

March 29, 2024

No. 1-22-1450

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 18 CR 10885
	)	
LUIS FLORES,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE C.A. WALKER delivered the judgment of the court.  
Presiding Justice Oden Johnson and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirm defendant's conviction for involuntary manslaughter because the State's evidence was sufficient to both defeat his self-defense affirmative defense and demonstrate he acted with the requisite intent.

¶ 2 After a jury trial, defendant Luis Flores was found guilty of involuntary manslaughter (720 ILCS 5/9-3 (West 2016)) and sentenced to 30 months' imprisonment. He appeals, arguing the State failed to prove beyond a reasonable doubt that he did not act in self-defense and the evidence failed to establish he acted recklessly. For the reasons below, we affirm.

¶ 3 BACKGROUND

¶ 4 Flores was charged by indictment with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (2) (West Supp. 2017)) following an altercation with victim Carlos Hernandez-Galvan on June 9, 2018.

¶ 5 At Flores' jury trial, the parties stipulated that: (1) El Centenario, a restaurant and bar, is located on the 4500 block of West Roosevelt Road in Chicago, Illinois; (2) El Centenario has multiple surveillance cameras located on both its exterior and interior; (3) The surveillance cameras were all in working order and provided fair and accurate recordings of the altercation between Hernandez-Galvan and Flores.

¶ 6 Crystal Estrada testified that she had a pending contempt petition against her for previously failing to appear to testify in this case, but she was not promised anything regarding the contempt petition in exchange for her testimony. Estrada worked as a manager and bartender at El Centenario at the time of the incident, and was at work on June 9, 2018. She and Flores were not romantically linked at that time, though Flores is the father of one of her children. Flores, her cousin Naomi and a cook (only identified as "Freddie") were also present that day.

¶ 7 During her shift, Hernandez-Galvan entered the bar, and Estrada served him alcohol. Estrada had seen Hernandez-Galvan in El Centenario before. Estrada saw Flores and Hernandez-Galvan at the bar together, then playing pool. She also noticed a friend of Flores arrive at the bar. Later that night, she "heard people saying that there was going to be a fight." She walked outside.

Hernandez-Galvan was already outside at this point, but Estrada could not remember Flores' location. When she exited, she saw Hernandez-Galvan on the ground, and Flores, also outside, walking back inside the bar. Estrada approached Hernandez-Galvan, who was unconscious and "snoring." Estrada went back inside and called 911. Flores left El Centenario after Estrada called 911 but before emergency personnel arrived. Estrada spoke to police officers at the bar, but she did not tell them Flores' name because she was "scared."

¶ 8 On cross-examination, Estrada agreed she served Hernandez-Galvan several drinks before the incident. Based on her observation, she believed he had been drinking alcohol before he arrived at El Centenario. He was singing and talking to himself, but she did not notice if he was unsteady on his feet. She observed him ask multiple people to play pool. At some point Flores' friend took over playing the game for Flores. Following the game, Flores' friend and Hernandez-Galvan had a conversation, which Flores later joined. Based on Flores and Hernandez-Galvan both waving their hands, Estrada concluded they were arguing. She did not see any physical fight between Flores and Hernandez-Galvan. Regarding the origin of the argument, Estrada testified that before the fight, Hernandez-Galvan told her to inform Flores he owed Hernandez-Galvan \$100 for the game. She believed Hernandez-Galvan was intoxicated at the time of this conversation, and he was angry with Flores. She never heard Hernandez-Galvan challenge Flores to go outside and fight.

¶ 9 Anamar Hernandez,<sup>1</sup> a paramedic for the Chicago Fire Department, testified that she received a call on June 9, 2018, for an individual that was "[u]nresponsive but breathing." She and her partner arrived on the scene to find Hernandez-Galvan "[l]ying on his back unresponsive with blood on the back of the head and on the ground and \*\*\* a cut around the mouth." Anamar stated

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<sup>1</sup> Because Ms. Hernandez and the victim have similar last names, we refer to her by her first name.

that in addition to the cut on his mouth, Hernandez-Galvan had a hematoma or “blood sack [*sic*]” pooling in the back of his head and labored breathing. He also had a “slight odor of alcohol.” On cross examination, Anamar testified that the odor of alcohol emanated from Hernandez-Galvan’s mouth and body.

¶ 10 Chicago police detective Kevin Graney testified that he was assigned to Hernandez-Galvan’s case on June 9, 2018. He interviewed witnesses at the bar, including Estrada, retrieved and reviewed video surveillance footage, and spoke to medical staff at Mount Sinai Hospital regarding Hernandez-Galvan’s condition. From his review of the video, Graney noticed interactions between the offender (whom he later learned was Flores) and Estrada which suggested the two had a preexisting relationship. On June 10, 2018, Graney re-interviewed Estrada about a possible relationship with Flores, but Estrada only said that “she seen [Flores] in the bar before but there was no relationship.” Further investigation revealed that Estrada was a passenger in a traffic stop in November 2015 in which Flores was the driver, and the two previously shared an address.

¶ 11 Dr. Grace Chang, a doctor at Mount Sinai Hospital, testified that on June 9, 2018, Hernandez-Galvan was admitted with a “devastating traumatic brain injury” and “very severe bleeding in the brain.” A CT scan revealed “bleeding on both sides of the brain,” a “fracture on the back of his skull,” and “swelling of the brain.” She described the injuries as “very severe” and carrying “a moderate to high likelihood of death.”

¶ 12 Hernandez-Galvan had two kinds of brain bleeds: a subdural bleed, which is always caused by trauma, and subarachnoid bleeds, which can occur from either traumatic or nontraumatic causes. After relevant testing, Dr. Chang determined that trauma was the sole cause of Hernandez-Galvan’s bleeding on the brain. He never regained consciousness after his admission to the hospital, and was declared “brain dead” on June 17, 2018. He had a blood alcohol content (BAC)

level of .197 when he was admitted to the hospital, but that would not have contributed to or caused bleeding in his brain.

¶ 13 On cross examination, Dr. Chang testified that any alcohol consumption can, “make you do worse after any kind of traumatic injury,” but will not “necessarily cause you to die.” Hernandez-Galvan’s chart did not indicate that he suffered any facial or neck fractures.

¶ 14 Dr. Libby Aronson, a forensic pathology fellow for the Cook County Medical Examiner, testified that she reviewed the autopsy report and photos, police reports, the body diagram, X-rays, and a toxicology report, all documentation commonly relied upon by experts in her field, and it was her opinion to a reasonable degree of medical certainty that Hernandez-Galvan’s cause of death was “[c]omplications of blunt force head injuries due to assault,” and the manner of the death was homicide. His injuries included “subarachnoid and subdural hemorrhages over both sides of the brain,” and a fracture of the “right posterior cranial fossa or the base of the brain in the back.”

¶ 15 On cross examination, Dr. Aronson agreed that an injury can be worse if a person does not brace themselves or try to break their fall. She testified that the fall caused the fracture, not the blow to the front of Hernandez-Galvan’s face. Dr. Aronson stated, “I would say the cause of death is due to cerebral injuries. I don’t think that the cause of death stems from the occipital fracture.”

¶ 16 On redirect examination, Dr. Aronson agreed that if a person is struck in the head by a fist and then impacts the ground, a brain bleed like Hernandez-Galvan’s could have been caused by either the strike or the fall, and she could not say which action caused the brain bleeds in this case.

¶ 17 On recross examination, Dr. Aronson testified that she would not be able to differentiate between whether a punch or the fall caused Hernandez-Galvan’s brain bleeding, but it was likely that a punch to the face did not cause his fracture.

¶ 18 The State admitted the video footage into evidence. The footage, included in the record on appeal and reviewed by this court, comes from four cameras referred to as cameras 2, 3, 4, and 8. Camera 2 is located outside of the bar facing towards a parking lot, with the lot itself obscured. The footage from camera 2 depicts, in relevant part, Hernandez-Galvan exit the bar at 18:51:26, with Flores closely behind him, and Freddie behind Flores. Hernandez-Galvan reaches towards his pants with both hands as he turns left around a corner towards the parking lot, an area the camera does not depict. His body becomes largely obscured as he turns left, though he appears to turn towards Flores. As Flores turns the corner, he reaches back with his right arm and swings it towards Hernandez-Galvan. Flores and Freddie continue around the corner and out of the camera's view, while three other individuals (identified as Estrada, Naomi, and Flores' friend Jonatan Viveros) exit the bar. Seconds later, Flores pushes past the three individuals and re-enters the bar, followed by Freddie. Flores speaks with Estrada as he re-enters. Estrada and Flores gesture towards each other with their hands as they speak.

¶ 19 At 18:55:00, Flores exits the bar again and enters the parking lot. He appears to have a conversation with Viveros, and the two exit from view. At 18:56:34, a vehicle stops in the street near the parking lot entrance. Flores exits the vehicle and speaks with Estrada and Freddie. Moments later, Viveros parks the vehicle and approaches the group. At 18:58:55, Flores, Viveros, and Freddie walk towards the parking lot and around the corner, out of the camera's view. At 18:59:35, Flores walks back in view and speaks to Estrada, followed by Viveros and Freddie. Flores and Viveros enter the vehicle and drive away at 19:01:52.

¶ 20 The footage from camera 3 begins at 18:51:00. The camera is located at the back of the parking lot, facing the bar, with the upper right portion depicting the corner around which Hernandez-Galvan turns in the footage from camera 2. At 18:51:30, Hernandez-Galvan enters the

frame from the upper right as he falls backwards and hits the pavement. Flores' first punch is not visible, but the video does show Flores take a step towards Hernandez-Galvan's body, lean down, and punch Hernandez-Galvan four more times, twice with each hand. Freddie then grabs Flores' arms, at which time he stops punching and walks away. Hernandez-Galvan lies motionless for the remainder of the footage. Freddie twice pulls on Hernandez-Galvan's arms, with no response. At 18:55:03, Flores approaches and appears to touch Hernandez-Galvan's head. At 18:58:59, Flores, Viveros, and Freddie attempt to move Hernandez-Galvan's body, but stop within 20 seconds. Viveros touches the back of Hernandez-Galvan's head, then waves his hand as if trying to remove something from it.

¶ 21 The footage from camera 4 begins at 18:29:02. It shows the interior of El Centenario, with a bar visible in the upper right portion of the screen, and a pool table in the bottom right. The video shows Hernandez-Galvan approaching various patrons while holding a pool cue. He walks towards the back of the bar, where Flores is seated. Shortly thereafter, the two walk towards the pool table and begin playing. The footage stops at 18:30:57 and skips ahead to 18:46:02, at which point Viveros has taken over the game for Flores. At 18:47:50, Hernandez-Galvan moves from the pool table and gestures towards the back of the bar, where Flores is again seated. Hernandez-Galvan then says something to Estrada, who is tending bar. Estrada turns towards Flores, who stands up from the bar and walks towards Hernandez-Galvan.

¶ 22 The footage from camera 8, located in the interior of the bar and fully depicting the pool table, starts at 18:32:00. It begins with Flores and Hernandez-Galvan playing pool. Viveros enters at 18:34:19. He and Viveros have a conversation, during which Viveros shows Flores some papers. At 18:36:50, Flores removes cash from his pocket and gives it to Viveros. Hernandez-Galvan is nearby while this occurs. At 18:37:50, Viveros takes over the pool game from Flores, who exits

from view. At 18:48:35, Flores re-enters view and interacts with Hernandez-Galvan. Both men gesture towards each other with their hands as the conversation continues. Viveros sits nearby during much of the interaction. At 18:51:18, Hernandez-Galvan points outside, then throws his pool cue onto the table and walks outside. Flores follows closely behind, taking off his hat and putting it on the pool table as he exits. At 18:51:55, Flores, re-enters the bar, places his hat back on his head, then flicks his right hand.

¶ 23 The State rested, and Flores moved for a directed verdict, arguing that the evidence showed the fall caused Hernandez-Galvan's skull fracture, meaning Hernandez-Galvan's death was "an accidental death in effect by him falling backwards." The circuit court denied Flores' motion.

¶ 24 Flores testified that on June 9, 2018, he arranged to meet Viveros, his employee, at El Centenario at approximately 4:30 pm. Flores arrived before Viveros. He spoke with Freddie, ordered food and an alcoholic drink, and sat down. 10 minutes later, Hernandez-Galvan approached Flores and asked him to play pool. Flores, who had never seen Hernandez-Galvan before, declined initially, but eventually agreed. Flores believed Hernandez-Galvan was drunk.

¶ 25 Viveros arrived another 10 minutes later. Flores bought Viveros a drink and spoke with him about a payment Flores owed him. Flores took cash out of his pocket and gave it to Viveros, then asked Viveros to finish the pool game with Hernandez-Galvan. Flores returned to his seat. Shortly thereafter, Estrada told Flores that Hernandez-Galvan said Flores owed him money. Flores approached Viveros and Hernandez-Galvan and asked, "what was going on." Hernandez-Galvan said that Flores owed him money for losing the pool game. Flores responded that he did not bet on the game, and refused to pay. Hernandez-Galvan became aggressive, insisted they both go outside, and threw his pool stick on the pool table. Flores then threw his hat on the table and followed behind Hernandez-Galvan.



¶ 26 While outside but before reaching the parking lot, Hernandez-Galvan “turned towards” Flores and “wanted to hit” him. Flores explained that he “responded first because I felt—I defended myself because he was going to hit me.” Flores demonstrated for the jury that Hernandez-Galvan raised his hand and pushed forward with it and stated he only “hit back” in response. Specifically, Flores punched Hernandez-Galvan in the face, knocking him backwards onto the parking lot pavement. Flores “went with” Hernandez-Galvan to the ground, and hit him “once or twice” more. At some point, Flores realized Hernandez-Galvan was not responding, and stood up. Freddie was also outside, and pulled Flores to the side. Flores noticed that Hernandez-Galvan was snoring.

¶ 27 After Viveros and “the waitresses” arrived outside, Flores went back inside the bar. Because they thought Hernandez-Galvan was sleeping, nobody called for an ambulance for “15, 20 minutes.” When he struck Hernandez-Galvan, he did not intend to kill or inflict great bodily harm. He left because other people on the scene encouraged him to do so to avoid further conflict when Hernandez-Galvan woke up. Before he left, he and Viveros tried to move Hernandez-Galvan inside, at which point they realized he “hit his head.”

¶ 28 On cross examination, Flores admitted he felt insulted by Hernandez-Galvan’s comments, but denied he was angry. Hernandez-Galvan said they were “going to talk” outside, and Flores denied he went outside to fight with Hernandez-Galvan. The first time Flores felt afraid was when Hernandez-Galvan “threw a punch.” Flores stated that Hernandez-Galvan “tried” to make physical contact with him, but never did. Flores confirmed that after Hernandez-Galvan fell to the ground, Flores got on top of him and hit him multiple additional times. After each additional punch, Hernandez-Galvan remained motionless. Flores disagreed that Freddie had to pull him off Hernandez-Galvan. He admitted he knew Estrada, Naomi, and Freddie prior to the incident.

¶ 29 On redirect examination, Flores agreed that the incident happened in a matter of seconds, and he could not consider every movement he made. He acknowledged he struck Hernandez-Galvan at least two additional times after the initial punch, but did not remember as many as four additional punches.

¶ 30 Viveros testified that he arrived at El Centenario at approximately 6 or 6:30 p.m. After Flores paid him, he asked Viveros to finish a pool game Flores was playing with a man whom Viveros later learned was Hernandez-Galvan. Viveros finished the game, losing by making the eight ball in the wrong pocket. Viveros then sat down to drink his beer. A short time later, Hernandez-Galvan approached and said Viveros owed him \$100 because he was playing on Flores' behalf. Viveros refused because he never bet Hernandez-Galvan. Hernandez-Galvan became "aggressive" and continued demanding payment.

¶ 31 Hernandez-Galvan left the area where Viveros sat, but returned later with Flores. Flores asked Viveros if he bet \$100, which Viveros denied. When neither Viveros nor Flores agreed to pay Hernandez-Galvan, he became upset and began cursing, and eventually told Flores "[l]et's go outside" in an "aggressive, demanding" tone. After this, Hernandez-Galvan exited the bar and Flores followed. Freddie ran to the front of the bar and asked if the two men went outside to fight. Viveros responded, "I do not know." Freddie then exited the bar, and Viveros followed. By the time Viveros arrived outside, Flores was already walking back towards the bar. Viveros could see Hernandez-Galvan behind Flores on the pavement. Hernandez-Galvan "was on his back with his arms on his side on the floor motionless."

¶ 32 Viveros, Flores, and Freddie tried to move Hernandez-Galvan, but when Viveros placed his hand on the back of Hernandez-Galvan's head, he felt blood. The men stopped trying to move

Hernandez-Galvan at that point, and someone called an ambulance. After he confirmed an ambulance was on the way, Viveros left with Flores.

¶ 33 On cross-examination, Viveros testified that he did not call 911 following the incident. He agreed the pool game between Flores and Hernandez-Galvan initially appeared friendly. When Flores and Hernandez-Galvan started arguing, Viveros thought Hernandez-Galvan seemed “drunk,” but he “assumed [Flores and Hernandez-Galvan] were friends.” Viveros did not speak to the police about the incident.

¶ 34 Dr. Werner Spitz, a medical doctor specialized in pathology and forensic pathology, testified that Hernandez-Galvan suffered two injuries, a fracture to the occipital bone and an injury to his upper lip. Hernandez-Galvan’s BAC was .206 at the time of the incident; it only manifested in the medical records as .197 due to the time that had elapsed between the incident and the toxicology. Dr. Spitz opined that Hernandez-Galvan’s impact with the ground was exacerbated because he did not mitigate the fall. He concluded that the cause of death was the “fall and impact,” and agreed his findings were consistent with the medical examiner’s report.

¶ 35 On cross examination, Dr. Spitz testified he reviewed video, but did not see a video depicting Flores striking Hernandez-Galvan. Regarding Hernandez-Galvan’s alcohol intoxication, Dr. Spitz disagreed that a “problem drinker” would be able to control their body while their BAC was .206 better than someone who is not a “problem drinker.”

¶ 36 The State questioned Dr. Spitz about the impact multiple blows to the face could have on somebody who had fallen on the pavement and had a skull fracture. Dr. Spitz responded, “There’s no evidence here that he was punched severely multiple times in the face.” He continued, “if he was punched multiple times in the face, there would be evidence to that. And there was not.”

¶ 37 On redirect examination, Dr. Spitz testified that there was no indication of facial fractures. He continued, “if you punch somebody in the face sufficiently to cause fractures and bleeding and a fracture in the back of the head, you need to have a tremendous amount of force \*\*\* [even] an inexperienced pathologist would see that.”

¶ 38 On recross examination, the State showed Dr. Spitz a grand jury transcript which he confirmed he used to form his opinions. After reviewing the transcript, Dr. Spitz agreed it contained testimony that Flores punched Hernandez-Galvan in the face after he was unconscious on the ground.

¶ 39 During closing arguments, the State argued that Flores’ conduct satisfied the elements of first degree murder because Flores “sucker punched” Hernandez-Galvan, caused him to fall to the ground and impact his head on the asphalt, then continued to strike Hernandez-Galvan while he was unconscious on the pavement. Regarding the video footage, the State contended the first punch was not significantly obscured, and the video as a whole demonstrated Flores should have known he would cause great bodily harm based on the severity of the first punch and his subsequent strikes after Hernandez-Galvan’s fall. The State also contended the record showed Flores did not act defensively but was, in fact, the aggressor.

¶ 40 Defense counsel argued that the State told a “fantasy tale based on a place that you cannot see from the cameras, making up evidence to try and convict” Flores of first degree murder. Counsel continued that because the cameras could not see around walls, the jury must base their decision only on what the evidence showed. Furthermore, Flores could not have known that a drunk Hernandez-Galvan would not be able to break his fall and hit his head, causing a fracture to the back of his skull. Counsel contended the jury should accept Flores’ testimony that he acted in self-defense, stating “[I]f somebody takes a swing at you, you can swing back.”

¶ 41 In rebuttal, the State contended, regarding Dr. Spitz, that he “never watched” the videos and “didn’t want to admit that the defendant punched [Hernandez-Galvan] multiple times.”

¶ 42 The circuit court instructed the jury regarding first degree murder, second degree murder, and involuntary manslaughter, as well as the affirmative defense of self-defense.

¶ 43 The jury found Flores guilty of involuntary manslaughter (720 ILCS 5/9-3 (West 2016)). Flores filed a posttrial motion, arguing in relevant part that the evidence was insufficient to sustain the verdict. On June 27, 2022, the circuit court denied Flores’ posttrial motion, and the matter moved to sentencing, where, after a hearing, the court sentenced him to 30 months’ imprisonment. On July 25, 2022, Flores filed a motion to reconsider sentence, which the court denied on August 24, 2022. This appeal followed.

¶ 44 JURISDICTION

¶ 45 The circuit court denied Flores’ motion to reconsider sentence on August 24, 2022, and he filed his notice of appeal on September 19, 2022. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Dec. 7, 2023).

¶ 46 ANALYSIS

¶ 47 On appeal, Flores argues the evidence was insufficient to sustain the verdict because the State did not: (1) disprove any elements of Flores’ self-defense claim beyond a reasonable doubt, or (2) establish he acted recklessly.

¶ 48 We begin with self-defense. When a criminal defendant alleges that the State’s evidence is insufficient to sustain a conviction, 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979);

*People v. Collins*, 214 Ill. 2d 206, 217 (2005). A conviction will not be reversed unless the evidence is so “improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 49 When a defendant raises the affirmative defense of self-defense, “The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense.” *People v. Gray*, 2017 IL 120958, ¶ 50. The elements of self-defense are: “(1) unlawful force threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable.” *Id.* If the State disproves any single element, the affirmative defense fails. *People v. Jeffries*, 164 Ill. 2d 104, 128 (1995). “Because the [factfinder] determines witness credibility, draws reasonable inferences from testimony, and resolves conflicts in the evidence, it need not accept a defendant’s claim of self-defense.” *People v. Young*, 347 Ill. App. 3d 909, 920 (2004).

¶ 50 The record shows Hernandez-Galvan and Flores began arguing over a game of pool. The video depicts the argument, and shows Hernandez-Galvan toss his pool cue aside and exit the bar. Flores removes his hat and follows. Flores claimed he believed they were going outside to talk. Once outside, the video shows the two men approach a corner, where Hernandez-Galvan becomes partially obscured. Hernandez-Galvan appears to turn towards Flores, though any other movement on his part is indiscernible. What is clear from the combined video footage from both outdoor cameras, however, is that as Hernandez-Galvan turns, Flores punches him, causing Hernandez-Galvan to fall backwards, hit the back of his head on the pavement, and lay motionless on the ground. Flores walks towards Hernandez-Galvan’s prone body, leans down, and punches him four

more times before Freddie pulls him away. Flores testified that Hernandez-Galvan attempted to strike Flores first, and he only punched back in retaliation.

¶ 51 On this record, we find that a rational jury could have found the State's evidence refuted Flores' claim of self defense. While the crucial moment of the video is obscured, there is sufficient evidence from the multiple camera angles, the witness testimony, and the video from inside the bar before the altercation to support either the State's version (Flores punched Hernandez-Galvan without provocation) or Flores' (he threw a punch only after Hernandez-Galvan swung first). In this scenario, where the video evidence is not itself determinative and must be considered alongside witness testimony, we owe the factfinder the typical deference it is due on determinations of evidentiary weight, reasonable inferences, and witness credibility. See *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 29. While we do not know which elements the jury specifically found the State refuted, the video, considered alongside the other evidence, could reasonably support the conclusion that Flores threw the first punch without any physical provocation from Hernandez-Galvan. This, coupled with Flores' own testimony that he did not feel threatened by any of Hernandez-Galvan's conduct inside the bar, would make Flores the initial aggressor, defeating his claim of self-defense. See *People v. Cruz*, 2021 IL App (1st) 190132, ¶¶ 44, 60, 62.

¶ 52 Moreover, even conceding Flores' account regarding the first punch, a rational factfinder could still find he did not act in self-defense due to his subsequent conduct of punching while Hernandez-Galvan was on the ground. Hernandez-Galvan's act of swinging first, if accepted, could have caused a fear of imminent harm, and a punch to defend could be a reasonable use of necessary force. But any belief Flores may have had to act in self-defense ended when Hernandez-Galvan fell unconscious to the ground. At this point, a reasonable jury could conclude the danger

had ended, and no additional force was necessary, making Flores' subsequent conduct objectively unreasonable, defeating the sixth element. See *People v. Dickey*, 2011 IL App (3d) 100397, ¶ 15.

¶ 53 We find that *Dickey* provides helpful guidance on this point. There, also in the context of a bar fight, the court found the defendant's self-defense claim failed because the record showed that while the victim likely started the fight by striking the defendant first, the defendant went beyond self-defense when he tackled the victim to the ground, hit him in the face five or six times, and kicked him after the victim was disabled. *Dickey*, 2011 IL App (3d) 100397, ¶¶ 4-10, 15. These facts bear a strong resemblance to the present case; it is undisputed that Hernandez-Galvan was unconscious on the pavement while Flores continued to deliver multiple blows to his face. As the *Dickey* court stated, in this scenario, a rational factfinder could conclude that Flores did not believe Hernandez-Galvan, "who was lying on the ground, created a danger \*\*\* requiring the continued application of force." *Id.*

¶ 54 Flores' primary argument on self-defense is the evidence conclusively showed Hernandez-Galvan swung first. This argument fails because it requires this court to substitute its judgment for that of the factfinder on matters of evidentiary weight, reasonable inferences, and witness credibility, which we will not do here. *People v. Bradford*, 2016 IL 118674, ¶ 12. As explained above, the evidence was subject to multiple rational interpretations, and we cannot set aside the jury's acceptance of at least some portion of the State's interpretation of the evidence in favor of Flores' version, even if we agreed with Flores. Moreover, we note that as the factfinder, the jury here was free to assess the credibility of the witness' testimony, and Flores' refusal to acknowledge that his relationship with Estrada (describing her only as a "waitress") or how many times he struck Hernandez-Galvan despite the clear video evidence would give a rational factfinder the discretion to discredit Flores' version of events.



¶ 55 Attempting to distinguish *Dickey*, Flores argues that his additional strikes after Hernandez-Galvan fell unconscious to the ground were reasonable “under the exigencies that existed at the moment” because the incident lasted a matter of seconds. See *People v. White*, 87 Ill. App. 3d 321, 323 (1980). But the *Dickey* court, and other Illinois courts considering similar circumstances, have found that a self-defense claim may fail if the defendant continues to apply force after the victim stops posing a threat. *Dickey*, 2011 IL App (3d) 100397, ¶ 15; see also *People v. Willis*, 210 Ill. App. 3d 379, 383-84 (1991) (collecting cases). The video speaks for itself—Flores saw Hernandez-Galvan fall, then approached him and hit him again four times. A rational jury could interpret this conduct to defeat self-defense.

¶ 56 Flores further argues that, pursuant to Dr. Spitz’s testimony, the jury had to accept the punches he threw when Hernandez-Galvan was on the ground were not thrown with significant force. Notwithstanding that Dr. Spitz’s testimony appears to reveal he never even reviewed the video depicting the additional strikes. This argument fails because the jury was free to give Dr. Spitz’s testimony whatever weight it saw fit. See *People v. Milka*, 211 Ill. 2d 150, 182 (2004). Even giving Dr. Spitz the benefit of the doubt that he knew the undisputed fact of Flores’ additional ground strikes, his testimony about the “force” of them was not entitled to greater weight than the jury’s own eyes in viewing those strikes.

¶ 57 Before concluding our self-defense discussion, we note that any argument Flores makes in his briefing based on the suggestion that only the fracture caused by Hernandez-Galvan’s impact with the ground caused his death, rendering the additional ground strikes superfluous, misstates the record. Dr. Aronson testified that it was “[c]omplications of blunt force head injuries due to assault,” that caused his death, not just the fracture itself. While the fall may have caused *the fracture*, Dr. Aronson testified that punches to the head and face can also cause brain bleeding,

and did not differentiate one factor that alone caused Hernandez-Galvan's death. Dr. Spitz's testimony did not refute this, nor would the jury have been compelled to accept Dr. Spitz's conclusion if he did offer a contradictory opinion. In this scenario, it is the totality of Flores' conduct—both the first punch and the subsequent punches—that the jury had to consider regarding whether Flores acted in self-defense.

¶ 58 Flores' final claim is the evidence was insufficient to sustain the jury's verdict because the State did not establish that he acted recklessly. To establish involuntary manslaughter, the State must satisfy the following elements: "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly." 720 ILCS 5/9-3 (West 2016). A defendant acts recklessly when he "consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow \*\*\* and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2016). As mentioned above, where a criminal defendant alleges the State's evidence is insufficient to sustain a conviction, 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. *Collins*, 214 Ill. 2d at 217.

¶ 59 We find that a rational factfinder could conclude that Flores acted recklessly. Illinois courts have found that a defendant who continues an attack after a victim has become defenseless can be found to have acted recklessly. Helpful on this point is *People v. DiVincenzo*, 183 Ill. 2d 239 (1998) (abrogated on other grounds by *People v. McDonald*, 2016 IL 118882). There, the defendant was found guilty of murder after first punching the victim on the side of the face and

then, while the victim was motionless on the ground, kicking the victim three times more, twice to the back and once to the head. *DiVincenzo*, 183 Ill. 2d at 246. In deciding the circuit court should have instructed the jury on involuntary manslaughter, our supreme court explained, “Based on the evidence, the jury could reasonably have concluded that defendant, by punching and kicking the victim, consciously disregarded a substantial and unjustifiable risk of death or great bodily harm.” *Id.* at 252. Flores’ conduct falls in line with that of the defendant in *DiVincenzo*—he continued to strike Hernandez-Galvan after he lay motionless on the ground—and thus, per our supreme court, can be sufficient to establish the intent necessary for an involuntary manslaughter charge. *Id.*; see also *People v. Yeoman*, 2016 IL App (3d) 140324, ¶ 21 (continuing attack may be sufficient to show even an intentional mental state necessary to sustain murder conviction); *People v. Henry*, 86 Ill. App. 3d 602, 603-04 (1980) (affirming conviction for involuntary manslaughter where evidence showed that the defendant knocked decedent to the ground and repeatedly stomped on his face, killing him). While another factfinder may have accepted Flores’ version that because everything happened so quickly, he did not have the opportunity to form the requisite intent, the record and the caselaw also supports the finding this jury made, and reversal in this circumstance is inappropriate. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 49.

¶ 60 The jury could also have found Flores acted with the requisite intent based only his first punch, as a single blow to an intoxicated individual may also demonstrate recklessness for an involuntary manslaughter charge. See *People v. Taylor*, 212 Ill. App. 3d 351, 357 (1991) (evidence was sufficient for involuntary manslaughter conviction where defendant punched victim and victim “due to his drunkenness \*\*\* was unable to soften or stop his fall to the ground.”). Flores admitted he struck Hernandez-Galvan knowing he was drunk, and per *Taylor*, this provides another ground for the jury here to conclude Flores acted recklessly.

¶ 61 Flores centers his argument on the general proposition that “death is not ordinarily contemplated as a natural consequence of a blow or blows from a bare fist,” but this proposition applies to the showing needed to establish the intent to kill for first degree murder, and thus does not control our finding here. See *Yeoman*, 2016 IL App (3d) 140324, ¶ 20; *People v. Lengyel*, 2015 IL App (1st) 131022, ¶ 51. Moreover, Flores did not deliver only a single punch, but instead threw multiple blows, and as the *Yeoman* court explained, there is an exception to the general proposition that death is not contemplated from a bare fist strike “where the defendant inflicted multiple blows to the victim.” *Yeoman*, 2016 IL App (3d) 140324, ¶ 21. Flores’ conduct aligns with this exception.

¶ 62 Flores also argues that the jury overlooked expert testimony that it was likely the fall that caused Hernandez-Galvan’s death, not Flores’ punches, and his fall was unforeseeable and thus not a risk Flores consciously disregarded. Flores cites Dr. Aronson’s testimony that the cause of death was complications of blunt force head injuries due to assault, and Dr. Spitz’s testimony that it was Hernandez-Galvan’s inability to mitigate his fall due to his drunkenness which caused him to suffer a skull fracture. This argument fails because a rational jury could have concluded that the fall was not unforeseeable due to Hernandez-Galvan’s drunkenness, and Flores’ act in punching him despite his intoxication consciously disregarded the risk he would fall and suffer severe injuries. See *People v. Taylor*, 212 Ill. App. 3d at 357. Additionally, the expert testimony is not inconsistent with the jury’s finding regarding Flores’ mental state because despite Flores’ characterization, the record shows no witness isolated Hernandez-Galvan’s death as only related to his fracture. Accordingly, Flores circuitous attempt to argue that the additional ground strikes were not part of the relevant conduct for the jury to analyze in determining Flores’ mental state fails because is belied by the record.

¶ 63

#### CONCLUSION

¶ 64 A rational factfinder could conclude the State disproved at least one element of Flores' self-defense affirmative defense and that Flores acted recklessly during the incident with Hernandez-Galvan. Accordingly, we affirm his conviction.

¶ 65 Affirmed.