

No. 1-14-1219

**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).

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 13 CR 12698
	)	
SEAN COBB,	)	Honorable
	)	James B. Linn,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Simon concur in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's decision to admit the victim's testimony regarding her injuries and potential surgery was not plain error. Defendant's claim that the State failed to prove that the victim suffered permanent disfigurement is moot.

¶ 2 Following a bench trial, defendant Sean Cobb was convicted of three counts of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010), two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010), six counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(3)(A), (a)(1)(3)(C), (a)(2)(3)(A), (a)(2)(3)(C) (West 2010) and five counts of aggravated battery (720 ILCS 5/12-3.05(a)(1), (f)(1)

(West 2010) and was sentenced to 54 months' imprisonment. Defendant now appeals and argues that the trial court erred in admitting the victim's testimony regarding her injuries and potential surgery and the State failed to prove him guilty beyond a reasonable doubt of aggravated domestic battery. For the following reasons, we affirm the judgment of the trial court.

¶ 3

### BACKGROUND

¶ 4 Defendant was staying with his mother, Evangeline Van, his aunt, Stephanie Cobb, and his aunt's daughter, Tabatha, at his grandmother's house at 4709 West Polk following her death. On June 10, 2013, defendant and Stephanie got into an altercation. Stephanie testified that defendant and Evangeline were fighting in the kitchen. Defendant had a gun in his hand and argued that he wanted to kill Stephanie's dogs. Defendant began yelling at Stephanie about the dogs. Stephanie testified that she did not argue with defendant and retreated to her bedroom, shutting the door. Defendant then came into her bedroom and hit her on the left side of her face with a gun. She did not see the gun in his hand before defendant hit her and did not remember which hand held the gun. After being struck, she could not see out of her left eye and had a gash that was bleeding. Evangeline took defendant out of the room and Tabatha, after seeing Stephanie bleeding under her eye, went to get a cold towel and ice.

¶ 5 Tabatha, later joined by her sister, Charmaine, took Stephanie to a friend's house and then to the hospital. Stephanie testified that she received stitches under her eye and had broken her orbital bones. Stephanie testified that someone at the hospital called the police. Tabatha testified that Charmaine had called the police and that Stephanie seemed high that day, which Stephanie denied.

¶ 6 Stephanie later consulted with a surgeon who could repair her orbital bones. She

ultimately chose not to because surgery would not have improved her eyesight. At the time of trial, Stephanie still had no vision in her left eye.

¶ 7 Tabatha testified that she witnessed the argument that defendant and Evangeline were having in the kitchen. The argument moved into Stephanie's room. Tabatha saw defendant yelling at Stephanie while Stephanie was lying on her bed. Evangeline would not let Tabatha into Stephanie's room so Tabatha turned to go sit on the couch. She heard a "pop or slap" and saw Evangeline push defendant out of Stephanie's room. Defendant had a gun in his hand. Tabatha rushed to Stephanie's aid.

¶ 8 Officer Jackson testified that he and his partner were dispatched to 4709 West Polk to escort Tabatha into the residence to get her belongings. Tabatha told Officer Jackson that "there was bag in the kitchen that belonged to the gentlemen who she was afraid of" and that Officer Jackson might want to look at it. Officer Jackson walked into the kitchen and saw an open gym bag with a nine millimeter magazine protruding from it. Officer Jackson recovered the ammunition clip from defendant's bag.

¶ 9 Officer Ari Pachnik testified that around midnight, June 10, 2014, he was checking the premises at 4709 West Polk to make sure that defendant was not present after learning of a domestic battery incident that occurred that afternoon. While Officer Pachnik was standing outside talking to Stephanie and Tabatha, they pointed out Evangeline driving in her truck with defendant in the rear passenger seat. Officer Pachnik alerted other officers and got into his vehicle following Evangeline's truck. When he activated his emergency lights and sirens, he saw defendant, whom he identified in open court, reach down on the floor to conceal or retrieve an unknown object. Defendant was detained.

¶ 10 Two handguns were recovered from the floor of the truck where defendant was sitting. Defendant was arrested. Thereafter, the police recovered 42 live .38 caliber rounds from a bag in the truck bed, which were suitable to the firearm recovered from the floor of the truck where defendant was seated, and one live .357 caliber magnum round.

¶ 11 The parties stipulated that defendant had a prior felony conviction for robbery and had never been issued a FOID card. Defendant's motion for a directed finding was denied.

¶ 12 Defendant's mother Evangeline testified on defendant's behalf. She stated that on June 10, 2013, she was washing dishes in the kitchen when she heard defendant and Stephanie arguing in the dining room. Defendant and Stephanie moved into Stephanie's room, still arguing. Evangeline walked into Stephanie's room and saw Stephanie push defendant. Defendant then punched Stephanie in the face. Defendant did not have a gun when he punched Stephanie, or at any other time that afternoon. Evangeline did not see any blood, but got a cold towel for Stephanie and took her out of the house. She also testified that Tabatha was not home at the time of the incident but walked in after the altercation was over.

¶ 13 The trial court found defendant guilty on all counts. Defendant was sentenced to an aggregate of 54 months' imprisonment, at 85% time, with credit for 303 days served. It is from this judgment that defendant now appeals.

¶ 14 ANALYSIS

¶ 15 Defendant argues that the trial court erred in allowing Stephanie to testify regarding her injuries and potential reconstructive surgery because her testimony was both inadmissible hearsay and testimony that a lay witness was not qualified to give.

¶ 16 Defendant correctly acknowledges that he has forfeited review of these alleged errors

because he either failed to object at trial or failed to include the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); see also *People v. Thompson*, 238 Ill. 2d 598 (2010). Consequently, we review this issue for plain error.

¶ 17 The plain error doctrine allows a court of review to consider a forfeited error when “(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.” *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

“In the first instance, the defendant must prove 'prejudicial error.' That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. The State, of course, can respond by arguing that the evidence was not closely balanced, but rather strongly weighted against the defendant. In the second instance, the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process.” *Id.* at 187.

However, before considering plain error, we must first consider whether error occurred at all. *People v. Harris*, 225 Ill. 2d 1, 31 (2007).

¶ 18 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Smith*, 141 Ill. 2d 40, 76-77 (1990); M. Graham, *Cleary & Graham's Handbook of Illinois Evidence* §§ 801, 807 (7th ed.1999). The fundamental reason for excluding hearsay is the lack of an opportunity to cross-examine the declarant. *People v. Shum*, 117 Ill. 2d 317, 342 (1987).

¶ 19 Stephanie's testimony regarding her injuries was based on her own observation and experiences, which were within her personal knowledge and therefore was not hearsay. *People*

*v. Enis*, 139 Ill. 2d 264, 272 (1990). Victims are consistently permitted to testify regarding the injuries they sustained and the treatment they received, without supporting medical testimony or documents, without that testimony constituting hearsay. See *In re J.A.*, 336 Ill. App. 3d 814, 818 (2003); *People v. Costello*, 95 Ill. App. 3d 680, 686 (1981); *People v. Eichelberger*, 81 Ill. App. 3d 1012 (1980). Stephanie testified that defendant hit her on the left side of her face with a handgun. As a result, her eye became swollen, she was bleeding and in pain. She sought treatment at the hospital for her injuries and received stitches below her eye and medication for the pain. She further testified that the bones around her eye were broken and that reconstructive surgery was recommended but she declined to have the surgery because it would not bring back the sight in her left eye. Stephanie testified that she lost vision in her left eye because of defendant's blow. The photographs introduced into evidence show Stephanie's extremely swollen left eye and the stitches underneath her left eye. Furthermore, Stephanie's testimony regarding her injuries was corroborated by Tabatha, who saw Stephanie's eye after she was struck and testified that Stephanie was bleeding. We therefore find that the trial court did not err in allowing Stephanie to testify to her injuries and plain error analysis is not necessary.

¶ 20 We also find no error with respect to defendant's argument that the trial court erred when it allowed Stephanie's testimony regarding her injuries because it was the type of evidence that required testimony from a medical expert. Generally, it is not necessary to present expert testimony on the issue of causation when the relationship between cause and effect is readily apparent based on common knowledge and experience. *People v. Anderson*, 95 Ill. App. 3d 143, 148 (1981). But where the question of causation is beyond the general understanding of the public, the prosecution must present expert evidence. *Id.*

¶ 21 The issue of causation was readily apparent in this case. Defendant hit Stephanie in the eye with a handgun. As a result, Stephanie's orbital bone was broken; she lost vision in her eye, and received stitches. The trial court did not err in allowing her testimony regarding the extent of her injuries, and therefore plain error analysis is improper.

¶ 22 Defendant argues that the State failed to prove him guilty of aggravated domestic battery because the State did not prove that Stephanie suffered "permanent disfigurement."

Specifically, defendant asserts that even if Stephanie was disfigured right after the incident, the State did not present any evidence of "any damage to the surface of Stephanie's face or eye that was still present at the time of trial."

¶ 23 The State argues that defendant's argument is moot because his aggravated domestic battery conviction for permanent disfigurement, count III, was merged into count II, and therefore there was no judgment or sentence entered on count 3.

¶ 24 Defendant was charged by way of information with three counts of aggravated domestic battery. Count I charged that defendant committed the offense of aggravated domestic battery when he intentionally or knowingly caused great bodily harm to Stephanie by striking her about the body with a handgun. Count II charged that defendant committed the offense of aggravated domestic battery when he intentionally or knowingly caused permanent disability to Stephanie by striking her about the body with a handgun. Count III charged that defendant committed the offense of aggravated domestic battery when he intentionally or knowingly caused permanent disfigurement to Stephanie by striking her about the body with a handgun.

¶ 25 Because the State did not treat defendant's conduct as multiple acts and charge him as such, the trial court could not have entered convictions and sentences on all three counts. Where

a defendant is charged with multiple crimes that are derived from the same act, a defendant may only be convicted for the most serious offense. *People v. King*, 66 Ill. 2d 551, 566 (1977).

Indeed, the trial court noted that "cts. 1, 2, 3 agg dom merge [into] ct. 2."<sup>1</sup>

¶ 26 A conviction requires both a finding of guilt and a sentence. See 730 ILCS 5/5-1-12 (West 2010) (“ ‘Judgment’ means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court”); see also *People v. Holmes*, 405 Ill.App.3d 179, 186, (2010) (holding that even if one viewed the defendant's guilty plea as an adjudication by the court that he was guilty, that adjudication did not meet the statutory definition of a “judgment” until a sentence was pronounced by the trial court). In this case, the trial court found defendant guilty of all three counts of aggravated domestic battery. However, the trial court imposed sentence on only one count of aggravated domestic battery, count II.

¶ 27 Defendant asks this court to determine the sufficiency of the evidence on count III. Defendant argues that the State did not prove that Stephanie was permanently disfigured as the State charged in count III. Count III, as stated, was merged into count II, count of aggravated domestic battery. As the trial court properly merged its findings and indicated on the half-sheet that defendant's conviction was based only on one charge, count II, the sufficiency of the evidence on count III is a moot issue.

¶ 28 Even if it were not moot, the evidence was sufficient to sustain the conviction for aggravated battery based on permanent disfigurement under count III. The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light

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<sup>1</sup> This information comes from the half-sheet.

most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 332 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 29 To sustain a conviction for aggravated domestic battery as charged in count III, the State must prove that the defendant intentionally or knowingly caused permanent disfigurement to a family or household member. 720 ILCS 5/12-3.3(a) (West 2010). Disfigurement is defined as that which "impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner." *People v. Woods*, 173 Ill. App. 3d 244, 249 (1988) (quoting Black's Law Dictionary 420 (5th ed.1979)). Generally, whether a defendant inflicted great bodily harm or permanent disfigurement is a question for the trier of fact. *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993).

¶ 30 The evidence in this case sufficiently supports the trial court's finding that defendant's act of hitting Stephanie in the eye with the handgun caused her permanent disfigurement as charged in count III. Stephanie testified that defendant hit her in the left eye with a handgun.

Her eye was swollen and bleeding. A laceration under her eye required stitches. When he hit her, defendant broke her orbital bone. After seeing a surgeon who could repair the broken bone, Stephanie declined to have surgery because it would not repair her eyesight. At the time of trial, over one year after the incident, Stephanie still had no vision in her left eye. There is no question that defendant's actions left Stephanie's eye deformed in that her eyesight was compromised. See *Woods*, 173 Ill. App. 3d at 249. Viewing the evidence in the light most favorable to the State, a rational trier of fact could conclude that defendant caused Stephanie to suffer permanent disfigurement.

¶ 31 Our finding on this issue is consistent with *Doran*, 256 Ill. App. 3d at 132-33 (1993) (a rational trier of fact could conclude that the victim suffered permanent disfigurement where the record contained pictures of the victim's injuries and the victim displayed a scar in the bridge area of his forehead) and *People v. Newton*, 7 Ill. App. 3d 445, 447 (1972) (a rational trier of fact could conclude that the victim suffered great bodily harm or permanent disfigurement where the victim went to a doctor's office to receive six stitches for a wound in his head, and at trial five months later, he indicated that the wound left a small scar which was covered by hair).

¶ 32 CONCLUSION

¶ 33 Based on the foregoing, the judgment of the trial court is affirmed.

¶ 34 Affirmed.