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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13 CR 19519
	)	
DANIEL GLEICH,	)	
	)	The Honorable
Defendant-Appellant.	)	Colleen Ann Hyland,
	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Mason and Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant’s aggravated domestic battery conviction affirmed where the State presented sufficient evidence that defendant acted knowingly and voluntarily when he physically attacked his then-wife.

¶ 2 Following a bench trial, defendant Daniel Gleich was found guilty but mentally ill of aggravated domestic battery and was sentenced to 30 months’ probation. He appeals his conviction arguing that the State failed to prove him guilty of the offense beyond a reasonable doubt. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3

## BACKGROUND

¶ 4

During the early morning hours of September 8, 2013, defendant, a veteran of the United States Marine Corps., physically attacked his then-wife, Maura Gavin, fracturing her left orbital bone. Defendant was subsequently arrested and charged with aggravated domestic battery in connection with those events (720 ILCS 5/12-3.3 (West 2012)). He waived his right to a jury trial, electing instead, to be tried via a bench trial. He also filed paperwork indicating that he would be proceeding with an insanity defense.

¶ 5

At trial, Gavin, a high school teacher, testified that she met defendant in 2009 and that they married on June 22, 2013. She categorized them as a “pretty social” couple who socialized frequently with friends. On the evening of September 7, 2013, they attended a benefit at the Stadium Club, with one of Gavin’s girlfriends. They attended the benefit from approximately 5 p.m. to 11:15 p.m. that evening. During that time, Gavin and defendant both consumed alcohol. She estimated that she had “maybe two” drinks and that defendant consumed at least six to eight Miller Light beers that evening. According to Gavin, defendant was “in good character” during the benefit, explaining that he was “always pretty animated and funny when he was drinking.” After returning to their condo that evening, the two ate sandwiches and were in good spirits, “laughing and telling jokes.” They went to bed around 12 a.m.

¶ 6

Sometime thereafter, Gavin awoke when she heard defendant make coughing and gurgling noises. She turned over and tapped his left shoulder and said, “Dan, Dan, come on, get up, get up. I don’t want you to get sick in bed.” Defendant, using a “pretty mean tone,” responded: “Knock it off. I’m fine.” Gavin initially decided to “kind of let him be;” however, he started making more coughing and gurgling noises several minutes later. In response, Gavin addressed him again, stating: “Dan, come on, you got to get up. I don’t want you to throw up on

yourself.” In a “mean” tone, defendant responded, “I’ll show you how to get up.” He then rolled on top of her and pinned both of her arms down with his knees. Using a closed fist, defendant then punched Gavin’s face four times, striking her left eye. When Gavin rolled onto her left side in an effort to shield her face, defendant responded by punching the back of her head four or five times. As defendant struck her, Gavin repeatedly stated, “Dan, it’s me. It’s me. It’s me. Stop.” In an effort to escape, Gavin bit one of defendant’s fingers, causing him to throw his arms into the air. She then rolled off the bed onto the floor and began crawling toward the bathroom. Before she could make it to the bathroom, however, defendant again sat on top of her and struck the back of her head with both of his fists. She began to feel dizzy and feared for her life. Defendant, however, suddenly “slumped over” and stopped punching her.

¶ 7 At that point, Gavin ran into the bathroom, placed a towel on her face, and began “trying to figure out what [she] was going to do.” When she did not hear defendant making any noises in the bedroom, Gavin ran out of their residence wearing only the shirt in which she had been sleeping and sought help from Steven and Kayleen Parker, a couple with whom she and defendant were friendly that lived nearby. After Gavin explained to the Parkers what happened, the couple drove her to her sister’s house in LaGrange Park. When she arrived, Gavin spoke to her mother and sister and relayed what had occurred. Her mother then drove her to LaGrange Memorial Hospital to get treatment for her injuries.

¶ 8 At the hospital, Gavin initially told the triage nurse that she sustained her injuries at a party; however, she admitted what really occurred when she was later examined by the E.R. doctor. Gavin explained that she was initially deceptive with medical personnel because she loved defendant, did not understand why he had attacked her, and did not want him to get into trouble. After Gavin truthfully disclosed that defendant attacked her, a police officer arrived and

took pictures to document her injuries, which included bruising and swelling of her left eye, bruising on her left shoulder, and a cut on her upper lip. Gavin subsequently had two follow up appointments with a plastic surgeon to discuss treatment about the “very serious” injury to her left eye. Surgery was ultimately deemed unnecessary and she did not lose her eye.

¶ 9 Although defendant had never inflicted substantial injuries on her prior to that evening, Gavin provided details about another argument and altercation that she had with defendant one week earlier. She recalled that on September 1, 2013, she and defendant were socializing and drinking with friends at Bourbon Street, a local bar. The couple decided to leave around 6 p.m. When Gavin tried to take defendant’s keys to prevent him from driving, he grabbed both of her arms, threw her against the vehicle, and ordered her to “Get into the car.” Gavin, who was “extremely scared,” followed defendant’s order and entered the vehicle. When defendant reached the first stoplight, however, Gavin “threw the car in park” and jumped out of the vehicle. She then tried to call her brother-in-law with her cell phone, but defendant exited the car, and smashed her phone before she could make the call. Gavin then reentered the car and defendant drove them home. Because she was still scared, Gavin spent the night at the Parker’s residence. When she returned home the following day, defendant apologized, stating that he was “extremely sorry.” Gavin noticed that defendant had numbers written on his hand and when she asked him about it, defendant responded that he had written his brother’s phone number on his hand because he expected her to call the police and he wanted to be able to phone his brother to bail him out of jail. Gavin, however, did not call the authorities because she believed it was a “one time incident.”

¶ 10 On cross-examination, Gavin admitted that she and defendant had spent the night of the benefit joking and laughing and that they had not argued that evening. Prior to that night,

defendant had never punched her. When asked why she repeatedly said “Dan, it’s me,” as he was punching her, Gavin explained that defendant never uttered her name during the attack and that she wanted to make sure he was aware that he was hitting his wife. Gavin denied ever witnessing defendant thrashing in his sleep or experiencing bad dreams or night sweats. She further denied that defendant had ever struck or grabbed her in his sleep or that she had spoken to anyone about defendant having sleep issues. Although Gavin was aware that defendant was a military veteran, she denied that defendant provided her with any details of his deployments and military service. She has not spoken to defendant since the morning that he attacked her and the two are now divorced.

¶ 11 Dr. Bernadette Gniadecki, a board certified emergency room physician, testified that she treated Gavin when she arrived at the LaGrange Memorial Hospital emergency room at approximately 3 a.m. on September 8, 2013. At that time, Gavin, who was “tearful, but very composed,” conveyed that her husband had punched her left eye and reported experiencing “moderate pain.” Dr. Gniadecki observed “significant soft tissue swelling” in the area around Gavin’s left eye, which rendered her unable to completely open her eye. She also observed visible swelling to Gavin’s nose, cheek, and jaw region as well as slight bleeding around her nose. Given the significant trauma to Gavin’s eye, Dr. Gniadecki ordered three CAT scans: “one of the facial bones,” a “head CT,” and a “CT scan of her neck.” The head and neck scans ultimately revealed that Gavin had not sustained any intracranial or neck injuries. The facial CT, however, revealed “a displaced fracture of the left orbital floor extending to the anterior wall of the maxillary sinus,” or a “crack in the bone on the bottom of the eye socket on the left eye.” Based on Gavin’s substantial and significant injuries, Dr. Gniadecki admitted her to the hospital and contacted the authorities.

¶ 12 After presenting the aforementioned evidence, the State rested its case. Defendant's motion for a directed finding was denied. Thereafter, defendant elected to testify.

¶ 13 Defendant testified that he enlisted in the United States Marine Corps in 2003 when he was 18 years old and served two tours in Iraq. During that time, he was involved in multiple firefights and saw several of his friends and squad members get killed. During his second tour, he was "knocked out" and suffered traumatic brain injuries on two separate occasions when improvised explosive devices (IED) detonated nearby. Two engineers in his unit were killed during the second explosion. As defendant helped recover their remains, he decided he no longer wanted to be involved in active combat. Accordingly, he sought and received an honorable discharge from the military in 2007.

¶ 14 Following his discharge from the military, defendant testified that he no longer felt able to relate to any of his friends and that he distanced himself from people. He began to suffer from anxiety and experienced recurring nightmares. In his nightmares, defendant would see his "buddies['] faces" and "see what [they] went through." He also had a recurring dream in which a half-gorilla, half-man wearing a turban attacked and killed him no matter how hard he fought back. Defendant testified that he was unaware that he moved or "thrashed" around when he experienced those dreams until his brother and his wife both told him that they witnessed him doing so. Gavin, in particular, told defendant that he thrashed around in bed, grabbed her, cried, and spoke in a different language while he was asleep. When defendant continued to experience these sleep issues after they moved in together in June 2010, Gavin began conducting research into post-traumatic stress disorder (PTSD). Following her research, the couple discussed PTSD and defendant's dreams and behavior with friends and family. Given his recurring sleep issues, defendant and Gavin agreed that she would either wake him up verbally when he was

experiencing nightmares or she would stand by the foot of the bed and grab him by his ankle. Defendant estimated that he and Gavin talked about his sleep issues and PTSD “hundreds” of times during their marriage. He also spoke about PTSD at the high school at which she taught on Veteran’s Day.

¶ 15           When asked about the events that transpired on September 1, 2013, defendant testified that he and his wife had met their friends for drinks at Bourbon Street. While they were socializing, Gavin saw a text message that defendant had received from his brother referencing a loan that they had taken out. Gavin, who had not known about the loan, then “went berserk” and started screaming at him in front of their friends. In response, defendant decided to leave her at the bar and return home. Gavin, however, followed him and began “beating” on the passenger window as he sat in the driver’s seat of his car. Although defendant did not want her to join him in the vehicle, he let her in because she “was insistent on being loud.” Gavin continued “yelling” at him as he drove toward their condo. At one point, defendant ordered her to get out of the car after she repeatedly reached toward the console to put the car into park while he was attempting to drive. Ultimately, however, defendant made a U-turn to pick her up because he did not want her to walk home while she was drunk. When Gavin refused to reenter his vehicle, defendant stopped the vehicle, approached her, and “grabbed her by the arm.” In response, she punched him in the stomach. After being punched, defendant admitted that he “grabbed her” and “threw her into the car.” When he did so, Gavin’s phone fell to the ground and “busted.”

¶ 16           When they arrived back at their condo building, Gavin did not return to their unit. Instead, she simply ran off. Defendant suspected that she was going to call the police and “say something because she [was] drunk.” As a precaution, he wrote his brother’s phone number on his hand so that he could call him if he was arrested. Defendant learned that his fears of being

arrested were unfounded when two of his friends came over and informed him that Gavin was “at Steve’s house” and that she would return in the morning. The following day, after Gavin returned home, they talked about the loan and defendant apologized for failing to be forthcoming about it. He then replaced her broken phone.

¶ 17 By the time that they attended the benefit on September 7, 2013, defendant testified that their relationship was “back to normal.” He estimated that they were at the benefit from approximately 4 p.m. to 9 p.m. and that he drank “seven or eight” beers during that time. When they returned home that evening, they were “fine” and were “laughing” and “having fun.” His last memory of that evening was kissing Gavin goodnight and going to sleep. The next thing he recalled was waking up alone in the bedroom. The lights were on and there was blood on the bathroom floor. When he went downstairs to look for his wife, defendant saw that the front door was “cocked open.” Six or seven police officers were standing outside of the door and he invited them inside. The officers asked if he had gotten into a fight with his wife, and defendant responded that he did not know and that he had just woken up. The officers noticed that he had a bite mark on his hand and scratches on his chest. Defendant put on some clothing and was taken to the police station in handcuffs. To this day, defendant has no recollection about what transpired that evening. He has not been able to talk to his wife since that night.

¶ 18 After he was bailed out of jail, defendant testified that he checked himself into a Lovell Veterans Administration (VA) mental hospital. He explained that he sought treatment because he “needed help” and “wanted to be back with [his] wife.” He remained in the hospital for four days. During that time, he spoke to doctors who “put [him] on a whole bunch of prescription drugs.” Following his discharge from the hospital, defendant attended weekly counseling sessions for over a year. Defendant testified that he no longer attends counseling regularly;



however, he continues to take medication. He currently has prescriptions for Prazosin, for his sleep issues, and Sertraline, for his mood and depression.

¶ 19 On cross-examination, defendant admitted that although he and Gavin had discussed PTSD on “hundreds” of occasions, he had never been diagnosed with or treated for PTSD until after he attacked his wife. He explained that he did not seek treatment because he was applying for positions with the Chicago Police Department and the Chicago Fire Department and did not want his medical records to reflect a PTSD diagnosis. He also admitted that he did not seek out treatment immediately after his arrest on September 8, 2013; rather, he admitted himself to the hospital on September 14, 2013, and checked himself out four days later. Although medical personnel wanted him to remain at the hospital for more than four days, defendant checked himself out because he felt “fine” and “stable.”

¶ 20 Defendant confirmed that he had no recollection as to what transpired after he and Gavin went to bed following the benefit. Specifically, he did not recall coughing or gurgling or Gavin trying to wake him up. Defendant acknowledged that there have been previous instances in which he was able to recall his nightmares upon waking; however, he did not remember the nightmare that he experienced that night.

¶ 21 On recross-examination, defendant explained that he did not check himself into the VA hospital until September 14, 2013, because he was not permitted to reenter the condo until that date. Once he was able to get into the condo and obtain the paperwork necessary for his admittance to the hospital, he did so.

¶ 22 Stephen Parker, a “long time” friend of defendant’s, testified that he and his wife, Kayleen, lived approximately one block away from defendant and Gavin and that they socialized with the couple regularly. Parker confirmed that Gavin discussed defendant’s sleep issues and

his PTSD symptoms with him. The first conversation in which she divulged defendant's issues and asked Parker about defendant's military experiences took place at the end of 2010 or at the beginning of 2011. She raised the subject again with him and some friends during a Super Bowl party in 2013. During that conversation, Gavin discussed defendant's "night terrors" and relayed that he would "grab[] her arm in the middle of the night" and that he would scream and cry in his sleep "quite often." Parker estimated that Gavin discussed defendant's PTSD "at least once every three months."

¶ 23 Parker confirmed that he and his wife were among the group of friends with whom the couple socialized on September 1, 2013, at Bourbon Street. Defendant and Gavin were both drinking on that occasion; however, only Gavin appeared intoxicated. He recalled that sometime that evening, Gavin started yelling at defendant and referenced defendant's brother. Parker observed defendant leave the bar alone and then saw Gavin follow him 15 or 20 seconds later. He subsequently received a phone call from Gavin approximately 30 minutes thereafter. When Parker and his wife returned home, Gavin was waiting for them. She appeared to be "very anxious" and "very excited" and stated that defendant had forcibly put his hands on her to get her into the car and had broken her phone. After talking to Gavin, Parker and a friend went to see defendant. They talked for about an hour, and although defendant was concerned that he was going to get divorced or arrested, Parker speculated that Gavin would likely wake up the next day and regret her decisions. Parker's speculation proved to be accurate as Gavin reconciled with defendant and went to dinner with him the following day. Parker had no concerns for her safety.

¶ 24 Parker confirmed that Gavin arrived at his condo at approximately 1 a.m. on September 8, 2013. She was "frantic" and had visible injuries to her face. Gavin relayed what had occurred

and repeatedly stated “that was not Dan.” Gavin did not want to go to the hospital or call the police. Instead, he and his wife drove Gavin to her sister’s house.

¶ 25 Chicago Police Officer Robert Gleich, defendant’s younger brother, testified that defendant was “very happy” and “outgoing” prior to enlisting in the marines; however, he became a “very different person” following his discharge from the military. Gleich explained that his brother became “very quiet” and “very standoff-ish” and was “in a very dark place.” When his brother started dating Gavin, however, he returned to being a “very happy person.” As a result, Gleich developed an “extremely close” relationship with his sister-in-law and they would communicate daily about a variety of topics, including defendant’s sleep issues and PTSD. He estimated that they spoke about defendant’s nightmares and PTSD “over [one] hundred times” and that he advised Gavin to grab defendant’s big toe and shake him when he had night terrors. She would also discuss those topics with other friends.

¶ 26 Gleich testified that he also had first-hand knowledge of his brother’s unusual sleep behavior. He recalled an occasion in which he and his brother were both staying with their mother over Mother’s Day weekend in 2009. Sometime in the middle of the night, Gleich heard defendant yelling and screaming. When he ran into his brother’s room, he observed him “thrashing his arms” back and forth “like he was in a fight or something.” When Gleich held his brother down and began to shake him in an effort to wake him up, defendant hit him. He was asleep when he did so. When defendant finally woke up, his eyes were “glazed” and he “had a weird look on his face.” It was clear to Gleich that defendant “had no idea what had occurred.” The following morning, Gleich spoke to his brother about the nightmare; however, defendant had absolutely no recollection as to what had occurred the previous night.

¶ 27 Dr. Lisa Rone, a licensed clinical psychiatrist and an assistant professor of psychiatry at Northwestern Memorial Hospital, testified as defendant's expert witness. During her years as a practicing psychiatrist, she has treated "hundreds" of military veterans with PTSD, which is a condition triggered by a traumatic event, the symptoms of which can include flashbacks, hyper vigilance, and exaggerated startle responses. She testified that she met with defendant to conduct a psychiatric evaluation on June 20, 2014. During the evaluation, they discussed defendant's combat experience, the symptoms he experienced thereafter, as well as his social, familial, vocational, educational, and substance abuse histories. Defendant relayed that he had a history of flashbacks and intrusive recollections of his experiences in combat. In addition, he also experienced recurrent nightmares, difficulty initiating and maintaining sleep, and hyperactive startle responses triggered by certain noises. Moreover, he had a history of thrashing in his sleep and grabbing his wife while experiencing nightmares. Defendant also reported several episodes of waking up in the living room or kitchen and having no recollection how he got there. When asked about the night of the attack, defendant confirmed that he had no recollection of hitting his wife.

¶ 28 In addition to meeting with defendant, Dr. Rone testified that she also reviewed defendant's medical records, as well as the police report completed in the case. Defendant's medical records from the VA hospital reflected that he had had a history of traumatic brain injuries and that he had had been diagnosed with depression, PTSD, and REM behavioral disorder, a type of parasomnia, or sleep disorder, that involves acting out vivid dreams with no recollection of doing so. She agreed that defendant had suffered from traumatic brain injuries, PTSD, and depression. She also agreed he had the symptoms of a parasomnia.

¶ 29           Ultimately, based on her interview of defendant and her review of relevant records, Dr. Rone expressed her belief that defendant was likely asleep and in the throes of a PTSD triggered nightmare when he attacked his wife. She further opined that “based upon the recurrent traumatic nature of his nightmares as well as the parasomnia where he acted out his dreams, that [defendant] lacked substantial capacity to appreciate the wrongfulness of his actions.”

¶ 30           On cross-examination, Dr. Rone acknowledged that defendant had never sought treatment despite his history of nightmares and grabbing his wife in his sleep until after the incident on September 8, 2013. In addition, although defendant’s medical records reflect a diagnosis of REM behavioral disorder, he never participated in a sleep study to confirm the diagnosis despite receiving a referral for a study. She also acknowledged that medical personnel never observed defendant acting out any of his dreams during the three nights that he slept at Lovell VA Hospital. Finally, she admitted that was no way to definitively determine whether defendant was in fact asleep during the attack.

¶ 31           After presenting Dr. Rone’s testimony, the defense rested. Thereafter, the State called Dr. Alexis Mermigas, a forensic psychiatrist with Forensic Clinical Services, to testify as a rebuttal witness. Dr. Mermigas testified that she met with defendant on December 16, 2014, to conduct a court-ordered evaluation pertaining the issue of his sanity at the time of the attack. As part of this evaluation, she also reviewed the police report and defendant’s medical records. Based on her review of all of the pertinent information, Dr. Mermigas opined that defendant was legally sane at the time that he attacked his wife and that “his symptoms of PTSD d[id] not appear to influence his actions at the time of the alleged offense” because there was “no clear indication that he was having a nightmare, a flashback, or a socio-episode; anything that would

have been from the PTSD that would have caused him to lack the substantial capacity to appreciate the criminality of his conduct at the time of the alleged offense.”

¶ 32 In support of her conclusion, Dr. Mermigas testified that PTSD typically does not result in blackouts and that nightmares resulting from PTSD are usually “incredibly vivid” and are not forgotten upon waking up. Moreover, it is not typical for persons with PTSD to act out their dreams; rather, such behavior is more indicative of a sleep disorder. Although defendant’s records reference REM behavioral sleep disorder, Dr. Mermigas testified that the disorder is most commonly seen in men over 50 years of age, not in men as young as defendant. Moreover, there is no definitive manner in which to render a sleep disorder diagnosis absent a sleep study, which defendant has not participated in. Given these factors, Dr. Mermigas opined that she did not believe that defendant attacked his wife in his sleep. Moreover, she opined that defendant’s failure to remember the attack was likely caused by an alcoholic blackout. In support, she noted that although defendant denied that he had a history of alcohol abuse or alcohol-related blackouts, he admitted consuming alcohol on the night in question.

¶ 33 On cross-examination, Dr. Mermigas acknowledged that there was no conclusive way to determine whether defendant was sleeping or awake at the time of the attack; however, the fact that defendant “verbally responded to [his wife] twice in a coherent manner” during the attack was an “indicat[ion] that he may have been awake.” She conceded that she could neither refute nor confirm that defendant has REM behavioral disorder absent a sleep study. She emphasized, however, that although people with REM behavioral disorder may violently act out their dreams, they “typically do not attack people for extended periods of time;” rather, they are “typically woken up after the first punch or two or kick or two by their sleep partner” and they usually remember their dreams. She reiterated that REM behavioral sleep disorder is a “fairly rare

diagnosis” and expressed her opinion that the “diagnosis d[id] not fit this scenario in this case.” Although she agreed with Dr. Rone that defendant suffers from “mild to moderate PTSD,” Dr. Mermigas did not believe that a PTSD nightmare caused the attack or that PTSD caused him to lack substantial capacity to appreciate the criminality of his conduct at the time of the alleged offense. Rather, she reiterated her belief that defendant was awake when he attacked his wife and that the most likely explanation for defendant’s failure to recall his conduct was an alcoholic blackout.

¶ 34 Following Dr. Mermigas’s testimony, defendant called Dr. Rone to testify in surrebuttal. She disagreed that with Dr. Mermigas’s supposition that defendant’s conduct and failure to recall the attack likely resulted from an alcoholic blackout; rather, she reiterated her opinion that defendant was likely asleep when he struck his wife. In doing so, she noted defendant and his wife were in bed when the attack happened and that his wife’s statement to police indicated that it commenced when she was attempting to wake defendant. Although Dr. Rone again conceded that there was no manner in which to definitively know if defendant was sleeping during the attack, she testified that it was a “fair” conclusion to draw given defendant’s history and the circumstances of the attack.

¶ 35 Following Dr. Rone’s surrebuttal testimony, the parties delivered closing arguments. Thereafter, the court continued the matter so that it could review its “extensive” notes before delivering its ruling. When the parties reconvened, the court recounted the testimony it had heard in the matter and ultimately rejected defendant’s argument that he was asleep during the

attack and that he lacked the substantial capacity to appreciate the criminality of his actions; rather, the court found him guilty but mentally ill of aggravated domestic battery.<sup>1</sup>

¶ 36 At the sentencing hearing that followed, the parties presented evidence in aggravation and mitigation and defendant delivered a statement in allocution. After considering the evidence, the court sentenced defendant to 30 months' probation, the first 12 months' of which would be "intensive." The sentence also required that defendant serve 60 days' imprisonment. Defendant's posttrial motion was denied and this appeal followed.

¶ 37 ANALYSIS

¶ 38 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated domestic battery. He argues that the evidence was insufficient to prove that he "acted voluntarily or knowingly when he struck [his wife] while he was in the midst of a recurring nightmare he had been known to act out while asleep."

¶ 39 The State, in turn, responds that defendant's challenge to the sufficiency of the evidence is without merit.<sup>2</sup> Specifically, the State argues that defendant was proven guilty beyond a reasonable doubt of aggravated domestic battery where he knowingly and voluntarily "conversed with his wife, attacked her in a prolonged, sustained manner, and fractured her orbital bone."

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<sup>1</sup> A verdict of guilty of mentally ill may be entered where the fact finder determines that the defendant was mentally ill, but not insane, at the time of the offense. *People v. Seaman*, 203 Ill. App. 3d 871, 881-82 (1990).

<sup>2</sup> As set forth above, defendant proffered an insanity defense at trial. He did not raise an involuntary conduct defense. Although related, "the defense of involuntary conduct and the insanity defense are *alternative* theories at the disposal of a defendant whose volition to control or prevent his conduct is at issue." (Emphasis added.) *People v. Grant*, 71 Ill. 2d 551, 558-59 (1978). As a general rule, an affirmative defense is waived unless it is properly raised at trial. *People v. Abrams*, 48 Ill. 2d 446, 458 (1971); *Glenn v. People*, 9 Ill. 2d 335, 344 (1956). Defendant, however, frames his appellate argument as a challenge to the sufficiency of the evidence, a claim that is not subject to waiver. *People v. Woods*, 214 Ill. 2d 455, 470 (2005) (citing *People v. Enoch*, 122 Ill. 2d 176, 190 (1988)) (recognizing that claims challenging the sufficiency of the evidence are not subject to waiver). Although the State observes that defendant did not specifically raise an involuntary conduct defense, it does not suggest that his claim is waived, and has thus waived any waiver argument. See *People v. Blair*, 215 Ill. 2d 427, 442 (2005) (quoting *People v. Stivers*, 338 Ill. App. 3d 262, 264 (2003) (recognizing that " 'waiver is in the nature of an affirmative defense that the State may either raise, waive, or forfeit' "). For these reasons, we address the substantive merit of defendant's claim.



¶ 40 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, the court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 58; *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). This standard is applicable to all criminal cases regardless of the nature of the evidence at issue. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). In a bench trial, the trial court is responsible for evaluating the credibility of the witnesses, resolving conflicts and inconsistencies in the evidence, and determining the weight to afford, and the inferences to be drawn, from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court may not substitute its judgment for that of the trier of fact on such matters (*People v. Campbell*, 146 Ill. 2d 363, 375 (1992)) and will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*People v. Bradford*, 2016 IL 118674, ¶ 12).

¶ 41 As a general rule, to sustain a criminal conviction, the State must prove that the defendant performed a prohibited act (*actus reus*) with the prescribed mental state (*mens rea*). *People v. Nelson*, 2013 IL App (3d) 120191, ¶ 25; *People v. Stiles*, 334 Ill App. 3d 953, 956 (2003). The State must also prove that the defendant performed the prohibited act voluntarily. 720 ILCS 5/4-1 (West 2012) (“A material element of every offense is a voluntary act”); see also *People v. Grant*, 71 Ill. 2d 551, 558 (1978) (recognizing that it is a “fundamental legal principle that a person is not criminally responsible for an involuntary act”). “[I]nvolutionary acts may include

those committed during convulsions, *sleep*, unconsciousness, hypnosis or seizures.” (Emphasis added.) *Grant*, 71 Ill. 2d at 558; see also *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 61.

¶ 42 Pursuant to section 12-3.3 of the Illinois Criminal Code of 2012 (Criminal Code), a person commits the offense of aggravated domestic battery when he, “in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement.” 720 ILCS 5/12-3.3 (West 2012). A person, in turn, commits domestic battery when he knowingly, and without legal justification “[c]auses bodily harm to any family or household member.” 720 ILCS 5/12-3.2(a)(1) (West 2012). A person acts knowingly when he is consciously aware that his conduct is practically certain to cause the result proscribed by the offense. 720 ILCS 5/4-4 (West 2016). Accordingly, to sustain a conviction for aggravated domestic battery, the State is required to prove that the defendant committed a voluntary act knowing that it would cause great bodily harm.

¶ 43 Here, there is no dispute that defendant repeatedly struck his wife during the early morning hours of September 8, 2013, and caused her great bodily harm by fracturing her left orbital lobe. There is likewise no dispute that defendant, a United State Marine Corp. veteran, suffers from PTSD. The only dispute is whether defendant was asleep and in the midst of nightmare triggered by his PTSD during the assault, rendering his actions unknowing and involuntary. Given that defendant testified that he has no recollection about what happened after he went to bed, Gavin was the only witness able to provide a firsthand account of the assault. She testified that she and defendant went to sleep after drinking and spending an enjoyable evening together at a charity benefit. When she heard defendant coughing and making gurgling noises, she spoke to him twice and urged him to “get up” so that he would not get sick in bed. Defendant coherently and angrily responded to her on both occasions, telling her to “knock it

off” and then threatened to “show [her] how to get up.” He then rolled over and punched her four or five times in the face, and in the back of her head. Defendant continued to hit her even after she bit his finger and fell onto the floor. She was only able to escape when defendant suddenly “slumped over” and stopped hitting her. Although defendant had never struck her before that night, Gavin testified that defendant had acted aggressively toward her the previous week when he threw her against his vehicle. Defendant had been drinking on that occasion as well.

¶ 44 We note that although Gavin denied discussing PTSD or nightmares with anyone, her testimony was contradicted by defendant’s witnesses. Moreover, although she never testified she believed defendant was asleep during the attack, she admitted stating, “Dan, it’s me” repeatedly, which could be interpreted as an indication that she doubted defendant was fully cognizant of his actions. Even if Gavin’s testimony could be construed as somewhat incredible in some respects, it was within the province of the trial court to make a determination as to her overall credibility as a witness. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 45 Moreover, we note that Gavin’s testimony was not only evidence presented as to the nature of defendant’s conduct; rather, competing experts offered differing opinions about defendant’s behavior that night. Dr. Rone, defendant’s expert, testified that she believed that defendant was in the midst of a nightmare triggered by PTSD when he assaulted his wife. In support, she cited defendant’s reported history of nightmares and his experiences sleepwalking and grabbing his wife in his sleep. Moreover, she found it significant that the attack occurred when Gavin attempted to wake defendant. Although the State’s expert, Dr. Mermigas, agreed that defendant suffered from PTSD, she disagreed that defendant was asleep during the attack, and opined that his failure to recall the event was most likely triggered by an alcoholic blackout.

In doing so, Dr. Mermigas noted that defendant had no recollection of dreaming that night and that PTSD nightmares and flashbacks are usually extremely “vivid” and are not forgotten by the PTSD sufferer upon waking. In addition, defendant had verbally responded to his wife “twice in a coherent manner” before attacking her, which was an indication that he was likely awake. Moreover, she emphasized that PTSD does not cause people to act out their dreams; rather only a sleep disorder like REM behavioral disorder, would cause such behavior. Although there were notations in defendant’s medical charts referencing parasomnia and REM behavioral sleep disorder, no diagnosis had been confirmed by a sleep study. Moreover, she did not believe that defendant’s behavior that night was consistent with a sleep disorder because the attack on his wife was prolonged and he did not stop after his wife bit his finger. Dr. Mermigas explained that although people with REM behavioral sleep disorder may violently act out their dreams, they “typically do not attack people for extended periods of time” and are typically woken up “after the first punch or two” by their sleep partner.

¶ 46 The circuit court, after considering the evidence, including Gavin’s testimony, the nature of the attack, and the opinions of the competing experts, found the evidence sufficient to support a conviction for aggravated domestic battery. In doing so, the court highlighted the State’s other crimes evidence, specifically the fact that defendant had acted in “a somewhat violent manner” toward his wife following a night of drinking approximately one week prior to the attack at issue. The court also found it notable that defendant had twice responded verbally to his wife in a coherent manner before physically attacking her and concluded that his responses “show[ed] he was aware of what was happening and he was angry.” Although the court acknowledged the conclusion of both experts that defendant suffered from PTSD, the court found that defendant’s diagnosis did not prevent him from appreciating the wrongfulness of his behavior. Based on our

review of the evidence, we are unable to conclude that the court's finding that defendant was awake and aware of what was happening at the time he attacked his wife is so improbable or unreasonable, such no rational trier of fact could have reached that conclusion. Indeed, although the court heard testimony from two competing experts who drew vastly different conclusions about defendant's state of mind at the time of the assault, defendant's expert, Dr. Rone, a clinical psychiatrist, admitted that her opinion was premised upon an acceptance of defendant's reported history and his description of the events on the night in question. In contrast, the State's expert, Dr. Mermigas, testified that as a forensic psychiatrist, her opinion was based solely upon her consideration of the objective facts of the case. In light of the different methodologies employed by the competing experts, we find that the court's acceptance of Dr. Mermigas's testimony was reasonable.

¶ 47 In so finding, we are unpersuaded by defendant's reliance on *People v. Martino*, 2012 IL App (2d) 101244 and *People v. Nelson*, 2013 IL App (3d) 120191. In *Martino*, the Second District reversed the defendant's aggravated domestic battery conviction where the evidence established that he broke his wife's arm when he fell on her after being tased by police. 2012 IL App (2d) 101244, ¶ 15. The court reasoned that the tasing of the defendant indisputably left him "incapable of controlling his muscles" and thus "his act of falling on [his wife] and breaking her arm was an involuntary act for which he cannot be held accountable." *Id.* In *Nelson*, the Third District reversed the defendant's conviction for telephone harassment where he presented expert testimony that his actions were the product of a complex involuntary tic resulting from his Tourette's syndrome. 2012 IL App (3d) 120191, ¶ 29. Given that the State failed to present a rebuttal expert to testify that the defendant's actions were voluntary and refute defendant's expert's testimony, the court concluded that "uncontroverted evidence presented at trial,"

established that the defendant's actions were involuntary and that no reasonable trier of fact could have found otherwise. *Id.*

¶ 48 Unlike *Martino*, defendant was not exposed to external stimuli that rendered him physically incapable of controlling his muscles. In addition, unlike *Nelson*, the court heard from two competing experts who offered differing opinions as to the nature of defendant's actions and his ability to appreciate the criminality of his conduct. As the trier of fact, it was the province of the circuit court to resolve that conflicting testimony and a reviewing court may not substitute its judgment for that of the trier of fact. *Siguenza-Brito*, 235 Ill. 2d at 228. Here, following our review of the trial, we cannot agree with defendant that the evidence was insufficient to support a finding that his actions were voluntary.

¶ 49 We further find that the evidence was sufficient to allow the trier of fact to conclude that defendant acted with the requisite intent and knowingly struck his wife. Because one's mental state is rarely susceptible to direct proof, whether a person acted with intent, such as knowingness, is generally established through circumstantial evidence and inferred from the defendant's conduct and the circumstances surrounding his actions. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 44; *People v. Price*, 225 Ill. App. 3d 1032 (1992). Here, defendant's verbal responses to his wife's efforts to get him out of bed, the prolonged nature of the assault, the multiple blows inflicted on Gavin, and the testimony of Dr. Mermigas was sufficient to allow the trier of fact to conclude that defendant was not asleep and that he acted with the requisite intent when he struck his wife. Although Dr. Rone offered a different opinion, it was the trial court's responsibility to consider and resolve the conflicting testimony. *Siguenza-Brito*, 235 Ill. 2d at 228. The mere fact that the conflicting testimony was not resolved in defendant's favor does not create reasonable doubt.

¶ 50 In so finding, we reject defendant’s contention that this court’s decision in *People v. Lee*, 2017 IL App (1st) 151652 compels a different result. In *Lee*, this court reversed a schizophrenic defendant’s conviction for aggravated battery of a nurse who was treating him. Although there was no dispute that the defendant made a single physical contact with the nurse when he grabbed at the cross necklace that the nurse was attempting to remove from his neck, we concluded that the State failed to prove that the defendant acted knowingly and that he was “consciously aware” that his conduct in grabbing his necklace would cause the nurse harm. *Id.* ¶ 22. Unlike the defendant in *Lee*, however, defendant did not inflict a single physical blow on his victim while his attention was focused elsewhere; rather, the record established that he struck his wife multiple times during a sustained physical assault. Defendant’s conduct and the circumstances of the attack provided the trier of fact with sufficient evidence to conclude that he acted knowingly.

¶ 51 Ultimately, because we find that the State presented sufficient evidence to establish that defendant knowingly and voluntarily struck his wife repeatedly in the face and head, resulting in a fracture of her left orbital bone, we affirm defendant’s conviction for aggravated domestic battery.

¶ 52 CONCLUSION

¶ 53 The judgment of the circuit court is affirmed.

¶ 54 Affirmed.