

vacate the extended-term portion of his sentence for unlawful restraint, reduce the sentence to three years, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 On June 11, 2010, the State charged defendant with one count of unlawful restraint (720 ILCS 5/10-3 (West 2008)), one count of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2008)), and two counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2008)) relating to a May 6, 2010, confrontation with Jacqueline Katz. On June 23, 2010, the grand jury issued superseding indictments.

¶ 5 On July 22, 2010, an interim order of protection was entered against defendant in favor of Katz and her son, of whom defendant is the father. On August 24, 2010, the trial court entered a plenary order of protection prohibiting defendant from coming within 500 feet of Katz and the parties' son. Defendant was denied visitation but was allowed contact by telephone.

¶ 6 On August 24, 2010, the trial court conducted a bench trial. Katz testified she resided with defendant and their son in an apartment. On May 5, 2010, after she got home from work, she and defendant went to Shooter's bar and grill. They stayed until 8:30 p.m. when they left for the Copper Top, another tavern. They stayed approximately 30 minutes when defendant, who seemed angry or agitated, wanted to leave. When they got to the car, defendant told Katz a man named "Seebo" had pulled a knife on him. He was angry because he felt Katz had not left the tavern quickly enough. He punched her in the mouth. She drove toward home, while defendant hit her, pulled her hair, and argued with her. At a stop sign, she tried to escape by getting out of the car, but defendant caught her, dragged her back to the car, and put her in the passenger's seat. Defendant drove as Katz tried to get bystanders' attention by honking the horn, screaming, and rolling down the window.

¶ 7 When they arrived home, defendant dragged Katz from the car by her hair. He threw her on the bed, kicked her with his heels, and punched her in the face, ribs, and back. Defendant had possession of her keys and telephone. He locked her in the bedroom and told her he would kill her if she came out. She escaped through the window. Two men were standing in the parking lot but, according to Katz, they were not interested in helping her or getting involved. Defendant came outside and, pretending like she needed assistance because she was intoxicated, led her back into the apartment. Once inside, defendant punched and kicked her again, told her he was going to kill her, and choked her with a washcloth.

¶ 8 When the beating stopped, defendant got Katz a washcloth with ice to hold on her lip. She got in the bathtub to soak because her back and ribs hurt. Defendant sat on the toilet while she was in the bathtub. When she got out of the bathtub, she went outside to smoke. He followed and asked her why she made him do this. They laid on the bed together and, when he fell asleep, she left and ran to a friend's apartment in the same complex. The friend, Dusty Hawkins, called the police. Katz admitted she may have bitten defendant during the altercation. The State presented photographic exhibits depicting Katz's injuries, including a swollen and bloody lip and two black eyes.

¶ 9 Calvin Amen testified he had accompanied several coworkers, including Katz, to Shooters but left after two hours. He went home, declining the invitation to go to the Copper Top. The next morning, he realized he had received a text message from Katz's telephone that said she would not be at work the next day. He thought the message was odd because (1) it addressed him as "Calvin," when Katz never called him by his full name, (2) the word "come" was misspelled, and (3) it contained no apology for missing work. These characteristics were atypical for Katz.

¶ 10 Jeff Wermsman, a Bloomington police officer, responded to Hawkins' apartment at approximately 2:30 a.m. He saw Katz sitting on the sofa with "substantial facial injuries." Gil Winger, also a Bloomington police officer, responded to Hawkins' apartment as well but when he arrived, he saw Wermsman speaking with Katz, so he went to Katz's apartment to speak with defendant. Defendant told Wermsman that the altercation with Katz was only verbal in nature. The officer noted defendant had one scratch on his face and one on his arm. The State rested.

¶ 11 Hawkins testified on behalf of defendant, stating that she is friends with defendant's sister. When Katz arrived at her apartment, she thought Katz was intoxicated and she could see signs that she had been injured. Hawkins said Katz's eyes were "just really puffy." She said Katz explained she and defendant had been at the Copper Top when he announced he was ready to leave. Katz was not ready, but she left anyway. When they got in the car, Katz started hitting defendant.

"Q. [Defense attorney:] Okay, now tell me what, if anything, and if you can separate this, tell me what, if anything, she said that happened in the car?

* * *

A. She said that they were heading home, back to [their apartment], and she said that she hit him a couple of times, and he just put his arm in front of her because she was trying to jump out the car as well, and he wanted to keep her in the car so she didn't get hurt from going out of the car, and she bit his arm."

Katz told Hawkins that defendant drove because she was too intoxicated to do so. When they arrived home, they fought. Katz told Hawkins that defendant beat her for approximately one hour.

Hawkins said Katz told her she had retrieved two knives from the kitchen and began swinging them at defendant. However, defendant just went into the bedroom and fell asleep. The following exchange occurred:

"Q. In connection with her saying that she got two knives from the kitchen, tell me as precisely as you can recall why she said she had knives in the apartment?

A. She said that she thought he was going to come attack her again, but she thought—she thought he was going to come attack her again, but he just went into the room and left her alone, and she just put the knives down and just sat in the living room until he was asleep."

Hawkins said Katz said the fight ended around 1 a.m., but she did not come to Hawkins' apartment until 2:30 a.m. She called her mother from Hawkins' apartment, who arrived approximately 45 minutes later and then Katz called the police at approximately 3:30 a.m.

¶ 12 On cross-examination, Hawkins said the police are incorrect if they say they received the dispatch at approximately 2:30 a.m. The prosecutor played a recording of the 9-1-1 call, and Hawkins identified her voice as the person placing the call. Hawkins acknowledged that she told the operator a different version of the events than what she had just testified because, according to her, Katz had "switched up her story so many times."

¶ 13 Mitzi Scott, defendant's mother, testified she visited defendant in jail the day after the incident and noticed "[t]hree very big, deep bite marks in his forearm." She said those marks are gone now and were not photographed at the time.

¶ 14 Defendant testified he and Katz had been in a relationship for approximately four years. With regard to the night of the incident, defendant explained he and Katz had been at the second tavern, the Copper Top, for approximately one hour when he announced he was ready to leave because he was having stomach pains. Katz did not want to leave, which caused them to argue. He denied telling Katz that someone had pulled a knife on him. He drove because Katz was intoxicated. At some point during the trip home, Katz tried to jump out of the car. Defendant said he reached across to shut the door. Katz told him she wanted to get out. He stopped the car and told her to get out, but she remained in the car. She tried to jump out again. Defendant said he slammed the door and told her to " 'chill out and calm down.' " She bit him and he "did backhand her to the face." Her mouth bled and her lips swelled.

¶ 15 Defendant said he carried Katz into the apartment, as she had fallen asleep in the passenger seat. He laid her on the couch and he took a shower. When he got out, he went into the kitchen. Katz was standing near the refrigerator and "pulled a kitchen knife out on [him]." She warned him to leave her alone or she would stab him. He slapped her again twice, "pushed her down and said if she said that again, [he] would hit her like a man." She dropped the knife on the counter and they continued to argue. She took a bath and he went to bed. Defendant said he did not tell the police about the bite mark or any of Katz's behavior because he knew he "was going to jail regardless." He denied sending Amen a text message from Katz's telephone.

¶ 16 Courtney Long, defendant's sister, testified she and her mother were caring for the parties' son on the night of the incident. During the early morning hours, she got a call from Hawkins. Katz got on the phone and told Long she and defendant had gotten into a fight. She said she " 'had a couple of black eyes' " and was not sure whether she should call the police. Long said

Katz sounded "very intoxicated." Defendant rested.

¶ 17 At the close of evidence, the trial court requested each party submit written closing arguments. On October 12, 2010, the trial court entered a written order. Noting that the primary issue centered on the credibility of defendant and Katz, the court found Katz's testimony more credible than defendant's. It found defendant's demeanor and testimony "essentially not believable." The court further noted that Hawkins' testimony "not only imploded, it powerfully discredited the entirety of the defendant's position," and Long's testimony "conferred a similar aura of unbelievability to the defense." The court found each charge had been proved beyond a reasonable doubt.

¶ 18 Defendant filed a motion for a new trial, asserting that, among other grounds, the trial court "ignor[ed]" his claim of self-defense. The court denied his motion and sentenced him to concurrent terms of five years on his unlawful-restraint conviction, seven years on his aggravated-battery conviction, and two terms of 364 days on his two domestic-battery convictions, noting the first two sentences were extended terms. Defendant filed a motion to reconsider, claiming his seven-year term was excessive. The court denied defendant's motion. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Defendant's Claim of Self-Defense

¶ 21 Defendant argues he was denied a fair trial because the trial court failed to consider his affirmative defense of self-defense to his two charges of domestic battery. Defendant does not challenge his convictions on the remaining charges. Citing *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976), defendant insists the court failed to consider the "crux of the defense," which denied him a fair trial. Defendant points to the court's comment during its consideration of his motion for a new

trial to demonstrate the court's error. The court had stated:

"It is regrettable that the court's order does not correctly address the self-defense issue. The court's omission of any reference to self-defense invites the concerns expressed by [defense attorney] in the defendant's motion for a new trial. However, the court's order basically articulated the notion that this was a believability[-]of[-] the[-]witnesses case. There was no way that you could believe [defendant] and his evidence, and believe Ms. Katz and the other evidence. They were just completely irreconcilable."

Defendant claims this concession by the court means it "did not consider the crux of the defense."

We disagree with defendant's assessment of the court's comment.

¶ 22 The trial court made clear in its written judgment that this case centered on a credibility determination. If the court was to believe defendant, Katz was the aggressor, and defendant struck Katz in order to defend himself. However, the court specifically stated it did not believe defendant's version of the events, finding his credibility, as well as that of his witnesses, to be suspect. Instead, the court found Katz's testimony more credible, in effect, rejecting defendant's self-defense claim. At the hearing on defendant's posttrial motion, the court specifically stated: "The believability of the witnesses discloses to me that the self-defense argument that was advanced was without merit. And for want of having not said it before, I am saying it now. The evidence in this case I view as not at all close." Although the court did not specifically state it had considered defendant's self-defense claim in its original judgment, it is readily apparent that the court had, in fact, considered the defense at trial. By making its credibility determination, the court rejected

defendant's version and, implicitly, rejected his claim of self-defense.

¶ 23 We find it apparent from the trial court's comments that it indeed carefully considered the evidence presented, including defendant's self-defense claim, weighed the credibility of the witnesses, and based its decision on those determinations of credibility. We will not interfere with a court's credibility determination, or its verdict, unless we find the " "evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt." " *People v. Davis*, 409 Ill. App. 3d 457, 460 (2011) (quoting *People v. Jones*, 219 Ill. 2d 1, 33 (2006)). It is the function of the trier of fact to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence. *People v. Lee*, 213 Ill. 2d 218, 225 (2004). In this case, the record demonstrates the court did just that, finding Katz's testimony more credible and rejecting defendant's self-defense claim. Finding no error, we affirm.

¶ 24 B. Imposition of Extended-Term Sentence

¶ 25 Defendant next argues the trial court erred by imposing an extended-term sentence on his conviction for unlawful restraint because it was not the most serious class offense for which he was convicted. See 730 ILCS 5/5-8-2(a) (West 2008)). Relying on this court's decision in *People v. Peacock*, 359 Ill. App. 3d 326, 337 (2005), defendant argues his extended-term sentence imposed upon his conviction for unlawful restraint must be vacated since his convictions were based on related courses of conduct. The State concedes this point, and we accept the State's concession. As we did in *Peacock*, we will reduce defendant's sentence on his unlawful-restraint conviction to three years, vacating the extended-term portion, rather than remand for resentencing. *Peacock*, 359 Ill. App. 3d at 338. See also 720 ILCS 5/10-3(b) (West 2008) (unlawful restraint is a Class 4 felony); 730 ILCS 5/5-8-1(a)(7) (West 2008) (the term of imprisonment on a Class 4 felony shall be no more

than 3 years).

¶ 26

III. CONCLUSION

¶ 27

For the foregoing reasons, we affirm defendant's convictions and vacate the extended-term portion of the sentence for unlawful restraint. We remand for issuance of an amended sentencing judgment showing defendant's sentence for unlawful restraint as three years. Because the State has in part successfully defended a portion of the criminal judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620 (1985), citing *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 28

Affirmed in part and judgment vacated in part; cause remanded with directions.