

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2008

SHAWN CARLOS CARPENTER,

Appellant,

v.

Case No. 5D07-2762

STATE OF FLORIDA,

Appellee.

Opinion filed June 13, 2008.

Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

James S. Purdy, Public Defender,
and Rebecca M. Becker, Assistant
Public Defender, Daytona Beach,
for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Jeffrey R. Casey,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Shawn Carpenter appeals a judgment and sentence following a revocation of probation. The probation violation concerned a skirmish that occurred at the alleged victim's home. At the violation hearing, the victim was asked, "And during that altercation, you ended up being pushed by Mr. Carpenter; isn't that correct?" The victim responded, "No. Actually what happened was, I was calling 911, they were fighting, I

got in be --- tried to get in between them, and got pushed. And then the other guy fell on me." On cross-examination, the victim stated that Mr. Carpenter did not intentionally touch or strike her and any contact was accidental. Apparently, the victim's original statement to the police reflected that she called 911 when her former boyfriend and Mr. Carpenter began fighting and Mr. Carpenter subsequently pushed her and tried to push the phone out of her hand. Although the prosecutor showed the victim her original statement and questioned her in an attempt to impeach her testimony, no direct response was ever obtained.

The victim's purported prior inconsistent statement was not established and even had it been, a prior inconsistent statement is insufficient to sustain a violation of probation. Shaw v. State, 710 So. 2d 182, 184 (Fla. 3d DCA 1998).

REVERSED.

ORFINGER, TORPY, and COHEN, JJ., concur.