

No. 1-12-3388

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 19971
)	
ADEKUNLE ADEFEYINTI,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

Held: We hold the evidence was sufficient to sustain defendant's convictions for leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a) (West 2010)), failing to report such an accident (625 ILCS 5/11-401(b) (West 2010)), and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)). Defendant's ineffective assistance of counsel claim fails because he has not overcome the presumption that his counsel's actions were a matter of trial strategy and he has not proven prejudice.

¶ 1 The circuit court convicted defendant, Adekunle Adefeyinti, after a bench trial, of leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a)(West

2010)), failing to report an accident (625 ILCS 5/11-401(b)(West 2010)), two counts of aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)), aggravated battery by use of a deadly weapon other than a firearm (720 ILCS 5/12-4(b)(1)(West 2010)), and aggravated battery on or about a public way (720 ILCS 5/12-4(b)(8)(West 2010)) based on his actions while driving his car with J.C. on June 12, 2011. The circuit court sentenced defendant to concurrent terms of 12 years imprisonment, with two years of mandatory supervisory release (MSR), for failure to report an accident (625 ILCS 5/11-401(b)(West 2010)), 10 years imprisonment, with one year of MSR, for one count of aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)), and 6 years imprisonment for leaving the scene of a motor vehicle accident involving personal injuries (720 ILCS 5/11-401(a)(West 2010)). The remaining aggravated battery convictions merged into his conviction for aggravated battery causing great bodily harm.

¶ 2 Defendant challenges whether the evidence was sufficient to sustain his convictions for leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a) (West 2010)); failing to report an accident (625 ILCS 5/11-401(b) (West 2010)); and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)). He also contends his trial counsel was ineffective in arguing his motion for a directed finding at the close of the State's case-in-chief. We hold, after viewing the evidence in the light most favorable to the State, that the evidence was sufficient to sustain defendant's convictions for leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a) (West 2010)), failing to report an accident (625 ILCS 5/11-401(b) (West 2010)), and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)). Defendant failed to meet his burden of proving

ineffective assistance of counsel because he has not overcome the presumption that counsel's actions were a matter of trial strategy and he has not proven prejudice.

¶ 3

JURISDICTION

¶ 4 The circuit court denied defendant's motion to reconsider his sentence on November 2, 2012. On that same day, defendant timely filed his notice of appeal. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5

BACKGROUND

¶ 6 The State charged defendant by indictment in connection with a June 12, 2011, incident involving J.C. for the following offenses: count I, attempted first degree murder (720 ILCS 5/8-4 (a)(West 2010)); count II, aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)); count III, failure to report an accident after leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(b) (West 2010)); count IV and V, aggravated battery causing great bodily harm (720 ILCS 5/11-401(a)(West 2010)); count VI, aggravated battery with a deadly weapon other than a firearm (720 ILCS 5/12-4(b)(1) (West 2010)); count VII, aggravated battery on or about a public way (720 ILCS 5/12-4(b)(8) (West 2010)); and count VIII, leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a) (West 2010)).

¶ 7 At trial, J.C. testified that on June 12, 2011, she was in the vicinity of 47th Street and Cicero in Chicago, Illinois working as a prostitute. Defendant drove up to her in a black limousine. They agreed to oral and vaginal sex in exchange for \$150. Defendant wanted J.C.

to go with him to his house and smoke marijuana, but he had to first switch his car and change out of his work attire at the limousine company. Initially, J.C. rode in the front seat of the limousine, but later moved to the back because defendant did not want anyone to see her. After driving on the expressway, defendant parked the limousine in a parking lot and climbed into the back seat. J.C. asked him for money. Defendant showed her his wallet, but did not give her any money. Defendant and J.C. then had oral and vaginal sex.

¶ 8 J.C. and defendant then left the limousine and went to defendant's car, a "Hummer." Defendant explained to J.C. that he needed to go to a bank to "swipe his card." J.C. testified defendant "had a card that he shares with his wife so that if I swiped it she won't know that he has it or something." Defendant told J.C. he would be able to give her more money if she swiped his card for him. Once inside defendant's car, defendant drove J.C. to several banks before finally stopping at one on the north side of Chicago. Defendant walked over to the ATM machine. At this point in time, J.C. found it suspicious that defendant had not given her any money and wanted her to swipe his card. J.C. did not want to swipe his card. While defendant was outside of the car, J.C. cut defendant's seat with a razor blade because she felt defendant was not "up front" with her, and she thought he would not notice it.

¶ 9 J.C. asked Defendant if she could smoke in his car. When he replied no, she exited the car and smoked a cigarette near the passenger side of defendant's car. She wrote down defendant's license plate number on a pack of matches with the razor blade because the situation felt "suspicious." She did not have a cell phone at that time. J.C. explained defendant's return to the car and subsequent actions:

"A. [The car] was still running. *** I was using the running board to get in the truck. And it's like he kind of, you know, tried

to beat me to the door. And he got in. And he got in and like looked at me like this and like hit the gas and pulled off, not with me. (Indicating.)

Q. How were you able to see him?

A. I was like on the passenger door like standing on the window of the door so he can look and see me. So he got in and, yeah, I was on the side of the car and he took off."

¶ 10 Defendant's car had tinted windows, but the windows were down. J.C. testified that the last thing she remembered before blacking out was that when defendant pulled the car away, "he tried to run [her] into *** a yellow minivan." When asked why she believed defendant purposefully tried to veer her into the minivan, J.C. answered that defendant "saw me standing right there, he looked right at me and hit the gas and tried to run me into the car." She added that defendant "hit the gas hard." J.C. testified she "was hanging off the door" of the car when defendant accelerated. The next thing J.C. remembered was waking up bloody. She sought help by knocking on the doors of random houses. A man called an ambulance for her, which scared J.C., and caused her to run away. Eventually, J.C. made her way to a Chicago Transit Authority (CTA) Brown Line train station. She asked a man to use a phone so that she could call home. The next thing she remembered was waking up in the hospital.

¶ 11 J.C. spoke to Detective Joan Burke at the hospital and later showed her some of the areas she could remember from the incident, eventually finding defendant's limousine. J.C. testified a condom was used during sex. J.C. later identified defendant from a photographic array and a physical lineup at the police station. J.C. testified about the severity of the injuries she

sustained, including the facial paralysis she still suffers from, as well as the damage to her clothing and a ring she had been wearing on the day of the incident.

¶ 12 On cross-examination, J.C. denied meeting defendant two or three weeks before the incident. She also denied that she called defendant on the day of the incident to meet her and go to a party. She could not recall if she told Detective Burke that defendant planned on withdrawing \$600 to split with her. She explained defendant wanted her "to swipe the card to get some money off the card" and that she would receive \$150 of it while defendant retained the rest of the money. Defendant told her he shares the card with his wife. Defendant's wife did not know defendant had the card, but defendant told her that if she swiped the card for him his wife would think the card was stolen. J.C. recalled defendant receiving telephone calls from a female while they were in the car. Defendant explained to the female how to fix a television.

¶ 13 J.C. clarified on cross-examination that when defendant drove away, her feet were on the running board of the car. She stated that "[b]y the time I got on the running board, [defendant] looked at me and he took off. And as the car was moving, he was looking at me and I was trying to jump off, but I couldn't move." She looked up and saw she was going to run into a mini-van before blacking out. She testified further that defendant tried to "entice" her to come to his house with marijuana. She thought defendant wanted her to swipe his card to get her out of the car, but she did not want to be left because she did not know where she was. She denied that he gave her \$20 to find a ride home. J.C. did not know how much money defendant had on him at the time of the incident. She testified she cut his seat because typically she receives money "up front," and she was worried defendant was not going to pay her. She testified the condom that was used was left in the parking lot of his work. She denied there was a party on the night of the incident at Roosevelt and Cicero. J.C. reiterated that "it was like [defendant]

was trying to run me into the car [,]" but agreed that she did not know if defendant's actions were intentional.

¶ 14 Anthony Harris, a security and courtesy officer for the CTA testified that on the day in question, he was working at the Brown Line stop at 4645 North Damen. At approximately 5 in the morning, he noticed a woman dressed in torn clothing without shoes with blood on her face and hands. The girl approached him to ask if she could use his phone. She was unable to dial the number because something was wrong with her arm. Harris called an ambulance after noticing blood coming from her mouth. He sat her down and noticed a gash in her head "four inches wide and maybe like six or seven inches long."

¶ 15 Detective Rich Szczepkowicz testified that he was assigned to investigate the situation and interview J.C. at the hospital. Although he did not know what happened at the time, Detective Szczepkowicz testified that "[t]he nurses and doctors speculated it was consistent with either being dragged by a car, run over by a car, [or] perhaps hit by a car." At some point in time, Detective Szczepkowicz received information that led him to the 1800 block of West Leland. Residents had noticed blood trails along their property and on some of their porches. In addition to blood, an evidence technician found a braid of hair and a broken ring.

¶ 16 Detective Joan Burke was assigned to investigate J.C.'s injuries at the hospital on the day of the incident. J.C. told Detective Burke her injuries were caused by a male in his early 30's and described a limousine housing station. A few days later, Detective Burke took J.C. to two limousine housing stations, one of which J.C. immediately identified as the spot where defendant took her. J.C. identified the limousine she had been in because it was parked in the same spot and she recognized some damage to its back end. J.C. told Detective Burke that the condom they used had been thrown out the window of the limousine, but they were unable to find it.

The housing station did not have a surveillance camera. Based on her conversation with J.C., Detective Burke began looking for "a male Jamaican in his 30's, a limousine driver, black suit, now driving *** a black colored Hummer." The owner of the limousine, A-1 Limousine, provided Detective Burke with a "run worksheet" from the day of the incident, which lead her to defendant. J.C. identified defendant from the photo array as the person who caused her injuries.

¶ 17 The police placed defendant in custody and he consented to a search of his vehicle. Detective Burke did not notice anything unusual in defendant's car, describing it as "immaculate, very clean, nothing of significance pertaining to the case." After informing defendant she was investigating J.C.'s injuries, defendant told Detective Burke that he met a girl "around 79th and Stony Island," while he was driving a black limousine and they decided to go to the north side of Chicago. After changing vehicles to his car, defendant became tired and did not want to drive the girl back to the south side of Chicago. Defendant told Detective Burke that he told J.C. he would give her money to take the train south, but that he was not going to drive her. Defendant pulled the car over to a cash machine and got out of the car. J.C. also got out of the car to have a cigarette. Detective Burke testified defendant told her that when he returned to his car, "he felt that he was just done with her and he got in, he saw her at his back passenger door and he locked the car doors." Defendant then "hit the gas and pulled away." Defendant told Detective Burke that "all he heard was boom." Detective Burke testified "I asked if he looked back and he said no, he was done dealing with it and just kept going." On cross-examination, Detective Burke testified that she did not notice that the seat of defendant's car had been cut.

¶ 18 Dr. Kamana Mbekeani, a trauma, surgery, and critical care expert, testified regarding the injuries J.C. sustained and the medical response to those injuries. Dr. Mbekeani testified J.C.'s head and scalp wounds were life-threatening, and that it is common for people with head injuries

to black out. Dr. Mbekeani testified in cases, such as J.C.'s, where her scalp was pulled off, the most common cause is "the person being dragged at a different speed than the hair itself." Dr. Mbekeani testified that J.C.'s scalp appeared to have been "pulled on an object and the object moved forward and she was dragged with it." When shown pictures of J.C.'s knees and toes, Dr. Mbekeani testified the injuries were consistent with being dragged on the ground. When asked on cross-examination whether J.C. made any indication that sexual activity took place on the night of the incident, Dr. Mbekeani responded that J.C. "was incomprehensible" on the night of the accident and unable to effectively communicate with the medical staff. Dr. Mbekeani did not know if any vaginal, DNA, or semen tests were performed.

¶ 19 The court also heard from Detective Demetrius Kolliopoulos, who testified he assisted Detective Burke in defendant's arrest. The parties stipulated that business records from A-1 Limousine indicated that on June 11, 2011, defendant picked up 10 customers at 8:30 p.m. and dropped them off at 1537 West 87th Street in Chicago at 9:30 in the evening. He picked up the customers at 2 a.m. on June 12, 2011, and dropped them off at 3 a.m. in Bedford Park, Illinois. Defendant did not have any other assignments on June 12, 2011.

¶ 20 After the State rested, Defendant moved for a directed finding. Defense counsel argued:

"Well, your Honor, one element of *** the People's case is that my client had knowledge of these events and that he intended these events.

As far as the attempt murder and the aggravated battery and the other, there's been no evidence that my client had any sexual contact with the young lady.

Detective Burke, who is an excellent detective, went right back to the area where there had been supposedly a condom thrown out the window. She could not retrieve a condom. She knew exactly what she was looking for. I am sure nobody else picked up the condom.

There's just no evidence in this matter your Honor."

The circuit court granted defendant's motion as to count I, for attempted first degree murder (720 ILCS 5/8-4 (a) (West 2010)), but found that the State had met its burden as to the remaining counts in the indictment.

¶ 21 Defendant testified he first met J.C. and her two friends three weeks before the incident at a restaurant on 79th and Stony Island. Defendant gave one of the girls his business card. J.C. told him her name was Kelly. The other two girls were named Dollar and Nicki. Defendant testified that on the night of the incident, he received a call from Dollar and Nicki. Defendant told them he got off of work at 3 a.m., and they told him that they would call him then. After dropping off his customers, defendant drove back to A-1 Limousine to pick up his own car. One of the girls called defendant and told him she was at a party in a motel at Cicero and Roosevelt. Defendant told the girl he could not come to the party, but he could pick her up at a nearby gas station.

¶ 22 When defendant arrived, J.C. came out to the car and asked to hang out. Defendant offered his place, but told her he had to first go back to the office to get his chauffeur license. At the office, defendant pulled up behind the limousine he had been driving earlier. Defendant left his car and went to the limousine to get his license. When he came back, J.C. told him that she had never been in a limousine before. Defendant allowed her to look inside. They then went

back to his car and drove towards defendant's house. While driving, defendant remembered that his wallet was sitting in the console. He took out \$700, which he counted for his rent, while J.C. was by his side. He put the money back in his wallet and then into his coat pocket. Defendant's girlfriend then called him, asking his whereabouts and inquiring when he would arrive at home. Once defendant hung up the phone, he told J.C. that they could not go to his house, but that they could maybe meet in the future. Defendant told her that he would try to drop her where she could take the train, but J.C. demanded that he take her to 75th and Coles. Defendant's girlfriend kept calling, but defendant did not answer the phone. Eventually, defendant answered the phone and his girlfriend asked him how to operate "Netflix" on the television.

¶ 23 J.C. began to get upset after defendant's conversation with his girlfriend. J.C. pulled out a razor and demanded that defendant take her to 75th and Coles. Defendant refused. J.C. then cut his leather car seat. Defendant stopped the car at a gas station and offered J.C. \$20 to take the train and leave. J.C. told him that she wanted to smoke and got out of the car. Defendant got out of the car and locked the car door with his remote control. He went to an ATM while J.C. was walking back and forth 10 or 15 feet away. Defendant testified as follows concerning the events that happened after he arrived at the ATM:

"When I get there, my mind just told me that why am I giving this girl \$20 anyway? For what? She just cut my leather. She threatened to cut me with a razor. I said, you know what? Then I turned around from the ATM. Then I was walking towards her. She was still out there smoking. When she see me walk by the car, trying to go to the driver's side, she tried to pull the

cigarette light out, right. Before she put the cigarette out, I jumped in my car, you know, I drove off. When I, as soon as I pull my car in drive, because the car was running, I just use the remote, when I press the remote one time it unlock the driver's side. When I press a second time it unlock all the cars, all the doors.

But I press it one time, I went in the car, I put my car in drive. When I put my car in drive, move, I drove, then she hit, I heard the sign in the back, it hit my vehicle. Like, boom, boom, you know, in the back.

But the minute I look, *** there is a pothole that was in front of me, immediately, I fell in the first pothole. The second pothole right in front of me, and I maneuver my hand from the pothole, you know, drove off."

Defendant denied knowing that J.C. was holding on to the car and testified his car had tinted glass windows.

¶ 24 Defendant was not expecting his girlfriend to be at home. Although defendant intended to have sex with J.C., they never did because they did not go to his house. Defendant denied that he and J.C. were ever in the backseat of his car. Defendant denied knowing that J.C. was holding on to his car, but testified that he "heard her hit my vehicle in the back, you know. Like somebody hit your car like twice, boom, boom." Defendant further testified that he did not know that an accident involving J.C. occurred until three weeks later when he was taken into custody.

¶ 25 On cross-examination, defendant testified J.C. never told him she was a prostitute and they never agreed to have sex for money. He clarified that he went to the ATM to get \$20, because he did not want to give her any of the \$700 he had on him, which were "all hundreds." Defendant testified he could not see out of his back window because it was tinted. Defendant clarified that he did not know if J.C. grabbed the rear passenger door but stated that she did "bang on the passenger side door on the back." When asked whether he saw J.C. at the back door before pulling away, defendant answered "No. I heard her knock on the back of the vehicle, boom, boom, twice." He denied that he told the police that he saw J.C. at the back door. Defendant did not stop his vehicle when he heard the two knocks on the back of the vehicle. Defendant admitted he did not check on J.C. and he did not call the police.

¶ 26 Levita Jones, defendant's girlfriend, testified that on the night of the incident, defendant did not expect her to be at his house. They had been in a fight the day before. Defendant had told her that he would be at his house at a certain time, but that when he was not there, she decided to call him. On cross-examination, Jones testified that defendant had told her earlier that he was going to be home at 3 or 3:30 on the night of the incident. She testified she called him a second time and he did not pick up. She called him a third time to ask him a question about how to operate Netflix. Jones tried to keep defendant on the line in an attempt to hear background noise because she was a little suspicious. She did not hear any background noise.

¶ 27 The State called Detective Kolliopoulos in rebuttal. Detective Kolliopoulos testified that when defendant was taken into custody, he told him that the victim grabbed the back passenger side door. Defendant also told Detective Kolliopoulos that he saw the victim at the back door and that it was her choice to hold onto the car. Defendant told Detective Kolliopoulos that he went to the ATM to get more money for his rent.

¶ 28 The State introduced defendant's three prior federal convictions for mail fraud, wire fraud, and access device fraud from 2004 for purposes of impeachment.

¶ 29 The court found defendant not guilty of count II, aggravated criminal sexual abuse (720 ILCS 5/12-16(d)(West 2010)), but guilty of the following charges: count III, failure to report an accident after leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(b)(West 2010)); count IV and V, aggravated battery causing great bodily harm (720 ILCS 5/11-401(a)(West 2010)); count VI, aggravated battery with a deadly weapon other than a firearm (720 ILCS 5/12-4(b)(1)(West 2010)); count VII, aggravated battery upon a public way (720 ILCS 5/12-4(b)(8)(West 2010)); and count VIII, leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a)(West 2010)). The circuit court found defendant's testimony incredible, stating it did not "believe the defendant when he said he didn't see [J.C.]. He knew when he knocked her off the car. And he had the knowledge, in my view, the State proved knowledge in their case." Defendant filed a motion for a new trial, which the circuit court denied.

¶ 30 On October 4, 2012, the circuit court sentenced defendant to concurrent terms of 12 years in prison, with 2 years MSR, for failure to report an accident on count III (625 ILCS 5/11-401(b)(West 2010)); 10 years in prison, with 1 year MSR, for aggravated battery on count IV (720 ILCS 5/12-4(a)(West 2010)); and six years in prison on Count VIII for leaving the scene of a motor vehicle accident involving personal injuries (720 ILCS 5/11-401(a)(West 2010)). Counts V, VI, and VII merged into count IV. Defendant filed a motion to reconsider his sentence, which the circuit court denied on November 2, 2012. On that same day, defendant filed his notice of appeal.

¶ 31

ANALYSIS

¶ 32 Defendant challenges the sufficiency of the evidence for his convictions for leaving the scene of a motor vehicle accident involving personal injuries (625 ILCS 5/11-401(a)(West 2010)); failing to report an accident (625 ILCS 5/11-401(b)(West 2010)); and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a)(West 2010)). Defendant does not challenge his convictions for aggravated battery by use of a deadly weapon other than a firearm (720 ILCS 5/12-4(b)(1)(West 2010)) or aggravated battery on or about a public way (720 ILCS 5/12-4(b)(8)(West 2010)). We note that both parties cited the aggravated battery statute as it is currently numbered. See 720 ILCS 5/12-3.05(West 2012). The incident at issue here, however, occurred on June 12, 2011. At that time, the aggravated battery statute had not yet been amended and renumbered as section 12-3.05. See 720 ILCS 5/12-4 (West 2010) (indicating renumbering would not be effective until July 1, 2011).

¶ 33 The due process clause of the fourteenth amendment to the United States Constitution insures that an accused defendant is not convicted of a crime "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008); *People v. Brown*, 2013 IL 114196, ¶52 ("the State bears the burden of proving beyond a reasonable doubt each element of a charged offense and the defendant's guilt.") It is not, however, the function of this court to retry a defendant when reviewing whether the evidence at trial was sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our review of is focused on "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 offense beyond a reasonable doubt." *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies to both

circumstantial and direct evidence as well as to both jury and bench trials. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2000); *Brown*, 2013 IL 114196, ¶48.

¶ 34 The trier of fact is responsible for determining a witness's credibility and the weight to be given to a witness's testimony, as well as drawing any reasonable inferences from the evidence. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Although all reasonable inferences in the record must be given in the prosecution's favor, unreasonable inferences will not be allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The trier of fact, however, is in the best position to resolve any conflicting inferences produced by the evidence. *People v. McDonald*, 168 Ill. 2d 420, 447 (1995). Further, "the trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*; see also *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.") A defendant's conviction will not be reversed "simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible." *Id.* at 228. "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Circumstantial evidence alone can support a criminal conviction. *Brown*, 2013 IL 114196, ¶49.

¶ 35 The findings of the trier of fact are given great weight because it saw and heard the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, "a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *Brown*, 2013 IL 114196, ¶ 48. Although the trier of fact is accorded great deference, its decision is not binding or conclusive. *Id.* at 115. As

such, a conviction will be reversed where the evidence is so unsatisfactory, unreasonable, or improbable that it raises a reasonable doubt as to defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 36 Sections 11-401(a) and (b) of the Illinois Vehicle Code

¶ 37 Defendant challenges the sufficiency of the evidence for his convictions for both leaving the scene of a motor vehicle accident involving personal injuries (720 ILCS 5/11-401(a)(West 2010)) and for failing to report the accident (720 ILCS 5/11-401(b)(West 2010)). Defendant argues that the evidence at trial did not show that he knew that he was involved in an accident involving another person. He contends the evidence shows that he did not even know about the accident until three weeks later. Defendant acknowledges that J.C.'s testimony indicates that he saw her hanging from his car as he drove away, but characterizes her testimony as incredible. The State argues a rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 38 Section 11-401(a) of the Illinois Vehicle Code provides:

"(a) The driver of any vehicle involved in a motor vehicle accident resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled.¹ Every such

¹ Section 11-403 of the Illinois Vehicle Code provides that drivers involved in motor vehicle accidents have a duty to render aid and give information. 625 ILCS 5/11-403 (West 2010).

stop shall be made without obstructing traffic more than is necessary." 625 ILCS 5/11-401(a) (West 2010).

¶ 39 Section 11-401(b) of the Illinois Vehicle Code makes it unlawful to fail to report an accident after failing to comply with section 11-401(a). 625 ILCS 5/11-401(b) (West 2010).

Specifically, section 11-401(b) provides:

"(b) Any person who has failed to stop or comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. No report made as required under this paragraph shall be used, directly or indirectly, as a basis for the prosecution of any violation of paragraph (a)." 625 ILCS 5/11-401(b) (West 2010).

¶ 40 A conviction under either subsection (a) or (b) of section 11-401 requires that the offending motorist had "knowledge that he or she was involved in an accident that involved another person." *People v. Digirolamo*, 179 Ill. 2d 24, 42 (1997). Circumstantial evidence may be used to prove the knowledge requirement. *Id.* Additionally, "knowledge that another

person was involved in the accident may be imputed to a driver from the circumstances of the accident." *Id.*

¶ 41 Viewing the evidence in the light most favorable to the State, we hold the State proved beyond a reasonable doubt that defendant left the scene of a motor vehicle accident involving personal injury. 720 ILCS 5/11-401(a) (West 2010); *Baskerville*, 2012 IL 111056, ¶ 31. J.C. testified defendant "tried to beat" her to the car door, looked at her, and then quickly pulled away. She testified defendant "tried to run [her] into *** a minivan." She also testified concerning the injuries she sustained. Detective Burke testified defendant told her that he saw J.C. at his back passenger door, locked the car doors, pulled away, and heard a "boom." Dr. Mbekeani testified J.C.'s injuries were consistent with being dragged on the ground. J.C., Detective Burke, Anthony Harris, and Dr. Mbekeani all testified to the seriousness of J.C.'s injuries. Defendant admitted that he "jumped in" his car before driving off, and heard J.C. hit his vehicle, but denied seeing J.C. hanging onto his car. There was sufficient evidence to sustain defendant's convictions for leaving the scene of a motor vehicle accident involving personal injury. 720 ILCS 5/11-401 (a)(West 2010). A reasonable trier of fact could have concluded based on the evidence presented that defendant had the requisite knowledge that he was involved in an accident with J.C. and that he then left the scene. *Digirolamo*, 179 Ill. 2d at 42; 720 ILCS 5/11-401 (a)(West 2010).

¶ 42 We additionally hold that the evidence at trial, viewed in the light most favorable to the State, was also sufficient to sustain defendant's conviction for failing to report a motor vehicle accident. 720 ILCS 5/11-401(b)(West 2010); *Baskerville*, 2012 IL 111056, ¶ 31. Defendant admitted at trial that he did not report the accident and testified that he did not find out about the accident until his arrest three weeks later. Defendant's admission that he did not report the

accident, in addition to the evidence that he knowingly left the accident scene under section 11-401(a), provided sufficient evidence for his conviction under section 11-401(b) of the Illinois Vehicle Code. 720 ILCS 5/11-401(b)(West 2010).

¶ 43 Defendant's argument addressing his convictions under both section 11-401(a) and 11-401(b) of the Illinois Vehicle Code is based on his contention that J.C.'s testimony was incredible. We remind defendant, however, that it is the trier of fact's responsibility to weigh the evidence, resolve conflicting evidence, and make credibility determinations. *Jimerson*, 127 Ill. 2d at 43; *McDonald*, 168 Ill. 2d at 447. Accordingly, we hold, after viewing the evidence in the light most favorable to the State, that the evidence was sufficient to sustain defendant's convictions for leaving the scene of a motor vehicle accident (720 ILCS 5/11-401(a)(West 2010)) and for failing to report the accident (720 ILCS 5/11-401(b)(West 2010)).

¶ 44 **Aggravated Battery Causing Great Bodily Harm**

¶ 45 Defendant argues the State failed to prove the requisite mental state for his aggravated battery causing great bodily harm conviction. Defendant contends he was not consciously aware that his conduct would cause great bodily harm because he did not know J.C. was hanging on to his car. He acknowledges that J.C. testified he looked at her immediately before driving away, but claims her testimony is incredible. The State responds that a reasonable jury could convict defendant of aggravated battery based on the evidence.

¶ 46 A battery is committed when a person "intentionally or knowingly without legal justification and by any means ***causes bodily harm to an individual." 720 ILCS 5/12-3 (West 2010). Section 12-4(a) of the Criminal Code of 1961 defines the offense of aggravated battery as when "[a] person *** in committing a battery, intentionally or knowingly causes *great* bodily harm, or permanent disability or disfigurement." (Emphasis added.) 720 ILCS

5/12-4(a) (West 2010). "A person acts knowingly if they are consciously aware that their conduct is practically certain to cause great bodily harm." *People v. Vasquez*, 315 Ill. App. 3d 1131, 1133 (2000).

¶ 47 Viewing the evidence in the light most favorable to the prosecution, we hold the State proved beyond a reasonable doubt that defendant committed aggravated battery causing great bodily harm. 720 ILCS 5/12-4(a) (West 2010). *Baskerville*, 2012 IL 111056, ¶ 31. J.C. testified that after she got out of defendant's car to smoke a cigarette, defendant "tried to beat [her] to the door." Defendant then looked at her and "hit the gas and pulled off." J.C. testified defendant's windows were down and stressed that defendant saw her prior to pulling away. J.C. further testified defendant "tried to run [her] into *** a yellow minivan." Detective Burke testified defendant told her that he "felt he was done with" J.C., locked the doors, and quickly pulled away. Detective Kolliopoulos testified that defendant told him that he saw J.C. at the back door and that it was her choice to hold onto the car. J.C., Detective Burke, Anthony Harris, and Dr. Mbekeani testified to the seriousness of J.C.'s injuries. Defendant testified that he "jumped" into his car before driving off. He denied seeing J.C. as he drove off. J.C.'s testimony, in addition to the testimony of Detectives Burke and Kolliopoulos, Anthony Harris, and Dr. Mbekeani, provided sufficient evidence for a reasonable trier of fact to conclude defendant knowingly caused great bodily harm to J.C. by driving while she was hanging on to his car. J.C.'s testimony that it seemed as though defendant was trying to run her into another car provided further evidence of defendant's intent to harm her. Defendant again questions J.C.'s credibility. As previously discussed, however, it is trier of fact's responsibility, and not this court's, to weigh the evidence, resolve conflicting evidence, and make credibility determinations. *Jimerson*, 127 Ill. 2d at 43; *McDonald*, 168 Ill. 2d at 447. Accordingly, we

hold the record shows sufficient evidence to uphold defendant's conviction for aggravated battery causing great bodily harm. 720 ILCS 5/12-4(a) (West 2010).

¶ 48 Ineffective Assistance of Counsel

¶ 49 Defendant's final argument is that his trial counsel was ineffective for failing to emphasize during argument on his motion for a directed finding that the State did not prove that he failed to report the accident within thirty minutes in accordance with section 11-401(b) of the Illinois Vehicle Code. 625 ILCS 5/11-401(b) (West 2010)). Instead, defense counsel focused his argument on intent; *i.e.* that defendant did not intend for the accident to occur and the absence of sexual contact between J.C. and defendant. In response, the State argues defendant has not overcome the presumption that his counsel's actions were a matter of trial strategy because defense counsel's actions were consistent with defendant's concession at trial and his briefs before this court that he did not report the accident because he lacked knowledge that an accident occurred.

¶ 50 The right to the effective assistance of counsel is guaranteed under both the federal and Illinois Constitutions. *People v. Domagala*, 2013 IL 113688, ¶ 36 (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8). Ineffective assistance claims are analyzed under the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), as adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *Id.* To prove he was denied the effective assistance of counsel, defendant has to show both deficient performance of trial counsel and that trial counsel's performance prejudiced him. *People v. Evans*, 209 Ill. 2d 194, 219-220 (2004). Defendant has the burden of proving that he did not receive the effective assistance of counsel. *People v. Rucker*, 346 Ill. App. 3d 873, 885 (2004).

¶ 51 In order to establish deficient performance, a defendant "must prove that counsel's performance, as judged by an objective standard of competence under prevailing professional norms, was so deficient that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *People v. Bew*, 228 Ill. 2d 122, 127-28 (2008). In doing so, the "defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence." *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010). "Counsel's strategic choices are virtually unchallengeable." *People v. Fuller*, 205 Ill. 2d 308, 331 (2002). Accordingly, a failed strategic decision does not establish the ineffectiveness of counsel. *Id.*

¶ 52 To establish prejudice, a "defendant must prove that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Easley*, 192 Ill. 2d 307, 317 (2000). Therefore, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* As such, the results of the proceedings must be shown to be fundamentally unfair or unreliable. *Id.* at 317. If prejudice is not shown, a court can dispose of an ineffective assistance of counsel claim without first determining whether counsel's performance was deficient. *People v. Givens*, 237 Ill. 2d 311, 331 (2010).

¶ 53 Section 5/115-4(k) of the Code of Criminal Procedure of 1963 allows a defendant to move for a directed finding "[w]hen, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding*** of guilty[.]" 725 ILCS 5/115-4(k) (West 2010). If the motion is successful, the court "shall make a finding *** of not guilty, enter a judgment of acquittal and discharge the defendant." 725 ILCS 5/115-4(k) (West 2010). In deciding the motion, the court must determine, as a matter of law, that there is

insufficient evidence to support a finding of guilt. *People v. Withers*, 87 Ill. 2d 224, 230 (1981). In doing so, the trial court must "consider only whether a reasonable mind could fairly conclude the guilt of the accused beyond a reasonable doubt, considering the evidence most strongly in the People's favor." *Id.* Because the statute sets out the grounds for deciding the motion, the trial court has the discretion to allow the parties to provide argument on the motion. *Id.* at 231.

¶ 54 We hold defendant has not satisfied his burden of proving ineffective assistance of counsel because he cannot overcome the presumption that his counsel's actions were a matter of trial strategy. Initially, we point out that the record shows defendant did motion for a directed finding and the trial court's ruling on the motion addressed all counts of the indictment. The trial court granted the motion as to count I, for attempted murder; but denied the motion as to the remaining counts. Defendant has not challenged the circuit court's ruling on the motion for a directed finding. Rather, he bases his argument on how defense counsel orally argued the motion and how a proper argument may have changed the circuit court's ruling on the motion for a directed finding. Our review of the record shows defense counsel's strategy in this matter was to argue that defendant did not have sex with J.C. and that he had no knowledge that an accident occurred. It follows that if defendant did not know that an accident occurred, then he could also not subsequently report an accident. Had the strategy been effective, defendant would not have been convicted of the counts at issue here as knowledge is an element the State had to prove to show defendant left the scene of a motor vehicle accident involving personal injuries (720 ILCS 5/11-401 (a)(West 2010)), failed to report the accident after leaving(625 ILCS 5/11-401(b) (West 2010))), and aggravated battery (720 ILCS 5/12-4(a) (West 2010)). Defense counsel's focus on defendant's lack of knowledge of the accident was ultimately unsuccessful. A failed strategic

decision, however, does not establish ineffective assistance of counsel. *Fuller*, 205 Ill. 2d at 331. Accordingly, defendant has not overcome the strong presumption that his counsel's actions in orally arguing the motion for a directed finding were a matter of trial strategy.

¶ 55 Additionally, we hold defendant has not proven prejudice based on the posture of the issue before us. Defendant does not question that his counsel motioned for a directed finding, and the circuit court ruled on the motion as to all counts. It is presumed that the trial court knew the statutory grounds for the motion when making its ruling. See 725 ILCS 5/115-4(k) (West 2010); *Withers*, 87 Ill. 2d at 230 ("The ground for the motion is set out in the statute, and the judge, of course, is aware of the ground even if argument on the motion is not permitted."); *People v. Howery*, 178 Ill. 2d 1, 32 (1997) (it is presumed the trial court knows the law and its proper application). To establish prejudice in a claim for ineffective assistance of counsel, it must be shown "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Easley*, 192 Ill. 2d at 317. Accordingly, as the trial court here is presumed to be aware of the grounds for a directed finding, and did in fact rule on the motion as to all counts of the indictment, we cannot say defendant has carried his burden of proving that any additional oral argument would have changed the trial court's mind as to its decision to deny the motion for a directed finding as to count III for failure to report a motor vehicle accident.

¶ 56

CONCLUSION

¶ 57 The judgment of the circuit court of Cook County is affirmed.

¶ 58 Affirmed.