2015 IL App (2d) 131219-U
No. 2-13-1219
Order filed November 6, 2015



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Lake County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 13-CM-1828 |
| SADE WILLIS, | ) | Honorable John J. Scully, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant showed no plain error or ineffective assistance of counsel pertaining to the trial court's failure to instruct the jury that the State had to disprove beyond a reasonable doubt her claim of self-defense, as the parties essentially cured the error by providing that instruction in their closing arguments; thus, the error could not have affected the outcome of the trial and did not deny defendant a fair trial.

¶ 2 After a jury trial, defendant, Sade Willis, was convicted of three counts of battery (720 ILCS 5/12-3(a) (West 2012)) and acquitted of criminal damage to property (720 ILCS 5/21-1(a)(1) (West 2012)). The trial court denied her posttrial motion and imposed a year of supervision. On appeal, defendant contends that the court committed plain error in that it failed

to instruct the jury that convicting her of battery required the State to disprove beyond a reasonable doubt her claim of self-defense (see 720 ILCS 5/7-1(a) (West 2012)). See Illinois Pattern Jury Instructions, Criminal, No. 24-25.06A (4th ed. 2000) (hereafter, IPI No. 24-25.06A). We affirm.

¶ 3 The four-count information against defendant was based on two separate but related incidents of April 20, 2013. Count I alleged that defendant knowingly caused bodily harm to Erica Smith by grabbing her about the hair (720 ILCS 5/12-3(a)(1) (West 2012)). Count II alleged that she knowingly made insulting or provoking physical contact with Smith by grabbing her about the hair (720 ILCS 5/12-3(a)(2) (West 2012)). Count III alleged that she knowingly made insulting or provoking physical contact with Smith by striking her about the body (720 ILCS 5/12-3(a)(2) (West 2012)). Count IV alleged that she committed criminal damage to property by damaging the window of Smith's car (720 ILCS 5/21-1(a)(1) (West 2012)).

¶ 4 We summarize the trial evidence. Smith testified on direct examination as follows. She had been dating Derrick Duncan, defendant's brother, for approximately three years and had had a good relationship with defendant until April 20, 2013. Early in April, Duncan called Smith inquiring about rumors that defendant had chlamydia; defendant and Duncan had had an argument over the rumors. Smith told Duncan that she knew nothing about the rumors. On April 16, 2013, she spoke to Vivian Willis, the mother of defendant and Duncan. Vivian told Smith that she and defendant would work things out.

¶ 5 Smith testified that, just before noon on April 20, 2013, she drove to the IGA store on 22nd Street in North Chicago. As she entered the parking lot, defendant drove in, accompanied by Amber Willis, her cousin. Smith and defendant were parked next to each other, but neither exited her car or spoke to the other. Smith called Duncan; he told her that the "situation" had not

been resolved, and he asked her to pick him up at his friend's house on Sherman in North Chicago. Smith drove to Sherman, passing 2133 Sherman, the home of Vivian, Duncan, and defendant. Her driver's-side window was rolled down partway. She parked about four or five houses down from 2133 Sherman. Soon afterward, defendant pulled in on the street alongside Smith's car. Defendant's brother Darnell had been parked nearby, and he drove to the scene.

¶ 6 Smith testified that defendant began to laugh and yell at her. Smith told her that she was getting ready for work and had no time to argue. Defendant got out of her car and called Smith "bitch." Smith did not threaten defendant but asked her to stop. She also rolled up her window and locked her door. She had not noticed that her sunroof was still open. Defendant grabbed the sunroof with one hand, reached in with her other hand, and started pulling at Smith's hair and punching Smith in the back of the head. Defendant's legs were off the ground, and her knees were hitting the side of the car. Defendant spent at least five minutes pulling at Smith's hair. Smith repeatedly told defendant to stop pulling her hair and to get off her car. She had not hit or grabbed defendant to this point; one hand was on her phone, which she had been using to try to call Duncan, and she had been using the other hand to drive.

¶ 7 Smith testified that, after defendant refused to get off her car, she drove off slowly. As a result, defendant fell off. Defendant got up, entered her car, and drove away with Amber. Smith drove off in the opposite direction, toward her mother's house on 19th Place. When she arrived, her sister Latasha told her to go to the police station. Instead, Smith and Latasha got into Smith's car and picked up Duncan, who had arrived and had been waiting across the street. Smith told Duncan that she wanted to go to the home of Vivian's fiancé, Joseph Morris, on Park, because Vivian would be there and she and Smith could discuss the incident with defendant.

¶ 8 Smith testified that, as she parked in front of Morris's house, she saw defendant and Amber in defendant's car, very nearby. Vivian was standing near the curb, a few feet away and directly across from the cars. Latasha and Smith exited Smith's car as defendant stayed in her car. Latasha approached Vivian and asked what had happened in the attack on Smith. At that point, Smith heard a car door slam, and defendant ran up to her and called her names. Defendant grabbed Smith's hair and hit her in the back of the head at least five times. Smith had not hit or pushed defendant; defendant threw the first punch. Smith fought back, and they both fell to the ground. Smith was on top. Duncan tried to break up the fight. Vivian and Amber pulled Smith off defendant and started hitting her in the face and the back of the head and pulling her hair. They pulled out some of her weave. Latasha intervened. Smith was able to get back to her car.

¶ 9 Smith testified that, as she and Latasha reentered the car in the front seats and Duncan was entering in the back, defendant reached through the partly-open driver's-side window and hit her and Latasha. Smith rolled up the window and prepared to put the car into drive. At that point, defendant "karate kick[ed]" the driver's-side window, shattering it and sending glass flying; some of the glass hit Smith. Smith tried to call the police but could not get through. Defendant and Amber drove off. Smith lost sight of defendant and drove to the police station. It was about 2:15 p.m. Smith identified photographs, admitted into evidence, showing the injuries that the fight had caused to her head, hair, and arms. She also identified photographs, admitted into evidence, showing the glass that had been shattered by defendant's kick to the car window.

¶ 10 Smith testified on cross-examination as follows. At the IGA parking lot, she saw defendant and called Duncan. He told her to leave, get him, and go to the store later. At that time, Duncan was living with his friend, five houses down from 2133 Sherman, as Vivian had kicked him out four days earlier. Smith pulled out of the parking lot before defendant did.

Smith pulled up on Sherman near Duncan's friend's house. Defendant had followed Smith there and pulled up in the middle of the street. When defendant exited her car, Smith told her that she had no time to argue, because she had to get to work. Defendant was still pulling Smith's hair when Smith let her car roll; defendant fell off immediately.

¶ 11 Smith testified that, after the first incident, she did not go to the police, as she and defendant had been close and she hoped that they could work things out. After she picked up her sister, then Duncan, she decided to go to Morris's house to talk to Vivian. When she got there, she saw defendant and Amber sitting in defendant's car; Morris was standing near the house. Smith had not anticipated that defendant would be there. After the fight erupted, Vivian and Amber jumped in and attacked Smith, and Duncan and Latasha tried to break up the melee. Smith eventually got to her car as Vivian and Amber were hitting Latasha. On redirect, Smith testified that, while on Sherman, she kept her car in drive and called Duncan so that he could get there soon and they could leave.

¶ 12 Ludwin Barreno, a North Chicago police officer, testified as follows. At about 10 p.m. on April 20, 2013, after defendant had returned from the hospital, he asked her what had happened. Defendant gave the following account. That morning, Vivian told her to go to 2133 Sherman and pick up some clothes. When she got there, she saw Smith arriving. Defendant got out of her car, approached Smith's car, and put her hand onto the sunroof. Smith grabbed her hand and drove off, dragging along defendant, who soon fell to the ground. After defendant hit the ground, she blacked out and could not recollect any more of what had happened on Sherman. Barreno testified that defendant then wrote out a statement, which was admitted into evidence.

¶ 13 Duncan testified on direct examination as follows. About a week before April 20, 2013, defendant angrily told him that she was going to "beat [Smith's] ass" because Smith had been

telling people that defendant had a venereal disease. At this time, Duncan and defendant lived at 2133 Sherman. Vivian sometimes stayed with Morris on Park, but defendant rarely visited there.

¶ 14 Duncan testified that, on April 20, 2013, just before noon, he was at a friend's house on Sherman when he called Smith to pick him up. Smith called back, asking where he was, but he missed the call. Smith called again five minutes later; this call went to Duncan's voicemail. Smith called a third time and asked Duncan why he had not called back. Duncan checked his voicemail. He heard Smith call defendant's name and say, " 'Get off my car. Get off my car. I don't want to fight you. Get off my car.' " Duncan immediately called Smith and asked her to pick him up so that they could both talk to Vivian.

¶ 15 Duncan testified that he walked down the street. Smith and Latasha drove up, picked him up, and went to Park. There, defendant, Vivian, and Amber were standing outside. Latasha exited the car, approached Vivian, and said that she wanted to talk to her. Duncan was standing between Smith's car and defendant's car; Smith was standing in her driver's-side doorway; and Latasha was standing in front of Smith's car. At this point, defendant rushed Smith and hit her in the head two or three times before Smith fought back. Duncan tried to break up the fight by getting between defendant and Smith. The two combatants fell to the ground; at first defendant was on top, then Smith was on top. Vivian started striking Smith in the back of the head, landing more than 10 blows. Meanwhile, Amber fought with Latasha and also kicked Smith two or three times. After a few minutes, Duncan and his brother Darnell broke up the fight.

¶ 16 Duncan testified that Smith and Latasha reentered Smith's car as he stood just outside. Duncan then heard defendant and Amber yell, " 'Bitch this, bitch that. I'm going to fuck you up.' " Defendant kicked the driver's-side window, shattering it. Some of the glass hit Smith.

Defendant kept on yelling about what she would do to Smith. She and Amber then drove away. Smith called the police and soon drove to the station. Defendant, Vivian, and Amber were there.

¶ 17 Duncan testified on cross-examination as follows. When Smith picked him up, she drove to her house, slowed the car down, let Latasha get in, then drove to 2133 Sherman in hopes of talking to Vivian. When they found out that she was not there, they drove to Morris's house on Park. There, Duncan saw defendant, Vivian, and Amber, all standing on the curb. Smith pulled in five feet from defendant's car and took six or seven steps toward the front of her car. Latasha asked Vivian why defendant wanted to fight Smith. Defendant then charged Smith. The fight moved around. Eventually, Duncan pulled defendant and Smith apart. As Smith and Latasha reentered the car in front, and Duncan was getting into the backseat, defendant gave a "karate kick" to the driver's-side window.

¶ 18 Latasha testified on direct examination as follows. On April 20, 2013, when she was at home, Smith arrived and asked her to go with her to talk to defendant and Vivian about the rumors being aired about defendant. Along with Duncan, they drove to Park, not expecting to find defendant there. When they arrived, Latasha saw Vivian and Morris standing outside and defendant and Amber sitting in defendant's car. Latasha exited Smith's car first and was speaking to Vivian when she noticed that Smith had exited her car. Latasha and Vivian ran over. Latasha saw defendant swing at Smith and pull her to the ground. Defendant punched Smith in the face, and the two started rolling around.

¶ 19 Latasha testified that Duncan pulled Smith and defendant apart. Vivian then grabbed Smith's hair and started punching her in the head. Latasha came in to aid Smith, but Vivian punched her twice and Latasha started fighting back. Amber joined in attacking Latasha and Smith. By then, defendant was no longer in the fight; Latasha did not recall where she had been.

¶ 20 Latasha testified that she, Smith, and Duncan retreated to Smith's car. Defendant tried to get at Smith through the driver's-side window, but Smith moved her and Amber out of the way. Smith then rolled up the window. Defendant kicked out the window, sending glass all over the interior of the car. Smith tried to call the police as defendant and Amber entered defendant's car and drove off. Eventually, Smith, Latasha, and Duncan drove to the police station.

¶ 21 Latasha testified on cross-examination as follows. After Smith arrived home, she changed clothes. Five minutes later, Duncan showed up at the house. The three got into Smith's car and drove to Park to talk to Vivian. Duncan knew the way to Morris's house and had been trying to contact Vivian by phone. When they arrived on Park, Latasha heard defendant's car door slam and saw defendant approach Smith, who had gotten out of her car in the meantime. Latasha spoke to Vivian, but she could see defendant and Smith with her peripheral vision.

¶ 22 The State rested. Defendant first called Amber, who testified on direct examination as follows. On the morning of April 20, 2013, she was with defendant at defendant's boyfriend's house. Vivian called defendant and asked her to go to 2133 Sherman to get some things for her. Defendant and Amber drove off, stopping at the IGA to buy something to drink. As they pulled into the parking lot, they saw that Smith was in her car, two feet away. Defendant did not talk to Smith but drove off toward 2133 Sherman. Smith followed her.

¶ 23 Amber testified that, when she and defendant got to 2133 Sherman, defendant parked in front of the house. Smith parked in the middle of the street aside defendant's car. Defendant exited her car and walked toward Smith as Amber spoke on the phone to Vivian. After a couple of minutes, Amber heard Smith's car moving, looked up, and saw defendant getting dragged by Smith's car. Defendant's arm was stuck inside the sunroof and she was screaming at Smith to stop the car. Eventually, Smith did. Amber ran down the street and saw that defendant was

lying on her side in the middle of the street, with cuts on her arm, a gash in her forehead, and bruises on her hands. Amber told defendant to get up. Defendant said nothing, so Amber pulled her up off the ground. She saw Smith driving back up the street toward her and defendant. Smith told them to get off the street. Darnell came outside and asked what was going on.

¶ 24 Amber testified that at this point she was still on the phone with Vivian. Vivian told her to tell defendant to come to Morris's house so that they could then go to the police station. Because Amber could not drive, defendant drove while Darnell drove his car to Morris's house. Arriving there, Amber saw Vivian exit the house. She then saw Smith, Latasha, and Duncan coming down the street. Smith parked in the middle of the street, about two feet from defendant's car. Vivian and Morris were outside, holding some "peroxide and stuff."

¶ 25 Amber testified that Latasha exited Smith's car and said some angry words about defendant. Defendant, Amber, Vivian, and Morris were all standing in front of defendant's car. At that point, Smith started charging toward defendant. She raised her fist before defendant did. Vivian stepped in to try to break it up. Amber also stepped in, but Latasha swung at her. Duncan pulled Smith up and Vivian pulled defendant up. Smith, Latasha, and Duncan entered Smith's car. The driver's-side window was broken, but she had not seen how that had happened; she had never seen defendant kick the window. After the fight, Amber, Vivian, defendant, and Darnell went to the police station. Smith, Latasha, and Duncan arrived a few minutes later.

¶ 26 Amber testified on cross-examination as follows. While parked at the IGA near defendant, Smith never exited her car, did not look at defendant, and did not threaten her. On Sherman, she saw defendant exit her car without saying anything; she did not see Smith exit her car. Amber admitted that, in contrast to her testimony on direct examination, her written

statement included the assertion that Smith had been "speeding down the street doing 60 *** and she hit [defendant]" but did not say that defendant had been dragged down the street.

¶ 27 Amber testified that, after she helped defendant off the street, she did not call an ambulance. Defendant drove herself and Amber to Morris's home, because Vivian had said that she wanted to talk to them. Darnell drove his own car there. On Park, she had gotten out of the car when Smith got out of her car and started the fight. Amber admitted that her written statement did not mention that Smith had gotten out of her car and started the fight. On redirect, Amber testified that, after defendant reentered her car on Sherman, she was able to start the car and make the five-minute drive to Park. On re-cross-examination, Amber admitted that her written statement's assertion that Smith had run down defendant with her car was inaccurate.

¶ 28 Vivian testified as follows. On the morning of April 20, 2013, she called defendant and asked her to pick up some things at 2133 Sherman and bring them to Morris's house on Park. About an hour later, she spoke by phone with Amber, who said that she and defendant were on the way to 2133 Sherman. Vivian saw defendant when she and Amber drove up on Park. Vivian opened the driver's-side door, saw that defendant's face was bleeding badly, and asked Morris to go inside and get some peroxide. He did so. Amber was standing outside the car. Morris came back, and he and Vivian started to treat defendant. Defendant "didn't really know what was going on, really. She didn't know how she drove over there. She didn't even know she was over there." At this point, Smith drove up, accompanied by Latasha and Duncan, and parked in the street, about two feet from defendant's car. Duncan got out, followed by Smith and Latasha. Duncan shouted, " 'Beat that bitch ass.' " Defendant was out of her car, bent over, and bleeding badly. Smith lunged at her. Defendant fell to the ground. Vivian ran in to break it up, but

Latasha jumped on her, and Amber started pulling on Latasha. Eventually, Darnell and Morris broke up the fight.

¶ 29 Morris testified as follows. On April 20, 2013, he was residing at his father's house on Park. After the first confrontation with Smith, defendant and Amber drove up at Vivian's request. Defendant was bleeding from her forehead, hip, and hand. Vivian and Morris talked with defendant and started treating her outside her car with peroxide. By the time Morris looked up, Smith had arrived with Latasha and Duncan. Smith got out first, charged defendant, grabbed her, and threw her down onto the street. Defendant had not moved toward Smith at all. Vivian went over to try to separate the combatants, but Latasha exited Smith's car and started hitting Vivian. Amber joined in the fray. Morris did not see defendant throw any punches, but his view might have been obstructed by the cars.

¶ 30 Defendant testified on direct examination as follows. She had known Smith for approximately three years. By April 20, 2013, they "didn't really speak" to each other, because Smith had been spreading rumors on social media that defendant had chlamydia. At about 10 a.m. on April 20, 2013, Vivian asked defendant to pick up some items from the house on Sherman. Defendant and Amber drove from defendant's boyfriend's house. They stopped first at the IGA to get something to drink. Defendant did not enter the store, because she saw Smith parked in the next parking place. She did not speak to or look at Smith but drove to 2133 Sherman and parked. Darnell was there; so was Smith. Smith was still in her car. She rolled down the window and called defendant a "burning bitch." Defendant got out and told Smith that they should talk things out, while Amber stayed inside the car and spoke on the phone to Vivian about what items to get from the house.

¶ 31 Defendant testified that, at this point, she approached Smith's car and asked Smith whether they could talk about their difficulties. Defendant's arm was on top of the car's roof, next to the sunroof. Defendant and Smith started arguing back and forth. Smith reached through the sunroof, grabbed hold of defendant's right sleeve tightly, and drove off. Defendant used her left hand to hit Smith's hand, then grabbed Smith's weave to support herself as she shouted repeatedly at Smith to stop the car. Smith dragged defendant about six houses down the street and eventually let go of defendant, who fell to the ground. Defendant's head, hand, and knees were injured; she felt dizzy; and her glasses were damaged. At trial, defendant identified photographs of the injuries she had incurred from the fall.

¶ 32 Defendant testified that, as she lay in the street, Amber rushed over and pulled her up. They were walking back to defendant's car when defendant saw Smith driving back toward her. Smith stopped her car, got out, and told defendant, " 'You know bitch, that is why you bleeding [*sic*].' " Defendant and Amber entered defendant's car and drove off; Smith reentered her car and drove off. Defendant felt "out of it" but, because Vivian had called and wanted to know about her condition, she drove to Park. Darnell was nearby and drove behind her.

¶ 33 Defendant testified that she parked in front of Morris's house. Vivian spoke to her, and Morris came out of the house. Vivian helped defendant out of her car and then assisted Morris in treating defendant with peroxide. Smith then drove up, accompanied by Latasha and Duncan. All three exited Smith's car. Duncan told Smith, " 'Whoop that bitch ass,' " and Smith charged defendant, tackling her and then hitting her. The fight ended with defendant on the ground. Defendant never approached Smith's car and did not kick the window. Vivian drove her and Amber to the police station, from where she was taken to the hospital. After defendant was released from the hospital, she returned to the station and wrote out a voluntary statement.

¶ 34 Defendant testified on cross-examination as follows. On Sherman, defendant exited her car, but Smith remained in hers. When defendant put her hand onto the roof of Smith's car, Smith rolled up her driver's-side window and reached through the sunroof and grabbed defendant's arm. After defendant got up off the ground, she drove her car to Park rather than getting a ride with Darnell, as she did not want to leave her car unattended. Defendant admitted that her written statement did not say that Smith charged her on Park.

¶ 35 The parties rested. At an instructions conference, the trial court informed the parties that it would give, *inter alia*, the definitional and issues instructions on battery (Illinois Pattern Jury Instructions, Criminal, Nos. 11.05, 11.06 (4th ed. 2000)); a definition of "bodily harm" based on *People v. Rodarte*, 190 Ill. App. 3d 992, 999 (1989); the definitional instruction on the justifiable use of force in defense of a person (Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000)); and the instruction on an initial aggressor's use of force (Illinois Pattern Jury Instructions, Criminal, No. 24-25.09 (4th ed. 2000)). Defendant did not request, and the court did not mention, IPI No. 24-25.06A.

¶ 36 In argument, the prosecutor told the jurors, "If you believe [Smith] that the defendant intentionally and without provocation jumped on her sunroof and grabbed her hair and it hurt *** it would make sense that it would hurt. If you believe that beyond a reasonable doubt, you must find this defendant guilty of battery on [count I]." Also, he added, if the jurors found beyond a reasonable doubt that defendant "jumped on [Smith's] sunroof and grabbed her hair without provocation," and thereby provoked or insulted Smith, they must find defendant guilty of battery on count II. Further, he stated, "If you find *** that this defendant without provocation on Sherman Avenue punched [Smith] in the back of the head through the sunroof you must find her guilty of battery." Finally, as to count III, the prosecutor told the jurors, "If

you find that what [Smith] said is true what happened on Park Avenue [*sic*] in that this defendant threw the first punch, hit her on the head multiple times without provocation. *** [Y]ou must find this defendant guilty of battery on that count."

¶ 37 In her closing argument, defendant's attorney emphasized the evidence that Smith, not defendant, had been the aggressor in both confrontations. Defendant's attorney stated, "[The evidence] supports [defendant's] perspective, what happened through [defendant's] eyes, what happened through her family's eyes. [Defendant] was a part of these two fights but it was because she was defending herself. You have a legal right to defend yourself and that is exactly what she was doing." Further, if the jurors deliberated and did not know whom to believe, and were not certain whether to believe defendant, "that [was] reasonable doubt." She added, "[I]n order to find [defendant] guilty of these charges beyond all reasonable doubt, you have to find she wasn't defending herself."

¶ 38 The trial court instructed the jury that the State had the burden throughout to prove defendant guilty beyond a reasonable doubt. See Illinois Pattern Jury Instructions, Criminal, No. 2.03 (4th ed. 2000). As pertinent here, the court instructed the jury further as follows:

> "To sustain the charge of battery as to Count One the State must prove the following propositions [*sic*]: That the defendant intentionally caused bodily harm to Erica Smith and [*sic*] that she pulled Erica Smith about the hair.
>
> If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Bodily harm consists of some sort of physical pain or damage to body [*sic*] like lacerations, bruises, or abrasions whether temporary or permanent.

To sustain the charge of battery as to Count Two, the State must prove the following propositions [*sic*]: That the defendant intentionally made physical contact of an insulting or provoking nature with Erica Smith in that she pulled Erica Smith about the hair.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

To sustain the charge of battery as to Count Three, the State must proof [*sic*] the following proposition: That the defendant intentionally made physical contact of an insulting or provoking nature with Erica Smith in that she struck Erica Smith about the body.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

A person is justified in the use of force when and to the extent that she reasonably believes that such conduct is necessary to defend herself against the eminent [*sic*] use of aggressor."

¶ 39 The jury found defendant guilty of all three counts of battery but not guilty of criminal damage to property. Defendant moved for a new trial, contending in part that the trial court had

erred by failing to instruct the jury that, to convict her of battery, the jury had to find beyond a reasonable doubt that she acted without legal justification. She argued that, although she had failed to object to the court's instructions or tender alternatives, the issue was cognizable as plain error, both because the deficiency was serious and because the evidence was closely balanced.

¶ 40 At the hearing on defendant's motion, she argued that the not-guilty finding on criminal damage to property showed that the jury had doubts about the credibility of Smith, Duncan, and Latasha, supporting her assertion that the case was close on the battery charges. The prosecutor responded that, although the instructions had not specifically informed the jury that the State had to disprove self-defense beyond a reasonable doubt, the parties' closing arguments made up for this deficiency by referencing this burden. Further, contended the prosecutor, there was no evidence that defendant had used force to defend herself: in each incident, either she was the aggressor or Smith was the aggressor and defendant did nothing in response. Defendant replied that the State's closing argument implied that the jury had to find beyond a reasonable doubt that there was no "provocation" for defendant's allegedly criminal acts, which was different from finding that the acts were not legally justified. Also, she contended, there had been evidence that Smith had been the aggressor in each instance.

¶ 41 The trial court denied defendant's motion, holding that any deficiency in the instructions was not plain error. In the court's view, the evidence was not closely balanced. After a short hearing, the court entered a finding of guilty on all three battery counts and placed defendant on supervision for a year. She timely appealed.

¶ 42 On appeal, defendant again argues that the trial court committed plain error by failing to instruct the jury specifically that the State's burden to prove her guilty beyond a reasonable doubt of battery included disproving beyond a reasonable doubt her claim of self-defense. See

IPI No. 24-25.06A. Defendant concedes that she forfeited this issue by acquiescing in the giving of instructions that did not so state. See *People v. Hopp*, 209 Ill. 2d 1, 7 (2004). She contends, however, that, under Illinois Supreme Court Rule 451(c) (eff. July Apr. 8, 2013)) and *People v. Berry*, 99 Ill. 2d 499 (1984), this court ought to address the "substantial defect[]" (Ill. S. Ct. R. 451(c) (eff. Apr. 8, 2013)) in the instructions. She argues further that we should disregard the forfeiture rule because her attorney's failure to object to the inadequate instructions or tender proper instructions amounted to ineffective assistance.

¶ 43 Aside from invoking forfeiture, the State argues that (1) no evidence supported instructions on self-defense on counts I and II anyway; and, alternatively, (2) the defect in the instructions did not rise to plain error or show ineffective assistance, as the parties' closing arguments sufficiently informed the jury that the State had the burden to prove beyond a reasonable doubt that self-defense did not apply.

¶ 44 Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013) provides that, if the interests of justice require, substantial defects in criminal jury instructions are not forfeited by the failure to make timely objections thereto. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Rule 451(c) creates a limited exception to the forfeiture rule in order to correct grave errors and errors in cases that are so factually close that fundamental fairness requires that the jury be properly instructed. *Id.* Under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court. Rule 451(c) is coextensive with the plain-error clause of Rule 615(a), and the two rules are construed identically. *Piatkowski*, 225 Ill. 2d at 564.

¶ 45 To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was objectively unreasonable; and (2) it is reasonably probable

that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *People v. Evans*, 369 Ill. App. 3d 366, 383 (2006). If a defendant has failed to show prejudice, we may dispose of her ineffective-assistance claim without considering whether she has satisfied *Strickland*'s performance prong. *Strickland*, 466 U.S. at 697; *People v. Erickson*, 161 Ill. 2d 82, 90 (1994).

¶ 46 Preliminarily, we agree with defendant that she met the low threshold for being entitled to instructions on self-defense. (Although the trial court did instruct the jury on the definition of self-defense, the State argues that no instruction was warranted; were we to agree, we could find neither error nor ineffective assistance based on the instructional defect that defendant alleges.) With respect to each incident on which the battery charges were based, only "slight evidence" (*People v. Gonzalez*, 385 Ill. App. 3d 15, 19 (2008)) was needed to warrant the instruction. As to the first incident, defendant testified that Smith reached through the sunroof and seized her arm and that she defended herself by pulling on Smith's hair in order to avoid being thrown to the ground and injured. As to the second incident, Amber, Morris, Vivian, and defendant all testified that Smith attacked defendant before defendant hit her. Therefore, the evidence warranted the instructions on self-defense. The issue is whether the trial court committed plain error for failing to provide, or defendant's attorney was ineffective for failing to secure, an instruction specifically telling the jury that the State had to disprove self-defense beyond a reasonable doubt. We hold that defendant has not shown plain error or ineffective assistance.

¶ 47 In *People v. Huckstead*, 91 Ill. 2d 536 (1982), the defendant was charged with first-degree murder and claimed self-defense. The trial court instructed the jury on the State's burden to prove the defendant guilty beyond a reasonable doubt (see Illinois Pattern Jury Instructions, Criminal, No. 2.03 (1st ed. 1968)) and the elements of the offense (see Illinois Pattern Jury

Instructions, Criminal, No. 7.02 (1st ed. 1968)). *Huckstead*, 91 Ill. 2d at 542-43. The court also instructed the jury on when a person is justified in the use of force in self-defense (see Illinois Pattern Jury Instructions, Criminal, No. 24.06 (1st ed. 1968)). *Huckstead*, 91 Ill. 2d at 543. However, the court did not instruct the jury that the beyond-a-reasonable-doubt burden applied not only to the elements of the offense but also to the affirmative defense of the justified use of force (see Illinois Pattern Jury Instructions, Criminal, No. 25.05 (1st ed. 1968)) (IPI No. 25.05). In closing arguments, however, the defendant repeatedly told the jury that the State had the burden to disprove the affirmative defense beyond a reasonable doubt, and, in reply, the State acknowledged its burden. *Huckstead*, 91 Ill. 2d at 538. The jury convicted the defendant.

¶ 48 On appeal, the defendant argued that the trial court's failure to give IPI No. 25.05 amounted to plain error. *Huckstead*, 91 Ill. 2d at 537. The supreme court disagreed. The court observed that (1) the trial court did instruct the jury both on the affirmative defense and on the State's burden of proof throughout the case; and (2) in their closing arguments, both parties told the jury that the State had the burden to disprove the affirmative defense. *Id.* at 545. Therefore, because the instructions and the closing arguments for both sides "apprised the jury that the State had the burden of proving that [the] defendant was not justified in the force he used," the trial court's failure to give IPI No. 25.05 was not " 'grave error,' " *i.e.*, the defendant had not satisfied that prong of the plain-error test. *Id.* Also, as the evidence had not been closely balanced on the self-defense issue, the other prong of the test did not aid the defendant. *Id.* at 546.

¶ 49 Contrasting with *Huckstead* is *Berry*, in which the supreme court held that the trial court's failure to give IPI No. 25.05 was plain error and required the reversal of the defendant's conviction of murder. The court distinguished *Huckstead* by reasoning that (1) the defendant's attorney had never told the jury—either in closing argument or at any other time—that the State

had the burden to disprove the defendant's affirmative defense; and (2) the case was factually close. *Berry,* 99 Ill. 2d at 506.

¶ 50 We conclude that this case is closer to *Huckstead* than it is to *Berry*. Like the trial court in *Huckstead*, the trial court here instructed the jury on the State's overall burden of proof beyond a reasonable doubt; the elements of the offense of battery (including the alternative theories of counts I and II relating to the hair-pulling incident); and defendant's affirmative defense. Also, in closing argument, both parties told the jurors that it was the State's burden to disprove the affirmative defense beyond a reasonable doubt. Referring to the facts that it had to prove, the State specifically added that, to convict, the jurors must find these facts (including the lack of provocation) "beyond a reasonable doubt." Although "without provocation" is not synonymous with "without justification," any variance was probably in defendant's favor: if anything, it is easier to find that someone was "provoked" than to find that she was "justified."

¶ 51 Similarly, defendant reminded the jurors not only that she had the legal right to self-defense, but also that, if the jurors could not decide which version of a given confrontation to believe, that left "reasonable doubt." She then told them straightforwardly that, to convict defendant "beyond a reasonable doubt," they would "have to find she wasn't defending herself."

¶ 52 Thus, to the extent that the trial court's instructions did not express the State's burden on defendant's claim of self-defense, the parties' arguments filled the gap. We cannot say that the error in the instructions prejudiced defendant. Thus, her attorney was not ineffective for failing to obtain a specific instruction on the State's burden to disprove the affirmative defense. Further, the error did not rise to plain error. To the extent that the evidence was close, the error, having been essentially cured by the parties' arguments, could not have affected the outcome; and, per *Huckstead*, the error did not deny defendant a fair trial.

¶ 53 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 54 Affirmed.