

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Carroll County.
)	
Plaintiff-Appellee,)	
)	
v.)	Nos. 17-CM-17
)	
JEFFREY D. BROWN,)	Honorable
)	J. Jerry Kane,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Bridges and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* There was no merit to defendant’s contention that the trial court found him guilty of battery out of the erroneous belief that, as a matter of law, defense of property is not an affirmative defense to battery. The court first rejected defendant’s testimony that he beat the victim after interrupting his theft attempt, and afterward the court remarked that, *even if* the victim had been trying to steal, defendant would not have been justified in beating him. Thus, defendant’s argument on appeal misinterprets the court’s actual determination which was to reject the affirmative defense on factual grounds not legal grounds.

¶ 2 After a bench trial, defendant, Jeffrey D. Brown, was convicted of two counts of battery (720 ILCS 5/12-3(a) (West 2016)) and sentenced to concurrent 60-day jail terms. On appeal, he contends that one conviction (battery of Scott Gallacher) must be vacated because the trial court

erroneously assumed as a matter of law that his affirmative defense of defense of property (*id.* § 5/7-3(a)) was inapplicable. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged with battery to Candace Maze (count I) and Gallacher (count II). We summarize the trial evidence.

¶ 5 Maze testified on direct examination as follows. On February 13, 2017, she and Gallacher, her boyfriend, were residing at the home of Gert and John Carr in unincorporated Carroll County. At about 8:15 p.m., she and Gallacher were returning from Savanna. Gallacher was driving his truck east and had to pass the home of Les Harder on the way. Harder was a friend who had gone into the hospital about a week earlier. Maze saw defendant standing outside Harder's home, waving at her. She had known him for about as long as she had known Harder. At her request, Gallacher stopped and parked opposite Harder's house. He stayed in the truck. Maze crossed the road and entered through the house's front door as defendant held it open. Harder was not there.

¶ 6 Maze testified that, after she was inside, defendant hit her in the back of the head. She fell to the floor, and he kept punching her as she curled up on her back with her eyes closed and her hands over her face. He kept saying something about her having stolen from him. Eventually, defendant stopped. Apparently speaking to his girlfriend Joanne Collins, he asked, “ ‘[W]here's her boyfriend? Where's he at? He could be calling the cops.’ ” Before the attack, defendant had said nothing to Maze, and she had no idea what he meant by his talk of stealing.

¶ 7 Maze testified that defendant got up and ran out the front door. Maze got up and went to the Carr home. She was bleeding from her head and her right hand. It was pitch dark out, but she believed that Gallacher could defend himself. At the Carr home, Gert called the police. Deputy

Sheriff Christian Ponall arrived and spoke with Maze. She went to the hospital, where her injuries were photographed and treated. At trial, she identified the photographs.

¶ 8 Maze testified that, for about two or three months before the attack, she and Gallacher had visited Harder several times a week to assist him because his health was poor. In February 2017, they were not taking care of Harder, but defendant and Collins had been staying at his house.

¶ 9 Gallacher testified as follows. In February 2017, he and Maze were residing with the Carrs. On February 13, 2017, they were riding home from work. As they approached Harder's house, defendant was standing outside and waved at them to approach. At Maze's request, Gallacher stopped and parked across the road. She exited, crossed the road, and entered the house. About five minutes later, defendant exited the house alone, crossed the road, and walked up to Gallacher's truck. He told Gallacher to get out, so Gallacher did. Defendant told him not to return to his truck that night. He then grabbed the door of the truck and hit Gallacher twice in the back of the head. Gallacher started to walk away. Defendant reentered Harder's house, and Gallacher did not see him again that night.

¶ 10 Gallacher testified that he walked to the Carr house and saw Maze there. She was bleeding. They spoke to Ponall and went to the hospital for a few hours. Gallacher identified photographs taken at the hospital. One showed some marks on his shoulder. Gallacher did not remember receiving any injuries to his shoulder in the attack.

¶ 11 Ponall testified that, on February 16, 2017, he spoke to defendant at the county jail. Defendant said that, on the evening of February 13, he and Collins were in the living room of Harder's house when two people entered. Defendant said that he got off the couch and struck the intruders repeatedly because he thought that they were breaking in. Defendant also said that, after he left the house, he saw a truck and recognized it as Gallacher's. Ponall asked defendant where

he went after the incident, but defendant said that was “between him and his old lady” and refused to tell. Ponall also testified that, on the evening of February 13, he spent 10 minutes at Harder’s house trying to make contact with anyone who was inside, but he had no success. The State rested.

¶ 12 Defendant testified on direct examination as follows. On February 13, 2017, at about 8 p.m., he, Collins, and Harder were at Harder’s home. Defendant and Collins had been staying there every day to take care of the ailing Harder. Earlier that day, defendant and Collins had gotten into a collision between his truck and a truck that the Carrs’ son had been driving and in which Harder had been riding. The accident necessitated taking Harder to the hospital. When they returned that evening, defendant parked across the road from Harder’s home. Inside the home, Harder was assisted to his bedroom, and defendant and Collins lay down on the living room couch.

¶ 13 Defendant testified that, about 40 minutes later, the front door opened. Nobody had knocked or announced himself or herself, and there was no doorbell or knocker. No lights were on in the house or on the front porch. One person entered. Defendant said nothing but jumped up to defend the house, “[b]asically just [on] instinct.” He saw a shadow and started hitting the person. Collins stayed on the couch. In a couple of minutes, the person left the house. Defendant then realized that it was Maze.

¶ 14 Defendant testified that, after Maze exited, he went outside. He saw that Gallacher was “going through the trucks that we just got totalled [*sic*] out, going through our tools.” The tools included chainsaws and tree-cutting and roofing tools. They were in a locked box that had been broken open in the accident. There were no streetlights or other lights in the area. When defendant saw Gallacher, he “just started defended [*sic*] my tools *** I hit him because he was going through my shit—my stuff because my truck got totalled [*sic*] out.” Gallacher took off running.

¶ 15 Defendant testified on cross-examination that, in February 2017, his residence was in Savanna. As of February 13, 2017, he had been staying with Harder “every once in awhile” because of Harder’s illnesses. Defendant testified inconsistently on whether he and Collins stayed over at Harder’s the night of February 13-14, 2017. He first said that they did not, but then said that they did. Asked why he did not answer the door when the police knocked, he initially testified, “They never done nothing for me.” However, he then testified that he did not even know that the police were coming and that he was not at Harder’s house when they arrived. Reminded that he had just testified that he spent the night at the house, defendant stated that he had been there up until about 8:30 or 9 p.m. only. He added that, after the encounters with Maze and Gallacher, he went to call the police. He could not do so at Harder’s house because it had no phone. Defendant testified that, although he had intended to call the police, he did not, “[b]ecause the police were already on their way out there.” Asked why he did not go to the police and tell them what had happened, he testified, “because I probably had a warrant for my arrest by then.”

¶ 16 Defendant testified that, as he was hitting Maze, she told him that she would “never rob from you guys again.” Defendant denied having told Ponall that two people had entered the house; he had said that one person entered the house and one was at defendant’s truck. Asked why he left the house after the incident with Maze despite the need to take care of Harder, defendant testified, “Because I was going to make a phone call and get something to drink and then come back,” as the encounter had been so “nerve-racking.” When he confronted Gallacher outside, he did not say anything before he hit him. On redirect, defendant testified that he did not call the police from outside Harder’s home because his cell phone was “down on minutes.”

¶ 17 The defense rested. The State put on no rebuttal evidence. In closing arguments, the State maintained that defendant was not a credible witness, because his testimony as to both Maze and

Gallacher was inconsistent, illogical, and contrary to the photographic evidence and his statements to Ponall. Defendant's argument, which takes up 10 lines in the transcript, was that defendant had testified credibly that he was concerned about the unknown entrant into Harder's house and that he believed that Gallacher was rummaging through his tools with the thought of theft.

¶ 18 In finding defendant guilty of both charges, the trial court explained as follows. The photographs of Maze's injuries supported her testimony that she was attacked from behind. Similarly, the photographs of Gallacher's injuries supported his testimony that defendant had struck him in the back of the head. The court "[did not] know what to make of" the shoulder abrasions shown, as Gallacher did not testify that he fell to the ground and did not recall the abrasions. In any event, bodily harm was proved beyond a reasonable doubt.

¶ 19 The court stated that the "real issue here" was whether defendant knowingly caused the injuries. Despite "some shakiness" in Maze's testimony, "she was honest *** with regards to what happened on February thirteenth." Defendant's testimony that he attacked Maze because he thought she was breaking in was not supported by the evidence. Moreover, defendant testified inconsistently about whether he was inside the house when Ponall knocked, and his assertion that he had left to find a phone to call the police was not credible.

¶ 20 Defendant did not file a posttrial motion. The case proceeded to sentencing. After the evidence in aggravation and mitigation, the State requested that defendant be sentenced to 180 days in jail, based in part on his substantial criminal record. The State also emphasized that both victims had suffered substantial injuries. Gallacher's injuries were "either to the back or the side of his head consistent with *** being surprised by the Defendant when he went out to the truck."

¶ 21 Defendant requested probation. He cited his testimony that he had acted to protect Harder's house and his own truck, and he argued that his more serious convictions were not recent.

¶ 22 In pronouncing sentence, the court first noted, “I remember the testimony with that little refresher with regards to the injury to Mr. Gallacher.” The court continued:

“I *** believe I made the right decision in entering a guilty finding on each count under the facts of the case and that how Ms. Maze was hit from behind and injured ***. What she was doing quite frankly to me has nothing to do with protecting property. She was called into a house and what happened there, happened there.

With regards to Mr. Gallacher I do recall testimony that he was out by a truck where there was property of [defendant] but beyond that *I don't know that there was any indication that he was trying to steal anything, but even for argument[s] sake trying to protect property perhaps maybe in that situation but that's still not a reason for the Battery [sic]. It's not a defense.*” (Emphasis added.)

¶ 23 The court then sentenced defendant to concurrent 60-day jail terms. He timely appealed.

¶ 24 **II. ANALYSIS**

¶ 25 On appeal, defendant challenges only his conviction of battery to Gallacher. As noted above, defendant failed to properly preserve this issue on appeal by failing to file a post-trial motion in this case. However, he maintains that because the court ruled out his affirmative defense on erroneous legal grounds, the result of the proceeding on count II might have been different; thus, this court should find plain error and reverse. Relying on the second paragraph of the court's statement just before it pronounced sentence, defendant contends that the trial court erroneously assumed that defense of property is not an affirmative defense to battery. See 720 ILCS 5/7-3(a), 7-14 (West 2016). Further, defendant reasons that although the court explicitly stated that Maze's account of the first encounter was credible and defendant's was not, the court did not resolve the credibility contest between Gallacher and defendant on the facts of the second encounter.

¶ 26 When a defendant fails to properly preserve an issue for appeal, a reviewing court may review such forfeited claims for plain error if “(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.” *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The first step is to determine whether any error occurred at all. *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). We find that no error occurred in this case. The trial court’s remarks at sentencing, viewed in light of the entire record, show that the court rejected defendant’s affirmative defense not on legal grounds but factual grounds. The court’s statement at sentencing related solely to what it concluded was the hypothetical scenario in which defendant could have reasonably believed that Gallacher was threatening his property.

¶ 27 We turn to the passage on which defendant primarily relies. The court noted the evidence that Gallacher was “out by [defendant’s] truck.” This was consistent with defendant’s testimony, but it was also consistent with Gallacher’s testimony: it was undisputed that Gallacher parked his truck near where defendant’s truck was parked. The court continued, “I don’t know that there was any indication that [Gallacher] was trying to steal anything.” This statement implicitly discredited defendant’s assertion that Gallacher had laid his hands on defendant’s property.

¶ 28 The next words cut strongly against defendant’s claim of error. The words are, “but even for argument[’s] sake trying to protect property [*sic*].” The phrase “even for argument’s sake” ordinarily implies that the premise that follows is one that the speaker does not believe. Thus, defendant’s argument on appeal incorrectly assumes that the court’s decision was primarily concerned with his affirmative defense. The court had already found that the facts excluded defense of property as a possible theory. The court had credited Gallacher’s account of the confrontation and discredited defendant’s. That is why it later addressed defendant’s account only “for argument[’s] sake.”

¶ 29 Defendant contends that, although the court explicitly credited Maze's account of her confrontation with defendant over his account, it made no such explicit credibility resolution as to Gallacher's confrontation with defendant. However, defendant underestimates the degree of connection between the two sets of rival testimony. Crediting Maze's account of what happened *inside* the house over defendant's account necessarily tended to credit Gallacher's account of what happened outside the house over defendant's account.

¶ 30 The trial court credited Maze's testimony that defendant accused her of stealing from him. The court also credited her testimony that defendant asked Collins where Gallacher was and expressed the fear that he would call the police. These facts made it almost inevitable that the court would find that, when defendant stepped out of the house, he did what Gallacher said: he approached Gallacher, confronted him directly, and struck him in order to intimidate him into leaving the area without calling the police. This is consistent also with defendant's warning to Gallacher not to return to his truck that evening. It is also consistent with the implication of Maze's testimony: that defendant lured her into the house to attack her for what he thought was her thefts. And, as he knew that Gallacher was her boyfriend and he could see that Gallacher had driven there, the strong implication was that defendant had unfriendly plans for Gallacher as well.

¶ 31 The trial court's comment at the sentencing hearing was consistent with having found at trial that the facts of the second encounter did not implicate any defense of property. Defendant notes that, at trial, the court's explanation of its finding of guilt on count II did not discuss the affirmative defense. But this is consistent with rejecting the factual premise for the defense.

¶ 32 The remainder of the testimony, and the court's treatment of it, also bear out this conclusion. The court disbelieved any implication that defendant intended to call the police. Given defendant's blatant inconsistency on whether he was at the house when the police knocked,

why he did not talk to the police, whether he even wanted to talk to the police, and whether he stayed over that night, and his earlier refusal to tell Ponall where he went after leaving the house, this disbelief followed naturally. Moreover, defendant did not tell Ponall that he had seen Gallacher going through his tools: he placed Gallacher inside the house when he exited.

¶ 33 Defendant's claim of error rests on the assumption that the court found him credible about at least some of the disputed events that happened after he left the Harder house. But that possibility is negligible. Had the court found that defendant was wholly incredible about most of his actions, yet more credible than the State's witnesses about one aspect of what he did, the court surely would have said so.

¶ 34 In sum, defendant has not established that the trial court committed any error. Even assuming for argument's sake that we read the court's comments at sentencing as implying a belief that defense of property is *per se* inapplicable to a charge of battery—an implication that is unsupported by the court's choice of words—that erroneous belief did not affect the court's resolution of count II. Therefore, defendant's conviction of that count must be affirmed.

¶ 35 **III. CONCLUSION**

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Carroll County.

¶ 37 Affirmed.