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FIRST DIVISION  
September 26, 2016

No. 1-15-2374  
2016 IL App (1st) 152374-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SABAN GOLJI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 5099
	)	
MARC DAVIS,	)	
	)	Honorable Edward Washington,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Harris and Mikva concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff forfeited issues raised on appeal, but forfeiture aside, self-defense instructions and special interrogatories were properly given to the jury, jury verdict was not against the manifest weight of the evidence, and trial court properly excluded articles about defendant's alleged prior behavior; affirmed.
- ¶ 2 Following a jury trial, a verdict was returned in favor of defendant, Marc Davis, and against plaintiff, Saban Golji, on claims for assault and battery. On appeal, Golji contends that:
- (1) the trial court improperly allowed a self-defense jury instruction and special interrogatories;
  - (2) the verdict was against the manifest weight of the evidence; and (3) the trial court abused its

discretion when it granted Davis's motion *in limine* that excluded evidence of Davis's character.

We affirm.

¶ 3 On May 16, 2013, Golji filed a complaint that raised claims of assault, battery, and intentional infliction of emotional distress against Davis. In part, Golji asserted that Davis attacked him on August 24, 2012, while Golji was working as a building engineer for a building located at 860 North Lake Shore Drive in Chicago. Golji stated that upon reaching the ground floor from the service elevator, Davis confronted him and "a verbal altercation ensued." Golji further stated that Davis punched him in the face, resulting in extensive injuries.

¶ 4 In his answer, Davis raised the affirmative defense of self-defense. Recounting his version of the events, Davis stated that his in-laws lived in the building and had asked Davis to pick up a cell phone charger from their unit. Davis further stated that when he arrived, the doorman directed Golji to take Davis to his in-laws' unit. According to Davis, Golji initially refused, but ultimately agreed to do so. Davis contended that Golji used foul language, became argumentative, and then pushed Davis. Davis asserted that any physical force he used to protect himself was reasonable and necessary under the circumstances.

¶ 5 On December 18, 2014, Davis filed a motion for summary judgment, contending that Golji had failed to sufficiently allege a cause of action for intentional infliction of emotional distress.

¶ 6 Attached to Davis's motion was a transcript of his deposition. In part, Davis admitted during his deposition that he had attended the United States Naval Academy, but was expelled. Additionally, Golji's counsel asked Davis, a referee for the National Basketball Association (NBA), about an article that purported to relate to his work. Golji's counsel quoted the article and stated, " 'Davis, referring to you, is one of those guys that has rabbit ears for certain people. \*\*\*

He's a referee that thinks people pay for their tickets to come to see him, meaning you. He's one of those guys that has a little bit of an ego.' " Golji's counsel also asked Davis about a verbal exchange between him and basketball player Allen Iverson.

¶ 7 On February 25, 2015, the court entered an order that granted summary judgment to Davis and against Golji as to the claim for intentional infliction of emotional distress.

¶ 8 The matter proceeded and before trial started, Davis filed motions *in limine*, including one that sought to bar references to Davis's character. Davis contended that any reference to his expulsion from the United States Naval Academy should be excluded as irrelevant, immaterial, and too remote. Additionally, Davis recalled that during his deposition, Golji's counsel had asked him about his general reputation in the NBA and showed him an article about his relationship with NBA players and teams. Davis asserted that in a civil case, the reputation or character of a party is not at issue and the article was inadmissible hearsay. At a proceeding on July 21, 2015, Davis's counsel tendered the article to the court. In seeking to allow the article, Golji's counsel stated that depending on the testimony, he would want to ask Davis about past conduct consistent with the conduct in the present case, including "past behavior involving violence, loss of control, temper, that kind of thing."

¶ 9 Ultimately, the court granted Davis's motion *in limine* as to the article and any reference to the United States Naval Academy. The court stated that the article "appears to come off some internet site and it is a comment on \*\*\* Davis, as a referee made by a one-time official who pled guilty in a gambling scandal, and it has nothing to do with gambling. It's just his opinion that this man has an ego, and he cites an instance where a player chest bumps a ref, and then the player may be subject to some penalties." The court did not believe the article was related to a claim

that Davis had a predisposition or predilection towards violence. The court described the article as trivia and "just sports stuff and some opinion of this man as a referee."

¶ 10 The parties also discussed jury instructions before trial. Davis's counsel requested a special interrogatory that asked, "Was the Defendant Marc Davis acting in self-defense at the time of the occurrence[?]" Golji's counsel asserted that the special interrogatory was redundant in light of the other instructions. After the trial court questioned whether the special interrogatory fully tested the verdict because it did not mention unreasonable force, Davis's counsel stated that he also requested a special interrogatory that asked, "Did the Defendant Marc Davis use reasonable force at the time of the occurrence[?]" The court stated that for the interrogatories to have the effect that Davis sought, the answer would have to be "yes" to both questions. The court reserved its ruling to give Golji's counsel "time to think about this."

¶ 11 At trial, Golji testified that at around 5:30 p.m. on August 24, he was at the entrance of the shop of the 860 North Lake Shore Drive building when the doorman called via radio and asked him to bring the key to an apartment. Golji went to the lobby and told the doorman that per building rules, he needed a written order to provide the key, but his boss could provide permission. Eventually, Golji brought the key from the building office, and after dropping off the key with the doorman, he headed back to the shop. As Golji entered the freight elevator, he felt a sharp pain from being hit in his neck, and turned around to see Davis. Davis then hit Golji's face with a fist, whereupon Golji fell down and lost consciousness. When Golji awoke, he was sitting on a chair in the lobby and felt pain in his head, neck, and leg. Golji went to the emergency room and had a fractured bone in his lower leg.

¶ 12 Davis testified as an adverse witness for Golji, and stated that his in-laws owned a unit in the building. On August 24, he went to the building at his mother-in-law's request to retrieve a

phone charger from his in-laws' unit. When Davis arrived, the doorman told him that his in-laws had called and the doorman would retrieve a key to their unit. The doorman and Golji talked to each other about the key and began arguing. Davis left without retrieving the charger and began driving home, but his mother-in-law called and told him someone would give him a key and accompany Davis to the unit.

¶ 13 When Davis returned to the building, Golji brought the key and the doorman told Davis that Golji would take him to the unit. En route, Davis asked Golji, "[W]hat's the problem? Is everything okay[?]" Golji did not respond. Davis asked Golji a second time if he had a problem, to which Golji responded "no." Davis went on to ask whether there was a language problem and if Golji understood English. According to Davis, Golji swore at him, said he understood English, and pushed and kicked him. Davis punched Golji in the face and ran. Davis denied that he stepped on Golji's ankle. Davis did not know that Golji was lying on the floor unconscious. Davis told the doorman what happened and the doorman told Davis he would take care of it and to retrieve the charger. Davis stated that he was scared and did not return to where Golji was. Davis further stated that he hit Golji because Golji attacked him.

¶ 14 Dr. Tatjana Guzina, who was Golji's primary care doctor, testified that she saw him the day after the incident. Dr. Guzina stated that Golji was found to have a left tibial fracture and that Golji had a cast and used crutches. Dr. Guzina further stated that Golji had some swelling on his cheek and noted as a diagnosis or precautionary measure that Golji had a concussion. At a subsequent visit, Dr. Guzina referred Golji to a psychiatrist because he reported having nightmares and not sleeping well.

¶ 15 After Golji rested, Davis's counsel moved for a directed verdict on the assault and battery claims, contending that Golji had failed to prove the intentional aspects of either claim. Davis's

counsel also moved for a directed verdict on the issue of Golji's fractured tibia because Golji had failed to offer competent medical evidence as to the proximate cause of the fracture. The court denied both motions.

¶ 16 In his defense, Davis presented the expert testimony of Dr. Stephen Dinwiddie, a psychiatrist who discussed the findings from his interview and examination of Golji.

¶ 17 The parties and the court returned to the jury instructions. Golji's counsel noted that the court had reserved ruling on the self-defense special interrogatory. The court stated that Davis had "testified adverse in your case, so I think there's enough evidence now to talk about self-defense in this case." Golji's counsel stated, "I agree. \*\*\* I agree with the self-defense that he certainly testified as he did." Golji's counsel asked whether the court would give both the self-defense and reasonable force special interrogatories, to which the court responded that it would and that both were needed. Golji's counsel stated that he was "clear on it."

¶ 18 Following closing arguments, the court instructed the jury. In part, the instructions included the following:

"The Plaintiff has a burden of proving each of the following propositions:

1. That Defendant had the intent to cause a harmful contact with the Plaintiff.
2. That Defendant actually made unauthorized physical contact with the Plaintiff that was harmful.
3. That the Plaintiff was injured.
4. That Defendant's actions caused injury to the Plaintiff.

In this case, the Defendant has asserted the affirmative [defense] that his conduct was justified because he was acting in self-defense and used reasonable force.

Defendant has the burden of proving the following propositions:

1. He reasonably believed that he was in danger of an imminent battery by Plaintiff.
2. The force Defendant used appeared reasonably necessary to prevent the harm and was not likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each of the propositions required of Plaintiff has been proved and that Defendant's affirmative defense has not been proved, then your verdict should be for Plaintiff.

If, on the other hand, you find from your consideration of all the evidence that any one of the propositions Plaintiff is required to prove has not been proved, or that Defendant's affirmative defense has been proved, then your verdict should be for Defendant."

¶ 19 The instructions also included the two aforementioned special interrogatories. The first asked, "Was the Defendant Marc Davis acting in self-defense at the time of the occurrence[?]" The second asked, "Did the Defendant Marc Davis use reasonable force at the time of the occurrence[?]"

¶ 20 During deliberations, the jurors sent a note that asked to define reasonable force. The court stated to the parties that reasonable force was already defined in the instructions. The parties agreed to the following response: "Reasonable force is defined in the instructions as: The force that appeared reasonably necessary to prevent the battery and that was not likely to cause death or great bodily harm."

¶ 21 The jury ultimately returned a verdict in favor of Davis and against Golji. The jury also answered "yes" to both special interrogatories. On July 24, 2015, the court entered judgment on the verdict. Golji filed a notice of appeal on August 21, 2015.

¶ 22 Before we turn to Golji's arguments on appeal, we first address Davis's request to strike a statement from Golji's brief. Davis asserts that Golji's brief contains a statement about Davis's expulsion from the United States Naval Academy. Davis notes that the matter was excluded by the trial court pursuant to a motion *in limine*. We agree that Golji should not have referred to this matter in his brief. A statement of facts must contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment. Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). We strike the offending statement from Golji's brief.

¶ 23 Moving to the issues Golji raises on appeal, Golji seeks a new trial and contends that: (1) the trial court improperly submitted a self-defense instruction and special interrogatories to the jury; (2) the verdict was against the manifest weight of the evidence because Davis used excessive force; and (3) the trial court abused its discretion by denying Golji the ability to introduce articles about Davis's aggressive behavior. We note that Golji has forfeited review of these issues because he did not file a posttrial motion. Section 2-1202(e) of the Code of Civil Procedure (735 ILCS 5/2-1202(e) (West 2014)) provides that a party who does not seek a new trial in his posttrial motion "waives the right to apply for a new trial, except in cases in which the jury has failed to reach a verdict." By not filing a posttrial motion, Golji failed to preserve any matters for review. *Barry Mogul & Associates, Inc. v. Terrestris Development Co.*, 267 Ill. App. 3d 742, 755 (2007). See also *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶ 32 (in a jury case, failure to file a posttrial motion results in forfeiture).



¶ 24 Even if his claims were not forfeited, we would still affirm the judgment. We first consider Golji's contention that the trial court improperly submitted the self-defense instruction and special interrogatories to the jury. Golji argues that Davis failed to establish all of the elements of self-defense. Golji additionally asserts that the special interrogatories should not have been given because the issues were self-defining. Golji further contends that the special interrogatories caused the jury to be confused, as evidenced by the note asking for the definition of reasonable force.

¶ 25 Davis asserts that Golji waived this specific argument because he agreed that there was sufficient evidence of self-defense to submit the issue to the jury and that the special interrogatories were appropriate. We concur with Davis that Golji ultimately agreed with the instructions and special interrogatories and thus waived his argument. A party waives any objection to a jury instruction by failing to object to it at the instruction conference. *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 484 (2005). Further, special interrogatories must be "tendered, objected to, ruled upon and submitted to the jury as in the case of instructions." 735 ILCS 5/2-1108 (West 2014). To preserve an objection to an interrogatory, a party must set forth the grounds for the objection with specificity at the instructions conference so that the trial court can properly rule on the objection. *Smilgis v. City of Chicago*, 97 Ill. App. 3d 1127, 1129 (1981). Rather than object, Golji ultimately agreed that Davis's testimony was sufficient to merit an instruction on self-defense. Further, although Golji initially asserted that the self-defense special interrogatory was redundant, when the special interrogatories came up again, Golji did not object. Through his agreement and failure to object, Golji waived his challenge to the self-defense instruction and special interrogatories.

¶ 26 Even if the matter was not waived, the self-defense instruction and special interrogatories were properly given. A litigant has the right to have the jury clearly and fairly instructed on each theory that is supported by the evidence. *Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶ 106. "All that is required to justify the giving of an instruction is that there be some evidence in the record to justify the theory of the instruction." (Internal quotation marks omitted.) *LaFever v. Kemlite Co.*, 185 Ill. 2d 380, 406 (1998). "The evidence may be insubstantial." *Id.* Additionally, the question of whether the evidence at trial raised an issue, thus requiring a particular jury instruction, is within the sound discretion of the trial court. *Dixon v. Union Pacific R.R. Co.*, 383 Ill. App. 3d 453, 466 (2008). We will reverse a court's ruling about a jury instruction only if the court committed a clear abuse of its discretion. *Id.*

¶ 27 Self-defense is a defense in criminal and civil cases. *Thompson v. Petit*, 294 Ill. App. 3d 1029, 1035 (1998). A defendant who raises self-defense must offer evidence in support of each of the following elements: (1) the force had been threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened against him was unlawful; (5) he had an actual belief that (a) a danger existed, (b) force was necessary to avert the danger, and (c) the amount of force used was necessary; and (6) his belief was reasonable. *Id.* A defendant may not claim self-defense when the perilous situation he encounters was the result of his own aggressive conduct. *Id.*

¶ 28 Here, Davis presented sufficient evidence to merit a self-defense instruction. At trial, he testified that after asking Golji a few questions, Golji pushed and kicked him. Davis further testified that he hit Golji because Golji attacked him and that he was scared. Thus, according to Davis, Golji started the attack and was in the midst of pushing and kicking him when, in

response, Davis punched him once in the face and ran away. Davis's testimony supports each element of a self-defense claim and the trial court properly allowed a self-defense instruction.

¶ 29 The special interrogatories were also proper. A special interrogatory tests the general verdict against the jury's determination as to one or more specific issues of ultimate fact.

*Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002). "A trial court must give a special interrogatory if it involves an ultimate question of fact and if it is in proper form." (Internal quotation marks omitted.) *In re Detention of Hayes*, 2014 IL App (1st) 120364, ¶ 40. A special interrogatory is in proper form if it: (1) relates to an ultimate issue of fact on which the rights of the parties depend, and (2) an answer responsive to it is inconsistent with some general verdict that might be returned. *Id.* Further, a special interrogatory should be a single question, stated in terms that are simple, unambiguous, and understandable, and should not be repetitive, confusing, or misleading. *Simmons*, 198 Ill. 2d at 563. A special interrogatory is read in context with the court's other instructions to determine how it was understood and whether the jury was confused. *Id.* "A reviewing court will find reversible error in the submission of a defective special interrogatory only if there is proof of prejudice to the complaining party or jury confusion." *Niewold v. Fry*, 306 Ill. App. 3d 735, 747 (1999).

¶ 30 Here, the special interrogatories were in proper form. Whether Davis acted in self-defense was an ultimate issue in the case. Golji claimed at trial that Davis attacked him first, whereas Davis maintained that Golji attacked him first and he hit Golji in response. Additionally, if the jury returned affirmative answers to both interrogatories, which it ultimately did, then Davis could not be liable for the assault and battery claims. See *Thompson*, 294 Ill. App. 3d at 1035 (self-defense is a defense in criminal and civil cases); *Welch v. Ro-Mark, Inc.*, 79 Ill. App.

3d 652, 658 (1979) (defense to assault and battery is where a person threatened with bodily harm defends himself with reasonable force).

¶ 31 Further, there is no evidence that the special interrogatories were confusing. Golji points out that the jury sent a note during deliberations asking for a definition of "reasonable force." The parties agreed to an answer to the question. By itself, the note does not indicate that the jury was confused, particularly where all the jury requested was a definition of a term and the definition was found elsewhere in the instructions. But *cf. Smilgis*, 97 Ill. App. 3d at 1131 (case remanded for new trial where during the reading of the instructions, the jury was apparently distracted by noises coming from the defendant's counsel and during deliberations, the jury sent a note that evinced a misunderstanding as to material issues).

¶ 32 Golji additionally contends that the trial court failed to instruct the jury that the use of force is measured under a reasonable man standard. According to Golji, the jury should have been instructed that "[n]o more violence can be used than a reasonable man would under the circumstances regard necessary to his defense." (Internal quotation marks omitted.) *Winn v. Inman*, 119 Ill. App. 3d 836, 841 (1983) (quoting *Ogden v. Claycomb*, 56 Ill. 365, 366 (1869)). However, Golji waived this issue by not objecting in the trial court, specifying his claimed defect, and offering his own remedial instructions. See *Aguinaga v. City of Chicago*, 243 Ill. App. 3d 552, 576 (1993).

¶ 33 Next, Golji contends that the jury verdict was against the manifest weight of the evidence because Davis used excessive force. Golji also refers to himself as "an unsuspecting plaintiff." According to Golji, Davis went for Golji's head and knocked Golji unconscious. Golji asserts that while Davis was not injured, Golji sustained several psychological and physical injuries.

¶ 34 A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident "or where the jury's findings are unreasonable or arbitrary and not based on the evidence." *Boyd v. City of Chicago*, 378 Ill. App. 3d 57, 69 (2007). As a preliminary note, to the extent that Golji urges this court to adopt his version of the events, we decline to do so. It was for the jury to determine the credibility of the witnesses and the weight to be given to their testimony. *Niewold*, 306 Ill. App. 3d at 748. The jury apparently accepted Davis's view of what happened and there was ample evidence to support that finding. At trial, Davis testified that on the way to his in-laws' unit with Golji, Davis asked Golji a few questions. Davis further stated that Golji then pushed and kicked him. Davis stated that he punched Golji in the face and ran, and denied that he had stepped on Golji's ankle. That the jury could have drawn a different inference or conclusion from the evidence, and accepted Golji's testimony, is not a basis for setting aside the verdict. See *Perry v. Murtagh*, 278 Ill. App. 3d 230, 239 (1996).

¶ 35 Returning to the excessive force issue, Golji states that it is possible for a defendant to act in self-defense and yet be liable to the plaintiff for damages because of the use of excessive force, citing *Welch*, 79 Ill. App. 3d at 659. Here, however, the evidence supported the jury's finding that Davis used reasonable force in acting in self-defense. Davis punched Golji one time in the face in response to Golji pushing and kicking him. Although Golji was injured, we find that Davis acted reasonably in hitting Golji a single time to fend off an attack. *Cf. Id.* (use of a billy club was not excessive force where the defendant was confronted by a group of the plaintiff's hostile friends).

¶ 36 Further, we reject Golji's reliance on cases that discuss whether the evidence was sufficient to show that the victim's injuries amounted to great bodily harm in the context of a conviction for aggravated battery. See *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 10;

*People v. Matthews*, 126 Ill. App. 3d 710, 714 (1984); *People v. Jordan*, 102 Ill. App. 3d 1136, 1140 (1981); *People v. Smith*, 6 Ill. App. 3d 259, 264 (1972). Here, in this civil action for assault and battery, the question is fundamentally different—whether the jury could conclude from the evidence that Davis used reasonable force. We defer to the jury's findings (*Boyd*, 378 Ill. App. 3d at 69) and as stated above, the finding that Davis used reasonable force was not against the manifest weight of the evidence.

¶ 37 Lastly, Golji contends that the trial court abused its discretion by denying him the ability to introduce articles about Davis's aggressive behavior. Golji argues that the articles were relevant as to Davis's character and states that when self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor, citing *People v. Lynch*, 104 Ill. 2d 194, 200 (1984).

¶ 38 Evidentiary motions, including motions *in limine*, are within the trial court's discretion and are reviewed for an abuse of discretion. *Citibank, N.A. v. McGladrey & Pullen, LLP*, 2011 IL App (1st) 102427, ¶ 13. "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the same view." *Jones v. Rallos*, 384 Ill. App. 3d 73, 89 (2008).

¶ 39 Golji's reliance on *Lynch* is puzzling, as it was a criminal case and considered evidence of the victim's propensity for violence—here, that would be Golji, in his view of the case. See *Lynch*, 104 Ill. 2d at 200. The principle that applies here is that the admission of prior similar tortious or wrongful conduct to establish purpose, intent, motive, knowledge, or other mental state of a party to a civil action, is an exception to the general rule that prohibits proof of one wrongful act by evidence of the commission of another such act. *Thompson*, 294 Ill. App. 3d at 1035. Further, evidence of misconduct other than that in issue is not admissible to establish a

person's disposition to behave in a certain way. *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, ¶ 89. Even if the evidence of prior acts of misconduct is relevant to prove something other than propensity, a trial judge must still consider whether the danger of unfair prejudice to the defendant substantially outweighs the probative value of the evidence. *Thompson*, 294 Ill. App. 3d at 1036.

¶ 40 We cannot determine whether the article should have been admitted because it is not in the record. As an aside, Golji refers to "articles" in his brief, but the record indicates that only one article was presented to the court. Nonetheless, an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and any doubts that arise from the incompleteness of the record are resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Without the article or articles, we cannot determine whether the trial court abused its discretion by granting the motion *in limine*. We must presume that the trial court had a sufficient factual basis for its holding and that its order conforms with the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005).

¶ 41 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 42 Affirmed.