even considering such evidence of intoxication, *McGuire* affirmed the defendant's conviction over his objection that his accomplices' testimony should not be credited because they were intoxicated at the time of the crime.

McGuire and two companions "had been drinking for the 'biggest part' of three weeks prior to [the offense]." 18 Ill. 2d at 258. On the day of the offense, they started drinking early; sometime during the afternoon they went to a wooded hill near a tavern, where they "'would drink and pass out and go to sleep, and then wake up and drink some more and pass out.'" *Id*. After midnight, the men went to the tavern for more liquor. *Id*. Finding the tavern closed, the three men broke in and took liquor and cigarettes. *Id*. This Court affirmed the defendant's burglary conviction and rejected his challenge to the accomplice testimony, noting that although the "intoxication of a witness at the time of an event about which he testifies may always be proved, because it affects the weight to be given to his testimony," in the absence of unusual circumstances, "the decision of the jury on the weight to be given to the evidence will not be interfered with." *McGuire*, 18 Ill. 2d at 259. Here, as in *McGuire*, the jury was well aware that Carthron (and defendant) had been drinking on the night of defendant's assault on her and this Court will not second-guess the jury's decision to credit her testimony despite that fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002) (Court will not substitute its judgment for that of jury on questions involving weight of evidence or credibility of witnesses; having heard challenged witness's testimony, "the jury was fully aware of its alleged infirmities.").

Defendant further argues that Carthron's testimony was not credible because it contained contradictions. Def. Br. 30. For instance, Carthron testified that defendant choked and stabbed her around 7:00 a.m. but told Detective Williams shortly after the offense that she woke up at 1:30 a.m. bleeding from her side and saw defendant with a knife. *Id*. But Williams's testimony on this point was less than definitive; she repeatedly qualified her brief testimony with the phrase "I believe it was." AA188-89.

Defendant further complains that at trial Carthron testified that when she woke up on the morning of November 2, she and defendant argued over defendant's phone call with his current girlfriend the night before, but at the preliminary hearing she testified that she did not know whether she and defendant had argued before "the incident." Def. Br. 30. But the cited portion of the record fails to demonstrate any conflict in Carthron's testimony. At trial, Carthron agreed on cross-examination that she and defendant had argued "right before this incident that [she] described." AA63. The defense then impeached Carthron with her testimony from the preliminary hearing, where she was asked whether she and defendant had "an argument before this," and Carthron responded "not that I know." AA64-65. Even assuming that "this incident" refers to defendant's attack on Carthron, Carthron's preliminary hearing testimony to the effect that she did not know whether she and defendant had an argument before "this" fails to establish a contradiction because the defense never established what "this" referred to during Carthron's preliminary hearing testimony. And even if "this" referred to defendant's attack upon Carthron, whether they argued immediately before the attack, the night before, or both fails to establish that Carthron's testimony was entirely unworthy of belief or that the evidence was insufficient to convict.

Defendant's two remaining allegations also fail to establish any contradiction. That Carthron did not tell Detective Williams in her first interview that defendant choked her does not conflict with her trial testimony, in which she testified that she did not remember whether she told Williams during the first interview at the hospital that defendant woke her up by choking her or choked her until she passed out, but that she believed she had. AA84. At most, this was grounds for impeachment by omission,

which defense counsel pursued. AA188 (Williams, testifying that during first interview at hospital she did not recall Carthron telling her that defendant choked her until she passed out). And in any event, Williams clarified on cross-examination that after Carthron's discharge from the hospital she again spoke with Carthron at the police station; at some point, Williams agreed, she "received information that Ms. Carthron had been choked by the defendant." AA190. And Carthron's preliminary hearing testimony, in which she admitted that she did not remember whether she bit defendant, AA69-70, was consistent with her trial testimony on that point, where she ultimately agreed that she did not remember whether she bit defendant, AA70-71.

Carthron's actions after defendant's attack on her did nothing to undermine her credibility. Defendant notes that after sustaining the stab wound to her chest, Carthron took a half-hour bus ride to her daughter's home rather than seeking help from police officers on the scene, and contends that this behavior renders all of her testimony "impossible for any reasonable fact-finder to accept." Def. Br. 32. But this point, too, was explored at trial, where Carthron explained that she did not approach police officers outside of defendant's apartment because (1) she knew that defendant had called the police but did not know what story he had told them; (2) she did not know the extent of her injuries; and (3) she was focused on getting to her daughter's home so that her daughter could help her. AA76-77, AA88. This explanation was entirely plausible and provides no basis to doubt the entirety of her testimony.

Indeed, such minor inconsistencies regarding the collateral questions of the timing of defendant's offenses, or whether they argued in the evening, in the morning, or both — even if established — are insufficient to render the entirety of Carthron's trial testimony

unworthy of belief. *See People v. Evans*, 209 Ill. 2d 194, 211 (2004) ("It is the function of the trier of fact to assess the credibility of the witnesses, to determine the appropriate weight of the testimony, and to resolve conflicts or inconsistencies in the evidence."); *People v. Phelps*, 211 Ill. 2d 1, 7 (2004) (responsibility of trier of fact to resolve conflicts in the testimony, weigh evidence, and draw reasonable inferences from basic to ultimate facts); *Cunningham*, 212 Ill. 2d at 284 (2004) (despite concluding that three statements by police officer were "questionable," nothing in the record showed that "the only reasonable inference is that the questionable parts of [the officer's] testimony make the whole unworthy of belief"; officer's statements that directly supported the defendant's guilt could reasonably be accepted by fact finder, who saw officer testify, as true beyond a reasonable doubt).

Finally, in presenting a self-defense theory, defendant necessarily admitted that he committed the charged crimes, but argued that his actions were justified. *See* BB40-43; BB55-60; *People v. Chatman*, 381 Ill. App. 3d 890, 897 (2d Dist. 2008) (quoting *People v. Raess*, 146 Ill. App. 3d 384, 391 (1st Dist. 1986)) (raising self-defense "'necessarily constitutes an admission by the defendant that he committed the crime for which he is being prosecuted.'"). Defendant claimed that Carthron bit him, AA208, and Detective Williams observed an oval-shaped mark on defendant's chest, AA188-89, but defendant agreed that the bite never broke the skin, AA237, and that Carthron never attacked him with a knife, AA246. As the appellate court noted, a rational jury could find that defendant was the only one who could have inflicted the stab wounds and that the stabbing was unjustified, even if she did bite him. *Gray*, 2016 IL App (1st) 134012, ¶ 53. Accordingly, defendant's sufficiency challenge is meritless.

II. Defendant Failed to Carry His Burden of Clearly Establishing that Section 112A-3(3) Is Unconstitutional as Applied to Him.

Like his sufficiency challenge, defendant's as-applied challenge to the constitutionality of the domestic battery statute fails. It is undisputed that defendant and Carthron had dated for over two years and that their dating relationship ended approximately fifteen years before defendant choked and stabbed Carthron. It is also undisputed that under the plain language of section 112A-3(3), as someone who "had a dating relationship" with defendant, Carthron satisfied the statutory definition of a "family or household member."

There is no merit to defendant's contention that section 112A-3's definition of "family or household members" constitutes an abuse of the state's police power merely because he and the victim had not dated in fifteen years. As demonstrated in the People's opening brief, the challenged provision withstands rational basis review because a conceivable basis exists for finding it rationally related to a legitimate public interest — here, "curbing the serious problem of domestic violence." *People v. Wilson*, 214 Ill. 2d 394, 402-03 (2005).

Defendant's argument focuses on the question of what qualifies as a dating relationship. Def. Br. 14-17. But as defendant acknowledges, there is no dispute that defendant and Carthron were not in a *current* dating relationship; instead, they had been in a dating relationship fifteen years earlier. Def. Br. 9. Thus, the question of how to define a present dating relationship is not presented by this appeal: it is undisputed that defendant and Carthron satisfy the statutory definition because they are "persons who … have had a dating . . . relationship." 725 ILCS 5/112A-3(3). Once a dating relationship has been established, the statute applies regardless of the passage of time. *Wilson,* 214

Ill. 2d at 400. Indeed, that *former* dating relationship is at the very heart of defendant's complaint that section 112A-3(3) is unconstitutional as applied to him because their dating relationship had ended fifteen years earlier. Defendant makes no argument that their relationship does not satisfy section 112A-3's definition.

By covering persons who have a former dating relationship, the statute's plain terms dispense with any requirement of present romantic intimacy between offender and victim. And as explained in the People's opening brief, had the legislature's purpose been limited to deterring violence against persons with whom the offender shares a current romantic intimacy, it would not have included in its definition of "family or household members" "parents, children, stepchildren, and other persons related by blood or by present or prior marriage," "persons who share or formerly shared a common dwelling," "persons with disabilities and their personal assistants," or home "caregivers" for the elderly, broad categories of persons who (presumably) were never romantically intimate, much less currently so. And "former spouses" can hardly be expected to maintain romantic intimacy after a divorce. The broad scope of the definition of "family or household members" evinces the General Assembly's intent to cast a wide net to protect a large number of persons from domestic abuse, irrespective of any present romantic intimacy.

Defendant does not dispute this legitimate public interest, but argues that because former dating partners do not share a present romantic intimacy, the statute is not rationally related to it. Def. Br. 17-18 ("once that romantic intimacy has diminished . . . the reasonable relationship to the announced public interest also washes away"). But the General Assembly may have reasonably believed that people are more likely to batter a

former romantic partner even after their dating relationship and the attendant romantic intimacy ends; the legislature's definition of "family or household members" recognizes that such prior relationships engender a degree of familiarity that may render a victim more vulnerable to abuse at the hands of a former romantic partner. As noted by amici, "protections under the law for domestic victims thus focus on the nature, not the length of the relationship at issue." Brief of Amici Curiae 18 ("Amici Br."). As defendant himself notes, "the type of harm sought to be remedied by the legislature through the [Domestic Violence] Act was 'the universe of physical and psychological abuses *which only someone as close as a relative can inflict*.'" Def. Br. 13 (quoting *People v. Blackwood*, 131 Ill. App. 3d 1018, 1023 (3d Dist. 1985)). The legislature's definition also reflects the fact, conceded by defendant, that "partner violence does not end when a dating relationship ends." Def. Br. 18; *see also Wilson*, 214 Ill. 2d at 403 (threat of domestic violence does not end when relationship ends).

Nor is defendant correct that "the State essentially concedes that whether former dating partners are still influenced by their romantic intimacy should be a concern in this, or any, as-applied challenge to section 112A-3(3)." Def. Br. 19. Instead, in each of the statutory categories, the persons share or have shared a relationship that the legislature has determined renders them potentially susceptible to domestic abuse. The legislature has reasonably determined that former spouses and former dating partners maintain susceptibility to domestic abuse even after the spousal or dating relationship ends. As amici note, "engaging in a 'serious dating relationship' usually alters the dynamic of their relationship forever[.]" Amici Br. 9. But if, as in the People's hypothetical (in which a defendant stabbed someone at night in a dark alley and only later came to learn that by

coincidence the victim was his former girlfriend), the defendant was wholly unaware of the victim's identity, their relationship would have played no role in the defendant's crime or the victim's vulnerability to it. Under those circumstances, an as-applied challenge might succeed because there is no connection between the familiarity engendered by the domestic relationship and the ensuing violence.

Defendant is also incorrect when he maintains that the People "[r]ecogniz[e] the lack [*sic*] any current effect upon Matthew or Tina of their prior romantic intimacy." Def. Br. 23. To the contrary, as the People argued in their opening brief, Peo. Br. 19-20, the record amply demonstrates that defendant and Carthron remained familiar despite the passage of fifteen years' time. *See also* Amici Br. 20 ("record here demonstrates a level of accessibility, familiarity and trust between the victim and her abuser such that the victim should be entitled to heightened protection under the law"). Defendant and Carthron knew each other for twenty years; they continued to see each other over the years; and Carthron had seen defendant "a few" times in the month preceding defendant's attack upon her, AA58. Though they were not presently dating, their relationship remained intimate. AA93 (Carthron, testifying that they often spent the night together). That continued familiarity, access, and trust is reflected in the facts and circumstances underlying defendant's attack on Carthron. On the day before the stabbing, Carthron called defendant and asked him to pick up some items for her at the store; he purchased the requested items, and then they spent the evening together drinking and talking; Carthron testified that she and defendant had sex that night and shared defendant's bed, AA94. Though it differed in some respects from Carthron's, defendant's own testimony confirms that continued intimacy. He testified that in mid-October, he kept a bag of

clothing for Carthron and walked her to the bus stop. AA199-200. On the night of the offense, defendant testified, he invited Carthron over to his apartment "because she sounded all down," and he gave her a stack of movies to watch and permitted Carthron to remain in his apartment while he took a nap. AA203-07. The argument that led to the stabbing resulted only because defendant accepted a phone call from his current girlfriend; Carthron found it "disrespectful," and she was upset because defendant was talking to another woman while she was there. AA65. And defendant testified that although he considered Moore his common-law wife, the two were separated at the time of this offense; in his 911 call, he described Carthron as his girlfriend. Taken together, this evidence establishes the reasonableness of treating defendant and Carthron as "family or household members" for purposes of the domestic battery statute.

Defendant's argument that "re-abuse markedly declines as post-separation time increases" misses the mark. Def. Br. 18. At most, this argument suggests that defendant is less likely to abuse Carthron again in the future. More importantly, defendant effectively concedes that such statistics have no bearing on his as-applied challenge here. *See* Def. Br. 23 (arguing that empirical studies referencing prevalence of individuals abused by former partners "would be relevant [only] if this were a facial challenge to the statute.").

Similarly, the fact that Rhode Island places a time limitation on its domestic abuse statute does not support defendant's as-applied challenge here. *See* Def. Br. 24 (noting that R.I. Gen. Laws § 12-29-2(b) limits domestic abuse to those who have been in a dating relationship within the past year). That the Illinois statute does not contain such a limitation merely evinces the General Assembly's intent that the provision apply even

long after the dating relationship has ended. *See Wilson*, 214 Ill. 2d at 400 (statute applies to "anyone who has ever had a dating relationship with the victim . . . , no matter how long ago" — "the statute has no time limit.").

Defendant also misreads this Court's opinion in *Wilson* as "indicat[ing] that it would not be a valid exercise of the State's police power to apply the statute to someone in Matthew Gray's and Tina Carthron's shoes." Def. Br. 19. *Wilson* did nothing of the sort. The defendant in *Wilson* challenged the definition of family or household member as unconstitutionally vague, complaining that "the statute allowed a domestic battery charge to be based on a former relationship," and "did not place any time limits on the former relationship of the parties." 214 Ill. 2d at 396, 397. This Court rejected the defendant's vagueness challenge, noting that the fact that the statute has no time limit "does not make the statute vague." *Id*. at 400-01.

Wilson's trial court had expressed concern that "if a man bumped into a woman on the street, and he had dated that woman 45 years earlier in high school, he could be charged with domestic battery," demonstrating that the trial court's true concern was not vagueness, but whether the statute was a valid exercise of the legislature's police power. *Id*. at 401-02. But, this Court noted, the trial court "could consider a police power argument only on an as-applied basis." *Id*. "Thus, it was *not relevant* whether it was a valid exercise of the police power to make the statute applicable to relationships that ended 50 years before the alleged battery." *Id*. (emphasis added). It was reasonable for the legislature to include relationships that had been over for only a few months and "[w]hether it was reasonable to include relationships that had ended 50 years ago [was] not before this [C]ourt." *Id*. at 403. Thus, this "reservation of judgment" on the police

power question was not, as defendant claims, a "prescient realization that there are situations where the State's interest in preventing violence in current or former dating relationships evaporates with the passage of time." Def. Br. 20.

Neither the number of years since the parties had formally dated nor the question of whether the parties were currently romantically intimate determines the reasonableness of treating defendant and Carthron as "family or household members" for purposes of the domestic battery statute. As amici convincingly argue, if the appellate court's interpretation of section 112A-3 is permitted to go uncorrected, the court's error will affect not only this case or domestic battery cases generally, it will potentially extend to the Domestic Violence Act as well, because the statutes share the same definition of "family or household members." "Because the definitions of a 'family or household member' in the two statutes are 'in all pertinent respects, identical,' *Gray*, 2016 IL App (1st) 134012, ¶ 38, this risk is substantial, or at a minimum, may introduce unnecessary uncertainty into the [DVA's] streamlined procedures." Amici Br. 30-31. As amici explain, such an impact "would be directly contrary to the intent of the legislature" and the stated purposes of the DVA. Amici Br. 31.

The question is not "whether the legislature has chosen the best or most effective means of resolving the problems addressed by the statute, but only . . . whether the statute is reasonably designed to remedy the evils which the legislature has determined to be a threat to the public health, safety, and general welfare." *Wilson*, 214 Ill. 2d at 421-22. Measured against that deferential standard, section 122A-3 is plainly constitutional.

CONCLUSION

For these reasons and those stated in the People's opening brief, this Court should reverse the judgment of the appellate court and remand to the appellate court for consideration of defendant's remaining issues.

March 22, 2017

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is fifteen pages.

s/Katherine M. Doersch
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on March 22, 2017, the foregoing **Reply/Cross-Appellee's Brief and Appendix of Petitioner-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and copies were served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, in envelopes bearing sufficient first-class postage:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail a copy of the pleading to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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