2017 IL App (2d) 160573-U
No. 2-16-0573
Order filed June 9, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CF-1016
RUTH E. ANDERSEN,	)	Honorable Daniel P. Guerin,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of aggravated domestic battery was affirmed where (1) the State proved beyond a reasonable doubt that she caused great bodily harm and (2) she did not receive ineffective assistance of counsel.

¶ 2 Following a jury trial, defendant, Ruth Andersen, was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)). On appeal, she contends that the State failed to prove the element of great bodily harm and that she received ineffective assistance of counsel. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In the early morning hours of February 6, 2015, defendant struck her husband, Carroll Van Ness, on the head with a stainless steel frying pan. She was subsequently charged by indictment with aggravated domestic battery for causing great bodily harm. Prior to trial, defendant informed the prosecution that she intended to raise a defense of self-defense. She disclosed her son, Alan Andersen,[1] and Emily Hayes (apparently, her daughter) as potential witnesses in support of that defense.

¶ 5 At trial, Van Ness, whose nickname was Cary, testified that he and defendant ate dinner at a restaurant on the evening of February 5, 2015. When they returned home, defendant went to the basement to make gift baskets for a church raffle. Sometime after 11:30 p.m., Van Ness asked defendant from the top of the basement stairs whether she wanted to come to bed. Defendant gave an "aggressive" response, so Van Ness decided that he would sleep in a spare bedroom for the night rather than in the bedroom that the couple normally shared. According to Van Ness, while he was in bed in the spare room, he heard defendant call out to her adult son Andersen in a loud voice: "Where's Cary, where's Cary?" As Van Ness started to stand up, defendant opened the door, rushed into the bedroom, and hit him at least twice on the head with a frying pan. He was able to restrain defendant and retreat to a bathroom until police arrived.

¶ 6 By all accounts, Van Ness bled significantly from his head. One responding police officer testified that Van Ness was rattled and shaken and that there was "a shocking amount of blood streaming down his face and on his shirt and in the bathroom." A paramedic similarly described Van Ness as being "covered" in blood. The pictures that were admitted into evidence substantiated those descriptions.

¶ 7 According to Van Ness, the blows to his head were "heavy" and he lost vision for about

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[1] His first name is spelled "Allen" elsewhere in the record.

5-10 seconds after the attack. His scalp swelled, the wound throbbed, and he felt "shocked and wobbly." A paramedic wrapped Van Ness's head in gauze to control the bleeding. Van Ness was taken to the hospital and was treated with staples and a glue seam sealer. The parties stipulated that if Dr. Michelle Meziere were called as a witness, she would testify that Van Ness had "a large right frontal scalp abrasion as well as a 2 centimeter scalp laceration which [the doctor] repaired with three staples." Van Ness also testified that he had a scar on his head.

¶ 8 The State called Andersen as a witness. At around midnight, he heard Van Ness loudly tell defendant to "[p]lease come to bed." Defendant later came up to Andersen's room and said: "I want you [Andersen] to see what he's [Van Ness] doing to me." Andersen then heard an argument coming from the spare bedroom. When he walked into the hallway, he saw defendant holding a frying pan. Andersen testified that defendant hit Van Ness on the head with the pan after Van Ness "stepped forward" toward defendant with his arms raised at chest height. The State impeached Andersen by omission with the statements that he had made on the morning of the incident. Specifically, he acknowledged that he never told police or the 911 operator that defendant had come up to his bedroom and said "I want you to see what he's doing to me." Nor had he told police or the 911 operator that Van Ness lunged at defendant.

¶ 9 Patricia Staats, a friend of both defendant and Van Ness, testified that several days before the incident, defendant explained that she was going to kill Van Ness. Staats did not believe defendant, but she was stunned by the remarks. The State also introduced evidence that defendant was under the influence of alcohol on the morning of the frying pan incident. Defendant made various incriminating statements to the police, but she also told them that Van Ness was prone to massive mood swings and that he had beaten her 20 times in the past 4 years.

¶ 10 Defendant did not present any evidence.

¶ 11 At the jury instruction conference, defendant asked for a self-defense instruction. Over the State's objection, the court agreed that the evidence met the low threshold to justify the instruction. However, the court also ruled that, in accordance with the State's request, the evidence justified an "initial aggressor" instruction: "A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person." Illinois Pattern Jury Instructions, Criminal, No. 24-25.09 (4th ed. 2000) (hereinafter, IPI Criminal No. 24-25.09).

¶ 12 The jury found defendant guilty. The court denied the posttrial motion and sentenced defendant to probation and 60-days' incarceration. She timely appealed.

¶ 13 II. ANALYSIS

¶ 14 (1) Sufficiency of the Evidence

¶ 15 Defendant first challenges the sufficiency of the evidence supporting her conviction of aggravated domestic battery. She argues that the State failed to prove beyond a reasonable doubt that Van Ness sustained great bodily harm.

¶ 16 In addressing a challenge to the sufficiency of the evidence, the question is not whether *we* believe that the evidence established defendant's guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979). "Instead, the relevant question 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." (Emphasis in original.) *Jackson*, 443 U.S. at 319. In answering this question, we allow all reasonable inferences

supported by the record in favor of the State. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 17 Section 12-3.2(a)(1) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.2(a)(1) (West 2014)) provides that "[a] person commits domestic battery if he or she knowingly without legal justification by any means *** [c]auses bodily harm to any family or household member." Section 12-3.3(a) of the Code (720 ILCS 5/12-3.3(a) (West 2014)) provides that "[a] person who, in committing a domestic battery, knowingly causes great bodily harm *** commits aggravated domestic battery." There is no precise legal definition of the term "great bodily harm." *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993). Instead, it is the role of the jury as the trier of fact to determine whether the injuries that the victim sustained rose to the level of great bodily harm. *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 12. The trier of fact is entitled to consider the description of the attack, the victim's injuries, and the amount of blood caused by those injuries. See *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688, ¶ 19 (addressing the issue of great bodily harm for purposes of truth-in-sentencing).

¶ 18 A reasonable juror could have determined that defendant caused great bodily harm to Van Ness. The evidence showed that defendant hit Van Ness at least once in the head with a stainless steel pan, causing him to bleed significantly and to momentarily lose his vision. Van Ness described the blows as "heavy." He was rattled and shaken, and he required gauze at the scene to control the bleeding. He was treated with staples at the emergency room to repair the laceration. The laceration left a scar. Courts of review have upheld findings of great bodily harm under comparable circumstances. See *People v. Cross*, 84 Ill. App. 3d 868, 872 (1980) ("Certainly, striking the victim on the head with a lead pipe may be properly construed as inflicting great bodily harm."); *People v. Carmack*, 50 Ill. App. 3d 983, 985-86 (1977) (the jury's

finding of great bodily harm was affirmed where the victim was struck by a wooden stick or club and there was a hematoma behind his ear, bruising about his right eye, swelling on the back of his neck, and a scalp laceration that would have required stitches had he sought immediate medical attention).

¶ 19 Citing *In re J.A.*, 336 Ill. App. 3d 814 (2003), *People v. Figures*, 216 Ill. App. 3d 398 (1991), and *In re T.G.*, 285 Ill. App. 3d 838 (1996), defendant submits that "Illinois courts have ruled that great bodily harm must be more serious or grave than lacerations, bruises, or abrasions." To that end, defendant maintains that "there was no evidence to show that Mr. Van Ness' injuries were anything more than an abrasion or a laceration." Defendant essentially proposes a *per se* rule that lacerations and abrasions do not constitute great bodily harm. The cases that she cites do not support such a blanket proposition. The cases merely recognize that, because the supreme court has said that "bodily harm" means "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent" (*People v. Mays*, 91 Ill. 2d 251, 256 (1982)), "great bodily harm" must, as a matter of simple logic, involve a graver and more serious injury. *J.A.*, 336 Ill. App. 3d at 816; *Figures*, 216 Ill. App. 3d at 401; *T.G.*, 285 Ill. App. 3d at 846. That is a far cry from saying that lacerations and abrasions can *never* constitute great bodily harm. See *Cisneros*, 2013 IL App (3d) 110851, ¶ 14 ("[D]efendant claims that injuries limited to lacerations cannot qualify as great bodily harm. We disagree."). Indeed, "[t]o conclude that lacerations could never be great bodily harm would define the element as a matter of law, when instead it is a question of fact." *Cisneros*, 2013 IL App (3d) 110851, ¶ 27 (McDade, J., specially concurring). *J.A.*, *Figures*, and *T.G.* do not support the broad rule that defendant urges.

¶ 20 Defendant's cases are also factually distinguishable. In *J.A.*, the victim described his stab wound in the shoulder as feeling like a "pinch," the record was unclear as to the weapon that was used, and there was no evidence of the extent or the nature of the victim's injury. *J.A.*, 336 Ill. App. 3d at 815, 817-18. There was also no evidence that the victim in *J.A.* even bled, and the record was vague as to what medical treatment was recommended or required. *J.A.*, 336 Ill. App. 3d at 818. Similarly, in *Figures*, a bullet hit the victim's shoe and caused a small blood clot, but the bullet did not actually pierce the skin. *Figures*, 216 Ill. App. 3d at 400, 402. In *T.G.*, although the victim received three stab wounds to the chest, he described the first wound as "like being poked with a pen or pencil." *T.G.*, 285 Ill. App. 3d at 846. There was no evidence in *T.G.* that the victim felt the other two wounds, and there was little evidence regarding the nature or extent of the injuries. *T.G.*, 285 Ill. App. 3d at 846. Unlike the cases cited by defendant, here the State introduced ample evidence documenting the mechanism of Van Ness's injury, the nature and extent of his injury, and the required medical treatment.

¶ 21 Under the circumstances, a reasonable jury could have determined that defendant caused great bodily harm. Accordingly, we determine that defendant's conviction of aggravated domestic battery is not against the manifest weight of the evidence.

¶ 22 (2) Ineffective Assistance of Counsel

¶ 23 Defendant also argues that her trial counsel was ineffective for: (1) failing to present witnesses in support of a defense of self-defense; (2) failing to object to the "initial aggressor" jury instruction; (3) failing to request an instruction on the lesser included offense of domestic battery; and (4) stipulating to Dr. Meziere's medical testimony.

¶ 24 Ineffective assistance of counsel claims are governed by the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant must show both that her counsel's

performance was deficient and that such deficiency prejudiced the defense. *Strickland*, 466 U.S at 687. To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "Reasonable probability" means "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Where, as here, the defendant did not raise her ineffective assistance claim in the trial court and the facts surrounding the claim are undisputed, our review is *de novo*. *People v. Wilson*, 392 Ill. App. 3d 189, 197 (2009).

¶ 25 Decisions as to which witnesses to call, which defenses to raise, whether to propose or object to particular jury instructions, and whether to stipulate to evidence are generally considered matters of trial strategy that will not sustain claims of ineffective assistance. See *People v. Jones*, 2012 IL App (2d) 110346, ¶ 82 (the strong presumption that an attorney's failure to call a witness is sound trial strategy is overcome only if the "decision appears so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy"); *People v. Sanchez*, 2014 IL App (1st) 120514, ¶ 31 (defense counsel's decision not to raise the defense of self-defense was a matter of sound trial strategy, because the defense witnesses testified that the defendant did not use any force); *People v. Clarke*, 391 Ill. App. 3d 596, 617 (2009) (" 'Decisions concerning defense counsel's choice of jury instructions are characterized as tactical decisions within the judgment of defense counsel.' " (quoting *People v. Houston*, 363 Ill. App. 3d 567, 575 (2006))); *People v. Phillips*, 217 Ill. 2d 270, 284 (2005) ("As a matter of trial strategy, defense counsel might choose to stipulate to evidence in an effort to minimize the adverse impact it will have at trial.").

¶ 26 Defendant first criticizes her attorney for failing to call any witnesses in support of a defense of self-defense. The only potential witnesses whom she mentions are Andersen, Hayes, and herself. But Andersen testified in the State's case-in-chief, and defendant does not identify any additional testimony that Andersen was prepared to offer. Defendant likewise does not tell us what Hayes's testimony would have been. Notably, there is no indication in the record that Hayes even witnessed the events that gave rise to defendant's aggravated domestic battery charge.

¶ 27 Defendant personally waived her right to testify after the trial court admonished her. She does not dispute in her brief that her waiver was voluntary, although she hints that she could have been called as a witness to "elaborate" on certain statements that she made to police about having been abused by Van Ness. By testifying, defendant would have opened the door to cross-examination on a number of points that her attorney might reasonably have believed would be detrimental to the defense. For example, the State likely would have questioned defendant about whether she was under the influence of alcohol at the time of the incident. The State also could have asked her about the various incriminating statements that she made both before and after the incident. Having reviewed the record thoroughly, we disagree with defendant's contention that her counsel demonstrated "uncertainty and lack of preparation" at trial.

¶ 28 Defendant next criticizes her counsel for failing to object to the initial aggressor instruction that was given to the jury. She similarly maintains that her counsel should have objected when the State referred to her as the initial aggressor multiple times in closing argument. The instruction was proper, given that the parties disputed whether defendant was the initial aggressor. See *People v. Santiago*, 161 Ill. App. 3d 634, 641 (1987) (IPI Criminal No. 24-25.09 is appropriate where there is a question of whether the defendant was the initial aggressor).

It was also fair for the State to refer to defendant in closing argument as the initial aggressor, because such commentary was a legitimate inference from the evidence. See *People v. Woods*, 2011 IL App (1st) 091959, ¶ 42 ("The prosecutor 'has [the] right to comment on the evidence and draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant.' " (quoting *People v. Pasch*, 152 Ill. 2d 133, 184 (1992))). Defendant was not prejudiced by her counsel's failure to object to this jury instruction or to the prosecutor's comments.

¶ 29 Defendant maintains that her counsel committed a third error by failing to request a jury instruction on the lesser included offense of domestic battery. She does not cite any authority in support of her position, and her entire argument consists of only a few sentences. The argument is thus forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (arguments must be supported by citation of authorities); *People v. Olsson*, 2016 IL App (2d) 150874, ¶ 22 (six-sentence argument that was unsupported by authority was forfeited). Forfeiture aside, we note that there was an obvious tactical reason for pursuing an "all-or-nothing" defense to the aggravated domestic battery charge. There was strong evidence that defendant was the initial aggressor and that she battered Van Ness. However, it was less clear whether the jury would find that defendant caused great bodily harm. By not requesting an instruction on the uncharged offense of battery, the defense bet on the prospect of a complete acquittal rather than a likely conviction of battery, at the least. On the record before us, we cannot say that such strategy was so unreasonable as to constitute ineffective assistance. See *People v. Rhodes*, 386 Ill. App. 3d 649, 654 (2008) (where the evidence of the defendant's drug possession was overwhelming but the evidence of his intent to deliver was not, it was reasonable trial strategy not to request a lesser included offense

instruction, because doing so would have guaranteed a conviction for at least the lesser offense of possession).

¶ 30 Finally, defendant submits that she received ineffective assistance when her counsel stipulated to the content of Dr. Meziere's medical testimony. Defendant complains that "[t]he trial record is devoid of any statements by defense counsel indicating that he discussed and reviewed the medical testimony stipulation prior to, or at the time of trial, and that the defendant did not have any objection to the stipulation." Defendant also asserts that "defense counsel failed to request that the trial judge admonish or inquire of the defendant, on the record, regarding the defendant's discussion or review of the medical testimony stipulation and whether she was in agreement with the tendering of this medical testimony stipulation to the jury."

¶ 31 Once again, defendant has failed to cite any authority in support of her undeveloped argument, and it is forfeited. Forfeiture aside, except in situations where a stipulation is tantamount to a guilty plea, there is no obligation on the trial court or counsel to admonish the defendant or to ensure that such advisement is made part of the record. *Phillips*, 217 Ill. 2d at 283. The stipulation here was that if Dr. Meziere were called as a witness, she would testify that Van Ness presented to the emergency room with "a large right frontal scalp abrasion as well as a 2 centimeter scalp laceration which [the doctor] repaired with three staples." This stipulation was certainly not tantamount to a guilty plea. The defense also had good reason to stipulate to this testimony. Counsel could have reasonably believed that Dr. Meziere's concise description of Van Ness's injuries might ameliorate the impact of the State's photographs, which showed Van Ness bleeding rather severely. Also, by stipulating to this testimony, defendant avoided the doctor going into more graphic detail before the jury. It is apparent that stipulating to Meziere's testimony was a matter of trial strategy.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4–2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 34 Affirmed.