

FOURTH DIVISION
March 19, 2015

No. 1-14-1836

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 5282
)	
MARKO PERAICA,)	Honorable
)	Gregory Robert Ginex,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's convictions of aggravated battery are affirmed where the evidence established that defendant was not acting in self-defense, defendant caused "great bodily injury" to the victim, and defendant committed the battery on a "public way."

¶ 2 Following a bench trial in which defendant claimed self-defense, defendant was convicted of multiple counts of aggravated battery. Defendant was then sentenced to 24 months probation and was ordered to complete an anger management course, an alcohol evaluation, and

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complete 300 hours of community service. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Defendant Marko Peraica was charged by indictment with two counts of aggravated battery of a police officer, one count of aggravated battery based on great bodily injury, two counts of aggravated battery on a public way, and two counts of aggravated battery in a public place of accommodation or amusement. The following evidence was presented at trial.

¶ 5 Kevin Hartnett testified that at 10:30 p.m. on March 11, 2011, he finished his afternoon shift as a patrolman for the Brookfield Police Department, changed out of his uniform and into civilian clothes, and went to Irish Times with his girlfriend, Molly Forbus, for dinner. With dinner, Hartnett ordered a beer and Forbus ordered a cocktail. After they ate, Hartnett went outside with Forbus so she could smoke a cigarette. Before they left, though, Hartnett put in an order for another beer. Hartnett explained that Irish Times was located on the southwest corner of Prairie and Burlington, and another bar, Cheers (now called Phil's), was located on the southwest corner of that intersection. While they were on the sidewalk in front of Irish Times, they heard loud screaming and arguing from across the street in the Cheers parking lot. Hartnett and Forbus then saw two men, who they now know to be defendant and Raul Jasso, leave a group of about five or six people in the Cheers parking lot and walk across the street towards Irish Times. Forbus testified that both defendant and Jasso were stumbling, not walking straight, belligerent, and intoxicated.

¶ 6 Forbus and Hartnett then observed Jasso kick over a wooden three-foot-tall sign that was on the sidewalk in front of Irish Times. Defendant and Jasso then stumbled past Hartnett and Forbus and they noticed that both men's eyes were red, glassy, and bloodshot, and Jasso had a

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fat, bloody lip. Defendant and Jasso then entered Irish Times; Hartnett and Forbus remained outside. At that point, Hartnett called the Brookfield Police Department to let them about the disturbance in the Cheers parking lot and to notify them of defendant and Jasso's location. A minute or two later, Jasso and defendant exited Irish Times, and realizing they were headed back towards Cheers, Hartnett said in a respectful voice, "Why don't you pick up the sign and call it a night." Defendant responded "Who the f*** are you?" Hartnett responded that he was a Brookfield police officer. Defendant and Jasso began walking toward Hartnett; Jasso raised his hands and said "we'll pick up the sign."

¶ 7 When they reached Hartnett, Jasso put his hands on Hartnett's left forearm. Hartnett pulled away and told Jasso not to touch him. Jasso put his hands on Hartnett's forearm again and Hartnett again pulled his arm away and told Jasso not to touch him. Jasso put his hands on Hartnett a third time, and this time, Hartnett saw something coming at the left side of his head in his peripheral vision. As he was hit, Hartnett said he heard "a clunking noise" on the left side of his head. He stated the noise was similar to when an "aluminum bat makes contact with a hardball." Hartnett stated that it felt like "a hard object and not a fist or a flesh on flesh."

¶ 8 Forbus, who was standing just to the left of Hartnett about two or three feet away, testified that she saw defendant reach over Jasso's right shoulder with a ceramic plate in his right hand and hit Hartnett with the plate on the left side of his head, between his forehead and ear. Forbus described the plate as a white plate that was smaller than a dinner plate. She identified the plate in court. Forbus stated that she saw the back side of the plate as defendant struck Hartnett with it.

¶ 9 After being hit in the head, Hartnett grabbed Jasso's jacket to brace himself, and then pushed Jasso away from him and into defendant to get away from them. Hartnett then stumbled

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backwards, saw that his head was full of blood, and asked what he was hit with. Shortly thereafter, the Brookfield police arrived. As Sergeant Paton exited his car, Hartnett pointed at defendant and said "that's the guy, he hit me." Sergeant Paton then approached defendant and began to speak to him. During this time, Forbus went into Irish Times and told Jasso, who had left the scene, that the police were looking for him and that he needed to go outside.

¶ 10 Sergeant Paton testified that he received a call at approximately 12:15 a.m. dispatching him to Irish Times and when he arrived he saw three men standing in the street. When Sergeant Paton first saw Hartnett, he observed that there was "a large amount of blood coming from the left side of his head" and that Hartnett told him that defendant had hit him with something. Sergeant Paton testified that defendant was wearing "a very heavy big winter coat" and that his eyes were "bloodshot" and "glassy" and he could "smell the odor of alcoholic beverage on him." Sergeant Paton then conducted a pat down of defendant and recovered a white ceramic restaurant-type plate from his left pocket and a brandy snifter from defendant's right pocket. Sergeant Paton identified both of these objects in court, and the parties stipulated that the fingerprints that were taken from the plate were not suitable for comparison. Sergeant Paton then placed defendant in custody and secured him in his police car.

¶ 11 An ambulance arrived and Hartnett was given gauze and ice to place on his wound. He was told by the paramedics that stitches were unnecessary, so Hartnett refused medical treatment from the ambulance. After leaving the ambulance and going inside Irish Times to pay his bill, Hartnett realized that he was still bleeding. Forbus took Hartnett to the police station where he called an ambulance that then brought him to LaGrange Hospital. Hartnett began to feel nauseous and his foot began to bother him, so the doctors at the hospital took a CT scan of Hartnett's head, an X-ray of his foot, and stitched up the wound on his head with four stitches.

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Four photographs of Hartnett's head that were taken while he was being treated at the hospital and were introduced into evidence.

¶ 12 The State concluded by admitting all its exhibits into evidence, and defendant moved for a directed verdict arguing that the State failed to prove that the battery occurred on a public way and failed to prove that Hartnett was a police officer. With respect to the public way, the trial court judge stated:

"I think quite frankly, that in the photographs and the evidence, and I think I can take judicial notice as Irish Times, the bar, and Prairie Avenue, Burlington are well within our jurisdiction. I have a right to take judicial notice that the immediacy being outside the bar, the sidewalk, the street area, those are public ways. There is no question about that. So whether or not they were proven or whether or not the State had anybody come and testify to it, I do think the totality of the evidence shows that it's a public way."

With respect to the State's alleged failure to prove that Hartnett was a police officer, the trial court judge found that, although he believed that Hartnett announced he was a police officer, it was not enough to satisfy that defendant had the requisite knowledge to prove aggravated battery of a police officer.

¶ 13 Defendant also argued in his directed verdict motion that the State failed to disprove defendant's affirmative defense of self-defense and defense of others. The trial court judge found that there was nothing in the record to show self-defense or defense of another. As such, the trial court judge affirmed defendant's motion for a directed verdict on the two counts of aggravated battery of a police officer, and denied the remainder of the motion.

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¶ 14 Raul Jasso testified in defendant's case. Jasso testified that on the night of the incident, he had consumed over seven beers before walking from Cheers to Irish Times with defendant. Jasso stated that he and defendant were "hanging on each other" as they walked from Cheers to Irish Times and one of them knocked over the sign outside of Irish Times while they were nudging each other back and forth. Neither of them picked up the sign, and Hartnett blocked their path and yelled at them about knocking over the sign. Jasso testified that Hartnett aggressively "proceeded to shove [him] several times" with one or two hands. He stated that it was "strong enough to make him take a step back" and made him think that Hartnett was trying to "insinuate a fight." While Hartnett was yelling, defendant went back and picked up the sign. Jasso testified that defendant was watching the whole time as Hartnett shoved him and that defendant stated "who the f*** are you?"

¶ 15 Jasso stated that Hartnett took a step towards defendant, and Jasso watched defendant strike Hartnett. Jasso stated that defendant "was behind [him] so [he] did not see if there was anything in [defendant's] hand" when he hit Hartnett. After Hartnett was hit, he held his head for a second and then said, "you just struck a police officer." As Hartnett stepped towards defendant who was backing away, Jasso held his arms out to separate the two. Jasso again stated that he did not see anything in defendant's hands when he separated the two; he was watching Hartnett who was "going after" defendant. When the police arrived, they arrested defendant, and Jasso denied hitting Hartnett. Jasso went back into Irish Times to find a ride home, but Forbus came in and told him the police wanted to see him. When he went outside, the police officers told him to leave, so he walked home. Jasso stated that he never saw a plate in defendant's hand while they were outside of Irish Times.

¶ 16 On cross-examination, Jasso admitted he consumed "between 7 and no more than 13"

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beers that night prior to going to Irish Times. He also admitted that he was involved in an altercation at Cheers that resulted in him getting a busted lip. Jasso testified that Hartnett shoved him with both hands, "enough to throw him off balance each time." Jasso admitted that he went to the police station the next day and spoke with Officer McGrath and ASA Medina, however, he denied telling them that defendant hit Hartnett with a plate.

¶ 17 Defendant testified that on March 11, 2011, he was with Jasso at Cheers but then left after Jasso, who was intoxicated, got into an altercation. They went to Irish Times where the street was "jam packed" because it was the weekend before St. Patrick's Day. On their way there, he and Jasso were pushing into each other and they knocked over an Irish Times "A" frame sign. When they knocked over the sign, Hartnett "approached [them] screaming about the sign, pick up the sign" and defendant picked up the sign.

¶ 18 Defendant stated that Jasso tried to neutralize the situation, but Hartnett grabbed Jasso with his right hand and pointed with his left hand to pick up the sign. Defendant then approached Hartnett to try and neutralize the situation, and Hartnett also grabbed defendant's shirt. Defendant explained he was worried about Jasso because he was in no condition to defend himself. According to defendant, Hartnett looked upset, irritated, was yelling extremely loud, and was holding himself and Jasso both by their shirts. Defendant stated that he then "close fist kind of jabbed [Hartnett] on the head." Hartnett responded by saying, "you just hit a police officer." Defendant claimed that he was wearing a gold ring that night and denied having a dish in his hand or in his pockets. The police arrived 30 seconds later and took him into custody. Defendant stated that he hit Hartnett because "he grabbed me."

¶ 19 On cross-examination, defendant admitted that he drank six beers prior to the incident. Defendant did not witness the altercation Jasso had been in at Cheers and did not know how

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much Jasso had consumed, but he knew that he was intoxicated because he had slurred speech, was swaying from side to side and was stumbling. Defendant claimed that both Cheers and Irish Times were at capacity and there were 30 people outside of Irish Times when they walked over. Defendant was not sure who started the fight when Jasso and Hartnett "started getting into it." Defendant struck Hartnett while Hartnett was holding Jasso with his right hand and defendant with his left hand. Defendant believed that it was his ring that cut Hartnett's head.

¶ 20 After the defense rested, Brookfield Police Officer Robert McGrath testified in rebuttal that while he was working as a patrolman on March 11, 2011, he saw Hartnett enter the police station at about 1:00 a.m. with a fresh cut on his head. Because the cut was bleeding, an ambulance was called to take Hartnett to the hospital. On March 12, 2011, Officer McGrath and ASA Medina spoke with Jasso who told them that Hartnett only pushed him twice. Jasso admitted that he saw defendant hit Hartnett in the head with a plate.

¶ 21 ASA Kristin Piper testified that she was present for an interview with Jasso on February 26, 2014, at which time Jasso stated that while Hartnett was complaining about the sign he took two fingers and poked Jasso on the chest on two occasions. The State then rested.

¶ 22 The trial court made numerous findings of fact and ultimately found defendant guilty on one count of aggravated battery that caused great bodily harm, two counts of aggravated battery on a public way, and two counts of aggravated battery in a public place of accommodation or amusement, but merged all the counts into aggravated battery. In his ruling, the judge made the following remarks:

"What I think happened is exactly what Miss Forbus testified to. Miss Forbus said she stood out there and saw defendant strike Officer Hartnett with a plate in the head. That is corroborated by

Mr. Jasso's testimony to the State's Attorney, and he was impeached as to that. In totality in weighing all of the evidence in this case, I do not find that this was a matter of mutual combat. Nor do I find that that this was a matter of self-defense. What I do find was I find that someone who was under the influence came out there, wanted to cause a confrontation and struck this officer, Kevin Hartnett, in the head with a plate for whatever reason."

Defendant then filed a motion for a new trial, which was denied. Defendant was then sentenced to 24 months probation, and ordered to attend an anger management course, an alcohol evaluation, and complete 300 hours of community service.

¶ 23

ANALYSIS

¶ 24 Defendant argues that his convictions should be reversed because the State failed to prove him guilty of aggravated battery beyond a reasonable doubt. Specifically, defendant argues that the State was unable to present sufficient evidence to refute his claim that he was acting in self-defense when he struck Hartnett, the State failed to prove that defendant caused Hartnett "great bodily harm" when he struck him, and the State failed to prove that the incident took place on a "public way."

¶ 25 We review a challenge to the sufficiency of the evidence to determine “ ‘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 crime beyond a reasonable doubt.’ ” (Emphasis omitted.) *People v. Cox*, 195 Ill. 2d 378, 387 (2001) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *People v.*

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Evans, 209 Ill. 2d 194, 209 (2004). In reviewing the evidence, it is not the function of this court to retry the defendant, nor will we substitute our judgment for that of the trier of fact. *Evans*, 209 Ill. 2d at 209.

¶ 26 Self-Defense

¶ 27 Defendant argues that because the State failed to refute his claim of self-defense, he could not have had the requisite mental state to be convicted of an aggravated battery. If a defendant raises the affirmative defense of self-defense, the State must also prove beyond a reasonable doubt that he did not act in self-defense. *People v. Hayes*, 2011 IL App (1st) 100127, ¶ 30. The elements of self-defense are: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) danger of harm was imminent; (4) use of force was necessary; (5) the threatened person actually believed a danger existed requiring the use of force; and (6) the threatened person's beliefs were objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). The State satisfies its burden if it negates any one of these elements. *Id.*

¶ 28 Furthermore, it is the finder of fact's function to assess the credibility of the witnesses and the weight to be given their testimony by resolving any conflicts or inconsistencies in the evidence. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002).

¶ 29 Whether a defendant acted in self-defense is a question for the trier of fact to determine. *People v. Goliday*, 222 Ill. App. 3d 815, 821-22 (1991); *People v. Titone*, 115 Ill. 2d 413, 422 (1986) ("It is peculiarly the prerogative of the trier of fact to judge the credibility of witnesses and draw conclusions based on all the evidence."). A reviewing court will not reweigh the evidence or substitute its judgment on these matters for that of the trier of fact. *Tenney*, 205 Ill. 2d at 428. Where there are inconsistencies in witnesses' testimony, the finder of fact is not

required to believe the defendant's version of the events. See *Hayes*, 2011 IL App (1st) 100127, ¶ 37; *In re Jessica M.*, 399 Ill. App. 3d 730, 737 (2010) ("A trier of fact is 'not obligated to accept a defendant's claim of self-defense,' but instead must consider the probability or improbability of the testimony, the surrounding circumstances, and the testimony of other witnesses."). On appeal, a conviction will be affirmed "unless the proof is so improbable, unsatisfactory, or unconvincing as to raise a reasonable doubt of defendant's guilt." *People v. Gill*, 264 Ill. App. 3d 451, 459 (1992).

¶ 30 Initially, and as pointed out by the State, defendant's brief does not cite any case law or statute relating to his claim of self-defense. Illinois Supreme Court Rule 341(h)(7) states: "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. Sup. Ct. R. 341(h)(7) (eff. Jan. 1, 1967). Compliance with Rule 341 is mandatory, and this court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77; *Eryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 25; see *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). However, because we find that plaintiff's lack of compliance with Rule 341 does not entirely preclude our review here, we will not find that this lack of compliance is dispositive to our ruling on appeal. Accordingly, despite these deficiencies, we will not dismiss the appeal for failing to comply with Rule 341. See *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 26.

¶ 31 Here, the trial court judge made it clear in his ruling that he did not find defendant's testimony claiming that he struck the victim in self-defense to be credible; instead, the judge believed the version of the story told by Forbus:

"What I think happened is exactly what Miss Forbus testified to. Miss Forbus said she stood out there and saw defendant strike Officer Hartnett with a plate in the head. That is corroborated by Mr. Jasso's testimony to the State's Attorney, and he was impeached as to that. In totality in weighing all of the evidence in this case, I do not find that this was a matter of mutual combat. Nor do I find that that this was a matter of self-defense. What I do find was I find that someone who was under the influence came out there, wanted to cause a confrontation and struck this officer, Kevin Hartnett, in the head with a plate for whatever reason."

From our review of the record, we do not find the evidence to be so improbable, unsatisfactory, or unconvincing as to raise a reasonable doubt of defendant's guilt. Because we will not reweigh the evidence or substitute our judgment on these matters (*Tenney*, 205 Ill. 2d at 428), we affirm the trial court's finding that defendant was not acting in self-defense when he struck Hartnett in the head with a plate. *People v. Collins*, 106 Ill. 2d 237, 261-62 (1985) (It is well settled that these determinations are exclusively within the province of the trier of fact).

¶ 32 Forbus testified that Hartnett did not push or grab or have any physical contact with defendant or Jasso prior to being hit in the head with a ceramic plate. As stated earlier, the State needed only to disprove one of the six elements of self-defense to satisfy its burden at trial. The elements of self-defense are: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) danger of harm was imminent; (4) use of force was necessary; (5) the threatened person actually believed a danger existed requiring the use of force; and (6) the threatened person's beliefs were objectively reasonable. *Jeffries*, 164 Ill. 2d at 127-

¶ 36 Here, taking into account the trial court's findings of fact and credibility determinations, the evidence showed that Hartnett was hit in the head with a ceramic plate. As a result, his head was bleeding to the point that he eventually needed to have stitches. The trial court also viewed photographs of Hartnett's injury and heard testimony from Sergeant Paton that when he arrived at the scene, he noticed a large amount of blood coming from Hartnett's head. Viewing this evidence in the light most favorable to the State, (*Cox*, 195 Ill. 2d at 387), we conclude that a rational trier of fact could find that Hartnett, who was struck in the head with a ceramic plate, suffered great bodily harm. See *Cross*, 84 Ill. App. 3d at 872 ("Certainly, striking the victim on the head with a lead pipe may be properly construed as inflicting great bodily harm.").

¶ 37 Defendant cites two cases in support of his proposition that Hartnett's injuries could not be considered "great bodily harm" pursuant to the aggravated battery statute. In the first case, *In re J.A.*, 336 Ill. App. 3d 814 (2003), the victim was stabbed by the defendant in the back of the shoulder and described his injury as feeling like somebody pinched him. *In re J.A.*, 336 Ill. App. 3d at 817. Although the victim was advised to have his wound stitched, there was no evidence of the extent or nature of the victim's injury from the single wound. *Id.* As such, the court found that the State had failed to prove "great bodily harm" and instead was only able to prove "bodily harm." Here, defendant was struck in the head with a ceramic plate, which caused him to nearly fall over and bleed to the point that he eventually went to the hospital to have the wound stitched up. In this case, unlike *In re J.A.*, not only was there testimony that Hartnett was struck in the head, but there was testimony that the injury bled profusely, there were photographs of the victim's injury admitted into evidence, and there was testimony that the injury required four stitches to close the wound.

¶ 38 In the second case relied on by defendant, *People v. Figures*, 216 Ill. App. 3d 398 (1991), the defendant fired a shot at the victim that pierced the victim's shoe but did not penetrate his skin. *Figures*, 216 Ill. App. 3d at 402. The victim testified that his foot did not bleed as a result of the shot. *Id.* Based on that evidence, the court found that the State had failed to prove "great bodily harm" and instead had only proven "bodily harm." Unlike the injury in *Figures*, which appeared to be limited to a bullet grazing the victim's foot without making any harmful contact, Hartnett was struck in the head with a ceramic plate, causing his head to bleed until it was stitched up at the hospital. As such, we find, like the trial court found, that the State was able to prove that defendant caused great bodily injury to Hartnett when he hit him on the head with a ceramic plate. See *People v. Matthews*, 126 Ill. App. 3d 710, 710-14 (1984) (aggravated battery conviction based on great bodily injury upheld where the victim was struck on the head with a gun and received several full-force blows on the head and arms with a baseball bat, but only testified that she had "a bruise on my head").

¶ 39 Public Way

¶ 40 Last, defendant argues that the State failed to prove that the battery occurred on a "public way." In support of this argument, defendant states in his brief: "the State did not call anyone from the city, such as the Department of Public works, who could affirmatively state a precise location of the incident and secondly and more importantly, whether that area is accessible to the public." The State in turn argues that this conviction was merged, but that it nevertheless presented sufficient evidence to show that the incident occurred about a public way. Defendant does not rebut any of the State's arguments in his reply brief.

¶ 41 It appears from the record that defendant's convictions for aggravated battery on the public way or about a place of accommodation or amusement were merged and the trial court

judge entered judgment on defendant's aggravated battery based on great bodily harm. However, we find that defendant's argument that the State failed to prove that the incident occurred on the public way to be without merit. "[T]he courts [] have broad discretion in determining whether a person committed a battery 'on or about a public way.'" *People v. Lowe*, 202 Ill. App. 3d 648, 654 (1990). "An exact location is not necessary to find that a person committed a battery on or about a public way." *Id.* Here, both Hartnett and Forbus testified that they were on the sidewalk outside of Irish Times when the battery occurred, and both defendant and Jasso acknowledged that Jasso knocked over a sign outside of Irish Times just before the incident occurred. As such, viewing all the evidence in a light most favorable to the State, (*Cox*, 195 Ill. 2d at 387), we find that there was sufficient evidence to find that the aggravated battery occurred on a public way.

¶ 42

CONCLUSION

¶ 43 For the reasons stated above, we affirm the trial court's judgment.

¶ 44 Affirmed.