



because it was based on the same act as the aggravated domestic battery. Lester finally contends that the term of mandatory supervised release (MSR) he must serve upon his release from prison must be reduced from four years to two years to reflect the statute in effect at the time of the offense. We affirm Lester's conviction for aggravated domestic battery, vacate the aggravated battery conviction, and correct the mittimus.

¶ 3 Lester's arrest arose out of a June 20, 2008, incident during which he pistol whipped Ana. At trial, Ana testified that on the night in question, she was outside with Yonika Farris (Yonika). At one point, Lester drove up and pulled over. As Lester exited the vehicle, he had his keys in his hand and was shouting and pointing at their house. When Ana grabbed Lester's shoulder, he turned around and struck her with his keys. Lester then hit Ana a second time on the head with his keys and she fell to the ground. Ana characterized the blows as an accident. She then explained that Lester had his back to her during the incident and she guessed that he thought she was someone else. When Ana heard a gunshot, she told Lester to leave. Although her wounds bled, Ana said that they were "not bad" and that she had "seen worse."

¶ 4 At trial, Ana indicated that she did not remember telling the police that Lester hit her on the head with a gun. Similarly, Ana did not remember telling hospital staff either that Lester accidentally injured her with keys or that they had fought. She denied telling police or hospital staff that Lester had pistol whipped her.

¶ 5 About a month after the incident, Ana spoke to assistant State's Attorney Meg O'Sullivan (ASA O'Sullivan). ASA O'Sullivan transcribed the conversation and Ana then signed a statement. At trial, Ana did not recall whether she said that Lester hit her with keys, but denied stating that he grabbed her by the hair and hit her with a gun which then went off. Ana believed that she had to make the statement to protect her family, *i.e.*, to get Lester out of the neighborhood. Although Ana reviewed the statement, she asserted that she must have read it "fast" because she did not remember saying some of the "stuff" it contained.

¶ 6 During cross-examination, Ana testified that she loved Lester. At the time of the incident, Ana and her family lived in a neighborhood filled with drug and gang activity. Although she was not threatened before this incident, she testified that afterward, "they" told her to keep Lester out of the neighborhood because Lester had told "them" to take their business somewhere else. She asserted that she made false statements because her family was being threatened. However, by the time of trial she had moved and could speak to "exactly what happened."

¶ 7 During recross-examination, Ana denied telling ASA O'Sullivan and hospital staff that she and Lester were in an abusive relationship, but admitted that she had never contacted the police to "correct" the facts. Ana admitted that her arm was injured, but denied that the injury was caused when Lester hit her with a gun; rather, she testified her arm was bruised when she fell.

¶ 8 Yonika testified that when Lester exited the vehicle, he asked Ana to come over. When she refused, Lester asked again. Lester then walked over and grabbed Ana by her hair. He proceeded to hit Ana on the forehead with the handle of a gun. When Lester hit Ana a second time, the gun went off. Although Yonika later signed a statement brought to her by Ana and Lester's mother indicating that Lester hit Ana with keys, she asserted at trial that the statement's contents were false and that she only signed it to help her friend.

¶ 9 Robert Jackson (Robert) testified that he saw Lester exit a green SUV and approach Ana. Lester had a firearm in his hand and told Ana to "come here." When Ana refused, Lester told her "come here" a second time. Lester then grabbed her in a headlock and struck her twice on the head with the butt of the gun. After a gunshot sounded, Lester got back into the SUV and left. Ana remained on the sidewalk with blood dripping from her head. In addition to calling 911, Robert went to Ana and wrapped his t-shirt around her head.

¶ 10 Officer Marco Renteria (Officer Renteria) testified that when he arrived on the scene, Ana was on the ground bleeding "profusely" with a white towel or t-shirt wrapped around her head. Later, at the hospital, Ana told him that she had gotten into a verbal altercation with Lester, and that

Lester had pushed her arm and pistol whipped her on the forehead.

¶ 11 Nurse Joy Davis (Nurse Davis) testified that she treated Ana. Ana had two lacerations on her forehead, one was two-and-a-half centimeters long and the other was three centimeters long. Although Ana was not actively bleeding at that time, there was a "great deal" of dried blood in her hair and on her face. Ana's left arm was also bruised. When Nurse Davis asked Ana what had happened, Ana told Nurse Davis that: (1) she had been pistol whipped by Lester; (2) Lester had beaten her for six years; and (3) she wanted a divorce lawyer. After a police evidence technician photographed the lacerations and Nurse Davis cleaned them, a doctor numbed the area and sutured both lacerations. Ana was also given a CAT scan, an x-ray of her left forearm, a tetanus shot, and morphine to manage her pain.

¶ 12 According to Nurse Davis, the injuries to Ana's head were consistent with being struck by a blunt object or being pistol whipped. She did not think the injuries were consistent with being hit by keys, as those injuries would present as abrasions or scrapes. Nurse Davis described the injuries to the left forearm as defensive wounds.

¶ 13 ASA O'Sullivan testified that when she met with Ana, she asked what had happened and whether Ana would like to memorialize the conversation in writing. After transcribing the statement, ASA O'Sullivan asked Ana to read a portion out loud to verify that she read and understood English. ASA O'Sullivan then read the entire statement aloud so that Ana could make any corrections. Subsequently, Ana signed the statement.

¶ 14 Ultimately, the trial court found Lester guilty of one count of aggravated domestic battery and two counts of aggravated battery. In making its ruling, the court found Ana to be completely incredible and contrasted her testimony at trial with her "concise, credible" statement indicating that Lester had hit her with the butt of a gun "so violently that her forehead split open."

¶ 15 Defense counsel then filed a motion to vacate judgment or in the alternative to grant a new trial, arguing, in pertinent part, that the State failed to establish "great bodily harm." The court

denied the motion, determining that Ana had suffered great bodily harm when Lester pistol whipped her. The court then sentenced Lester to eight years in prison for the aggravated domestic battery conviction. The court also merged the two aggravated battery convictions and sentenced Lester to a concurrent term of seven years for aggravated battery. After defense counsel filed a motion to reduce sentence, the court reduced Lester's sentence for the aggravated battery conviction to five years.

¶ 16 On appeal, Lester first contends that his conviction for aggravated domestic battery must be vacated because the State failed to prove beyond a reasonable doubt that Ana suffered "great bodily harm" when she only had two "small" facial lacerations and a bruise.

¶ 17 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Id.* A conviction will be reversed only when the evidence was so unreasonable or unsatisfactory that reasonable doubt remains as to whether the defendant was guilty. *Id.*

¶ 18 A person commits aggravated domestic battery when, in committing a domestic battery, he intentionally or knowingly causes great bodily harm or permanent disability or disfigurement. 720 ILCS 5/12-3.3(a) (West 2008).

¶ 19 Although "great bodily harm" does not have a precise legal definition, "great bodily harm" requires that an injury be of a greater and more serious nature than one suffered as the result of a battery. *People v. Figures*, 216 Ill. App. 3d 398, 401, 576 N.E.2d 1089, 1091 (1991); see also *In re J.A.*, 336 Ill. App. 3d 814, 817, 784 N.E.2d 373, 376 (2003) ("great bodily harm" is more serious than the lacerations, bruises, or abrasions characteristic of "bodily harm"). Whether the victim's

injuries rise to the level of "great bodily harm" is a question for the trier of fact, and rests upon the injuries suffered by the victim, not whether the victim was hospitalized or the permanent nature of the victim's disability or disfigurement. *Figures*, 216 Ill. App. 3d at 401, 576 N.E.2d at 1092.

¶ 20 Here, the evidence at trial established that Lester grabbed Ana and hit her on the head with the butt of a gun twice. Ana suffered two lacerations to the head which bled profusely and required stitches, as well as bruising to the left arm consistent with being struck with a blunt object. Ana also underwent a CAT scan and an x-ray, and was prescribed morphine. After reviewing the record in the light most favorable to the State, this court cannot say that no rational trier of fact could have found that Ana suffered great bodily harm. *Ross*, 229 Ill. 2d at 272, 891 N.E.2d at 876.

¶ 21 However, Lester contends that Ana did not suffer "great bodily harm" because she only suffered two minor lacerations and bruising. Lester also highlights Ana's testimony that her injuries were not bad.

¶ 22 Initially, this court notes that the trial court found Ana's testimony at trial to be incredible compared to the "concise, credible" statement she gave to ASA O'Sullivan. We will not substitute our judgment for that of the trier of fact on this issue. *Id.* Additionally, the question of whether a victim's injuries rose to the level of great bodily harm was a question of fact. Here, Ana's testimony regarding her injuries did not preclude a finding that great bodily harm had occurred when the trial court did not believe her testimony, and the evidence established that Ana suffered two head wounds which bled copiously and required stitches; as well as the fact that she was given a prescription narcotic. See *People v. Matthews*, 126 Ill. App. 3d 710, 714-15, 467 N.E.2d 996, 1000 (1984) (a finding of great bodily harm was not precluded when the victim was struck once on the head with a gun and three times on the arms and head with a baseball bat, but stated that she only had a bruise on her head and there was a lack of evidence as to whether her injuries required medical attention because the matter was a question of fact for the jury).

¶ 23 This court is unpersuaded by Lester's reliance on *In re J.A.*, 336 Ill. App. 3d 814, 784 N.E.2d

373 (2003) and *In re T.G.*, 285 Ill. App. 3d 838, 674 N.E.2d 919 (1996). In both of those cases, the victims described their injuries in relation to common occurrences, and neither indicated he had suffered an injury that warranted serious medical attention. See *In re J.A.*, 336 Ill. App. 3d at 817, 874 N.E.2d at 376 (the victim described being stabbed as feeling like a pinch); *In re T.G.*, 285 Ill. App. 3d at 846, 674 N.E.2d at 926 (the victim compared being stabbed to being poked with a pen). In the instant case, although Ana described her injuries as "not bad," the trial court found her testimony incredible and the record reveals that Ana's head wounds required sutures and she was prescribed morphine.

¶ 24 Based on the description of the incident and Ana's injuries as well as the amount of bleeding caused by those injuries, it was reasonable for the trial court to conclude that the cumulative evidence at trial established great bodily harm. See *People v. Psichalinos*, 229 Ill. App. 3d 1058, 1068-69, 594 N.E.2d 1374, 1382 (1992) (cumulative evidence of the nature of the attack, which caused bleeding and a bruise and created an inference that the victim's nose was fractured as a result, was sufficient to establish great bodily harm). This court reverses a conviction only when the evidence at trial was so unsatisfactory that reasonable doubt remains as to a defendant's guilt; this is not one of those cases. *Ross*, 229 Ill. 2d at 272, 891 N.E.2d at 876. Accordingly, we affirm Lester's conviction for aggravated domestic battery.

¶ 25 Lester next contends, and the State concedes, that his conviction for aggravated battery must be vacated because it violates the one-act, one-crime rule when this conviction was carved out of the same act that formed the basis of his aggravated domestic battery conviction.

¶ 26 One-act, one-crime analysis involves a two-step process. First, the court must determine whether the defendant's conduct consisted of multiple acts or a single act, as one physical act cannot be the basis for multiple convictions. *People v. Miller*, 238 Ill. 2d 161, 165, 938 N.E.2d 498, 501 (2010). For purposes of the one-act, one-crime rule, a single act is any overt or outward manifestation that will support a different offense. *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d

838, 844-45 (1977). When a defendant's conduct involved multiple acts, this court must determine whether any of the offenses are lesser-included offenses, as a conviction for a lesser-included offense is improper. *Miller*, 238 Ill. 2d at 165, 938 N.E.2d at 501.

¶ 27 A careful review of the indictment in this case reveals that both of Lester's convictions were based upon the single "act" of beating Ana "about the head with a handgun." Accordingly, Lester's conviction for aggravated battery was a violation of the one-act, one-crime rule (*King*, 66 Ill. 2d at 566, 363 N.E.2d at 844-45), and must be vacated.

¶ 28 Lester finally contends, and the State concedes, that the trial court's order that he must serve a four-year term of MSR upon his release from prison is an *ex post facto* punishment because the term of MSR applicable to a conviction for aggravated domestic battery on June 20, 2008, the date of the offense, was two years. Compare 730 ILCS 5/5-8-1(d)(2) (2008) and 730 ILCS 5/5-8-1(d)(6) (West 2010).

¶ 29 A criminal law runs "afoul" of the prohibitions against *ex post facto* laws if it is retroactive and disadvantageous to a defendant. *People v. Prince*, 371 Ill. App. 3d 878, 880, 864 N.E.2d 316, 319 (2007). A law disadvantages a defendant when, *inter alia*, it increases the punishment for a previously committed offense. *Id.*

¶ 30 Pursuant to the statute in effect on June 20, 2008, a defendant convicted of the Class 2 felony of aggravated domestic battery was subject to a two-year term of MSR upon his release from prison. See 720 ILCS 5/12-3.3(b) (West 2008); 730 ILCS 5/5-8-1(d)(2) (West 2008). Lester's term of MSR must be reduced from four years to two years to reflect the version of section 5-8-1(d)(2) of the Unified Code of Corrections (see 730 ILCS 5/5-8-1(d)(2) (2008)), in effect at the time the offense occurred. See *Prince*, 371 Ill. App. 3d at 880, 864 N.E.2d at 319. Thus, pursuant to our power to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900, 882 N.E.2d 1169, 1173 (2008)), we direct the circuit court clerk to correct Lester's mittimus to reflect a two-year term of MSR.

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¶ 31 Accordingly, this court affirms Lester's conviction for aggravated domestic battery while vacating the conviction for aggravated battery. Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we order that Lester's mittimus be corrected to reflect a two-year term of MSR.

¶ 32 Affirmed in part; vacated in part; mittimus corrected.