

NOTICE
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2013 IL App (4th) 110766-U

NO. 4-11-0766

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 19, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
STEVEN K. CRANFORD,)	No. 10CF87
Defendant-Appellant.)	
)	Honorable
)	John B. Huschen,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Defendant's home-invasion conviction is overturned, because the evidence fails to support the inference defendant did not have authority to enter Alayna's residence and knew the victim was in the home when defendant entered.
- (2) Defendant's ineffective-assistance-of-counsel claims on issues related to the home-invasion are moot, given the home-invasion conviction is overturned.
- (3) Defendant's ineffective-assistance-of-counsel claim regarding counsel's failure to investigate or call a witness to testify regarding the cause of defendant's injuries of great bodily harm fails because defendant did not show he was prejudiced by counsel's failure.
- (4) Defendant's argument the State made improper statements regarding the home-invasion charge during closing argument is moot, because his home-invasion conviction is overturned on another ground.
- (5) The State's error in asking defendant to comment on the veracity of State's witnesses did not arise to plain error.
- (6) Because his home-invasion conviction is overturned, defendant's extended-

term sentence for aggravated battery is not void.

¶ 2 In December 2010, a jury found defendant, Steven K. Cranford, guilty of home invasion (720 ILCS 5/12-11(a)(2) (West 2010)), aggravated battery (720 ILCS 5/12-4(a) (West 2010)), and criminal trespass to residence (720 ILCS 5/19-4(a)(2) (West 2010)). The trial court sentenced defendant to concurrent terms of 13 years' imprisonment for home invasion and 8 years' imprisonment for aggravated battery. Defendant appeals, arguing (1) the State failed to prove him guilty of home invasion beyond a reasonable doubt, because the State failed to prove he lacked authority to enter the residence in which the victim was injured; (2) he was denied the effective assistance of counsel because his counsel failed to call two witnesses and to cross-examine another effectively; (3) the prosecutor improperly made statements during closing argument that were not based on the evidence; (4) the State improperly asked defendant to comment on the veracity of the State's witnesses; and (5) defendant's extended-term sentence for aggravated battery must be vacated. We affirm in part, reverse in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In September 2010, defendant was charged by grand jury with home invasion, aggravated battery, and criminal trespass to residence. Defendant's charges arose after an August 2010 incident occurred on North Second Street in Secor, where defendant's girlfriend, at the time, Alayna Stone, lived with her mother, Pamela Stone. According to the charges, defendant entered Pamela's residence without authority and caused injury to Thomas Gilliam.

¶ 5 In November and December 2010, a jury trial was held. Alayna testified first. Alayna, age 18 at the time of her testimony, testified she and defendant became engaged after

defendant was incarcerated. Alayna was a senior in high school. On August 20, 2010, at 5 p.m., Alayna, who was under house arrest, was at home.

¶ 6 According to Alayna, she and Gilliam dated "a couple years ago." On August 20, 2010, Gilliam arrived at Alayna's house around 11 p.m. Alayna denied inviting him over, stating her neighbor, Kenneth Lovings, invited Gilliam. When Gilliam arrived, Lovings and Alayna were at the house. Alayna's brother and a friend were in the house, but were upstairs. Lovings and Gilliam were drinking alcohol; Alayna was not.

¶ 7 Alayna testified she and defendant argued earlier that day. During the evening, she was often on the telephone speaking to defendant. After she "got frustrated with what was going on," around 12:30 a.m., Alayna decided to go to sleep. She said good-night to Lovings and Gilliam and went upstairs to sleep. Gilliam followed Alayna to her room. Alayna told him he could not be upstairs with her. She grabbed her pillow and blanket and went downstairs and laid on a couch. Gilliam followed her. He laid down on the other couch. The two turned off the lights and went to sleep.

¶ 8 Around 2:45 a.m., her mother Pamela arrived home drunk. Pamela had difficulty opening the door and woke Alayna "with her screaming and being a drunken lunatic." Alayna opened the door for her mother. Pamela "passed out" on a bed that was also downstairs.

¶ 9 Alayna testified defendant arrived around 3 a.m. She invited him over. After defendant entered the house, he turned on the lights and began screaming at Alayna, asking her who was on the couch. Defendant "was highly intoxicated." Before Alayna "became aware of what was going on," defendant hit a sleeping Gilliam about five times with his fist. Defendant was cursing and screaming. Gilliam was moaning. Alayna then saw her mother grab a golf club

to stop defendant. In the commotion, Alayna exited the house. Defendant ran out the door. Alayna did not see Pamela strike Gilliam with the golf club.

¶ 10 According to Alayna, after defendant left, she entered the house. Alayna called defendant and told him he hurt Gilliam "really bad." Defendant responded he did not know what had happened. Alayna then went to help Gilliam. She wiped the blood from Gilliam's face. Gilliam was bleeding from his nose, ears, and lips. His eye was swollen. At no time did Gilliam try to defend himself. He sat up and asked Alayna what happened.

¶ 11 Alayna testified she believed someone had already called the police, but she called the police after she spoke to defendant. Alayna spoke to Deputy Michael Lay. Alayna testified, at this point, she "was still freaking out." She was crying, and Gilliam was "still gushing out blood." Her mother continued to run around the house screaming. Alayna refused to give Deputy Lay defendant's contact number. When Deputy Lay asked Alayna if defendant had permission to enter the house, she told him defendant did not. Alayna acknowledged her testimony was different, stating she invited him that night. Alayna told Deputy Lay defendant did not have permission because her probation conditions mandated she not have contact with defendant and she feared getting into trouble.

¶ 12 Alayna and defendant argued during the day of August 20, 2010, and defendant said he was going out. Defendant was 23 years old. When Alayna and defendant later talked over the phone, she did not tell him Gilliam was at her house because Gilliam was her ex-boyfriend and defendant would be upset. Around 10 p.m., Alayna asked defendant to come to the house and see her. Defendant was unsure he could get a ride.

¶ 13 Alayna stated she did not ask Gilliam to leave because he had been drinking.

Gilliam and Lovings were sharing a case of beer. She did not know how much Gilliam consumed, because she was on the telephone with defendant most of the night.

¶ 14 According to Alayna, she and Pamela had discussed defendant's presence in their home. Defendant had personal belongings there. Alayna testified it was okay with Pamela that defendant would be in the house.

¶ 15 On cross-examination, Alayna testified she wrote in a statement for the State's Attorney's office, she invited defendant over that evening. Alayna said she told him to just walk in and come to bed. Alayna knew defendant was with his friend Mike Lopez. According to Alayna, Pamela had permitted defendant to be in her residence since defendant and Alayna began dating almost two years before. Defendant's dog stays at the residence. The dog had been there since Alayna was placed on house arrest in August 2009.

¶ 16 According to Alayna, in the previous year, defendant had been to her house that late more than 20 times. On August 21, 2010, the door was unlocked.

¶ 17 Pamela testified, on the evening of August 20, 2010, she played cards and went to a bar. Pamela stayed at the bar until it closed at 2 a.m. Pamela characterized herself as "pretty intoxicated." Pamela did not recall arguing with Alayna. Pamela went to bed. Around 3:30 a.m., Pamela heard "a lot of noise outside" her bedroom. When she got up to check on the noise, she saw defendant. The lights were out, as far as she could remember. Pamela did not recall who turned on the lights. Defendant was standing in the doorway. He and Alayna were yelling at each other. Pamela did not realize Gilliam was there, until "[p]robably 15, 20 minutes after [she] got up," when "everything was all over." Pamela saw Gilliam sitting up and bleeding on the couch. Pamela became hysterical. Pamela did not see defendant and Gilliam in an alterca-

tion.

¶ 18 The State asked Pamela several questions about whether defendant had permission to be in her home that evening. Pamela answered the questions as follows:

"Q. Now, prior to this night[,] did you have an opportunity to discuss with Alayna whether or not the defendant had permission to be inside the house?

A. Yes.

Q. What did you tell her with regards to that?

A. I had given him permission to be there.

Q. You had?

A. Just to keep peace with her and—yeah.

Q. So it's your testimony here today that you had given him permission to be there?

A. Prior to that.

Q. What about that night?

A. No.

* * *

Q. Did you have a discussion with regards to the court order and Alayna and the defendant with her?

A. Yeah. We discuss that a lot, uh-huh.

Q. That was prior to August 21st; is that correct?

A. Yes.

Q. What did you tell her with regards to that court order?

A. That it wasn't okay with me for him to be around. But if I wasn't home, people were over all the time. She didn't—she didn't follow any of those rules on her probation order. So then I made her probation officer aware of that, and the times I have called the police they didn't do anything about it, so I just pretty much gave up.

Q. What is—was the nature of your discussion with her with regards to that order?

A. The nature of it?

Q. Did you talk to her that she couldn't have defendant over pursuant to court orders?

A. Yeah. I tried to make her aware of what, you know, can happen.

Q. But despite knowing that you still told her that she could have him over?

A. Yes.

Q. You remember you and I discussing that issue yesterday at the State's Attorney's office?

A. Yes.

Q. What did you say yesterday?

* * *

A. I probably told you no, because I guess I don't want her getting in any more trouble and I don't want to get in trouble so—

Q. So when you told me no, probably, were you telling the truth or were you being honest?

* * *

Q. Were you telling the truth or was that a lie when you told me no?

A. I told you I couldn't remember, I believe, and you told me to go home and think about it.

Q. On the night of August 21, 2010, did Alayna have permission to have [defendant] over at the house?

A. No, she did not."

¶ 19 On cross-examination, Pamela stated she did not know how many times defendant was at her house because if she was not at home, she was not aware. Pamela did not think defendant had clothing at her house, stating she did not know what was in Alayna's room. Pamela was aware that defendant's dog was at her residence, but she testified she would not "call it his dog."

¶ 20 Pamela testified she remembered talking to a police officer three days after the incident. She told the officer if she had swung the golf club and struck Gilliam it was an accident. Pamela testified it was possible she could have accidentally missed defendant and struck Gilliam.

¶ 21 According to Pamela, she remembered giving defendant a ride home three weeks

before the incident. When asked if she drove him home because he had spent the night before, Pamela answered, "I suppose."

¶ 22 Aaron Stone, Pamela's son and Alayna's brother, testified, on the evening of August 20, 2010, he was upstairs in his room hanging out with a friend. Gilliam was a friend of the family. Aaron did not invite Gilliam over that night. Aaron remembered Gilliam arrived "pretty late." It was after 10 p.m. or so. Aaron believed Alayna invited Gilliam over, because he did not know who else would have invited him. Aaron testified Lovings might have been there, but Aaron stated he was upstairs most of the night.

¶ 23 Aaron testified, between maybe 1 and 2 a.m., he awoke to noise downstairs. Aaron ran downstairs and noticed defendant in the living room. Pamela "was in his face." Aaron observed his mother "was pretty drunk and pretty pissed off about something." Aaron glanced at Gilliam and saw him curled up in a ball, but then, after Gilliam moved, Aaron saw the blood. Aaron told defendant he needed to leave. Defendant left.

¶ 24 According to Aaron, Alayna returned. Aaron believed she was outside or in the back room. Pamela stayed in the kitchen. Alayna asked where defendant was. Aaron told her defendant left. Alayna ran outside. Aaron could hear Alayna and defendant outside. Alayna was screaming at defendant. Defendant stomped off. Aaron went to Gilliam to see if he was okay. Pamela "[came] storming back in, and she ha[d] this golf club." Aaron did not see Pamela with a golf club until then. He believed he would have seen it sooner, had Pamela been holding it when he came down the stairs.

¶ 25 On cross-examination, Aaron testified defendant had been to his house over 20 times in the previous year.

¶ 26 Gilliam testified, during the evening of August 20, 2010, he was at Alayna's house. He was 20 years old. Alayna invited Gilliam to her house and drink with her. Alayna told Gilliam if he did so, she would give him oral sex. She "just texted [him] randomly, asked [him] to come hang out because she was bored and lonely." Alayna said she and defendant were not dating. Gilliam did not take alcohol with him. It was there when he arrived around 9 or 10 p.m. Lovings arrived after Gilliam did. Lovings did not invite Gilliam over. Alayna, Lovings, and Gilliam all drank together and watched television. At some point, Alayna said she was going to go to bed. She went upstairs. Gilliam went to talk with her. They talked about the reason Gilliam visited her home. He propositioned Alayna for sex. She refused. The two decided to sleep on the couches. They went downstairs and laid on separate couches. They watched a movie and went to sleep.

¶ 27 Gilliam stated he awoke "to a bunch of medics standing over [him]." Gilliam's head "felt extra heavy" and his face hurt. On a scale of 1 to 10, Gilliam called his pain about an 8 or 9. He was bleeding from inside his ear and his lip. He experienced swelling; his eye was swollen shut. Gilliam had no memory of how the injuries occurred. He went to a Bloomington hospital, but was sent to a Peoria hospital, where he stayed for two days. Gilliam was in pain for two weeks and missed a week of work.

¶ 28 According to Gilliam, during the evening, Alayna texted defendant and, he thought, called him once. The two were arguing. At no point in the evening did Alayna tell Gilliam defendant was coming over. Gilliam testified he probably would not have stayed had he known defendant was coming.

¶ 29 Michael Lay, a deputy for the Woodford County sheriff's department, was

dispatched around 3 a.m. on August 21, 2010, to North Second Street in Secor for a home invasion. Deputy Lay was met at the door by Alayna. He spoke to Alayna, who told him an individual entered the house, battered the victim, and fled. At first, Alayna was uncooperative. Pamela told Alayna if she did not tell Deputy Lay who inflicted the injuries, then Pamela would. Alayna told Deputy Lay defendant beat Gilliam with his hands and fist.

¶ 30 According to Deputy Lay, he asked Alayna "if she had let him in the house." Alayna told him she did not.

¶ 31 On cross-examination, Deputy Lay testified Pamela was "very intoxicated at the scene." He had to separate Pamela and Alayna because he feared a domestic issue. He did not see Pamela with a golf club.

¶ 32 Defendant also called two witnesses and testified on his own behalf. Lea Cranford, defendant's mother, testified she had, in the past year, either dropped defendant off at Alayna's residence or picked him up from there probably 15 times. At times, these were overnight visits. Lea testified defendant had some clothing and other personal items at Alayna's house.

¶ 33 Defendant testified he and Alayna had been in a relationship since March 2009. They were engaged to be married. In the past year, he had been to Alayna's house 30 to 40 times. When he arrived at Alayna's house, he would walk in. The door was always unlocked. Defendant testified he had walked in as late as 4:30 a.m. once.

¶ 34 According to defendant, on August 20, 2010, he was supposed to work a double shift at a fast-food restaurant in Metamora. He left work early, however, because he burned his hand. He left work and defendant walked to a bar. He called his best friend, Mike Lopez, and

asked him to join him. Defendant wanted to talk to Lopez, because defendant had been having some problems with Alayna. He had been texting Alayna throughout the day and wanted some advice from Lopez. Lopez arrived around 10 p.m. They had a few drinks. After Lopez arrived, defendant and Alayna continued exchanging texts. At some point, defendant called Alayna. Alayna invited him to her house to spend the night. Defendant responded he did not know if he would be able to get a ride.

¶ 35 Defendant testified he and Lopez left the Metamora bar and went to a bar in Roanoke. After they left the Metamora bar, defendant texted Alayna to tell her they were going to another bar. He did not receive a message back. The Roanoke bar closed at 2 a.m. Defendant and Lopez left just before it closed and went to someone's house. Lopez then drove defendant to Alayna's house. They arrived between 3:15 and 3:45 a.m. Defendant, as he usually did, walked in. He was "pretty inebriated." Defendant turned on the light and saw Alayna on one couch and a male on the other. Before he arrived he did not know Gilliam was there. Defendant knew Gilliam was Alayna's ex-boyfriend. He did not recognize Gilliam on the couch. Defendant looked at Alayna and asked her who the male was. She replied defendant knew who he was. Defendant struck Gilliam with an open hand on top of his head and yelled for him to wake up. Gilliam did not move or say anything. Defendant smacked him again on the other side. Defendant then hit him a third time, punching him. Gilliam did not get up. After defendant first struck Gilliam, Alayna tried to intervene by pulling his arm.

¶ 36 Defendant stated he yelled at Alayna, asking her why Gilliam was there and why she was sleeping downstairs. While defendant and Alayna were arguing, defendant saw Pamela. She began yelling at them. Defendant and Alayna did not acknowledge her and continued

arguing. Alayna told defendant he needed to leave. Alayna walked toward the dining room. Then, defendant saw Pamela again. She was holding a golf club. Pamela entered the living room. She yelled at defendant and began swinging the club at him. Defendant dodged a swing, and Pamela struck Gilliam. Aaron came downstairs and told defendant he was calling the police and defendant should leave.

¶ 37 When he learned the police were looking for him, defendant turned himself in. Defendant had two or three outfits at Alayna's house, as well as some medical papers. Defendant also kept phone chargers there, and his dog stayed there.

¶ 38 Defendant admitted he had a previous forgery conviction.

¶ 39 On cross-examination, defendant denied intending to commit a criminal act on entering the house. He testified on a scale of 1 to 10, his level of intoxication was about a 7. Defendant testified he struck Gilliam only on the right side of his face.

¶ 40 The State asked questions about whether defendant believed Alayna, Aaron, and Pamela lied about the incident:

"Q. So when [Aaron] said that he was calling the police and when he said that he didn't see that golf club in Pam[ela]'s hand until after you left he would have been lying, right?

A. I can't tell you what—you know, I don't know what he was thinking, you know. He said what he said, is his testimony. I can't say anything different.

Q. I'm not asking you what he was thinking. What he said were lies; is that correct?

A. Yeah.

Q. And when Pam[ela] told Officer Lay that you didn't have permission to enter that house, would that have been a lie, too?

A. Yes.

Q. And when Alayna told this jury that you punched Mr. Gilliam in the face one, two, three, four, maybe even five times, that, too, would have been a lie, correct?

A. Yes, sir.

Q. So everybody is lying except for you; is that what you want this jury to believe?

A. I just know my testimony.

Q. That's not my question. Everybody else is lying but you?

A. Yes."

¶ 41 The jury found defendant guilty of all three offenses. In January 2011, a sentencing hearing was held. During this hearing, the trial court observed it was "convinced that by the evidence presented that the entry was for the purposes of committing harm to the person present and that as a result the consent that [defendant] had previously received was vitiated by or eliminated by his acts that he contemplated committing." Defendant was sentenced to 13 years' imprisonment on the home-invasion conviction and 8 years' imprisonment on the aggravated-battery conviction. The trial court ordered the two sentences run concurrently. The court held

the criminal-trespass sentence merged into the home-invasion conviction.

¶ 42 In December 2010, defendant moved for a new trial. He argued he was denied the effective assistance of counsel because his counsel failed to call a number of witnesses.

According to the motion, these witnesses included Gilliam's mother, who would testify regarding the doctor's thoughts Gilliam's injury on the left side of his face appeared to be a golf-club impression; Lopez, who would have testified how often he took defendant to Alayna's house in the previous year; and medical personnel. New counsel was appointed to represent defendant on posttrial proceedings.

¶ 43 At the hearing on defendant's posttrial motion, defendant's trial counsel, Dan Harrod, testified. Harrod testified he could not remember whether he disclosed Lopez as a witness. According to Harrod, Lopez could have testified regarding any conversations he had with defendant on the way to Alayna's residence to establish defendant's state of mind as he entered the house. When asked if Lopez discussed with him that he read the text messages from Alayna to defendant inviting him over that night, Harrod testified, "Mike was aware of text messages, yes." Harrod did not call Lopez as a matter of trial strategy. Harrod believed he had put on enough evidence to show whether defendant entered with authority. Lopez was working at the time of trial, but was available to testify.

¶ 44 Harrod further testified the medical doctor who treated Gilliam was not called to testify. Harrod was unsure what the doctor would have said. He stated trial testimony showed the impression left on Gilliam's cheek looked like a golf club, so he did not think he needed actual medical testimony on the matter. Harrod read reports made by the doctor. According to Harrod, "[t]here was a discussion in the reports that said [the injury] had the impression of a golf

club." Harrod was uncertain why he did not call Debra Ellis, Gilliam's mother, to testify.

¶ 45 Defendant also testified at the hearing. Defendant asked Harrod to call Lopez to testify because Lopez was "the only other person that could testify to back up my *** explanation of what happened."

¶ 46 The trial court denied defendant's motion for a new trial. This appeal followed.

¶ 47 II. ANALYSIS

¶ 48 A. Reasonable Doubt

¶ 49 Defendant first argues the State failed to prove him guilty of home invasion beyond a reasonable doubt. Defendant maintains the State failed to offer sufficient proof on one element of the offense: defendant entered the residence without authority. Defendant emphasizes the testimony Alayna invited him to her house that night, defendant had often and repeatedly been to Alayna's house at similar times in the preceding year, defendant kept clothing and other items at Alayna's house, and defendant did not know Gilliam was at the house until after he entered.

¶ 50 The State responds a lack of authority to enter can be established by proving defendant did not have permission to enter the house *or* defendant had criminal intent when he entered the house. The State contends the evidence supports a conclusion both were proven. The State emphasizes Alayna's statement to Deputy Lay and Pamela's testimony. The State further contends the jury could infer defendant knew Gilliam was in the house based on the testimony showing Alayna and defendant were fighting and Alayna invited Gilliam to her house, with the inference that Alayna intended to make defendant jealous.

¶ 51 When a criminal defendant challenges the sufficiency of the evidence of his

criminal conviction, the task of this court is to consider the evidence "in the light most favorable to the prosecution" and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 558-59 (2005). In completing this task, this court carefully examines the record, "while giving due consideration to the fact that the court and jury saw and heard the witnesses." *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). Only when we find the evidence is so unreasonable, improbable, or unsatisfactory it justifies a finding of reasonable doubt will we reverse a conviction. *Smith*, 185 Ill. 2d at 542, 708 N.E.2d at 370.

¶ 52 Section 12-11(a)(2) of the Criminal Code of 1961 (720 ILCS 5/12-11(a)(2) (West 2010)) (test of section eff. until July 1, 2011) sets forth the home-invasion offense of which defendant was convicted:

"(a) A person who is not a peace officer acting in the line of duty commits home invasion when without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present *** and *** (2) Intentionally causes any injury *** to any person or persons within such dwelling place[.]"

Under the limited-authority doctrine, if an invitee enters another's residence with the intent to commit an offense therein, the entry was " 'without authority,' " under the terms of the home-invasion statute. *People v. Bush*, 157 Ill. 2d 248, 254, 623 N.E.2d 1361, 1364 (1993). In *Bush*, the supreme court reasoned an occupant and an invitee have an implicit understanding any criminal activity is beyond the scope of the invitation. *Bush*, 157 Ill. 2d at 254, 623 N.E.2d at

1364. "If, however, the invitee enters the residence with an innocent intent and only later develops a criminal intent once he or she is inside, this does not change the fact that the entry itself was with an innocent intent and, therefore, was with the occupant's authorization." *People v. Murray*, 364 Ill. App. 3d 999, 1004, 848 N.E.2d 160, 164 (2006).

¶ 53 We agree with defendant. We find the evidence is unsatisfactory and raises reasonable doubt. See *Smith*, 185 Ill. 2d at 542, 708 N.E.2d at 370. The State could prove this element by proving defendant lacked permission to enter the home or by proving defendant entered Alayna's residence with intent to commit a crime therein.

¶ 54 The evidence regarding whether defendant lacked permission to enter Alayna's home is so unsatisfactory it justifies a finding of reasonable doubt. Alayna testified she invited defendant over. Defendant testified Alayna invited him over. Alayna and defendant testified not only did defendant have permission to enter the home on August 21, 2010, but routinely had permission to enter the home. Defendant testified when he went to the house, he would let himself in through an unlocked door. There is also testimony defendant kept possessions at Alayna's house. Aaron, a resident of the home, testified defendant had been there approximately 20 times in the previous year. Pamela admitted she gave defendant a ride home after one of his overnight visits.

¶ 55 The State relies upon Alayna's and Pamela's statements to the police and to the State's Attorney. Alayna's statement came immediately after the incident. The fact Alayna was on house arrest and one of her terms of probation was that she not have contact with defendant undermines the veracity of those statements. Alayna had reason to lie to the police. Pamela's statements regarding whether defendant had permission to be in the house that night or any other

were too unreliable to establish defendant lacked authority to enter the house. In her own testimony, Pamela stated she agreed to allow defendant in her home as a sort of peace offering with her teenage daughter. Despite also stating defendant was not allowed in her home, Pamela admitted to turning a blind eye to Alayna's conduct in regards to defendant. She testified she did not know what occurred when she was not at home, and even admitted to implicitly permitting Alayna's invitations to defendant by giving him a ride home. Pamela's testimony was too equivocal to carry any weight.

¶ 56 Regarding the limited-authority doctrine, the State's evidence is so improbable and unsatisfactory it justifies reasonable doubt defendant had the intent to beat Gilliam when he entered Alayna's house. The facts establish Alayna and defendant had been arguing on August 20, 2010, and had engaged in talking on the telephone and repeated texts in the course of the evening. In the light most favorable to the prosecution, the evidence shows Alayna invited Gilliam over with an offer of oral sex. After Gilliam arrived, Alayna, Gilliam, and Lovings drank and watched television. At some point, Alayna went upstairs. Gilliam followed. Gilliam propositioned her. After Alayna denied his advances, the two returned downstairs upon deciding to sleep on the two couches. Alayna went to sleep around 12:30 a.m. There is no testimony or phone-record evidence to contradict the time Alayna went to sleep or to contradict the conclusion Alayna stopped texting or communicating with defendant by that time. Gilliam's testimony is not inconsistent with Alayna's, nor is defendant's. Defendant testified he had not heard from Alayna after he texted her as he was leaving the Metamora bar.

¶ 57 The record shows defendant had no further contact with Alayna until he entered the residence. There is some dispute as to the timing of defendant's entry into the house. Aaron

testified he awoke sometime "maybe" between 1 and 2 a.m. to find defendant, Pamela, Alayna, and Gilliam in the living room. Such testimony carries little weight given not only Aaron's uncertainty, but also Pamela's testimony she did not even leave the bar until after it closed at 2 a.m. Alayna testified defendant arrived around 3 a.m. Pamela placed the time at 3:30 a.m. Defendant estimated he arrived between 3:15 and 3:45 a.m. In the light most favorable to the State, defendant arrived at Alayna's residence at 3 a.m. Both Alayna and defendant testified he did not know Gilliam was at the residence until after he had entered the residence.

¶ 58 There is no direct evidence showing defendant knew Gilliam was in the home. There are no phone records showing the content of the text messages. No one testified to having overheard defendant state he knew Gilliam was there.

¶ 59 The State argues on appeal Alayna's conduct showed defendant knew Gilliam was at the residence. The State contends this evidence suggests Alayna invited Gilliam over to make defendant jealous. The State impliedly asks this court to infer from that inference Alayna must have told defendant Gilliam was there.

¶ 60 The evidence shows this inference from an inference is improbable and unsatisfactory. The scenario the State presented was defendant, who was so jealous he beat a defenseless and sleeping Gilliam a short time after entering the house, knew Gilliam was at the residence by 12:30 a.m. Despite knowing this, he went to another bar and then another individual's house and waited until 3 a.m. to confront Alayna and Gilliam. We recognize defendant had to be driven to Alayna's. There is, however, no testimony defendant could not have gotten a ride sooner, particularly given defendant's driver that evening was his best friend. Given the time delay and defendant's apparent jealous behavior, a more probable and satisfactory inference from

the inference Alayna wanted to make defendant jealous is she did not tell defendant Gilliam was there and she went downstairs with Gilliam so defendant would find them upon entering the house.

¶ 61 The State failed to prove the element defendant lacked authority to be in Alayna's residence beyond a reasonable doubt. Defendant's home-invasion conviction is reversed.

¶ 62 This same rationale applies to defendant's conviction for criminal trespass to a residence. Although defendant did not ask this court to reverse this conviction, the circumstances of this case necessitate we do so. At sentencing, the trial court found the criminal-trespass conviction merged into the home-invasion conviction and thus defendant was not sentenced on the criminal-trespass conviction. The reversal of the home-invasion conviction without a reversal of the criminal-trespass conviction would allow defendant to be sentenced on the latter. However, the criminal-trespass offense contains the same "without authority" element we found insufficiently proved in regards to the home-invasion offense. See 720 ILCS 5/19-4(a) (2) (West 2010). In the interests of judicial economy, the criminal-trespass conviction is likewise overturned.

¶ 63 B. Ineffective Assistance of Counsel

¶ 64 Defendant next argues counsel was ineffective for failing to call Lopez and Gilliam's treating physician as witnesses during his trial and for not effectively cross-examining Alayna. Defendant argues Lopez should have been called to testify and Alayna should have been effectively cross-examined on matters related to whether defendant had permission to enter Alayna's residence. Defendant contends had counsel done either, an invitation would have been established and defendant would not have been convicted of home invasion. Defendant contends

Gilliam's physician should have been called to testify to show Gilliam's "great bodily harm" injuries, necessary to establish aggravated battery, were caused by having been struck by a golf club and not by defendant's actions.

¶ 65 To prove an ineffective-assistance-of-counsel claim, a defendant must establish (1) counsel's performance fell below an objective standard of reasonableness, and (2), as a result, defendant suffered prejudice. See *People v. Hodges*, 234 Ill. 2d 1, 17, 912 N.E.2d 1204, 1212 (2009). To establish the second part of this test, defendant must show a reasonable probability exists the proceeding's outcome would have been different absent counsel's deficient performance. *People v. Moore*, 189 Ill. 2d 521, 535, 727 N.E.2d 348, 355-56 (2000) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). Both parts of the test must be proven for a defendant to succeed on an ineffective-assistance-of-counsel claim. This court may resolve the claim upon finding the defendant cannot prove just one part of the test, without considering the other. See *People v. Little*, 335 Ill. App. 3d 1046, 1052, 782 N.E.2d 957, 963 (2003).

¶ 66 We begin with defendant's arguments related to his home-invasion claim and find those arguments moot. A case is rendered moot when the resolution of a question of law will not affect the result of a case. *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471, 777 N.E.2d 924, 927-28 (2002). Our decision reversing the home-invasion conviction renders defendant's arguments regarding calling Lopez to testify and cross-examining Alayna moot. Even if we were to determine defense counsel provided ineffective assistance on these grounds, that decision would not alter the result as the conviction has already been overturned. We need not decide it. See *People v. Campa*, 217 Ill. 2d 243, 269, 840 N.E.2d

1157, 1173 (2005) (concluding courts of appeal generally will not decide moot questions).

¶ 67 Defendant contends counsel provided ineffective assistance by not calling Gilliam's treating physician to testify or by failing to investigate further. We find defendant has not established the second part of the test, *i.e.*, he was prejudiced by counsel's failure. At the hearing, defense counsel Harrod testified regarding seeing "a discussion in the [medical] reports that said [the injury] had the impression of a golf club." No evidence was presented to show what the doctor would have said at trial had he been called to testify. Neither the aforementioned medical reports nor an affidavit from the doctor were presented at the hearing on the posttrial motion. The doctor was not called to testify regarding what his testimony would have been. Defendant's trial counsel, at the hearing on the posttrial motion, stated he did not know how the doctor would testify. Absent such evidence, defendant did not prove a reasonable probability exists the outcome of his trial would have been different had counsel called the doctor to testify. Defendant's ineffective-assistance-of-counsel claim fails.

¶ 68 C. The Prosecutor's Conduct

¶ 69 1. *Closing Argument*

¶ 70 Defendant argues the prosecutor committed error by repeatedly misstating the evidence during closing argument. Defendant contends, despite the lack of any evidence showing defendant knew Gilliam was at the house before defendant entered, the prosecutor repeatedly told the jury defendant entered the house with the purpose of confronting Gilliam. Defendant maintains such argument prejudiced him and he should be granted a new trial.

¶ 71 We find the issue moot. The alleged misstatement of evidence relates to the "without authority" element of the home-invasion offense and defendant's home-invasion

conviction. We have determined defendant's conviction for home invasion was improper.

¶ 72

2. Defendant's Cross-Examination

¶ 73

Defendant next argues the prosecutor committed error at trial by repeatedly questioning defendant regarding the veracity of the other witness's testimony. Defendant acknowledges counsel did not object at trial to the questioning, but maintains the issue is reviewable under the plain-error doctrine. In support, defendant relies on *People v. Barnes*, 182 Ill. App. 3d 75, 86, 537 N.E.2d 949, 955 (1989), in which the First District observed prosecutors are prohibited from asking defendants their opinions on the veracity of other witnesses who testify against them because the questions, in part, demean them by forcing defendants to call the State's witnesses liars.

¶ 74

The State acknowledges a defendant may not, in general, be asked to comment on the veracity of opposing witnesses. The State contends when a defendant opens the door by giving answers opposite to the answers provided by other witnesses, such questioning is proper. In support, the State relies upon *People v. Kokoraleis*, 132 Ill. 2d 235, 547 N.E.2d 202 (1989), and *People v. Turner*, 128 Ill. 2d 540, 539 N.E.2d 1196 (1989).

¶ 75

Defendant concedes the issue is forfeited because he did not object at trial. See *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) (to preserve an issue for appellate review, a defendant must object at trial and raise the issue in a written posttrial motion). Defendant argues we may consider the issue under the plain-error doctrine. Under this doctrine, this court may review an otherwise forfeited argument when the evidence is closely balanced or the error is of such magnitude the accused is denied a fair and impartial trial. *Turner*, 128 Ill. 2d at 555, 539 N.E.2d at 1202. Our first step in plain-error review is to determine whether an error

occurred. *People v. Owens*, 372 Ill. App. 3d 616, 620, 874 N.E.2d 116, 118 (2007).

¶ 76 The propriety of cross-examination is largely left to the trial court's discretion. *Turner*, 128 Ill. 2d at 557, 539 N.E.2d at 1203. A court's decision whether to permit questions on cross-examination will not be reversed absent a clear abuse of discretion. *Turner*, 128 Ill. 2d at 557, 539 N.E.2d at 1203. It is well-established a prosecutor should not ask a defendant his opinion on the veracity of another witness who testified against him. See *Barnes*, 182 Ill. App. 3d at 86, 537 N.E.2d at 955. Such questions invade the jury's province to determine the credibility of witnesses and force a defendant to call the State's witnesses liars, causing the defendant to be demeaned before the jury. *Barnes*, 182 Ill. App. 3d at 86, 537 N.E.2d at 955. Cross-examination designed to annoy, harass, or humiliate a witness must not be tolerated. *People v. Lyles*, 106 Ill. 2d 373, 402, 478 N.E.2d 291, 303 (1985).

¶ 77 We find the prosecutor's questions were designed to degrade and humiliate the defendant. This was not a case in which the prosecutor attempted to give defendant an opportunity to explain differences in the evidence. See *Turner*, 128 Ill. 2d at 556-57, 558, 539 N.E.2d at 1202-03. This was a case where the prosecutor forced the defendant to speculate as to the intent of the witnesses and call them liars. Particularly troublesome is the prosecutor asked the defendant to call the witnesses "liars" on testimony that did not directly contradict his own. For example, the prosecutor asked defendant if Aaron was lying when he did not see a golf club in Pamela's hand until after defendant left. Aaron's testimony, however, does not directly contradict defendant's (and Alayna's) testimony Pamela swung the golf club in the living room *after* defendant struck Gilliam. The only reason to ask defendant to call a witness a liar in such scenario is to demean him in front of the jury. The entire line of questioning was improper.

¶ 78 The State's cases are distinguishable. Neither case establishes a defendant "opens the door" to such questioning by merely presenting a version of events that differs in some way with testimony by the other witnesses. Instead, one of the State's cases shows such questioning may be allowed "following testimony by a defendant on direct examination that he was coerced into repeating inculpatory statements furnished to him by *the authorities*." (Emphasis added.) *Kokoraleis*, 132 Ill. 2d at 265, 547 N.E.2d at 216. For example, in *Kokoraleis*, the State introduced multiple inculpable statements made by defendant to authorities regarding three murders in which he participated. *Kokoraleis*, 132 Ill. 2d at 248, 547 N.E.2d at 208. Defendant's theory at trial was that he was " 'framed,' " explaining the police provided him with facts regarding the crimes and asked him to repeat the information in his statements. *Kokoraleis*, 132 Ill. 2d at 251-52, 547 N.E.2d at 210. In *Turner*, the court found no plain error after finding the prosecutor's questions, in giving the defendant an opportunity to explain the overwhelming evidence against him, did not humiliate or embarrass the defendant. *Turner*, 128 Ill. 2d at 556-57, 558, 539 N.E.2d at 1202-03.

¶ 79 We find error, but the error does not arise to plain error. The evidence against defendant is not closely balanced. To establish aggravated battery, the State had to prove Gilliam suffered "great bodily injury." See 720 ILCS 5/12-4(a) (West 2010). Gilliam suffered injuries to his ear, including a burst ear drum, to his eye and to his lip. These injuries resulted in two days' hospitalization and a week of missed work. The testimony indisputably shows a defenseless Gilliam was struck in the face and head by defendant. Alayna testified defendant punched Gilliam with force up to five times. Defendant admitted he punched Gilliam. While there is some testimony Pamela may have struck Gilliam with a golf club, such testimony does not make

the evidence "closely balanced." Alayna did not see Pamela strike Gilliam with the golf club. Aaron saw Pamela just after the commotion, but he did not see a golf club in Pamela's hand, although he believed he would have seen one if it were there. Pamela did not testify she struck anyone with a golf club. Only defendant testified Pamela struck Gilliam with the golf club, but he did not testify or produce evidence that Gilliam's injuries were caused by a golf-club strike, as opposed to his own punches. The record shows defendant caused great bodily injury to Gilliam and committed aggravated battery.

¶ 80 The error is also not of such magnitude the accused is denied a fair and impartial trial. In light of the overwhelming evidence against defendant, the improper questioning did not deny defendant a fair and impartial trial. This decision stands even if we assume the prosecutor's statements during closing argument regarding home invasion were also improper and consider the effect of the two cumulatively.

¶ 81 D. Extended-Term Sentence

¶ 82 Defendant last argues his extended-term sentence for aggravated battery must be overturned and his case should be remanded for resentencing. Defendant, citing 730 ILCS 5/5-8-2(a) (West 2010), maintains Illinois law requires an extended-term sentence may only be imposed for offenses within the most serious class of offenses for which the accused is convicted. Defendant argues, because the home-invasion offense is the most serious class of offenses for which he was convicted, he could not be sentenced to an extended term for aggravated battery. The State concedes the sentencing error, but maintains remand is unnecessary as this court may reduce defendant's sentence to the maximum non-extended term.

¶ 83 This error was cured by the reversal of defendant's home-invasion conviction.

Section 5-8-2(a) no longer bars defendant's extended-term sentence for aggravated battery. It is affirmed.

¶ 84

III. CONCLUSION

¶ 85 We reverse defendant's home-invasion and criminal-trespass convictions and affirm defendant's conviction and sentence for aggravated battery. We remand for issuance of an amended sentencing judgment consistent with this order. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 86

Affirmed in part and reversed in part; cause remanded with directions.