



¶ 6 Several people gathered at the home of Gracie and the defendant on March 8, 2009, and began drinking beer. Present at this gathering were Jason Buie, Joshua Buie, Bryan Payne, Bambi Kistler, and Brandi Oakley. The defendant came home from work sometime between 3 and 4 p.m. and began drinking with his guests. At about 9 p.m. Gracie and Bambi started to leave the home in order to go buy more alcohol. Bryan Payne indicated that he wanted to go, and so Bambi gave up her seat to Bryan. Before they left the driveway, Bryan got out of the car and got into a fight with Joshua Buie. As the fight turned physical, Gracie went into the home to get the defendant to come outside and break the fight up. The defendant came out of the home carrying two pocketknives and stating that he was going to kill someone. Gracie told the defendant to put the knives away, and she pushed him in the chest. The defendant fell down. The defendant got up and swung at Gracie with his right hand and stabbed her in the stomach. He swung at her with his left hand also, but he missed. Gracie testified that she believed that the defendant was trying to kill her. Bryan then drove Gracie to an area hospital, where she was treated before eventually being airlifted to a St. Louis hospital for further care.

¶ 7 Testimony of Joshua Buie

¶ 8 Joshua and his brother Jason had been at the home of Gracie and the defendant for several hours on March 8, 2009. Bryan Payne arrived at about 6 p.m. Joshua got into a fight with Bryan at about 9 p.m. The defendant came outside during the fight and lunged at Joshua. Joshua noticed that he had been struck in his stomach with something which turned out to be a knife. Joshua then grabbed the defendant's arms and held him before he could swing again. Joshua had no weapon at the time that he was stabbed, but he later picked up a pipe that he found behind the house. Joshua received two stitches in his stomach wound.

¶ 9 Testimony of Jason Buie

¶ 10 Jason arrived at the home of Gracie and the defendant at dusk on March 8, 2009. All

but two people at the home, Bambi and Brandi, were drinking, but he did not believe that anyone was intoxicated. At about 9 p.m., Gracie and Bryan began to leave in a vehicle in order to obtain more alcohol. Joshua and Bryan got into a fight. Gracie went into the house to get the defendant. Jason attempted to break up the fight. He saw the defendant come out of the house and noticed that his fists were closed. He did not see any weapons. The defendant moved straight at Joshua. Joshua stated that he had been stabbed. Jason left the scene but later returned. Upon his arrival back at the home, the police were there. He did not see Joshua or Gracie get stabbed.

¶ 11 Testimony of Bambi Kistler

¶ 12 Bambi testified that she arrived at the home at approximately 7 p.m. She and Brandi were the only two people at the home who were not drinking alcohol. She and Gracie got in Gracie's vehicle with the intent of going to get more alcohol. Bryan came up to the car and said that he wanted to go and so Bambi got out of the car. Then Bryan and Joshua got into a fight. The defendant came out of the house, but by the time he arrived, the fight was over. Bambi continued standing by Gracie's car with her attention on a conversation between Bryan and Jason. Then, Bambi heard Joshua say that he had been stabbed. Some of the people ran away at hearing that Joshua had been stabbed. Then, Bambi heard Gracie say that she had been stabbed. Gracie told Bambi to call the police. Bambi testified that she did not see any weapons in the defendant's hands.

¶ 13 Testimony of Brandi Oakley

¶ 14 Brandi testified that she arrived at the home at approximately 8:30 p.m. She and Bambi were not drinking, but everyone else was. Brandi was inside the home when Bambi came inside and stated that there was a fight outside. By the time Brandi got outside, the fight was over. Brandi was standing near the defendant and Joshua. She testified that she heard the defendant ask Joshua if he "want[ed] a piece of this" and that then the defendant

stabbed Joshua. She saw knives in the defendant's hands. Joshua did not make any threats toward the defendant before he was stabbed. She called the police. Immediately after the attacks, Joshua ran away and returned with a piece of pipe.

¶ 15 Testimony of Illinois State Police Trooper Stacey Heselton

¶ 16 On March 8, 2009, at about 9:25 p.m., Trooper Heselton received the call to the home of Gracie and the defendant. The defendant was found about one hour later walking on Interstate 70. He was highly intoxicated. Trooper Heselton searched the defendant's pockets, finding a cell phone, pepper spray, and two pocketknives. One of the knife blades had a substance that appeared to be blood on it. The defendant had no blood on his clothing.

¶ 17 In rebuttal, Trooper Heselton was called again by the State and testified that the defendant was read his constitutional rights at 1:05 a.m. on March 9, 2009. He was confused and intoxicated but told Trooper Heselton that he knew Gracie was pregnant with his child. He had little memory of the events that had taken place at the home and did not make any statements about stabbing anyone.

¶ 18 Testimony of Bryan Payne

¶ 19 Bryan testified that he arrived at the house of Gracie and the defendant in the early afternoon. He and the defendant went to the liquor store sometime that afternoon and upon return spent the afternoon playing horseshoes and a drinking game. He and Gracie were headed back to the liquor store when he got into a fight with the Buie brothers—Joshua and Jason. Just as he was going to hit Joshua, he heard Gracie yell that she had been stabbed. He took Gracie to the hospital.

¶ 20 The Defendant's Testimony

¶ 21 The defendant denied any knowledge that Gracie was pregnant. He did, however, acknowledge a false belief that she was pregnant in December 2008. Before noon on March 8, 2009, the defendant, Gracie, and Jason consumed a 12-pack of beer at Jason's home.

Then they returned to the defendant and Gracie's home and continued drinking. The defendant testified that before 3 p.m. that afternoon, he and the others present at his home were intoxicated. The last thing that he remembered happening on March 8, 2009, occurred at about 3 p.m., when Gracie and Bryan left to go get more beer. He testified that he woke up four days later in jail. He admitted that the knives admitted into evidence as exhibits were his knives, but he stated that when he got home from work, he always put them on a table by the front door.

¶ 22 Other Evidence

¶ 23 The trial court admitted into evidence Gracie's medical record from her treatment at the St. Louis hospital emergency room. From the records, upon examination, Gracie had a 2.5-centimeter-deep wound in the left side of her abdomen consistent with the history of being stabbed.

¶ 24 Verdict and Sentence

¶ 25 At the conclusion of the case, the jury deliberated and found the defendant guilty of armed violence and aggravated battery to a pregnant person. He was found not guilty of both counts of aggravated battery with a deadly weapon. He was sentenced on September 22, 2009. In aggravation, the court noted that the defendant had prior convictions and that a lengthy sentence was necessary to deter others. He was sentenced to a 15-year term for the armed violence conviction.

¶ 26 LAW AND ANALYSIS

¶ 27 Proof Beyond a Reasonable Doubt

¶ 28 The jury found the defendant guilty of armed violence with a dangerous weapon (720 ILCS 5/12-4, 33A-2(a) (West 2008)) and aggravated battery to Gracie Olmstead with knowledge that she was pregnant (720 ILCS 5/12-3, 12-4(b)(11) (West 2008)).

¶ 29 To establish guilt of armed violence, the State must prove that the defendant, while

armed with a dangerous weapon, committed a felony. In this case, the defendant was charged with three other felonies but was only convicted of the felony of aggravated battery to a pregnant person. The key component to proof of the aggravated battery charge was the establishment that the defendant knew that Gracie was pregnant.

¶ 30 In order to sustain these convictions, the State must prove that the defendant is guilty of each element of the crimes charged beyond a reasonable doubt. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. Circumstantial evidence can be used to satisfy this burden. *People v. Saxon*, 374 Ill. App. 3d 409, 417, 871 N.E.2d 244, 251 (2007). Circumstantial evidence has been defined to mean proof of facts from which a jury can infer other facts that would typically follow based upon human experience. *In re Gregory G.*, 396 Ill. App. 3d 923, 929, 920 N.E.2d 1096, 1101 (2009). The inferences drawn from circumstantial evidence must be reasonable. *Id.*

¶ 31 If the sufficiency of the evidence is challenged, on appeal, the court must view the evidence in a light most favorable to the prosecution and determine if "any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt." *Saxon*, 374 Ill. App. 3d at 416, 871 N.E.2d at 250. Therefore, all the reasonable inferences to be drawn from the evidence—direct or circumstantial—must be viewed in the State's favor. *Id.* at 416-17, 871 N.E.2d at 251. The conviction can only be reversed if the evidence was so improbable or unsatisfactory that it leaves questions open about the defendant's guilt. *Id.* at 416, 871 N.E.2d at 250.

¶ 32 In this case, the defendant argues that proof was not beyond a reasonable doubt because testimony of the witnesses revealed factual differences of the course of events that night. The defendant latches onto each minor factual inconsistency in the testimony of the various witnesses and argues that these discrepancies serve to support his claim that his guilt was not proven beyond a reasonable doubt. The issue is not the number of testimonial

conflicts but the nature of the conflicts, as well as the subject matter of the conflicts. We have carefully reviewed the transcripts of the testimony, and we do not reach the same conclusion. It is true that there are differences in the testimony about the order of the attacks or about where witnesses were located in relationship to the victims at that time. However, those differences do not have any bearing upon the ultimate issue regarding whether the State proved that the defendant stabbed Gracie. While the defendant himself may not be able to recall whether or not he stabbed Gracie Olmstead, Gracie remembers precisely who stabbed her and how it occurred. She saw the knives in the defendant's hands, saw him swing at her with both knives, and testified that the defendant stabbed her. One of the nondrinking guests at the home, Brandi Oakley, testified that she saw the defendant with knives in both hands and saw him stab Joshua, the other victim. Joshua, the other victim, saw the defendant lunge at him and then realized that he had been stabbed. While the other witnesses did not see the defendant actually stab Gracie or Joshua, the circumstantial evidence that the defendant was the attacker was quite strong. All the witnesses place the defendant at the scene of the crime. The defendant fled the scene of the crime immediately after, and when located by police, he had two knives in his pockets.

¶ 33 The jury heard all the witnesses testify and were able to watch them while testifying. Therefore, the jury was in the best position to judge the credibility of those witnesses. We are not able to second-guess their conclusions. To the extent that the evidence received during the trial was capable of being interpreted in conflicting ways, the trier of fact is the entity who is best able to resolve those conflicts. *Saxon*, 374 Ill. App. 3d at 416, 871 N.E.2d at 250.

¶ 34 Regarding the aggravated battery charge for his attack on Gracie Olmstead, the only other element needed to prove the defendant's guilt was his knowledge of her pregnancy. The defendant testified that he did not know that she was pregnant. Gracie testified that the

defendant knew of her pregnancy and further that he accompanied her to the doctor's office when that pregnancy was confirmed. Officer Heselton testified that the defendant acknowledged the fact that he was aware of Gracie's pregnancy. The credibility of the witnesses had a bearing on this issue as well. The jury resolved those credibility issues in the State's favor.

¶ 35 Considering all the direct and circumstantial evidence in the light most favorable to the prosecution, we are simply not able to conclude that the defendant's guilt of the charges of armed violence and aggravated battery was not established beyond a reasonable doubt.

¶ 36 Sentencing

¶ 37 The defendant was convicted of a Class X felony and was therefore subject to a minimum term of incarceration of 10 years. 720 ILCS 5/33A-3 (West 2008). The State asked the court to sentence the defendant to 20 years. The defendant asked for the minimum of 10 years. The court sentenced the defendant to 15 years.

¶ 38 On appeal of this issue, the defendant argues that the court did not give sufficient consideration to the factors in mitigation. The defendant fails to tell us what factors in mitigation were not considered by the court. He asks this court to reduce his sentence or alternatively to remand the case to the trial court for a new sentencing hearing.

¶ 39 The court's sentencing order clearly states that it considered all the factors in both aggravation and mitigation. The defendant offered no specific mitigating factors at his hearing but did address the court in a statement of allocution. Apparently acknowledging his intoxication at the time of the crimes, the defendant admitted not remembering whether or not he stabbed Gracie, but he said that if he did so, he was sorry for that. The defendant downplayed the size of the wound he inflicted upon Gracie. He acknowledged that he kept a lot of beer in his refrigerator at home but stated that this was because Gracie was an alcoholic. He stated that he did not understand why he should be punished for having beer

in his home since the beer was due to Gracie's alcoholism. His attorney argued that all of his prior criminal offenses were at least 10 years old and that most were traffic offenses. The attorney argued that the defendant was a law-abiding citizen and employed. Counsel blamed his drinking problems upon his recent involvement with Gracie Olmstead.

¶ 40 When we review sentencing issues on appeal, the trial court's decisions must be given great deference. *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1094 (2006). If the sentence falls within the statutory range, that sentence will not amount to an abuse of the court's discretion unless it is manifestly disproportionate to the nature of the offense. *Id.*

¶ 41 Upon a review of the facts and circumstances surrounding this case and given the statutory penalty range, we are not able to find that the court's sentence of 15 years amounted to an abuse of discretion. We conclude that the sentence represents a reasoned consideration of the aggravating and mitigating factors. See *People v. Center*, 198 Ill. App. 3d 1025, 1033, 556 N.E.2d 724, 729 (1990). The sentence is not manifestly disproportionate to the nature of the offense. The defendant stabbed a woman he knew was pregnant with his child. The evidence established that he attempted to stab her a second time. And although he was not convicted of stabbing Joshua Buie, the evidence established that he did do so. Being voluntarily intoxicated at the time of the offenses and not remembering their commission does not mollify the seriousness of the crime. We affirm the sentence imposed by the court.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the judgment and the sentence rendered by the circuit court of Fayette County are hereby affirmed.

¶ 44 Affirmed.