

NOTICE
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2017 IL App (5th) 140313-U

NO. 5-14-0313

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 14-CF-128
)	
SCOTTIE MUSGRAVES,)	Honorable
)	Neil T. Schroeder,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the State failed to prove that the victim suffered "great bodily harm" as is required to sustain an aggravated domestic battery conviction, the defendant's conviction is vacated and this cause is remanded for the trial court to enter a conviction on the lesser charge and modify his sentence.

- ¶ 2 The defendant, Scottie Musgraves, appeals the judgment of the circuit court of Madison County convicting him of aggravated domestic battery. He was sentenced to eight years in the Illinois Department of Corrections to be served at 85% with four years of mandatory supervised release. For the following reasons, we vacate and remand with instructions to reduce the defendant's conviction and modify his sentence.

¶ 3 The State presented three witnesses at the defendant's April 22, 2014, jury trial: Heather Durham (Durham), an emergency room nurse; Malaya Collins (Collins), the victim and Musgraves' fiancée; and Larry Butkovich (Butkovich), a deputy patrolman with the Madison County sheriff's department. The following evidence was adduced at the trial.

¶ 4 On January 19, 2014, Collins sought treatment at St. Anthony's emergency room. Durham testified that she was working in the emergency room when Collins arrived, complaining of a cut to her right palm, some swelling to her forearm, bruising on her upper arm, and abrasions on her leg. Collins also had a small cut behind her left ear. Photographs of Collins' finger, right palm, ear, leg, and left arm were admitted into evidence. Durham testified that Collins appeared upset and told Durham that her boyfriend caused her injuries by hitting her with a wooden stool, choking her, and punching her. Durham testified that Collins received four stitches in her palm but described the leg abrasions as "superficial" and an X-ray showed no bone abnormalities to her forearm. Durham stated that Collins reported pain "eight out of ten" where 10 is "the worst pain you have ever felt in your life." Durham testified that Collins did not mention falling down the stairs.

¶ 5 Collins testified that she lived with the defendant at the time of the incident and that they have a son together. Regarding her injuries, she testified that she had a little scarring on her hand resulting from the cut, and that she "took the stitches out maybe three days myself," noting that "[the stitches] unraveled." She stated that she "was taken off work due to the swelling, and he gave me pain medicine, so I was in a lot of pain."

She did not specify how long she took off work. Collins clarified that, "actually maybe the second day I was okay," noting that "some of the swelling went down" and that "I elevated my leg, and it was fine from there." She testified that she takes blood pressure medication that causes swelling when she forgets to take it; she was not sure if she had taken it at the time of the incident. She testified that the defendant was home when she was injured but that she received the injuries from a slip and fall.

¶ 6 Collins stated that she started an argument with the defendant when she came home at approximately 3 a.m. from a birthday party. She explained that "there was a woman and a man there," and she "[did not] know who the woman was." She testified that she was upset about the dog being "messy" and "not only that about the woman being in my house." She testified that she put on flip-flops and took the dog outside, where she "slid face first down the [back porch] stairs on my left side" and grabbed the railing in an attempt to catch herself. She stated that the fall was how she obtained her injuries, and that the stool broke because she threw it at the defendant.

¶ 7 Collins testified that she did not speak to the defendant about her testimony, but that she did speak to his lawyer to let her know that she "didn't expect for all this to happen" and that she "falsified the whole statement." Collins agreed that she did not tell anyone that night that she fell down the stairs and acknowledged telling Durham that her boyfriend had caused the injuries with a bar stool. She stated that she had only wanted the defendant escorted from her home that night, and she knew that the hospital staff would call the police.

¶ 8 Collins testified that the defendant knew she was injured that evening because he was standing in the kitchen when she "was limping in the house" and her "hand was bleeding." She stated that the defendant asked her what had happened, to which she replied, "leave me the hell alone." The State asked Collins whether the defendant would be lying "if later on [the defendant] denies that you were even injured." Collins responded that, "[i]f he denied that my hand was bleeding, I don't know how he could have not known." Collins testified that the only time the State contacted her was when she was served the subpoena, and that she had never told the defendant's lawyer any other story besides the story to which she testified.

¶ 9 Butkovich testified that he had previously investigated domestic violence cases. He stated that when he arrived at the hospital, he was advised that Collins reported that she was battered. He took Collins' statement and photographed her injuries, but she refused to give a recorded statement. He testified that domestic violence victims are not always reluctant to tell him what happened, but "it does happen."

¶ 10 Butkovich testified that he went to Collins' residence to search for evidence, particularly in the bedroom, where Collins reported being asleep prior to the argument. He was also looking for evidence of a broken stool or signs of a struggle. He testified that the defendant answered the door to Collins' residence, and that he recognized the defendant "on sight" because he "had prior contact" with him. He told the defendant that Collins was in the hospital with injuries that she claimed were caused by him. The defendant denied that there was a physical confrontation and told Butkovich that "he

believed she was at a party and may have gotten in a fight prior to her coming home." Butkovich stated that the defendant did not tell him that Collins fell on ice or down stairs.

¶ 11 Butkovich testified that he looked in the bedroom and found a wooden stool that was broken in several pieces and observed some knocked over shelves that appeared consistent with a struggle or confrontation. He stated that the stool's condition was consistent with Collins' report that she was struck with a stool. Butkovich stated that he took photographs of the residence. He testified that the defendant appeared uninjured, and that the defendant did not tell him that he was "attacked," that Collins was the one who broke the stool, or that she fell down the stairs.

¶ 12 The State rested its case, and the defendant did not present any evidence in his defense. After the jury retired to deliberate, the trial court stated that the jury sent out a question, requesting that the court, "[p]lease give us a definition of, quote, great bodily harm, end quote." The court wrote back that, "[y]ou have heard the evidence and received the jury instructions. No further evidence or instruction will be provided regarding the definition of 'great bodily harm'." The jury found the defendant guilty of aggravated domestic battery but not guilty of aggravated battery.

¶ 13 On June 13, 2014, the court held a hearing on the defendant's posttrial motion and sentencing. Defense counsel argued that Collins' injuries did not constitute great bodily harm beyond a reasonable doubt. The court replied that "[m]y recollection was the nurse testified that she had—the victim had a laceration" and that a laceration "is one of the specific forms of injures stated in *People versus Mays*, that which may constitute great bodily harm." Defense counsel responded that the *Mays* court defined bodily harm, not

great bodily harm. The court agreed, but stated that great bodily harm was "a question of fact [that] is to be determined by the jury without specific instruction from the Court[.]" The court denied the posttrial motion and sentenced the defendant to eight years' incarceration. The defendant appeals.

¶ 14 On appeal, the defendant argues that the State failed to prove beyond a reasonable doubt that Collins suffered great bodily harm because her injuries were merely scrapes, minor lacerations, and contusions. He requests that this court reduce his conviction for aggravated domestic battery to domestic battery. When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). In the alternative, he requests that, "[i]f this Court finds the evidence sufficient to convict" on the aggravated domestic battery charge, his case be remanded for a new trial based on the cumulative evidentiary and prosecutorial misconduct errors that denied him a fair trial. We decline to address his alternative arguments because we agree that the State failed to prove that Collins suffered great bodily harm.

¶ 15 A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery. 720 ILCS 5/12-3.3(a) (West 2014). At issue in this appeal is whether the defendant committed great bodily harm as defined under the statute.

¶ 16 Our courts have found that although "great bodily harm" does not lend itself to a precise legal definition, it requires proof of an injury of a greater and more serious nature

than ordinary battery. *In re J.A.*, 336 Ill. App. 3d 814, 815-16 (2003). The Illinois Supreme Court has provided guidance on the "bodily harm" definition in regards to ordinary battery, noting that "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent, is required." *People v. Mays*, 91 Ill. 2d 251, 257 (1982). As great bodily harm requires an injury of a graver and more serious character than an ordinary battery, logic dictates that the injury must be more severe than the *Mays* bodily harm definition. *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991). The word "great," meaning "remarkable in magnitude, power, intensity, degree, or effectiveness" (Webster's Third New International Dictionary 994 (1993)), must be given effect in construing the statute. *Figures*, 216 Ill. App. 3d at 401.

¶ 17 Great bodily harm does not require hospitalization of the victim, or permanent disability or disfigurement. *Id.* The relevant question is not what the victim did or did not do to treat the injury but what injury the victim in fact received. *People v. Edwards*, 304 Ill. App. 3d 250, 254 (1999).

¶ 18 Findings of great bodily harm have been reversed where substantial questions existed about the extent of the victims' injuries. In *In re T.G.*, the victim was stabbed three times by the defendant, but no evidence was presented regarding the nature and extent of the victim's injuries. *In re T.G.*, 285 Ill. App. 3d 838, 846 (1996). The victim described the first stab as "like being poked with a pen or pencil," but he testified that he did not realize that he had been stabbed until after he noticed his shirt was cut. *Id.* The defendant's conviction for aggravated battery was reversed where great bodily harm was not proved beyond a reasonable doubt. *Id.*

¶ 19 In *In re J.A.*, the defendant stabbed the victim once in the left shoulder, which the victim described as feeling like a pinch. *In re J.A.*, 336 Ill. App. 3d 814, 815 (2003). Although the victim was advised to have the wound stitched, there was no evidence regarding how many stitches would have been needed or who gave him that advice. *Id.* at 818-19. The court reduced the defendant's conviction from aggravated battery to battery where the record reflected "no evidence of the nature and extent of the injury" beyond those facts. *Id.*

¶ 20 Finally, in *In re Vuk R.*, the defendant struck the victim several times with his fists, breaking the victim's nose, injuring a cheek bone and eye socket, and causing him to lose consciousness. *In re Vuk R.*, 2013 IL App (1st) 132506, ¶¶ 4, 9. The victim testified about these injuries, and the State introduced photographs of the victim taken shortly after the occurrence showing swelling and discoloration, although the photographs were not included in the record on appeal. *Id.* ¶ 9. The court concluded that the State failed to present sufficient evidence of great bodily harm where no evidence was presented regarding any pain suffered by the victim (other than that he was given pain medication), the details of the victim's treatment for his injuries, or how long after the incident he suffered the effects of those injuries. *Id.*

¶ 21 The defendant concedes that the State put forth more evidence in his case than is present in the above cases. However, he notes that these cases stand for the proposition that "the State must provide actual detail about the injuries that show beyond a reasonable doubt that those injuries constitute great bodily harm."

¶ 22 Our focus turns to the evidence presented regarding the nature and extent of Collins' injuries. The most severe injury Collins received was a one-inch laceration to her palm that received four stitches. There was no testimony about the depth of the laceration. There was no indication from the medical professional that stitched the laceration as to why stitches were required to close the wound. Collins removed the stitches herself a few days later. Collins also had bruising and swelling to her left arm. However, an X-ray showed no fractures, and although her left arm was photographed, there was no evidence offered in comparison to her right arm to clarify the degree of swelling. There were also no follow-up photographs to clarify the extent of bruising. Durham described the leg abrasions as "superficial." The State presented testimony that Collins' pain was "eight out of ten" and that she was on pain medication, but this was immediately countered by Collins' testimony that she felt fine by the second day. Finally, the State offered no evidence about the duration of Collins' injury other than her testimony that she was "taken off work" for an indeterminate amount of time. There was no testimony about prolonged recovery or functional limitation. Even viewed in a light most favorable to the prosecution, we find that the State did not present sufficient evidence of great bodily harm where it failed to present sufficient evidence of the details of Collins' treatment for her injuries or how long after the incident she suffered the effects of those injuries. See *In re Vuk R.*, 2013 IL App (1st) 132506, ¶ 9. The State therefore failed to demonstrate beyond a reasonable doubt that Collins' injuries constituted great bodily harm as required to sustain an aggravated domestic battery conviction. We find

that the defendant's requested relief, that his aggravated battery conviction be reduced to domestic battery, is appropriate in this instance.

¶ 23 For the foregoing reasons, the defendant's conviction is vacated and this cause is remanded for the trial court to enter a conviction on the lesser charge of domestic battery and modify his sentence.

¶ 24 Conviction vacated and cause remanded.