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2019 IL App (3d) 160540-U

Order filed April 15, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0540
CATHY ANN LOGAN,)	Circuit No. 15-CF-519
Defendant-Appellant.)	Honorable John P. Vespa, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice McDade concurred in part and dissented in part.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove defendant's guilt of aggravated battery beyond a reasonable doubt. However, the evidence was insufficient to sustain defendant's mob action conviction.
- ¶ 2 Defendant, Cathy Ann Logan, appeals from her convictions for mob action (720 ILCS 5/25-1(a)(1) (West 2014)) and aggravated battery (*id.* § 12-3.05(f)(1)). Defendant argues the State failed to prove her guilt of the two offenses beyond a reasonable doubt. We affirm in part and reverse in part.

¶ 3

I. BACKGROUND

¶ 4

The State charged defendant, by indictment, with one count each of mob action and aggravated battery. Before trial, the State filed a motion for use immunity to compel Tyshia Logan, defendant's daughter, to testify against defendant. The court granted the State's motion.

¶ 5

At trial, Jameniss Taylor testified that the victim, Antoniss Cooley, was her sister. Jameniss did not know defendant, but she attended school with Tyshia. Tyshia and Jameniss did not get along and had had "issues" for several years. On August 2, 2015, Jameniss and Geneva Green were visiting a friend who lived on Proctor Street when Tyshia approached them. At the time, Tyshia was carrying a padlock and approximately 20 people had gathered to watch Tyshia and Green fight.

¶ 6

Jameniss notified Antoniss of the potential fight between Tyshia and Green. Antoniss drove down the street to Jameniss's location; defendant exited Tyshia's house nearby and stabbed Antoniss and ran off. However, Jameniss subsequently testified that defendant was already on the scene when Antoniss arrived. Antoniss tried to break up the fight between Tyshia and Green. Defendant produced a knife and stabbed Antoniss. At the time of the stabbing, Jameniss was standing eight feet from defendant. Jameniss said the knife was long and had a wooden handle, "like, a butcher knife." When the State asked Jameniss if a photograph in evidence accurately depicted the knife that she had observed, Jameniss said "[a] wood handle, yeah, but I didn't see how long it was. It was too late. It was already inside of her." After the stabbing, defendant ran toward Tyshia's house.

¶ 7

Tyshia testified that defendant was her mother. Tyshia went to school with Jameniss and Green. Tyshia did not get along with Jameniss because they had both dated the same man. Tyshia also did not get along with Antoniss because their children shared a common father.

Tyshia said that defendant did not have a good relationship with Antoniss. On the night before the stabbing, Tyshia was involved in a physical altercation with Green at a night club.

¶ 8 On August 2, 2015, as Tyshia returned from the grocery store, she saw Jameniss, Green and several other people standing on Proctor Street near her house. Tyshia estimated that the group consisted of approximately 70 people. Members of the group taunted Tyshia and tried to provoke her to fight with Green. Tyshia did not approach the group and stood in her yard and spoke with her brother. Defendant approached the group to speak with Antoniss's mother, Antonissa. At that time, individuals in the group started fighting. When the fighting began, Tyshia was standing in her yard, but later moved to a neighboring yard where she picked up a padlock on a shoestring to use for protection. Tyshia could not see who was hitting whom in the fight, but noted several people had weapons like mace, tasers, and knots. Approximately five minutes after the fight began, Tyshia called the police. The police arrived 10 minutes later and the crowd started to disperse. After the fight, defendant returned to Tyshia's location. Defendant had been sprayed with mace and yelled that she could not see. Defendant tried to hand a silver and brown knife to Tyshia. Tyshia caught the knife in her shirt and then dropped it in her neighbor's yard. Tyshia did not know where the knife had come from because defendant did not have a knife when she approached the crowd.

¶ 9 Antoniss testified that she and Tyshia did not get along because their children shared a common father. On August 2, 2015, around 7 p.m., Jameniss called to tell Antoniss that a fight was starting on Proctor Street, near Antoniss's home. Antoniss and Antonissa drove down Proctor Street to the location of the fight. At the time, Antoniss was recovering from kidney stone surgery and took pain medication. Antoniss saw approximately 50 people standing in the street. Antoniss attempted to remove Jameniss from the crowd and Antonissa approached

defendant. Antonissa and defendant exchanged “words,” and Antoniss heard someone say “she has a knife.” Antoniss turned and saw defendant approach her while holding a knife. Antoniss asked defendant “what she was going to do with [the knife], and it just went into [Antoniss’s] stomach.” At the time of the stabbing, Tyshia was standing in the street approximately 10 to 15 feet behind defendant. Antoniss initially said that she “blacked out” from the injury. However, Antoniss explained that she did not really lose consciousness, but that she panicked at the sight of the blood. Antoniss saw defendant run toward Tyshia’s house. Antoniss described defendant’s weapon as a “wooden knife” and later clarified that the “handle was wooden.” Antoniss did not see what happened to the knife after the stabbing. Antoniss was transported to the hospital where she received treatment for her injury and spoke to the police.

¶ 10 On cross-examination, defense counsel impeached Antoniss’s identification testimony with her prior statement to the police. Antoniss told a police officer at the scene that after she fell to the ground, she was kicked several times. Defense counsel’s cross-examination also included the following exchange.

“Q. Okay. And at some point you told the officer that you weren’t exactly sure which individual stabbed you. It could have been [defendant] or Tyshia; is that correct?”

A. Uh-huh.

THE COURT: Ma’am, I need you to answer yes or no, not just uh-huh.

THE WITNESS: I don’t even remember what she just asked me.

By [defense counsel]:

Q. I said, at some point you told the officer that you weren’t exactly sure who stabbed you. It could have been [defendant], it could have been—

A. I never told the officer anything like that. I knew who stabbed me. I'm the one that told them where she went.

Q. Okay. And you didn't phone the police; is that right?

A. Right. How could I?

Q. You told—so you didn't tell—do you recall talking to a P.P.D. Officer Drew Flinn on the scene?

A. I don't remember.

Q. Okay. So you never would have told any officer that it was an individual in a black tank top that would have stabbed you?

A. Possibility. I don't remember what she had on now.

Q. You stated you were on medication that day before the incident even occurred. What medication were you on at that time?

A. I wish I could have brought my bag with me, about 10. I'm still taking it.

Q. Were they pain medications?

A. Yes.

Q. Kidney stones are painful, right?

A. Yeah, they are painful.

Q. I'm on depression medicine. I'm on all kinds of medicine.

Q. Okay. And were you released from the hospital that day then, or did you stay for a few days?

A. No, I stayed.

Q. Just overnight?

A. For a few days.”

¶ 11 The parties stipulated that Antoniss had two prior felony convictions for theft and retail theft, and one misdemeanor conviction for obstructing identification.

¶ 12 Peoria police officer Drew Flinn testified that he had responded to a call of a large group of people fighting and a report of a black female wearing a black shirt and shorts armed with a knife on Proctor Street. At the scene, Antoniss showed Flinn a large laceration on her stomach. Flinn radioed for an ambulance and asked Antoniss who had stabbed her. Antoniss pointed to a black female wearing a black tank top and shorts. Flinn identified this individual as Tyshia. Flinn saw Tyshia standing in front of a house on Proctor Street. Five to ten minutes later, Antoniss told Flinn that “Cathy and Tyshia Logan” had passed the knife back and forth and both defendant and Tyshia had stabbed her.

¶ 13 Peoria police officer Gerald Suelter testified that he was dispatched to Proctor Street on the report of a large fight and a female armed with a knife. Suelter arrived after Flinn and he was immediately approached by Antoniss, who held her hand over large laceration on her stomach. As Suelter walked Antoniss to an ambulance, Antoniss pointed to and said that defendant had stabbed her. Following this identification, Suelter arrested defendant. Suelter could not remember what defendant was wearing at the time, but guessed that she was wearing a light tank top. Thereafter, a firefighter directed Suelter to a drainage grate where he had seen a knife. Under the grate, Suelter saw what looked like a steak knife with a wooden handle.

¶ 14 The parties stipulated that Peoria police officer David Buss would testify that he was the crime scene investigator for this incident. A firefighter directed Buss to a sewer grate on Proctor

Street where Buss located a knife. The knife was in good condition and was dry compared to the other items in the sewer. Buss detected no fingerprints on the knife.

¶ 15 Peoria police officer Christopher Heaton testified that on August 2, 2015, he responded to a call of a large fight and stabbing on Proctor Street. By the time Heaton arrived at the scene, three people had been taken into custody. Heaton spoke with defendant who was then restrained in a patrol car. The patrol car was equipped with a video camera. The State introduced the video of defendant sitting in the backseat of the patrol car into evidence. Heaton explained that although the video shows only defendant, defendant could see the police and firefighters opening the sewer grate and retrieving something from it.

¶ 16 The video shows defendant sitting in the backseat of a patrol car. Defendant is wearing a light-colored tank top. At the beginning of the video, defendant asks for something to remove the mace from her face. Approximately 23 minutes into the video, defendant shouts for someone to come to the side of the car. Defendant then asks in a quieter voice if the police found anything in that hole. Around 27 minutes into the video, an officer provides defendant with the *Miranda* warning. Defendant denies any wrong-doing. Defendant says that she saw the group gathering, she tried to talk to Green, Green sprayed mace in her face, and then she ran back to the house to put water on her face. Defendant denies stabbing anyone and reasserts that her skin is still burning from the mace.

¶ 17 On cross-examination, Heaton said that although defendant claimed that she had been sprayed with mace, his incident report did not document it. Heaton noted that defendant looked sweaty after the incident, but he did not notice any mace. Several months after the incident, defendant came to the police station and asked Heaton to prepare a supplemental report that

indicated that defendant had been sprayed with mace. At the conclusion of Heaton's testimony, the State rested.

¶ 18 The defense called Felicia King to testify. King lived next door to Tyshia on Proctor Street. On August 2, 2015, King saw approximately 30 people walk down Proctor Street toward her house. King recognized Antoniss and Jameniss in the crowd. King briefly went into her house, and upon returning saw Antoniss, Jameniss, and Antonissa attacking defendant and King's two daughters. King tried to remove her daughters from the fight, and Antonissa hit King in the eye. King saw several people attack defendant, and someone in the group sprayed defendant and King's daughters with mace. King remembered that other individuals in the group possessed tasers. King did not see a knife, defendant and Antoniss fighting, or the individual who stabbed Antoniss.

¶ 19 On cross-examination, King said that Antoniss was the "ring leader" of the group. Initially, King said that the group included "Kenise Smith, [Jameniss], Neva Green, Montella Brown, Latreka Smith, Erica—I don't know Erica's last name—Zaya Foster." Thereafter, King said that the only people that she recognized in the group were Antoniss and Antonissa. King said that Tyshia never left her yard during the fight, and Tyshia carried a padlock.

¶ 20 Defendant testified that on August 2, 2015, she was taking care of her grandchildren at Tyshia's house while Tyshia was at the grocery store. Defendant noticed that a group of 40 to 50 people had gathered on Proctor Street. Members of the group wanted Tyshia to come outside. Defendant recognized Green, Antoniss, and Antonissa standing in the group. Defendant went to speak with Green and Antonissa who were standing in the street in front of Tyshia's house. Defendant and Green discussed Green's fight with Tyshia from the night before, and defendant asked the group to leave. As defendant spoke with Antonissa, Green sprayed defendant with

mace. The mace blinded defendant. Defendant then felt several people punch and kick her. Defendant denied stabbing anyone and did not recall handing Tyshia a knife or throwing a knife down a sewer grate. The first time defendant learned of the knife was when she saw the police officers and firefighters standing near the sewer drain. Initially, defendant thought that the police had found a gun in the sewer because defendant noticed that an individual in the crowd possessed a gun and had been standing near the sewer grate. Defendant did not learn of the stabbing until she was transported to the Peoria County jail.

¶ 21 On cross-examination, defendant said that Tyshia was not involved in the fight. After defendant was sprayed with mace, a neighbor brought defendant a wet sheet. Defendant wrapped the sheet around her face and walked to Tyshia's house where she tried, unsuccessfully, to wash the mace off. When defendant left Tyshia's house, an officer placed her under arrest. Defendant said that she did not attempt to flee the scene because she had done nothing wrong. The parties stipulated that defendant's criminal record included two felony convictions for retail theft.

¶ 22 In rebuttal, the State called Antoniss to testify. Antoniss denied leading the group of people down the street. Antoniss also said that she did not fight with King or King's daughters.

¶ 23 In its ruling, the court said

“In that both sides agree that for Count 1 the perpetrators could be the defendant, Cathy Logan, and someone one other than Tyshia Logan, I'm finding that the State met their burden of proof. They have proved beyond a reasonable doubt Count No. 1; and I'm finding that the State met their burden of proof as to Count 2, meaning I'm finding Cathy Logan guilty on both counts, and I will—probably 90 percent of my thoughts on this are already known based on my

questions, but I have Antoniss Cooley definitely got stabbed, definitely has a knife wound, and there is only one person that possessed the knife.

I mean, I can go up and dream up other scenarios, but I only have evidence of one person possessing a knife, and that would be the defendant. And is this a victim versus defendant and I choose to believe the victim? No. It's victim and defendant's daughter versus defendant; and, you know, I hate to say that. I don't want there to be strife in the family unit, but—and I hope there is not—but my job is to be the Judge on this case and make a determination as to whether the burden of proof has been met, and that's a large part of it.

The extent that daughter, Tyshia Logan, possessed the knife was only to—and it's undisputed—was only holding it—she held her shirt out away from her stomach, and the knife was laid onto that, and then she dropped it, Tyshia Logan dropped it for a second, a few seconds, it kind of doesn't even count as a person possessing a knife.

I'm looking through my notes, Antoniss Cooley says some odd, maybe even wrong things. The officer's testifying, Antoniss Cooley said Tyshia Logan stabbed her. Later she said Cathy Logan and Tyshia Logan attacked her, black-tank-top girl stabbed me, which would have been apparently—well, not defendant anyway, not Cathy Logan, apparently its Tyshia Logan. Both of those girls stabbed me. That was Officer Flinn's testimony as to what Antoniss Cooley said, and I don't doubt that. I don't doubt Officer Flinn's testimony.

Officer Suelter said Antoniss Cooley pointed to the defendant as the person who stabbed her, and Antoniss Cooley did not point out anybody but the

defendant. My recollection of Antoniss Cooley's testimony is she just had kidney stone surgery and was still on medication for that. Because I just rattled off what some would call a fairly length [*sic*] list of wrong testimony or testimony that would not go along with me finding Cathy Logan guilty, how do you find her guilty and reel off that list of things that do not point to Cathy Logan? Well, that's out. I've never been stabbed before, so I wouldn't know, but I would imagine Antoniss Cooley said that Antoniss Cooley was stabbed and panicked, fell to the ground, blacked out, and had recent kidney stone surgery, which unfortunately, I have experienced and am still on the medication from that; and even—like I say, the knife testimony, I think reasonable doubt was not achieved by Antoniss Cooley's—whatever. It is a bad—it's a negative label you want to put on her testimony, as far as how damning it was for the defendant. She said, whatever. I just read the list off, two, three, maybe four times she said a wrong thing, a thing other than defendant being the one who did this to me. Maybe it was just twice, but twice was a pretty big amount.

But given her physical situation at the time, recent surgery, still on meds for that, panic, blacked out, fell to the ground, kicked, punched, and all of that—excuse me for making a mistake here—immediately afterwards, that's not like they went back a week later or 48 hours later.

So State has met their burden of proof on both counts. I find Cathy Logan guilty on both counts, so this case needs to be set for a sentencing hearing.”

¶ 24 Before the sentencing hearing, defendant filed a handwritten statement in allocution. In the statement, defendant asked for leniency and said

“As you know [Y]our Honor, the crime I committed was bad. I need to tell you motivated me to act against the law. I got jump and I was trying to protect myself from them I stab somebody and I truly remorseful for the actions that I took and I did not have the intent to commit these offenses.”

At the sentencing hearing, the court allowed defendant to make an unsworn oral statement in allocution. Defendant said

“And I really apologize for stabbing her, but it was just when I got maced, Antoniss Cooley had the knife and she dropped it, [Y]our Honor, and I picked it up and just got to swinging.

And I am so sorry for that because I done messed up my life, and I’m a good person, and I just want to apologize to the courts and everybody for the mistake I made, and I regret it.

It was just that when the lady dropped the knife, I just picked it up and got to swinging. I told her I was sorry because she calls—I used to—me and her used to have a bond where she could come and get my granddaughter from me or I’ll take my granddaughter to her house because her and my daughter don’t get along, [Y]our Honor.”

The court sentenced defendant to concurrent terms of two years’ imprisonment. Defendant appeals.

¶ 25

II. ANALYSIS

¶ 26

Defendant argues the State failed to prove her guilt of aggravated battery and mob action beyond a reasonable doubt where the pertinent evidence consisted solely of the testimony of two

biased witnesses whose account was improbable, unconvincing, contrary to human experience, and contradicted by the testimony of other witnesses. We find the evidence was sufficient for the court to find defendant guilty of aggravated battery and insufficient to prove defendant's guilt of mob action.

¶ 27 In a challenge to the sufficiency of the evidence, we will not retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, “ ‘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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “[I]n a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The testimony of a single witness, if positive and credible, is sufficient to sustain a conviction, even if that testimony is contradicted by defendant. *Id.* We will not reverse a conviction simply because the evidence is contradictory or defendant claims that a witness was not credible. *Id.*

¶ 28 A.

¶ 29 To establish defendant's guilt of aggravated battery, the State needed to prove that defendant, knowingly and without legal justification, used a deadly weapon other than a firearm, to cause bodily harm to Antoniss. 720 ILCS 5/12-3.05(f)(1), 12-3(a) (West 2014).

¶ 30 The evidence in the instant case established each of the elements of aggravated battery. First, Jameniss, Tyshia, and Antoniss each testified that they saw defendant possess a deadly weapon, a knife, immediately before or after the stabbing. Second, the trial evidence fails to indicate that defendant possessed a legal justification for stabbing Antoniss. Instead, Jameniss

and Antoniss's testimony indicated that defendant stabbed Antoniss without provocation. Third, Antoniss stated that her injuries from the stabbing required hospitalization and continued treatment.

¶ 31 In addition to the direct evidence of defendant's commission of an act of aggravated battery, the video recording of defendant sitting in the patrol vehicle further supports the court's finding of guilt. During the recording, defendant's demeanor changes when she observes the police officers gather around a sewer grate. At that time, defendant's voice lowers from her previously boisterous request for medical attention to a quiet query to a person outside of the vehicle. Defendant asks the unseen person what the police found in a hole. While this evidence does not directly establish that defendant stabbed Antoniss, it inferentially establishes a consciousness of guilt. See *People v. Simpson*, 286 Ill. App. 3d 1034, 1039 (1997) (defendant's reaction as the police closed in on him demonstrated a consciousness of guilt).

¶ 32 Defendant argues the above evidence fails to prove her guilt beyond a reasonable doubt because it is subject to numerous credibility issues. At the outset, we note that any inconsistencies in the trial testimony are to be resolved by the trier of fact. *Siguenza-Brito*, 235 Ill. 2d at 228. We acknowledge that the record contains multiple contradictory statements on everything from the size of the crowd (varying witnesses gave estimates of between 20 and 70 people), to Tyshia's location during the stabbing (in the street or yard), to the use of mace during the fight, the description and location of the knife, and the victim's identification of the assailant. However, Jameniss and Antoniss's testimony about the stabbing was largely consistent. Both witnesses indicated that defendant approached Antoniss without provocation and stabbed Antoniss. Additionally, Antoniss identified defendant as the assailant while on the scene and at trial. At trial, Antoniss denied identifying another individual at the scene and indicated that any

other potential misidentification was caused by the stress of her injury and ongoing medical treatment. Antoniss's denial and subsequent explanation of her purported on-the-scene misidentification presents a question of fact that the court resolved in its role as the fact finder. In its ruling, the court accepted Antoniss's explanation that her injury and medical treatment affected her on-the-scene identification, and the court concluded that Antoniss's at-trial identification of defendant was credible. After reviewing the record, we conclude that the court's fact finding is entitled to deference. See *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) (while the fact finder's decision to accept testimony is not binding on a reviewing court, it is entitled to great deference). Antoniss's identification was corroborated by the testimony of officers Flinn and Suelter who each recalled that Antoniss had identified defendant at the scene. After reviewing the record in the light most favorable to the State, we conclude that a rationale trier of fact could find the essential elements of aggravated battery beyond a reasonable doubt.

¶ 33

B.

¶ 34

To establish defendant's guilt of mob action, the State must prove that defendant acted together with one or more persons to knowingly or recklessly use force or violence to disturb the public peace. 720 ILCS 5/25-1(a)(1) (West 2014). A defendant's "mere presence" at the scene of a riot or disturbance is insufficient to sustain a mob action conviction. *People v. Kent*, 2016 IL App (2d) 140340, ¶ 19. The State must also present evidence that defendant acted with the "requisite mental state of having the intent to commit an unlawful act." *Id.*

¶ 35

In this case, the State presented no evidence that defendant acted together with another person to disturb the public peace or that she possessed the intent to commit an unlawful act. The evidence, viewed in the light most favorable to the State, established that defendant approached the group of 20 to 70 people who had gathered on Proctor Street with the hope of

averting a fight. None of the evidence indicated that defendant was a part of the group or joined the group with the intent to commit an unlawful act. Instead, defendant's testimony established that she approached the group with the intent to diffuse the situation and prevent a second confrontation between Green and Tyshia. Additionally, multiple witnesses testified that individuals in the group, and not defendant, provoked the fight by goading Tyshia to fight Green. Because the evidence readily shows that defendant was alone and intended to deescalate the situation, we find the State failed to satisfy its burden of proof.

¶ 36 The State contends that defendant's actions fit within an "affray" theory of mob action. In support of this position, the State relies on *People v. Barnes*, 2017 IL App (1st) 142886. The *Barnes* court explained that the criminal offense of mob action represents "'a comprehensive codification of the former law regarding' the offenses of riot, rout, affray, unlawful assembly, and mob action." *Id.* ¶ 56 (quoting Ill. Ann. Stat., ch. 38 § 25-1, Committee Comments-1961, at 140 (Smith-Hurd 1964)). "[T]he offense of affray was committed when two or more people, 'by agreement, fight in a public place.'" (Emphasis in original.) *Id.* ¶ 65 (quoting Ill. Rev. Stat. 1961, ch. 38, § 505). "[A]n affray was akin to a duel, except that it did not require the use of deadly weapons, nor did it involve the ritualized practice of issuing and accepting a challenge through seconds that was characteristic of dueling. [Citation.] It simply required a previously agreed-upon 'fight.' [Citation.]" *Id.* ¶ 66. The *Barnes* court found that section 25-1(a)(1) of the Criminal Code of 1961, that codified the offense of mob action, required evidence of "'concerted action,'—that is, a common purpose or agreed-upon course of action among the '2 or more persons' who engage in '[t]he use of force or violence disturbing the public peace.'" *Id.* ¶ 68 (quoting 720 ILCS 5/25-1(a) (West 2008)). Thus, to prove mob action, the State must show

that defendant and another individual shared a common criminal purpose or agreed to the fight.
Id.

¶ 37 In this case, there is no indication that defendant shared a common criminal purpose with members of the group or agreed to the fight. Defendant knew that members of the group intended to provoke a fight between Green and Tyshia, but defendant did not share this purpose and sought to prevent the fight. Defendant was ultimately unsuccessful as the fight began while she was near the group, and according to her testimony, she was attacked. Therefore, the record does not prove an “affray” theory of mob action.

¶ 38 The State also argues defendant’s oral and written statements in allocution constituted a judicial confession that precludes defendant from challenging the sufficiency of the evidence. See *People v. Green*, 17 Ill. 2d 35 (1959).

¶ 39 “A judicial confession is a voluntary acknowledgment of guilt during a judicial proceeding, such as a plea of guilty, testimony at trial, or testimony at some other hearing.” *People v. Hunter*, 331 Ill. App. 3d 1017, 1025 (2002); see also *Green*, 17 Ill. 2d at 41-42 (“a judicial confession consists of a plea of guilty to an indictment or some similar action or conduct in a court or judicial proceeding. [Citations.] The testimony of an accused at the trial may constitute a judicial confession, [citation] or such confession may consist of a statement before a magistrate on preliminary [hearing].”). “A defendant may, by plea of guilty or confession, waive the production of all evidence of his guilt. [Citations.] Thereafter, he may not question the legal sufficiency of the evidence against him.” *Green*, 17 Ill. 2d at 42.

¶ 40 After reviewing the transcript of the sentencing hearing and defendant’s written statement in allocution, we find that these two statements do not constitute a judicial confession because defendant’s statements did not admit any of the elements of mob action.

¶ 41

III. CONCLUSION

¶ 42

The judgment of the circuit court of Peoria County is affirmed in part and reversed in part.

¶ 43

Affirmed in part and reversed in part.

¶ 44

JUSTICE McDADE, concurring in part and dissenting in part.

¶ 45

I concur in the majority's reversal of defendant's mob action conviction, but I respectfully dissent from the majority's finding that the evidence was sufficient to sustain defendant's aggravated battery conviction. From my review, the evidence is so improbable, unsatisfactory, and inconclusive that it also leaves significant doubt of defendant's guilt of aggravated battery and I would reverse that conviction as well..

¶ 46

The majority's decision to affirm defendant's aggravated battery conviction relies heavily on the deferential standard of review. While the *Collins* standard accords an extremely high degree of deference to the fact-finder's conclusions, they are not unassailable. As here, when the court itself--the fact-finder--expressed significant doubt about the conclusiveness of the evidence, those conclusions are even more vulnerable to challenge. Under *Collins*, reversal is warranted where "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Austin M.*, 2012 IL 111194, ¶ 107. In this case, I find that the evidence has met this standard.

¶ 47

The record in this case is replete with contradictory evidence regarding everything from the size of the crowd (witnesses gave estimates of between 20 and 70 people) to Tyshia's location during the stabbing (in the street or yard), the use of mace during the fight, the description and location of the knife, and the victim's conflicting identifications of her assailant. While each of these inconsistencies impacts the fact-finder's overall determination of guilt, the

last one (conflicting identifications) renders the trial court's finding of guilt beyond a reasonable doubt on the aggravated battery charge suspect and unreasonable.

¶ 48 In that ruling, the court made two pertinent findings of fact: (1) Antoniss was stabbed, and (2) only defendant possessed a knife. While the first finding is amply supported by the record, the second conclusion and other bases for the conviction find no vindication there. The court recognized and acknowledged the pervasive weakness in the evidence when it repeatedly noted that Antoniss's identification of her assailant was shrouded in doubt. The court opined that Antoniss said "some odd, maybe even wrong things," and "two, three, maybe four times she said a wrong thing, a thing other than defendant being the one who did this to me. Maybe it was just twice, but twice was a pretty big amount." *Supra* ¶ 23. Ultimately, the court explained away these inconsistencies by attributing Antoniss's contradictory identifications to the emotional and physical stress caused by the stabbing, Antoniss's preexisting kidney condition, and the medication that Antoniss was taking at the time the incident occurred. The court's reasoning is flawed in two major respects.

¶ 49 First, Antoniss, who was in the best position to know who had stabbed her and identify her assailant, described this individual as a person wearing a dark-colored tank top and shorts. Initially, at the scene, Antoniss *pointed to* Tyshia, who was dressed in clothing like that Antoniss described, and accused Tyshia of stabbing her. At that time, defendant was wearing a light-colored shirt. Thereafter, while still at the scene, Antoniss told Flinn that the defendant and Tyshia had passed the knife back and forth and *both* of them had stabbed her. This stood in direct conflict with the physical evidence that showed Antoniss had suffered only one knife wound. By the time of trial, Antoniss had settled on accusing defendant. However, as part of her trial testimony, Antoniss acknowledged on cross-examination that she might have told Flinn that an

individual in a black tank top stabbed her. Given these facts, Antoniss's shifting, conflicting identifications could not establish, beyond a reasonable doubt, that defendant had stabbed her.

¶ 50 Second, the court's rationale that Antoniss's erroneous identifications at the scene were due to her physical and mental condition disregards the reality that some, possibly all, of these stressors also impacted Antoniss's positive identification of defendant at other times. Antoniss testified at trial that she was on ten different medications at the time of the incident, a fact that seemed to particularly resonate with the judge. She later testified that she was still taking these medications at the time of the trial. Therefore, Antoniss's at-trial identification suffers from very similar reliability concerns as those the court relied upon to excuse Antoniss's varying on-scene identifications. These concerns cited by the trial court to explain the unreliability of her allegations at the time of the incident also existed throughout the case and render each of her identifications, including that at trial, inconclusive. Antoniss's remaining testimony suggesting that defendant ever possessed a knife is subject to the same medication-based concerns.

¶ 51 Overall, the objective evidence in the case strongly suggested that there were two knives at the scene. No witness other than Antoniss and Jameniss reported seeing defendant in possession of any knife while she was involved in the fight. Moreover, no evidence sufficient to show that defendant possessed the knife that actually caused Antoniss' injury was ever introduced by the State.

¶ 52 Jameniss initially described the knife used to stab her sister as a long knife. However, when the State asked if a photograph in evidence depicted the knife she had seen, Jameniss said that it did, but she "didn't see how long" the knife was. *Supra* ¶ 6. Jameniss then described the knife as comparable to a "butcher knife." *Id.* This testimony was contradicted by the photograph of the knife admitted into evidence at trial and by Suelter's testimony that the knife resembled a

steak knife. Additionally, the evidence of Antoniss's injury is inconsistent with a blunt-ended butcher knife and was more probably caused by the type of knife with a sharp curved edge that was removed from the sewer. These contradictions call into question Jameniss's more general testimony that she actually saw defendant holding a knife.

¶ 53 Tyshia, who testified under a grant of immunity, swore that defendant did not have a knife in her possession when she left the house and approached the crowd. However, when defendant returned to Tyshia's location, she handed Tyshia a knife that Tyshia promptly dropped in her neighbor's yard. Tyshia's testimony about the description and location of the knife is dramatically at odds with the photographs of and testimony about the only knife recovered from the scene—the one that looks like a steak knife and was located in the sewer. In order to accept Tyshia's testimony as true, some other individual(s) had to have brought a knife or knives to the fight. Thus the record does not support the trial court's finding that only defendant possessed a knife.

¶ 54 Overall, I find that the evidence is so contradictory and inconclusive that it leaves a reasonable doubt as to whether defendant, Tyshia, or another unknown individual stabbed Antoniss. Indeed, the court struggled to validate its finding of guilt when it was faced with these very inconsistencies and credibility issues. The court's personal struggle, even without the factual inconsistencies, indicates that the court had real doubts as to defendant's guilt. It was forced to rely on speculative explanations to rationalize its doubts in order to find defendant guilty of aggravated battery. I find the court's explanations and conclusions to be unreasonable in light of the doubt and inconsistency that pervade the case. Accordingly, I would find the evidence at trial so unreasonable, improbable, and unsatisfactory that it cannot support any conclusion beyond a reasonable doubt or sustain defendant's aggravated battery conviction.

Finally, because defendant's unsworn statements in allocution were not made at trial and were unavailable to the court when it rendered its decision, I would find that they had no bearing on the court's finding of guilty and cannot operate as a waiver of defendant's sufficiency of the evidence claim. In light of this belief, even if it did constitute waiver, I would override any such waiver to reach the just result of reversing this conviction. More generally, I would find that rote application of the waiver by allocution rule both undermines defendant's right of allocution (730 ILCS 5/5-4-1(a)(6) (West 2016)) and requires defendant to choose between forgoing a challenge to the sufficiency of the evidence or seeking a more lenient sentence by assuming responsibility for the offense. In sum, the sentencing process is so fraught with practical considerations, including whether or not to express remorse, even for a crime that one did not actually commit, that an unsworn statement in allocution is not, for very practical reasons, tantamount to a confession of guilt. For all of the foregoing reasons, I would reverse defendant's conviction for aggravated battery.