

No. 1-12-0104

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 8483
	)	
HERBERT TRIBBLE,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE LAVIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant stabbed the victim twice, causing one laceration through her subcutaneous fat and a second laceration which penetrated almost to the bone, the State proved beyond a reasonable doubt that defendant had inflicted great bodily harm. Mittimus ordered corrected to show that two convictions were merged into a conviction for aggravated domestic battery.

¶ 2 In a bench trial, defendant Herbert Tribble was acquitted of attempted murder but convicted of aggravated domestic battery and sentenced to 14 years in prison. Two convictions

for aggravated battery were merged with that conviction.<sup>1</sup> On appeal, defendant contends that the State failed to prove that the victim, Keyonsha Holloway, suffered great bodily harm. In the alternative, he seeks correction of the mittimus to reflect a single conviction for aggravated domestic battery.

¶ 3 At trial, Holloway testified that on April 28, 2011, she lived on the top floor of a two-flat building at 6835 South Carpenter in Chicago with her three children and defendant. At about 7 p.m. one of Holloway's daughters, who was also defendant's child, "threw a tantrum" and Holloway struck her on the arm. Defendant came from the back of the apartment and began to argue with her, saying "Keep your hand off my child." When defendant threatened to beat up Holloway, she told him to leave the apartment, but he did not do so. The argument continued until defendant walked to the back of the apartment. He emerged about one minute later, grabbed Holloway by her neck, and "punched" or plunged a knife into her stomach. Holloway felt a sharp pain and looked down to see that she had a stab wound, which was bleeding. The knife defendant used, one that Holloway said he customarily carried with him, was a small steak knife with a blade that was about three or four inches long. Defendant threw Holloway to the floor, where he straddled her and began swinging the knife. As he did so he told her she was going to die. Defendant struck Holloway in the shoulder with the knife, but then her mother came from the downstairs apartment where she lived and broke up the fight. Defendant fled out the back door. When Holloway went outside, defendant began running toward her with the knife, saying "You are going to die, bitch." Holloway's mother jumped between them. Defendant picked up a brick and began swinging it and the knife at Holloway. When Holloway

---

<sup>1</sup> Defendant was also charged with aggravated battery based on causing permanent disfigurement, but no conviction or sentence was entered on that charge.

heard sirens, defendant took several more swings, then threw the brick at her car and fled down the alley.

¶ 4 An ambulance arrived to take Holloway to the hospital, but she declined because she thought defendant was going to return, and she feared for her children's safety. However, Holloway did go to the hospital at about 9 p.m. Holloway testified that she had sustained a stab wound to the left side of her abdomen, which required four staples, and a wound to her shoulder, which medical personnel glued shut because the wound was too close to the bone for staples. Holloway testified that two photographs which the State introduced into evidence accurately depicted her two wounds after they were closed, but those photographs have not been included in the record on appeal.

¶ 5 Holloway's mother, Aggie Melvin, testified that at the time in question another daughter told her that defendant and Holloway were fighting upstairs. Melvin went upstairs and saw defendant on top of Holloway, who was trying to get him off of her. Melvin pushed defendant off of Holloway, who ran and got a knife. Melvin also saw that defendant had a knife in his hand. Defendant went outside, followed by Holloway. When Melvin followed them out she saw defendant with a brick in his hand. She did not see a knife in his hand, but she did see that Holloway had a knife. At this point Melvin got in between them and convinced defendant to leave, after he had thrown a brick at Holloway's car. Melvin admitted that she had told the police that defendant had a knife in his hand when he was outside. She also testified that defendant was like a son to her.

¶ 6 The parties stipulated that Melissa W. Uribes, an emergency room doctor at Little Company of Mary Hospital Health Care Center, would testify that she treated Holloway, who came in to the hospital complaining of stab wounds. Upon examination, she found that Holloway had a "subcutaneous laceration to the left mid to lower stomach area." The laceration

was one and one-half centimeters long, with no active bleeding. The knife had penetrated the superficial layer of the skin as well as the superficial layer of fat. According to the doctor, it appeared to be more of a laceration than a stab wound. This wound was closed with four staples. The doctor also observed a superficial laceration to the right shoulder, approximately one-half centimeter long, which was closed with "Dermabond." Holloway was instructed to see her doctor within 48 hours for a "wound check" and to follow up in 10 to 12 days for staple removal.

¶ 7 The trial court found defendant not guilty of attempted murder, but guilty of aggravated domestic battery, aggravated battery causing great bodily harm, and aggravated battery with a deadly weapon. The court stated that the latter two convictions merged into the aggravated domestic battery conviction, and defendant was subsequently sentenced to 14 years in prison for that offense. Defendant now appeals.

¶ 8 Defendant contends that the State failed to prove beyond a reasonable doubt that Holloway suffered great bodily harm. As a result, he argues, his conviction for aggravated domestic battery should be reduced to domestic battery, and his conviction for aggravated battery based on great bodily harm should be reduced to battery.

¶ 9 Our standard of review is a familiar one: reviewing the evidence in the light most favorable to the State, could any rational trier of fact find the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). We will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory that reasonable doubt of defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8. It is the function of the trier of fact to weigh the evidence, determine witness credibility, resolve conflicts in the evidence, and draw reasonable inferences from these factors. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A person commits domestic battery if he knowingly, and without legal justification, causes bodily harm to any family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2010).

That crime becomes aggravated domestic battery if, in committing a domestic battery, the person causes great bodily harm to the family or household member. 720 ILCS 5/12-3.3(a) (West 2010).

¶ 10 It is undisputed that defendant caused bodily harm to a household member by stabbing Holloway with a knife. What constitutes great bodily harm is a question of fact which is for the fact finder to decide. *People v. Crespo*, 203 Ill. 2d 335, 343 (2001). Holloway testified that defendant stabbed her in the stomach with a knife, which caused a sharp pain and also caused bleeding. He then stabbed her in the shoulder. The parties stipulated that the emergency room doctor would have testified that the wound to the stomach went through the skin and the layer of fat below the skin. Although the doctor would have testified that the wound was more like a laceration than a stab wound, she also would have testified that it took four staples to close the wound. The doctor also would have testified that the wound to the shoulder was more like a laceration. But Holloway testified that the shoulder wound was so close to the bone that it had to be glued shut instead of stapled. Holloway was instructed to see a doctor two more times, to have the staples removed, and then to have the wounds examined again.

¶ 11 We are not persuaded by the cases upon which defendant relies in arguing that he did not inflict great bodily harm upon Holloway. He cites *In re T.G.*, 285 Ill. App. 3d 838 (1996), where the reviewing court found that no bodily harm occurred even though the victim was stabbed three times. *In re T.G.*, 285 Ill. App. 3d at 846. But in that case the victim only felt one of those stabbings, which he described as like being poked with a pen or pencil, and there was no other evidence of the nature or extent of his injuries. *In re T.G.*, 285 Ill. App. 3d at 846. Defendant also cites *In re J.A.*, 336 Ill. App. 3d 814 (2003), where no great bodily harm was found even though the victim was stabbed in the shoulder. But in that case the victim refused to have the

wound stitched, and he testified that when he was stabbed it felt like he was being pinched. *In re J.A.*, 336 Ill. App. 3d at 818-19.

¶ 12 Reviewing courts have upheld findings of great bodily harm even where there has been no proof of the nature of the victim's injuries or where the proof of injury was slight. In *People v. Cross*, 84 Ill. App. 3d 868, 872 (1980), the defendant was found to have committed great bodily harm when he struck the victim on the head with a lead pipe, even though there was no proof of injuries from that blow. In *People v. Matthews*, 126 Ill. App. 3d 710, 714-15 (1984), great bodily harm was found where the victim was struck on the head with a gun, leaving a bruise, and was also struck on the head and arms with a baseball bat. Here, Holloway was stabbed twice. One wound was to her stomach, penetrating the outer layer of skin and the next layer of fat. This caused a sharp pain and the wound began to bleed. Holloway was also stabbed in the shoulder, creating a wound which almost went down to the bone. Although Holloway initially chose not to go to the hospital, this was because she was afraid that defendant would return and harm her children. She did go to the hospital later that evening. Both wounds required medical attention to close them and Holloway was instructed to see a doctor two more times, for staple removal and to have the wounds examined again. We find that the trial court did not err in determining that Holloway sustained great bodily harm when the defendant stabbed her in the stomach and the shoulder with a knife. Accordingly we affirm defendant's conviction and sentence.

¶ 13 Defendant notes that although the trial court found that his two convictions of aggravated battery merged with his conviction for aggravated domestic battery, the mittimus still indicates that he was convicted of all three offenses and sentenced to three concurrent 14-year prison terms. We order that the mittimus be corrected to state that defendant was convicted of aggravated domestic battery and sentenced to a 14-year term for that offense, with the two convictions for aggravated battery merging into that conviction.

1-12-0104

¶ 14 For the reasons set forth in this order, we affirm defendant's conviction and sentence and order correction of the mittimus.

¶ 15 Affirmed; mittimus corrected.