

THIRD DIVISION
March 11, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 5443
)	
GEORGE CALHOUN,)	
)	The Honorable
Defendant-Appellant.)	Matthew E. Coghlan,
)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's aggravated battery conviction affirmed where the court's refusal to instruct the jury that it could consider the victim's prior acts of violence to evaluate defendant's self-defense claim did not constitute error given the lack of evidence that the victim committed any such acts.

¶ 2 Following a jury trial, defendant George Calhoun was convicted of aggravated battery and was sentenced to eight years' imprisonment. On appeal, defendant seeks reversal of his conviction, arguing that the circuit court erred when it denied his request to instruct the jury in accordance with Illinois Pattern Jury Instructions, Criminal, No. 3.12X (4th ed. 2000) (IPI

Criminal 4th No. 3.12X), and allow the jury to consider the victim's prior acts of violence to determine whether he was justified in his use of force against her. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4

Following a February 22, 2009, altercation with his then-girlfriend, Brenda Rice-Davis, defendant was charged with attempt murder, aggravated battery and domestic battery. Defendant elected to proceed by way of a jury trial.

¶ 5

Prior to the start of trial, the State filed a motion *in limine* to "preclude the defense from questioning Ms. Brenda Rice-Davis about any previous arrests in her background since she has no convictions and no reports have been tendered by the defense regarding [such] evidence." Defense counsel objected to the State's request, arguing that he intended to argue that defendant acted in self-defense and that defendant's knowledge that Rice-Davis had previously physically harmed her ex-husband "would go to his state of mind at the time of the offense." Specifically, counsel argued that defendant "plans to testify that he was in fear of his life because of the fact that he knew that according to him that she had had an altercation with an ex-husband and he was placed in the hospital as a result of that." After considering the parties' arguments, the circuit court sustained defense counsel's objection and ruled that defendant "c[ould] go into that if she said that to him."

¶ 6

At trial, Brenda Rice-Davis testified that she began dating defendant in 2008. On February 21, 2009, she and defendant were both staying at defendant's mother's house located on South Oakley Avenue. Because defendant's two foster brothers were also staying there, Rice-Davis and defendant did not have their own bedroom, but instead, were sleeping on sofas in the den. At approximately 5 p.m. that evening, Rice-Davis testified that she returned to the

residence after completing choir practice for an upcoming performance. Defendant was not present when she arrived, but Rice-Davis spoke to him on the telephone later that evening. Before she went to sleep for the night, Rice-Davis testified that she wrote defendant a note asking him not to wake her because she had another early choir rehearsal the next morning. She left the note on a cocktail table.

¶ 7 Rice-Davis recalled seeing defendant "roll past" her sometime after 12:45 a.m. He "fumbl[ed] around" in the kitchen for a while before going down to the basement where his foster brothers slept. She then heard what sounded like a "loud argument" between defendant and one of his foster brothers. When defendant came back upstairs, he was mumbling and talking to himself. At that point, Rice-Davis testified that she addressed defendant and asked him why he would come home so late and "start[] so much confusion" when everyone else in the house was trying to sleep. Defendant responded by saying: "If you don't like it, you can get the F out of here." Rice-Davis testified that when defendant spoke to her, he "was all red up" and she knew that "it was about to excel to another level."

¶ 8 When she began to get up to put her clothes on, defendant reached for a hammer from his tool belt that was hanging on the den door and told her, "I'm going to kill you bitch." As he spoke to her, Rice-Davis "saw a look that [she] had not normally s[een]," on defendant's face. When he turned on her with the hammer, Rice-Davis leapt over a cocktail table to get out of his reach and out of the den. Defendant, however, caught up to her in the kitchen. He grabbed the hood of her robe, and "c[ame] down on [her] the first time with the hammer." Although he struck her on the back of the head, Rice-Davis was able to maneuver herself so that "the impact wasn't that hard." They then began wrestling on the floor. Rice-Davis testified that defendant

kept striking her with the hammer, but that she was able to use her left arm to deflect "most of the blows."

¶ 9 After the first blow, Rice-Davis began screaming for help and Jessie Robinson, defendant's mother, ran into the kitchen and repeatedly yelled at her son to "stop." Robinson then tried to pull defendant off of Rice-Davis, but was unable to do so because he was "just in a rage." Rice-Davis continued to struggle with defendant and was able to maneuver herself to trap the hammer underneath her midsection. When he was unable to use the hammer, defendant began to assault her with his fists. His mother kept yelling, "George, stop, just stop," and continued trying to get defendant off of Rice-Davis, but he pushed Robinson out of the way. After doing so, defendant got up and began "rattling" around in the kitchen. Rice-Davis used that opportunity to run out of the kitchen and into Robinson's bedroom. As she was trying to shut the door, however, defendant caught up to her and began beating and pressing against the door. When defendant reared back to gain momentum to shove against the door, Rice-Davis ran into the adjoining bathroom. Defendant, however, caught up to her again before she was able to fully shut the bathroom door. At that point, defendant had a knife that he kept "sticking" through the opening of the door and tried to "cut [her]."

¶ 10 Rice-Davis was able to use her hand to bend the blade of the knife against the door frame; however, she was unable to completely shut and lock the bathroom door and defendant was eventually able to shove the door open. After gaining entry to the bathroom, defendant then began to assault her with his fists and they began "tussling and fighting." During the struggle, Rice-Davis pushed defendant against the glass shower doors, which shattered. She then ran back into Robinson's bedroom, but defendant caught up to her once again and began "striking" her on the bed. When he abruptly stopped his assault and left the bedroom, Rice-Davis was able to shut

and lock the bedroom door. After she did so, defendant returned and began banging against the door with an unknown object. He was ultimately unable to gain access to the room before police arrived. Following the arrival of responding officers, Rice-Davis was taken to Metro South Hospital where she received treatment for her injuries.

¶ 11 On cross-examination, Rice-Davis admitted that she had not expected defendant to stay out as late as he did that evening and confirmed that she did not know what he was doing or who he was with before he came home. She denied that she was the one who had taken defendant's hammer out of his tool belt or that she had hit defendant first with the hammer. Rice-Davis did confirm that defendant was also taken to the hospital once police and paramedics arrived at his mother's house.

¶ 12 Jessie Robinson, defendant's mother, confirmed that in February 2009, defendant and Rice-Davis were staying with her at her residence located at 11844 South Oakley Avenue. Darius and Gregory, her two foster sons, were also living with her at that time. Robinson testified that she was gone most of the day on February 21, 2009, and did not return to her house until 11:00 p.m. At that time, Rice-Davis, Gregory and Darius, were at the residence, but defendant was not present. Robinson went to bed shortly after 12 a.m. but woke up sometime thereafter and heard "yelling and screaming and scuffling." As she ran out of her bedroom, she heard Rice-Davis say "stop, please help me, stop, don't do this, something like that" and she heard defendant respond: "I'm going to get you. Why are you messing with me[?]. I'm going to get you." Defendant may have also said, "I'm going to kill you." When Robinson reached the kitchen, she observed defendant standing over Rice-Davis and "swinging the hammer at her" head. Rice-Davis, in turn, was on the ground trying to "defend[] herself with her arm up."

Robinson testified that she was panicked and began calling defendant's name and trying to get her son off of Rice-Davis, but he shoved her out of the way.

¶ 13 At some point, Robinson recalled that Rice-Davis was able to get off of the ground and run into Robinson's bedroom. Defendant ran after her and Robinson, in turn, chased her son. Although Rice-Davis had made it into the bedroom, Robinson explained that she had not been able to fully close the bedroom door before defendant caught up to her and tried to force the door open. After a struggle, defendant finally forced the door open and the fight continued in the adjoining bathroom. Robinson testified that defendant used a knife that he had gotten from the kitchen and began "swinging it, ranting and raving." As defendant and Rice-Davis continued to struggle, "they broke the shower" and Robinson saw "blood everywhere." Robinson testified that she then called "911" and ran outside to wait for the police to arrive.

¶ 14 On cross-examination, Robinson acknowledged that she did not know how long Rice-Davis and defendant were fighting before she awoke to Rice-Davis' screams. She also admitted that she did not know who struck first.

¶ 15 Darius Robinson, one of defendant's foster brothers, testified that at approximately 1 a.m. on February 22, 2009, defendant knocked on his bedroom door, which was located in the basement of the residence. Because he was tired, Darius did not let him in. Shortly thereafter, he heard "bumping" and screaming coming from upstairs. He testified that he recognized Rice-Davis' voice screaming for help. Darius panicked and he and Gregory, his other foster brother, ran upstairs. When they reached the kitchen, Darius observed Rice-Davis on the kitchen floor and defendant positioned "over her, hitting her with the hammer." Defendant struck Rice-Davis in the head several times and Darius saw her blood spray around the room. When Darius attempted to approach defendant, he saw a knife in defendant's back pocket and "backed up

because [he] got scared." Instead, he and Gregory returned to the basement to get a cell phone, which they then used to call the police. Afterwards, the boys went outside to wait for police to arrive. On cross-examination, Darius confirmed that he was not present when the altercation started and didn't know how it became physical or who struck first.

¶ 16 Gregory, defendant's other foster brother, confirmed Darius' account of the events that unfolded during the early hours of February 22, 2009. Specifically, Gregory testified that he was woken up at approximately 1 a.m. when defendant came into the basement where he and Darius were sleeping. After defendant returned upstairs, Gregory heard Rice-Davis begin screaming, "Help me." When he and Darius ran upstairs and into the kitchen, Gregory "saw [defendant] standing over [Rice-Davis] hitting her with the hammer." Gregory's foster-mother was also in the kitchen and was yelling at defendant to stop hitting Rice-Davis. Gregory testified that he saw defendant strike Rice-Davis three times with the hammer on the top of her head. He attempted to enter the kitchen to help her, but Darius pulled him back and the two ran back down to the basement to get a phone and call the police for help. After doing so, they waited on the front lawn for the police to arrive. On cross-examination, Gregory acknowledged that he did not know how the fight between defendant and Rice-Davis started or whether she struck defendant first. When he observed the altercation in the kitchen, however, Gregory confirmed that he never saw Rice-Davis hit defendant.

¶ 17 Vicki McDonald, an emergency room nurse at Metro South Hospital, testified that she treated Rice-Davis at approximately 3 a.m. on February 22, 2009. At that time, Nurse McDonald observed two deep lacerations on Rice-Davis' scalp, measuring 2 ½ cm and 4 cm, respectively. Both head wounds required staples. A CT scan was performed, but no internal bleeding was detected. In addition to the head wounds, Rice-Davis also had a laceration on her right index

finger, which required stitches, as well as severe bruising on her left arm. Nurse McDonald testified that she suspected that Rice-Davis' arm might be broken, but X-rays did not reveal any bone fractures. When Nurse McDonald asked Rice-Davis about how she had sustained her injuries, Rice-Davis reported that she had been hit with a hammer and stabbed with a knife. She appeared to be emotional and reported that she was in pain. Nurse McDonald testified that the injuries on Rice-Davis' scalp were "consistent" with the types of injuries that would be expected if one were hit on the head with a hammer. At the time that Rice-Davis was treated for her injuries, Nurse McDonald recorded her height as 5'10" and her weight as 220 pounds.

¶ 18 Chicago Police Officer Courtney Johnson testified that on February 22, 2009, at approximately 2 a.m., he and his partner, Officer Woodall, were directed to single family residence located at 1184 South Oakley where there was a "domestic battery in progress." After entering the residence, he arrested defendant. Defendant was also taken to the hospital to receive treatment for his injuries.

¶ 19 Evidence technician Abdalla Abuzanat testified that he was assigned to collect evidence pertaining to the domestic assault that occurred at Robinson's South Oakley residence. Abuzanat first drove to Metro South Hospital where he took photographs of defendant and Rice-Davis to document their injuries. Abuzanat then drove to the South Oakley residence. When he arrived at the residence he "noticed there was quite a lot of blood on the floors and on the walls." After taking pictures of the crime scene, Abuzanat collected physical evidence from the house. Specifically, Abuzanat recovered a hammer that was "in the master bedroom on top of the bed." Another evidence technician collected additional pieces of physical evidence relating to the crime including, a brown handled knife, a sleeveless shirt and a multicolored bathrobe. All evidence was inventoried in accordance with police protocol.

¶ 20 Cynthia Engelking, a forensic scientist specializing in latent fingerprint analysis with the Illinois State Police, examined the knife and the hammer recovered from the crime scene for latent prints but concluded that there were no latent prints on either weapon that were suitable for comparison.

¶ 21 Jennifer Acosta-Talbot, another forensic scientist employed by the Illinois State Police, testified that she received buccal swab standards taken from defendant and Rice-Davis and compared their known DNA profiles to the two unknown DNA profiles found on the hammer. Acosta-Talbot was unable to conclusively identify the source of the minor human male DNA profile found on the hammer, but explained that defendant could not be excluded as the source of that profile. She was able to conclusively identify defendant as the source of the male DNA profile that had been found on Rice-Davis' robe. Another forensic scientist performed the same analysis on the knife, which also contained a mixture of DNA profiles. The "major human DNA profile" on the weapon matched Rice-Davis's DNA profile. No conclusions could be drawn as to whether defendant matched the minor human DNA profile on the knife.

¶ 22 After presenting the aforementioned testimony, the State rested its case-in-chief. Defendant's motion for a directed verdict was denied and he elected to testify on his own behalf. He testified that at the time of the incident, he had been dating Rice-Davis for approximately one year. Although they did not live together, Rice-Davis frequently stayed with him at his mother's house. Defendant testified that on February 21, 2009, he spent the day playing chess with friends and returned to his mother's house sometime around 1 a.m. the following morning. He saw Rice-Davis sleeping on a couch in the den and found a note that she had written on a nearby coffee table. After reading the note, defendant threw it away and went down to the basement to use the computer because he did not want to bother her. He explained that Rice-Davis could be

"rough sometimes" and "hard on [him]" if he bothered her. While in the basement, defendant testified that he listened to some music and drank a beer. When he saw the stairwell light illuminate, he assumed that Rice-Davis was awake and returned upstairs to fix himself something to eat.

¶ 23 As he walked past the den to get to the kitchen, defendant testified that he felt something strike him on the back of his head. When he looked behind him, he realized that Rice-Davis had just attacked him with a hammer. Defendant became very afraid and explained that during an argument earlier that week, Rice-Davis had informed him that she had "put her husband in the hospital twice," and threatened to put defendant in the hospital as well.

¶ 24 Defendant responded to Rice-Davis' attack by grabbing her and pushing her to the kitchen floor. He then gained control of the hammer and used it to hit her a "couple" of times. Rice-Davis, however, was able to regain control of the hammer and used it to strike him in his left eye. As he reeled back from the blow, Rice-Davis got up from the floor and ran into his mother's bedroom. Defendant explained that he "rushed her" and followed her into the bedroom. When he did so, he saw a knife on the top of his mother's dresser. He picked up the knife and tried to force Rice-Davis to drop the hammer. Although he was admittedly "angry," defendant explained that he "wasn't trying to hurt her or anything." As they struggled, they both entered the adjoining bathroom and crashed through the glass shower door. Defendant began "bleeding everywhere." They continued to "tussle[]" in the bathroom, but defendant testified that he ran out of the room when it became apparent that Rice-Davis began "getting the best of [him]."

¶ 25 Because he was "still mad," and "couldn't control himself," defendant grabbed a "little butter knife" from the kitchen and returned to the bedroom door, which Rice-Davis had locked, and tried to use the knife to pry open the locked door. Ultimately, when he was unable to force

the door open, defendant went into the den and sat on a couch. Police arrived shortly thereafter and arrested him. He was then transported to the hospital because he needed treatment for the injuries that he sustained during his altercation with Rice-Davis.

¶ 26 On cross-examination, defendant denied that any words were spoken prior to the physical attack. He acknowledged chasing after Rice-Davis after she had initiated the physical attack and explained that he did so because he was "angry." He pursued her even though she was "getting the best" of him "the majority of the time" because he "got that fighting instinct" in him. Defendant, clarified, however, he was still "scared for [his] life." Although he admitted that he introduced a knife during the altercation, he did not recall if he denied using a knife when he spoke to detectives after the incident. Defendant was also unable to recall whether he informed detectives of the threat that Rice-Davis made against him earlier that week.

¶ 27 Doctor Faheem Jesani testified that he treated defendant at the Metro South Hospital Emergency Room at approximately 3 a.m. on February 22, 2009. At that time, defendant had 4 lacerations on his scalp, each measuring approximately 2 ½ cm in length. He also had a smaller laceration on his left eyebrow. Defendant's wounds were treated with twelve staples and three sutures. In response to Doctor Jesani's questions, defendant reported that he had sustained his injuries during an "altercation" and classified his pain as a "two" on a scale of one to ten. A CT scan was performed, but there were no abnormal findings. Doctor Jesani testified that defendant's injuries "could [have]" been caused by a hammer. He further testified that defendant's hospital records contained notes indicating that defendant was argumentative and uncooperative with emergency room staff. At the time that defendant received treatment for his injuries, a nurse recorded defendant's height as 5'8" and his weight as 150 pounds.

¶ 28 After the defense presented the aforementioned testimony and rested its case, the State called Detective Marie Chapel as a rebuttal witness. She testified that she interviewed defendant twice on February 22, 2009. The first interview was at 1 p.m. and the second interview took place at 6 p.m. During those interviews, defendant denied that a knife had been used during the altercation. He reported that Rice-Davis had struck him first and that he became angry and did not know how the altercation would have ended had the police not arrived on the scene when they did. Detective Chapel further testified that defendant never told her that Rice-Davis had informed him that she had put her ex-husband in the hospital twice before and that she threatened to do the same to defendant. Assistant State's Attorney Holly Kremin also testified in rebuttal. She was present for one of Detective Chapel's interviews with defendant and confirmed Chapel's account of their conversation.

¶ 29 After both parties presented their evidence, they participated in a jury instruction conference. During that conference, defense counsel requested that the jury be provided with IPI Criminal 4th No. 3.12X and be allowed to consider Rice-Davis' prior violent acts to decide whether the State had proved beyond a reasonable doubt that defendant was not justified in his use of force against her. In support of the instruction, defense counsel argued: "I believe there was evidence that Brenda Rice-Davis previously engaged in conduct or acts that were violent according to the testimony of my client. Therefore, I believe the jury is entitled to have that instruction and they can decide if it, in fact, happened or not." The circuit court disagreed, stating: "Well, this instruction deals with *Lynch* material, either prior conviction of a violent crime on the part of the victim, prior acts of violence or reputation for violence. The defendant testified that the victim had previously told him she had put her former husband in the hospital, but there was no—there was no direct evidence that that ever happened. There was no

conviction. She did not have a conviction. And so I don't think that this instruction should be given. It is refused. It will not be given."

¶ 30 Once a set of jury instructions was compiled, the jury was instructed accordingly and began deliberations. The jury ultimately returned with a verdict finding defendant not guilty of attempt murder, but guilty of aggravated battery. During the sentencing hearing that followed, the court found that defendant was eligible for an extended-term sentence due to his criminal history and sentenced him to 8 years' imprisonment. Defendant's post-trial and post-sentencing motions were denied. This appeal followed.

¶ 31 ANALYSIS

¶ 32 On appeal, defendant contends that the circuit court erred in denying his request to provide the jury with I.P.I. Criminal 4th No. 3.12X and instruct them that Rice-Davis' prior acts of violence could be considered to evaluate his claim that he acted in self-defense and was justified in his use of force against her. Because there was evidence in the record pertaining to Rice-Davis' prior violent acts, defendant asserts that the circuit court erred in refusing to give the proffered instruction and ultimately deprived him of his right to have the jury be fully instructed on his theory of the case and violated his right to a fair trial.

¶ 33 The State responds that the circuit court did not abuse its discretion when it refused to instruct the jury in accordance with IPI Criminal 4th No. 3.12X because "there was no reliable evidence that Brenda Rice-Davis had violent tendencies" and thus, the instruction was not supported by the evidence. In the alternative, the State contends that even if the court did err in rejecting the proffered jury instruction, the error was harmless because "the evidence overwhelmingly established defendant's guilt of aggravated battery."

¶ 34 "The purpose of jury instructions is to provide the jury with the correct legal principles applicable to the evidence so that the jury may reach a correct conclusion according to the law and evidence." *People v. Wales*, 357 Ill. App. 3d 153, 157 (2005). The State and the defendant are both entitled to have a jury instructed on their respective theories of the case as long as there is some evidence, no matter how slight, that exists that supports those theories. *People v. Janik*, 127 Ill. 2d 390, 398 (1989); *People v. Barnard*, 208 Ill. App. 3d 342, 349-50 (1991). More specifically, " '[a] criminal defendant is entitled to have a jury instruction on any legally recognized affirmative defense theory on which he has presented 'some evidence.' " *People v. Machlin*, 2014 IL App (1st) 110342, ¶ 33, quoting *People v. Roberts*, 136 Ill. App. 3d 863, 865 (1985). When asked by either party to provide an instruction that supports its theory of the case, the court's role is to simply determine whether there is some evidence that supports the theory and not to make any determinations as to the strength of that evidence. *Jones*, 175 Ill. 2d at 132. In evaluating the propriety of a set of jury instructions, the relevant inquiry is "whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). The trial court's instructions to the jury will not be deemed improper absent an abuse of discretion. *Mohr*, 228 Ill. 2d at 66; *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 108. An abuse of discretion will be found " 'if the jury instructions are not clear enough to avoid misleading the jury.' " *Mohr*, 228 Ill. 2d at 66, quoting *In re Timothy H.*, 301 Ill. App. 3d 1008, 1015 (1998). An abuse of discretion will also be found where a court refuses to provide the jury with an instruction pertaining to a party's theory of the case where evidence exists that supports giving the instruction. *Jones*, 175 Ill. 2d at 131-32.

¶ 35 In certain cases where self-defense is raised, IPI Criminal 4th No. 3.12X allows a jury to consider evidence of the victim's prior violent acts to determine whether the State has proved beyond a reasonable doubt that the defendant was not justified in his use of force against the victim. The specific instruction requested by defendant read as follows: "In this case the State must prove beyond a reasonable doubt the proposition that the defendant was not justified in using the force which he used. You have heard testimony of Brenda Rice-Davis committed those acts. If you determine that Brenda Rice-Davis committed those acts you may consider that as evidence in deciding whether the State has proved beyond a reasonable doubt that the defendant was not justified in using the force which he used." The committee notes accompanying IPI Criminal 4th No. 3.12X direct that the instruction should be given "if evidence of 'prior acts of violence' or 'reputation for violence' is admitted pursuant to *People v. Lynch*, [104 Ill. 2d 194 (1984)]."

¶ 36 In *Lynch*, the supreme court held that when a defendant raises a claim of self-defense, "the victim's aggressive and violent character is relevant to show who was the aggressor, and the defendant may show it by appropriate evidence." *People v. Lynch*, 104 Ill. 2d 194, 200 (1984). The court explained:

"A victim's aggressive and violent character may tend to support a theory of self-defense in two ways. First, the defendant's knowledge of the victim's violent tendencies necessarily affects his perceptions of and reactions to the victim's behavior. The same deadly force that would be unreasonable in an altercation with a presumably peaceful citizen may be reasonable in response to similar behavior by a man of known violent and aggressive tendencies. One can consider facts one knows, however, and evidence of the

victim's character is irrelevant to this theory of self-defense unless the defendant knew of the victim's violent nature ***.

Second, evidence of the victim's propensity for violence tends to support the defendant's version of the facts where there are conflicting accounts of what happened. In this situation, whether the defendant knew of this evidence at the time of the event is irrelevant." *Id.* at 199-201.

¶ 37 Here, defendant argues that the circuit court "seemed to allow the admission of [his] testimony concerning his knowledge of [Rice-Davis'] prior acts of violence under the first prong of *Lynch* because this testimony was probative of his 'state of mind' during the altercation."¹ Under the first approach, evidence of the victim's violent acts is only relevant and may only be introduced if the defendant knew of those acts. *People v. Figueroa*, 381 Ill. App. 3d 828, 844 (2008); *People v. Nunn*, 357 Ill. App. 3d 625 (2005). Although convictions for a violent crime constitute "reasonably reliable evidence of a [victim's] violent character," (*Lynch*, 104 Ill. 2d at 201), courts have nonetheless recognized that "a prior altercation or an arrest, without a conviction, can be adequate proof of violent character when supported by firsthand testimony as to the victim's behavior" (*People v. Cook*, 352 Ill. App. 3d 108, 128 (2004)). That is, in the absence of a conviction, "*Lynch* and its progeny unquestionably hold that proof is needed that the victim committed the crimes." *Cook*, 352 Ill. App. 3d at 128; see also *Figueroa*, 381 Ill. App. 3d at 846.

¶ 38 In this case, the circuit court permitted defendant to testify that Rice-Davis threatened to put him in the hospital. See *Lynch*, 104 Ill. 2d at 201 (recognizing the long-standing rule that a victim's threats against a defendant are admissible). Included in defendant's recitation of the

¹ Defendant makes no argument as to the admissibility of *Lynch* evidence under the second approach. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived ***").

specific threat directed against him was his testimony that Rice-Davis had put her ex-husband in the hospital on two previous occasions. Rice-Davis, however, was not charged with or convicted of any such crimes, and defendant admittedly had no first-hand knowledge that those violent acts had actually occurred. See *Cook*, 352 Ill. App. 3d at 128 (recognizing that in the absence of a conviction, proof of a victim's violent character may be established by proof of a prior altercation or arrest, but only "when supported by *firsthand* testimony as to the victim's behavior") (Emphasis added). The circuit court's refusal to instruct the jury that it could consider Rice-Davis' prior acts of violence, i.e., the two occasions in which she put her ex-husband in the hospital, in evaluating defendant's claim of self-defense, was based entirely on the fact that "there was no direct evidence that that ever happened."² Given the lack of such evidence, we are unpersuaded that the court erred in declining to instruct the jury in accordance with IPI Criminal 4th No. 3.12X.

¶ 39 Even if we were to conclude that the circuit court erred in rejecting defendant's tendered instruction, the error does not mandate reversal of defendant's conviction. See, e.g., *People v. Jackson*, 357 Ill. App. 3d 313, 321(2005) (recognizing that errors pertaining to jury instructions are subject to harmless error analysis); see also *People v. Figueroa*, 381 Ill. App. 3d 828, 846 (2008) (recognizing that any error made with respect to *Lynch* evidence is subject to harmless error review). In determining whether an instructional error is harmless, courts employ a totality of the circumstances approach and consider various factors, including: the instructions that were provided to the jury; the arguments made by defense counsel; the strength of the evidence against the defendant; and any other relevant factors. *People v. Casillas*, 195 Ill. 2d 461, 474

² We note that when the circuit court denied defendant's post-trial motion, the court justified its decision not to provide the jury with IPI Criminal 4th No. 3.12X on the fact that Rice-Davis had not been convicted of any crimes pertaining to her ex-husband. The court's initial ruling at trial, however, was not solely limited to the lack of any conviction.

(2000). Ultimately, an error with respect to a set of jury instructions does not mandate reversal unless it is evident that the jury was misled and that the verdict prejudiced the defendant. *People v. Washington*, 2012 IL 110283, ¶ 60; *Polk*, 407 Ill. App. 3d at 108.

¶ 40 Here, the set of instructions that the jury was provided fully set forth the elements of the charged offenses and accurately explained the legal tenets pertaining to the presumption of innocence and the burden of proof. See *Jackson*, 357 Ill. App. 3d at 321 ("Generally, the only instructions necessary to ensure a fair trial include the elements of the crime charged, the presumption of innocence, and the question of burden of proof").

¶ 41 Moreover, the jury did receive instructions pertaining to defendant's claim of self-defense. Specifically, they were provided with Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000),³ which outlines when a person is justified in his use of force against another to defend himself. Thus, as a whole, the set of instructions given to the jury accurately set forth the criteria with which to evaluate the State's case as well as defendant's theory of defense.

¶ 42 Even if defendant's requested instruction had been included, we do not find it likely that the verdict would have been different in light of the strength of the evidence against him. Notwithstanding defendant's assertion to the contrary, he was permitted to fully present his theory of the case. At the outset of the trial, defense counsel informed the jury that defendant acted in self-defense, and in support of his claim, defendant testified that Rice-Davis initiated their physical confrontation by striking him in the back of the head with the hammer. Defendant

³ The version of IPI Criminal 4th No. 24-25.06 provided to the jury stated:

"A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself." Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000).

further testified that when he realized that she had just attacked him, he became especially fearful because of the threat that she had delivered to him earlier that week. Specifically, he testified that "she put her husband in the hospital twice. She'll put me in the hospital." Defendant explained that his response to Rice-Davis' attack, including his continued pursuit of Rice-Davis into his mother's bedroom and bathroom, was the result of both his "ang[er]" and the fact that he was "scared for [his] life." Defense counsel subsequently highlighted defendant's fear as well as Rice-Davis' threat during closing statements.

¶ 43 Defendant's claims that he was scared for his life and acted in self-defense were contradicted by the testimony provided by various members of his family. Although defendant's mother and two foster brothers admitted that they did not know how the altercation started, the witnesses all testified that they heard Rice-Davis screaming for help and saw defendant standing over her swinging a hammer at her head. The witnesses further testified that they did not see Rice-Davis striking or attacking defendant; rather, they saw her try to deflect defendant's repeated blows with her arm. Defendant's mother further testified that defendant pushed her away when she tried to intervene and that her son pursued Rice-Davis with a knife when she tried to run away from him. Furthermore, forensic testimony demonstrated that Rice-Davis was the major contributor of the DNA mixture found on both weapons.

¶ 44 Because the evidence in the record overwhelmingly established that defendant was not justified in his use of force against Rice-Davis and that he was guilty of aggravated battery, we conclude that any purported error pertaining to the trial court's refusal to provide the jury with IPI Criminal 4th No. 3.12X was necessarily harmless.

¶ 45 CONCLUSION

¶ 46 Accordingly, the judgment of the circuit court is affirmed.

1-12-3374

¶ 47 Affirmed.