

No. 1-12-0534

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 8833
)	
VERNICE RANDOLPH,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to sustain conviction for aggravated domestic battery where injuries to the victim required surgery that left scars, the victim and a witness testified that defendant was the victim's girlfriend at the time of the incident, and defendant admitted that she and the victim engaged in sexual intercourse; mittimus corrected to reflect that only one conviction was imposed; conviction affirmed and order correction of the mittimus.
- ¶ 2 Following a bench trial, defendant Vernice Randolph was convicted of aggravated domestic battery and sentenced to three years in prison. On appeal, defendant contends the State failed to prove her actions caused permanent disability or disfigurement and that the victim was

a family or household member. Additionally, defendant contends, and the State agrees, that the mittimus should be amended to reflect that only one conviction was imposed. We affirm defendant's conviction and order correction of the mittimus.

¶ 3 Defendant was charged with one count of attempted murder, three counts of aggravated domestic battery, and four counts of aggravated battery. At trial on December 5, 2011, Otha Penn, the victim, testified that defendant was his girlfriend for three years and that in May 2011, she lived with him at the Ashland Hotel, located at 1535 West 47th Street in Chicago. On May 3, 2011, Penn and defendant physically fought in the second floor hallway of the hotel after someone told defendant that Penn was "hitting up" another woman, and the two went to Penn's room. Penn tried to calm defendant down, and they lay down in the bed to sleep. Defendant began to talk again about Penn's alleged behavior with another woman, but Penn told her he "didn't want to hear it" and went to sleep. Penn woke up when he felt something in his stomach, which he initially thought was defendant elbowing him, but in reality was defendant stabbing him. Defendant jumped up, grabbed Penn's chef knife, stabbed him in the arm and stomach three or four times, and then ran out of the room. Penn was "bleeding real bad" and told another individual to call an ambulance and try to keep defendant from leaving. An ambulance arrived and transported Penn to the hospital, where he had surgery on his lung and stomach and stayed until May 16. Penn displayed the scars on his stomach to the trial court.

¶ 4 The parties stipulated that a surgeon from the hospital would testify that he performed surgery on Penn after he was admitted on May 3. Before operating, a contrast CT demonstrated a probable blush and bleed in the lateral wall of the stomach. During surgery, there was a minimal amount of blood in the abdomen and there was a small posterolateral injury to the diaphragm, for which a graft was conducted. A small gastronomy was identified and repaired in the stomach. There was no evidence found of a through and through injury to the stomach, there

were no other injuries identified within the rest of the abdomen, and the skin was closed using staples.

¶ 5 In granting defendant's motion for a directed verdict as to the attempted murder count, the trial court said it "[found] the government's witness and evidence to be credible and telling," but did not find that defendant demonstrated the intent to kill.

¶ 6 Defendant testified that she had known Penn for about three years, but denied that Penn was her boyfriend on May 3. She pointed out that her boyfriend, who was the father of her children, was seated in the audience of the courtroom. Defendant and Penn "used to drink together and stuff," and when asked if "stuff" meant having sex together, defendant replied, "If that's what you want to call it." On May 3 at 5 p.m., defendant was visiting Carl Westbrook, a resident of the hotel who had just returned from the hospital. After 20 or 30 minutes, Penn arrived and used physical force to make defendant leave Westbrook's room. Penn and defendant fought and argued in the hallway, and then Penn dragged defendant to his room, where he pushed her on the bed, got on top of her, and choked her. Thinking the choking would kill her, defendant grabbed a knife and stabbed Penn's left arm and side twice, and then ran out of the room. She stated that Penn had grabbed, hit, and choked her in the past. Defendant admitted that when she was arrested two weeks later, she denied that she had stabbed Penn and told detectives she was not involved in the incident.

¶ 7 Carl Westbrook, who lived at the Ashland Hotel, testified that defendant was Penn's girlfriend. On May 3, defendant visited Westbrook's third floor room to welcome him home from the hospital. Penn arrived and seemed a little jealous that defendant was visiting Westbrook, and demanded she leave. After they left Westbrook's room, Penn and defendant argued, first in the hallway and then on the second floor 45 minutes later, with both hitting and knocking each other down. Penn pulled defendant to his room, saying, "Vernice, let's go;

Vernice, let's go; Vernice, let's go." Later, Westbrook learned from a neighbor that Penn was bleeding. Westbrook stated that Penn and defendant had fought numerous times in the past, and defendant would beg to be let out of Penn's room and for him not to hit her. At one time, Westbrook told defendant that Penn was cheating on her.

¶ 8 Monique McGee, Penn's neighbor at the Ashland Hotel, testified that defendant is Penn's friend, and while Penn resides at the hotel, defendant does not. In the past, McGee had heard "a lot of thumping, a lot of cursing, a lot of arguing, [and] a lot of yelling" from defendant and Penn. On May 3, defendant and Penn were arguing and yelling in Penn's room for at least 20 to 30 minutes, and then the door opened and defendant ran down the hallway. Penn came out of the room, holding his side and bleeding, and said, "[S]he stabbed me."

¶ 9 Carolyn Russell, the manager of the Ashland Hotel, testified that Penn is one of her tenants, and defendant comes over and visits him. When defendant and Penn had physically fought in the past, Russell had broken them up and threatened to put them out. Russell was not present during the incident on May 3.

¶ 10 The trial court found defendant guilty and stated:

"I find there is a volatile relationship between [defendant] and Mr. Penn over a period of time. Sometimes it got physical. Whatever was going on physically though she escalated it by bringing a knife and severely injuring Mr. Penn as he described it.

I find the government has met their burden of proof, and I find her guilty of aggravated domestic battery and aggravated battery in Counts 3, 4, 5, 6, 7, and 8 of the indictment.¹ They will

¹Count 1 was attempted murder, for which defendant's motion for a directed verdict was granted, and Count 2 was aggravated domestic battery based on great bodily harm. No further mention was made of Count 2 during the trial or at sentencing

merge. "

At sentencing, based on the results from a mental health evaluation, the trial court's finding was adjusted to guilty but mentally ill, and defendant was sentenced to three years in prison. The trial court stated, "I have found you guilty, and that is concurrent on all counts, all counts merged."

¶ 11 The mittimus listed two counts of aggravated domestic battery, three counts of aggravated battery based on great bodily harm, and one count of aggravated battery based on bodily harm with an air rifle. On the mittimus was written, "[All] counts concurrent, all counts to merge."

¶ 12 On appeal, defendant first argues her conviction should be reduced to aggravated battery because the State failed to prove her actions caused permanent disability or disfigurement. Defendant contends the only evidence presented on this issue was Penn's display of his scars and the surgeon's stipulated testimony, which did not establish that Penn sustained disfigurement or disabling injuries of a permanent nature.

¶ 13 When presented with a challenge to the sufficiency of the evidence, "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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not our function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, the trial judge, sitting as the trier of fact, determines the credibility of the witnesses, weighs and draws reasonable inferences from the evidence, and resolves any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a

reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 14 To sustain a conviction for aggravated domestic battery, the State must prove that the defendant intentionally or knowingly caused great bodily harm, or permanent disability or disfigurement to a family or household member. 720 ILCS 5/12-3.3(a) (West 2010).

Disfigurement is defined as that which "impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner." *People v. Woods*, 173 Ill. App. 3d 244, 249 (1988) (quoting Black's Law Dictionary 420 (5th ed. 1979)). Generally, whether a defendant inflicted great bodily harm or permanent disfigurement is a question for the trier of fact. *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993).

¶ 15 Here, the evidence sufficiently supports the trial court's finding that defendant's stabbing caused permanent disfigurement to Penn. Penn testified that he was stabbed multiple times in the stomach and arm, and required surgery on his diaphragm and stomach to repair the damage. He was in the hospital from May 3 to May 16, and at trial, approximately seven months later, scars on Penn's stomach were still visible. Viewing the evidence in the light most favorable to the State, a rational trier of fact could conclude that defendant caused Penn to suffer permanent disfigurement. This result is consistent with *Doran*, 256 Ill. App. 3d at 136 (a rational trier of fact could conclude that the victim suffered permanent disfigurement where the record contained pictures of the victim's injuries and the victim displayed a scar in the bridge area of his forehead) and *People v. Newton*, 7 Ill. App. 3d 445, 447 (1972) (a rational trier of fact could conclude that the victim suffered great bodily harm or permanent disfigurement where the victim went to a doctor's office to receive six stitches for a wound in his head, and at trial five months later, he indicated that the wound left a small scar which was covered by hair).

¶ 16 Defendant next contends that the State failed to prove that Penn was defendant's family

or household member. Defendant denied she was in a dating relationship with Penn, and argues their relationship lacked a significant romantic focus. There was no evidence of how frequently defendant visited, how frequently she spent the night, or whether they went on dates. In addition, defendant argues the evidence was insufficient to prove the parties shared a common dwelling because two witnesses testified that defendant did not live with Penn at the Ashland Hotel. Further, there was no evidence of how often defendant visited Penn, how long she would stay, and whether she spent the night, contributed to household expenses, helped with maintenance, or kept personal items in Penn's room.

¶ 17 Under the aggravated domestic battery statute, a "family or household member" is defined by Section 112A-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/112A-3(3) (West 2010)), and includes people who shared or formerly shared a common dwelling and people who have or have had a dating or engagement relationship. A dating relationship does not include casual acquaintanceship or ordinary fraternization between two people in business or social contexts. *Id.* A dating relationship has been further defined as "serious courtship," meaning that it is:

"[a] social relationship between two individuals who have or have had a reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of that growth of that mutual interest, that has endured for such a length of time and stimulated such frequent interactions that the relationship cannot be deemed to have been casual."

Alison C. v. Westcott, 343 Ill. App. 3d 648, 653 (2003) (quoting *Oriola v. Thaler*, 84 Cal. App. 4th 397, 412 (2000)). At a minimum, "serious courtship" is an established relationship with a significant romantic focus. *People v. Young*, 362 Ill. App. 3d 843, 851 (2005). Of note, six

weeks of dating coupled with sexual intercourse has been found to constitute a dating relationship. *People v. Irvine*, 379 Ill. App. 3d 116, 125 (2008).

¶ 18 Here, the evidence sufficiently supports a finding that the parties had a dating relationship. Penn and Westbrook referred to defendant as Penn's girlfriend. In addition, Penn testified that he and defendant began fighting after she was told that Penn was "hitting up another female." Westbrook testified that he had told defendant that Penn was cheating on her and that Penn seemed to be jealous that defendant was visiting Westbrook. In contrast, McGee testified that defendant was Penn's friend and did not live at the hotel, and Russell testified only that defendant visited Penn. Defendant denied that Penn was her boyfriend, but also admitted that she used to drink beer and engage in sex with him. There is conflicting evidence as to the status of the parties' relationship, but it is for the trier of fact to resolve this conflict (*Siguenza-Brito*, 235 Ill. 2d at 224), and the trier of fact's finding will be disturbed only where the evidence is so unsatisfactory as to leave a reasonable doubt as to defendant's guilt (*Woods*, 173 Ill. App. 3d at 250). Further, the trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22. Viewing the evidence in the light most favorable to the State, the evidence that Penn and defendant had a dating relationship is not so unsatisfactory that it raises a reasonable doubt of defendant's guilt. As we find that a rational trier of fact could conclude that the parties had a dating relationship, we do not need to reach the issue of whether Penn and defendant shared a common dwelling.

¶ 19 Defendant next contends, and the State agrees, that the mittimus should be amended to clearly reflect that only one conviction was imposed. Defendant's mittimus lists two convictions for aggravated domestic battery, three convictions for aggravated battery based on great bodily harm, and one conviction for aggravated battery with an air rifle. The trial court twice stated that all of those counts were to merge—once at the end of trial and once at the end of sentencing.

Where the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). Further, where multiple convictions are entered for the same act, a sentence is imposed on the most serious offense, and the convictions on the less serious charges are vacated. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). Here, defendant and the State agree that aggravated domestic battery is the most serious offense. Accordingly, pursuant to Supreme Court Rule 615 (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we correct the mittimus so that it reflects one conviction for aggravated domestic battery.

¶ 20 For the foregoing reasons, we affirm defendant's conviction and order the mittimus corrected.

¶ 21 Affirmed; mittimus corrected.