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## FACTS

¶ 4 Defendant and the victim, Grace Klein, were in a romantic relationship for six or seven years prior to the altercation which led to the instant charge. They lived together in a one-bedroom apartment where the altercation took place on October 31, 2009. On that date, the victim and defendant spent the day together. Both the victim and defendant consumed large quantities of alcohol, including beer and hard liquor. The victim admitted she was probably drunk, and defendant admitted to drinking between 8 and 10 beers, plus a half pint of whiskey.

¶ 5 At trial, defendant and the victim agreed that early in the evening, the victim started complaining about her recent breast cancer diagnosis, as well as the recent death of her aunt. Eventually, defendant told the victim they should have a "pity party" for her. This insensitive comment made the victim angry. The victim testified that she pushed defendant out of the apartment and locked the door behind him. She also testified that there was only one key to the apartment, so defendant could not get back into the apartment because the lone apartment key was hanging on a hook by the door. The victim then ate dinner and watched television. She went to bed about an hour after she threw defendant out of the apartment.

¶ 6 The victim awoke later to find defendant standing over her and screaming at her. She testified that while she and defendant had fought in the past, she never saw defendant look so angry, and it scared her. She attempted to run away from defendant. In doing so, the victim ran into a shelf in the kitchen which held an antique coffee pot. The victim grabbed the coffee pot and struck defendant over the head with it because she "knew [defendant] was going to hit [her], and [she] needed to get out of there." Defendant then picked up an antique hammer that was hanging above the shelf and struck her with it approximately three times on the head. The victim was able to escape the apartment and went upstairs to a neighbor's apartment and requested the neighbor call the police. The victim heard the neighbor call the

police. The victim then waited outside for the police to arrive.

¶ 7 As the victim was sitting down waiting for the police, she felt something dripping down her face. She put her hand on her face, and when she looked at her hand it was covered with blood. She said she was in extreme pain, and her "head felt like it was going to explode." After the police arrived, the victim went to the hospital in an ambulance. At the hospital, three staples were placed in the victim's head to close the wounds. When the victim returned home from the hospital, she noticed her "front door was kicked in and there was a footprint on it."

¶ 8 Defendant agreed that the victim threw him out of the apartment, but said when he arrived at the apartment later in the evening, he found the door unlocked. He went in and sat at the dining room table where he started listening to loud music. Defendant testified that the victim confronted him about the loud music by slapping him on the back of the head and turning off the radio. Defendant then went to the bathroom. Upon coming out of the bathroom, defendant found the victim on the side of their bed once again talking about her cancer. Defendant again mentioned a "pity party" and made "waa, waa, waa" sounds. According to defendant, the victim went "crazy" over his comments and struck him in the head with an antique coffee pot. He said they both fell to the ground, and he got up and told the victim she was crazy. The victim told him she was going to call the police, so he went to find a phone.

¶ 9 When defendant came back to the room, the victim was gone. Defendant dialed 9-1-1 and requested the police to come to the apartment. Defendant testified that when the victim left the apartment she appeared fine and there was no blood running down her face. He further testified that it only took a minute or two for the police to arrive after he dialed 9-1-1. Defendant specifically denied striking the victim during the incident in question.

¶ 10 Two officers responded to the scene. Officer Wright testified that when he arrived

he observed that the victim had been drinking and was irate. The victim had blood on her hands, head, and face and was screaming at him. According to Wright, defendant was antsy, "[l]ike he was afraid of something is almost the way I would describe it, almost fearful." Wright also said defendant was intoxicated. Wright did not see any injuries on defendant. Defendant requested the officers come into the apartment and look at the "crime scene." Defendant told Wright that the victim hit him over the head with a coffee pot and he had defended himself.

¶ 11 After defendant was arrested, Wright noticed a hammer hanging on the wall. He said there was a long hair wrapped around it. The hammer was confiscated 18 days later when the police went back to the scene to get a statement from the victim at the State's Attorney's request.

¶ 12 Both parties have criminal histories. Defendant has nine prior felony convictions. The victim admitted she has a 2004 conviction for deceptive practice and a 2009 conviction for obstruction of justice stemming from her lying to the police by giving her maiden name and incorrect birthday in an attempt to avoid a second ticket for driving without insurance. After hearing all the evidence, the trial court stated, *inter alia*, as follows:

"I'm definitely finding that—beyond a reasonable doubt that [defendant] committed an aggravated battery, Count II, in that without legal justification that he struck [the victim] repeatedly in the head with a hammer and he caused bodily harm to her. And that she had the injuries to her ear, the obvious injuries to her head that require staples to secure—those injuries required medical attention. And I'm finding that there was no legal justification for that, even given the fact that [the victim] might have been, under his circumstances and his version, the instigator by striking him with the coffee pot. I was waiting for [defendant's] testimony to say that he then struck her with the hammer in self-defense, but he's just saying these injuries miraculously appeared and

he doesn't know how they occurred which would suggest to me that he just doesn't want to address that issue."

The trial court further found defendant's testimony was not credible "to any degree," but "the testimony of [the victim] is buttressed by the surrounding evidence that was collected, the kicked in door, the photos of the apartment in disarray, her obvious injuries."

¶ 13 The trial court found the State had met its burden with regard to aggravated battery, but had not proven that the victim suffered "great bodily harm" which is required for a finding of aggravated domestic battery. The trial court, therefore, found defendant guilty only as to count II. Defendant was sentenced to seven and one-half years in the Department of Corrections. Defendant filed a timely notice of appeal.

¶ 14

## ANALYSIS

¶ 15

### I. Self-Defense

¶ 16 The first issue we are asked to consider is whether defendant was denied a fair trial because the trial court failed to consider the theory of self-defense. Defendant contends the State's evidence raised the question of self-defense, but the trial court erred in failing to consider that theory simply because defendant did not testify he acted in self-defense. The State responds that defendant waived a claim of self-defense by failing to assert a self-defense theory at trial, notwithstanding the State's evidence, and by directly and unambiguously denying that he hit the victim. The State further responds, even assuming *arguendo* that defendant did not waive the issue of self-defense, the trial court found that any self-defense claim would not have been persuasive, and, therefore, defendant was not prejudiced in any way. We agree with the State.

¶ 17 Self-defense is codified in section 7-1 of the Criminal Code of 1961 and states in pertinent part as follows: "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 defend himself or

another against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2008). A defendant may assert self-defense as an affirmative defense to a charge for conduct that might otherwise constitute a crime. See *People v. McLennon*, 2011 IL App (2d) 091299, ¶ 14. It is an affirmative defense under which a defendant admits to the offense, but denies responsibility. See *People v. Podhrasky*, 197 Ill. App. 3d 349, 352, 554 N.E.2d 578, 583 (1990).

¶ 18 The elements of self-defense include as follows: (1) force was threatened against the defendant; (2) the defendant was not the aggressor; (3) the danger of harm or injury was imminent; (4) the threatened force was unlawful; (5) the defendant actually believed that (a) danger existed, (b) force was needed to avoid the danger, (c) the type and amount of force used was required; and (6) the defendant's beliefs were reasonable. *People v. Harmon*, 200 Ill. App. 3d 411, 413, 558 N.E.2d 173, 174 (1990). If the trier of fact believes the State negates any of these elements beyond a reasonable doubt, then the State has carried its burden of disproving the defense. *Harmon*, 200 Ill. App. 3d at 413, 558 N.E.2d at 174. A reviewing court may not disturb the trier of fact's determination that the defendant was not acting in self-defense unless such conclusion is so unreasonable or improbable that a reasonable doubt of defendant's guilt lingers. *People v. Peterson*, 273 Ill. App. 3d 412, 424, 652 N.E.2d 1252, 1261 (1995).

¶ 19 In the instant case, the evidence of self-defense came during the testimony of Officer Wright, who testified that when he arrived on the scene defendant told him that the victim hit him over the head with a coffee pot and he defended himself. However, at trial, defendant never raised the issue of self-defense. Defendant testified that the victim attacked him from behind and hit him in the head with a coffee pot. They both fell to the ground and then "got up, away from each other." The victim told him she was going to call 9-1-1, and she left the apartment. Defendant then found his cell phone and dialed 9-1-1. On direct

examination, defense counsel specifically asked defendant if he ever struck the victim as follows:

"Q. [Defense attorney:] Did you ever strike [the victim] in the head with anything?

A. [Defendant:] No.

Q. Did you ever strike Grace in the wrist with anything?

A. No."

Moreover, defendant denied seeing any injuries on the victim after the incident during cross examination:

"Q. [Prosecutor:] When she left the apartment she was fine, right?

A. [Defendant:] That I could see she was fine, there wasn't nothing wrong with her.

Q. There was no blood running down her face, right?

A. Yeah, there was nothing, I couldn't see anything.

Q. She didn't have a hole in her head with blood coming out, right?

A. Obviously, yeah.

Q. So your testimony to us is that in the one minute she left the apartment after you called 911 and the officers got there, that she just magically got these wounds like a stigmata?

A. I'm not going to sit here and lie to you but that's what happened.

Q. Really?

A. I didn't examine her.

Q. Did you see blood dripping down her face?

A. I did not see anything wrong with the woman.

Q. Did she have blood on her hands?

A. No."

Officer Wright's testimony contradicted defendant's testimony in that according to Officer Wright, the victim was bleeding when he arrived on the scene and suffered from wounds which required medical attention, including three staples in her head to close the wounds.

¶ 20 After reviewing the record, it is clear that the defense presented at trial was not one of self-defense. While the State did present evidence of self-defense through the testimony of Officer Wright, defendant rebutted that theory with his own testimony in which he denied ever striking the victim. "The defense of self-defense presupposes that the accused committed the act and invokes the defense as a justification." *People v. Hawkins*, 88 Ill. App. 3d 178, 182, 410 N.E.2d 309, 313 (1980). Because defendant specifically denied striking the victim in any manner, it cannot follow that defendant was acting in self-defense during the incident in question.

¶ 21 Even assuming *arguendo* that self-defense was a proper defense, it cannot be said that the trial court failed to consider the theory of self-defense. Here, the trial court specifically discounted the theory of self-defense, finding that even if the victim was the instigator as defendant asserted, there was no legal justification for defendant to strike the victim with a hammer. The trial court's comments outlined in the "Facts" portion above show that the trial court clearly understood the theory of self-defense and the elements necessary for a finding of self-defense, but did not believe defendant was acting in self-defense when he hit the victim with a hammer. After reviewing the record, we cannot say the trial court's determination that defendant was not acting in self-defense when he hit the victim over the head with a hammer is so unreasonable or improbable that a reasonable doubt of defendant's guilt lingers.

¶ 22

## II. Sufficiency of Evidence

¶ 23 The second issue raised on appeal is whether the State failed to prove defendant guilty

beyond a reasonable doubt of aggravated battery. Defendant argues the State failed to prove him guilty of aggravated battery beyond a reasonable doubt because the facts presented at trial failed to establish that he caused bodily harm to the victim without legal justification. The State responds that the evidence was sufficient for a rational trier of fact to find that defendant committed the offense of aggravated battery. We agree with the State.

¶ 24 When a challenge to the sufficiency of the evidence is presented on appeal, it is not the function of the reviewing court to retry defendant. *People v. Banks*, 161 Ill. 2d 119, 135, 641 N.E.2d 331, 339 (1994). 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. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). It is sufficient if all the evidence when taken together satisfies the trier of fact beyond a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 380, 586 N.E.2d 1261, 1268 (1992). Furthermore, when the determination of a defendant's guilt or innocence depends upon the credibility of the witnesses and the weight to be given their testimony, it is for the trier of fact to resolve conflicts in the evidence. See *People v. White*, 209 Ill. App. 3d 844, 868, 567 N.E.2d 1368, 1382 (1991). We, as a reviewing court, are not to substitute our judgment. *People v. Robinson*, 213 Ill. App. 3d 1021, 1025, 572 N.E.2d 1254, 1257 (1991).

¶ 25 Defendant first asserts that the evidence was inadequate to prove that he caused bodily harm to the victim and that it is possible that in her inebriated state the victim fell and injured herself. However, in reviewing the evidence in the light most favorable to the State, we point out that the victim testified that defendant hit her over the head with a hammer and caused her injuries. Officer Wright saw the hammer at the scene and noticed that a long hair was wrapped around it. The hammer was later retrieved by the police. Furthermore, we point out there is absolutely no evidence in the record that the victim fell or inflicted the injuries on

herself. Such speculation is not enough to overturn defendant's conviction. Here, the trial court was in the best position to judge the credibility of the witnesses. The trial court specifically stated that defendant was not credible "to any degree," whereas the victim's testimony was corroborated by other evidence, including the door that was kicked in, the disarray of the apartment, and the victim's "obvious injuries" which were disavowed by defendant. Our own review shows that the record supports the trial court's conclusions, and we find sufficient evidence in the record to support defendant's conviction.

¶ 26 Defendant also raises the issue of self-defense, which we previously addressed. We point out that at trial defendant denied striking the victim in any manner. In contrast, the victim testified that defendant hit her in the head with a hammer. The victim specifically testified she threw defendant out of the apartment and locked the door. About an hour afterwards, the victim went to bed, but woke to find defendant standing over her and shouting at her. The victim admitted that she and defendant had arguments in the past, but testified that she had never seen defendant this angry. The victim was scared and tried to run away. She grabbed the coffee pot and hit defendant in an attempt to extricate herself from the situation. At that point, defendant took an antique hammer off the wall and hit the victim in the head. The victim suffered injuries which required medical attention at a hospital. Upon her return home from the hospital, the victim noticed that her front door had been kicked in and there was a footprint on it.

¶ 27 While defendant insists that the trial judge failed to consider self-defense, the trial judge's statements on the record refute that argument. Defendant also insists that the victim should not be believed due to a history of deceit and untruthfulness, but he ignores his own criminal history, which includes at least nine prior convictions. The trial judge was aware of the victim's 2004 conviction for deceptive practice and her 2009 conviction for obstruction of justice, but chose to believe the victim over defendant. We see no need to belabor the

point. Suffice it to say, the issue of self-defense rested upon the credibility of the witnesses, a determination better left to the trial judge, and there is sufficient evidence in the record to support the conclusion that defendant was the aggressor and was not acting in self-defense.

¶ 28 For the foregoing reasons, we hereby affirm defendant's conviction for aggravated battery.

¶ 29 Affirmed.