

No. 1-13-2048

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 18321
)	
SAMUEL MARTINEZ,)	The Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Attempted first degree murder conviction affirmed over claim that State failed to prove beyond a reasonable doubt that defendant acted with the specific intent to kill; public defender reimbursement fee vacated and matter remanded for an adequate hearing on the fee.

¶ 2 Following a bench trial, defendant Samuel Martinez was convicted of attempted first degree murder and sentenced to nine years' imprisonment. On appeal, he challenges the sufficiency of the evidence to sustain his conviction, and requests this court to vacate his

conviction for attempted murder, and remand for sentencing on the merged count of aggravated domestic battery. Defendant also requests this court to vacate the \$5,000 public defender reimbursement fee imposed by the court.

¶ 3 Defendant was charged, in relevant part, with aggravated domestic battery and the attempted first degree murder of his then wife, Carolina Cortez, on October 9, 2011. Defendant was also charged with the attempted murder of Armando Verereos on the same day.

¶ 4 At trial, Carolina Cortez testified that she was married to defendant for 18 years, and they have two children, an 18-year-old daughter and a five-year-old son. Cortez divorced defendant in August 2012.

¶ 5 Cortez further testified that on September 18, 2011, she was going to a baby shower and defendant insisted that he go with her. She told him no, and that she was "fed up," prompting him to push her on the bed, and punch her. Her son then grabbed defendant by the neck, and said, "do not hit my mommy," at which time defendant got off of Cortez. Her face was swollen and purple from this incident, but she did not call police and continued to live with defendant.

¶ 6 Cortez also testified that she works at the grocery store at Cermak Road and Cicero Avenue, and had a sexual relationship with her coworker, Armando Verereos, in October 2011. Cortez testified that she usually starts work at 7 a.m., and that defendant drives her to work following the same route. On October 9, 2011, defendant was going to drive her to work, but the front passenger door of their car was damaged and did not open, so Cortez got in the back behind the driver's seat. As defendant was driving, he deviated from the usual route, and when Cortez asked him, "where are you taking me," he did not respond to her question. She insisted that defendant take her to work because she had to be there at 7 a.m., but he did not respond. Defendant then asked her for her telephone. When they reached 23rd Street, defendant drove into

a vacant lot, and told her, "I'm going to fuck you up." When he said this, Cortez did not try to exit the car because the back doors could only be opened from the outside.

¶ 7 Defendant then drove down Hamlin Avenue, turned down Central Park Avenue and, before reaching Cermak Road, he entered an alley and stopped the car. Defendant turned his face towards Cortez while holding a knife. Cortez explained that the knife defendant had was a work knife but he had brought it home and usually kept in their kitchen. She never saw him place the knife in the car or carry it out of the house. Cortez further testified that defendant, with the 10-inch knife in hand, said, "I'm going to disfigure your face." Cortez grabbed the blade, and defendant punched her in the face, causing her to fall back into the seat. Defendant then yelled, "I'm going to fuck you up," pushed her, and she fell to the floor of the car. At that point, she felt a stab in her buttocks. Defendant then picked her up, pushed her to the front of the car, and told her to drive.

¶ 8 Cortez testified that when she was in the driver's seat, she opened the door and ran towards Cermak Road and a nearby church. Someone there was screaming, "help her, help her," she's bleeding. A car stopped, she got in, and the next thing she recalled was being in the hospital on a stretcher. While at the hospital, Cortez realized that she had been stabbed in the chest, and underwent two surgeries. The doctors told her that she had a perforated liver, and internal hemorrhaging requiring them to open her stomach. Cortez spent nine days in the hospital, and spoke to police multiple times, but never told them about the September 2011 incident.

¶ 9 Maria Guadalupe Flores testified that at 7 a.m. on October 9, 2011, she and her boyfriend, Gabriel Rodriguez, were driving in the area of Cermak Road and Central Park Avenue when they saw Cortez running for help with her arms raised. Cortez, who they did not know, entered their car and said, "help me, help me." She also said, "my children, my children, I don't

want nothing to happen to me." Cortez asked for a phone and called someone but no one answered. She was bleeding, and Flores and her boyfriend drove her to the hospital.

¶ 10 Dr. Ryan Sullivan testified that he was a surgeon at Mount Sinai Hospital and treated Cortez, who had a pulmonary hemorrhage, *i.e.*, blood in the lungs. She also sustained a laceration to her right hepatic lobe, with active bleeding in the liver, hemoperitoneum, which is blood in the abdominal cavity, and a tube was placed in her chest to remove the blood. Dr. Sullivan decided to operate on Cortez because she had 80% blood loss, and was still bleeding, and her condition was deteriorating. During the surgery, Dr. Sullivan observed a liver laceration with active hemorrhage, and a right diaphragm laceration in addition to the hemoperitoneum. The source of the injuries was a stab wound. If there had been no medical intervention, Cortez would have died.

¶ 11 Dr. Sullivan further testified that the stab wound was very deep into the body. He explained that the trajectory of the knife was almost a 90 degree angle, which was pretty much straight into Cortez. The knife entered through the skin, the subcutaneous fat, the abdomen, the chest wall, through the diaphragm, and into the liver. Dr. Sullivan performed surgery on Cortez on October 9, 2011, and on October 11, 2011, Cortez was still bleeding and a subsequent surgery was performed on her. Dr. Sullivan also testified that Cortez will have a lifetime risk of bowel obstructions from the scar tissue, and if she needs a subsequent surgery, it could significantly increase her chances of having a hernia.

¶ 12 Armando Verereos testified that at 7:15 a.m. on October 9, 2011, he was walking into the parking lot of his workplace when he noticed defendant's car. Defendant called Verereos over, then exited his car. Defendant then showed him a knife, and said, "I'm going to fuck you up." Defendant thrust the knife in the direction of Verereos, who had a bag of donuts in his hand and

used it to deflect the knife. Verereos then ran to the nearby security house with defendant chasing him. Defendant then got back into his car and left.

¶ 13 Chicago police detective Salvador Esparza testified that he and Officer Langley met with defendant at the police station. Defendant told the officers that while he was driving his wife to work, he noticed that she was on her cell phone, and he became suspicious. He drove into an alley, confronted her and asked for the phone, and also retrieved a knife on the front passenger seat and showed it to her. Cortez then grabbed the knife, and defendant slapped her and got into the back seat with her. Defendant told her that he was not going to hurt her, but said that he was going to "fuck her up," then stabbed her twice. Defendant then said, "see what you made me do," and she said, "let's go." He told her to drive and she escaped through the driver's side door. He then left and looked at the phone, and when he saw a picture of her coworker Verereos, he confronted him with the knife, saying he was going to "fuck him up." Verereos escaped, however, and defendant left the area, discarded the knife, and went to find his wife. Police told him to stay at the hospital, and he was placed under arrest. Defendant told police that he stabbed his wife because he believed she was cheating on him, that the knife he used was 10 inches long, and blade was approximately 6 inches.

¶ 14 At the close of evidence, the court found that the State proved every element of the offense of attempted first degree murder and aggravated domestic battery of Cortez. The court ordered the battery conviction to be merged into the attempted murder conviction. The court further found that defendant was not guilty of attempted murder of Verereos because the State did not prove each and every element of that offense.

¶ 15 Defendant filed a motion for a new trial, alleging that specific intent was not proven because when he pulled out the knife, he had no intent to use it. Defendant also alleged that he

did not try to cause Cortez' death as evidenced by him telling her to drive the car after the stabbing, that she looked fine, and he did not tell her that he was going to kill her. Defendant maintained that his actions showed that he lacked the specific intent to kill Cortez. The court denied the motion for a new trial, and subsequently sentenced defendant to nine years' imprisonment for the attempted first degree murder of Cortez.

¶ 16 The State then made an oral motion for reimbursement of the public defender's services. The court inquired whether the public defender appeared more than 11 times on this case. The public defender responded that she appeared 14 times. The court then noted that she appeared 14 times plus the trial, and granted the public defender fee of \$5,000.

¶ 17 On appeal, defendant contends that the evidence was insufficient to prove him guilty of attempted first degree murder where there is no evidence that he had the specific intent to kill Cortez. He requests this court to vacate that conviction and remand this cause for resentencing on the aggravated domestic battery offense.

¶ 18 When, as here, the challenge is to the sufficiency of the evidence, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). This court will not substitute its judgment for that of the trial court on questions involving the credibility of the witnesses or the weight of the evidence. *Campbell*, 146 Ill 2d. at 375. A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt. *Campbell*, 146 Ill 2d. at 375. For the reasons that follow, we do not find this to be such a case.

¶ 19 To sustain a conviction for attempted murder, the State must prove beyond a reasonable doubt that defendant, with the specific intent to kill, performed an act that constituted a substantial step toward the commission of murder. 720 ILCS 5/8-4 (West 2010). Mere intent to do great bodily harm or even knowledge that one's acts may result in great bodily harm or death is insufficient to establish the required mental state. *People v. Cunningham*, 376 Ill. App. 3d 298, 303 (2007). The specific intent to kill is an issue of fact, to be determined by the trier fact, and can be inferred from the surrounding circumstances, including the character of the act, the use of a deadly weapon and the severity of the injury. *People v. Johnson*, 368 Ill. App. 3d 1146, 1162 (2006).

¶ 20 Here, the facts show that defendant had a 10-inch knife from his work place in his car on the day in question when he was to drive Cortez to work. He deviated from the usual route, asked Cortez for her telephone, drove into a vacant lot, and would not respond to Cortez' questions regarding where they were going, and told her, "I'm going to fuck you up." When he said this, Cortez did not try to exit the car because the back doors could only be opened from the outside. Defendant then drove to a nearby alley, and told Cortez, with the knife in hand, "I'm going to disfigure your face." Cortez grabbed the blade, and defendant punched her in the face, causing her to fall back into the seat. Defendant then yelled, "I'm going to fuck you up," pushed her and she fell on the floor of the car. At that point, she felt a stab in her buttocks, and defendant stabbed her in the chest pushing the knife straight into her. He then picked her up, and pushed her to the front of the car, and told her to drive. Cortez escaped from the driver's side door and fled, and immediately got help from a passerby, who took her to the hospital. The medical evidence showed that the depth of the cut inflicted by defendant left Cortez in such a condition that she would have died without medical intervention, underwent multiple surgeries to stop the

bleeding, and was in the hospital for nine days. She is also subject to future injuries as a result of the wounds inflicted. Based on this evidence, which included the use of a deadly weapon, we conclude that a rational trier of fact could find that when he plunged his knife into her with such severity, defendant had the specific intent to kill Cortez to sustain his conviction for attempted murder. *People v. Miller*, 284 Ill. App. 3d 16, 24 (1996).

¶ 21 Defendant maintains, however, that his case is similar to *People v. Thomas*, 127 Ill. App. 2d 444 (1970), *People v. Jones*, 184 Ill. App. 3d 412 (1989), and *People v. Garrett*, 216 Ill. App. 3d 348 (1991). We disagree.

¶ 22 In *Thomas*, 127 Ill. App. 3d at 455-56, defendant stabbed the victim in the shoulder, nicked her with a knife multiple times, slammed her head into a dresser, then raped her. Here, on the other hand, defendant stabbed the victim twice, and so deeply, that she sustained life-threatening injuries. *Miller*, 284 Ill. App. 3d at 24. In *Jones*, 184 Ill. App. 3d at 430, defendant beat the victim with a gun, and although he also had a knife, he did not use it or fire the gun. Here, on the other hand, defendant had a knife which he used on the victim in such a way as to show an intent to kill. *Miller*, 284 Ill. App. 3d at 24. In *Garrett*, 216 Ill. App. 3d at 350-51, 354, defendant threatened the victim's life, but, although he held a knife to the victim's throat, he did not cut the victim; instead, he beat the victim with his hands. The victim, who lost two teeth from the beating, was treated as an outpatient for his injuries, received 15 stitches to his lips, and was released from the hospital 4 hours later. *Garrett*, 216 Ill. App. 3d at 354. Here, by contrast, defendant had a knife which he used to stab the victim in the buttocks and chest, which required two surgeries and nine days in the hospital.

¶ 23 The cases cited by defendant are therefore factually inapposite to the one at bar where the evidence here shows that defendant voluntarily and willfully stabbed the victim in the chest, the

natural tendency of which was to destroy her life; and, given that evidence, a rational trier of fact could have concluded that defendant had the specific intent to kill beyond a reasonable doubt. *In re T.G.*, 285 Ill. App. 3d 838, 843-44 (1996).

¶ 24 Defendant next contends that this court should vacate the trial court's order directing him to pay a \$5,000 public defender reimbursement fee where it was ordered without notice or a hearing regarding his ability to pay. The State concedes that the court failed to conduct a hearing, and requests this court to remand for one. Defendant responds that this court should vacate the fee outright with no remand.

¶ 25 Section 113-3.1(a) of the Code of Criminal Procedure (Code) (725 ILCS 5/113-3.1(a) (West 2012)) provides that the court may order defendant, who is appointed counsel, to pay the clerk of the circuit court a reasonable sum to reimburse either the county or the State for such representation. At a hearing to determine the amount of payment, the court shall consider the affidavit prepared by defendant and any other information pertaining to his financial circumstances. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level. 725 ILCS 5/113-3.1(a) (West 2012).

¶ 26 Here, the State requested a public defender reimbursement fee following sentencing. The court inquired whether the public defender appeared more than 11 times on this case. The public defender responded that she appeared 14 times. The court then noted that she appeared 14 times plus the trial, and granted the public defender fee. Defendant raised no question or objection to the fee.

¶ 27 It is thus apparent, and as both parties agree, that the trial court did not comply with the requirements of section 113-3.1(a) in assessing the public defender fee. Although the matter was

addressed within 90 days, the trial court never inquired into defendant's financial status or ability to pay.

¶ 28 In this respect, the case at bar is similar to *People v. Somers*, 2013 IL 114054, ¶15, where the trial court addressed the issue within the 90-day statutory time period, but failed to conduct an adequate hearing under section 113-3.1(a). The supreme court thus found that the remedy was to remand for a proper hearing under section 113-3.1(a). *Somers*, 2013 IL 114054, ¶18.

¶ 29 We reach the same conclusion here where the court solely inquired into how many times the public defender appeared on the matter, and did not conduct an adequate hearing in conformity with section 113-3.1(a). 725 ILCS 5/113-3.1(a) (West 2012). Accordingly, we remand the matter to the trial court for an adequate hearing on the State's motion to reimburse the public defender's office. *Somers*, 2013 IL 114054, ¶20.

¶ 30 In so holding, we reject defendant's claim that the fee should be vacated outright because there was no hearing. The fact that the court did not inquire into defendant's ability to pay the fee does not demonstrate that a hearing did not take place. See *People v. Guajardo*, 262 Ill. App. 3d 747, 757 (1994) (the term "hearing" is generally understood to mean a judicial examination of the issues between the parties, whether of law or of fact). The court's failure to comply with section 113-3.1(a) only shows that the hearing held was inadequate. We, therefore, vacate the fee and remand for an adequate hearing. *Somers*, 2013 IL 114054, ¶20.

¶ 31 In light of the foregoing, we vacate the public defender fee and remand for a hearing in compliance with section 113-3.1(a) of the Code (725 ILCS 5/113-3.1(a) (West 2012)), and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 32 Affirmed in part; vacated in part and remanded with directions.