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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 13 CR 764
	)	
NATHAN SMITH,	)	Honorable Clayton J. Crane and
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judges presiding.

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PRESIDING JUSTICE GRIFFIN delivered the judgment of the court.  
Justices Mikva and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment on defendant's convictions for attempted first degree murder, aggravated domestic battery and unlawful use of a weapon by a felon affirmed over his challenge that the State failed to prove his specific intent to kill the victim; remanded to the trial court as to the fines and fees issues.

¶ 2 Following a bench trial, defendant was convicted of attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)), aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2012)), and unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)). The trial court sentenced defendant to concurrent prison terms of 18 years, 5 years,

and 3 years, respectively. On appeal, defendant contends that his attempted murder conviction should be vacated because the State failed to prove that he had the specific intent to kill the victim where he had the opportunity to kill her, but instead, called 911 and provided her with life-saving medical assistance. Defendant also contends, and the State agrees, that this case must be remanded to the trial court to address the fines and fees issues raised in his opening brief. We remand this case to the trial court on the fines and fees issues, and affirm defendant's convictions in all other respects.

¶ 3 Defendant was charged with one count of attempted first degree murder, four counts of aggravated domestic battery, five counts of aggravated battery, one count of UUWF, and two counts of domestic battery. At trial, Simone Morrow testified that she and defendant had been in an on-and-off dating relationship for about nine years, and they had a daughter named "A." In 2012, they had been living together in an apartment on Van Buren Street for over a year. A few months prior to December 2012, Morrow and defendant ended their relationship. Defendant moved out of the apartment, leaving a few of his belongings behind.

¶ 4 On the afternoon of December 4, 2012, defendant called Morrow and told her that he had picked up "A." from preschool because he wanted to spend time with her. "A." was four years old at the time. Defendant had never picked her up from school before. Morrow questioned defendant as to why he picked up "A." "out of the blue," but did not argue with him and decided to let it go. Morrow and defendant agreed to meet at a McDonald's restaurant a few blocks from Morrow's apartment to exchange "A.". When Morrow arrived at McDonald's, she waited for "A." to finish eating. As they left the restaurant and began walking home, defendant asked Morrow if he could go to the apartment with them to retrieve some of his belongings. Morrow

agreed he could do so, and he walked to the apartment with them. During this time, Morrow and defendant engaged in normal conversation and were not arguing.

¶ 5 When they arrived at Morrow's seventh-floor apartment, "A." entered the bathroom. Defendant entered Morrow's bedroom, and Morrow followed him. Defendant walked around to the opposite side of the bed, looked for his belongings, and placed some items on the bed. Morrow and defendant were not talking or arguing at the time. Defendant walked to where Morrow was standing, withdrew a box cutter from his jacket pocket, and held it in his right hand. He pinned Morrow down on the bed and held her arms crossed in front of her chest. Defendant then sliced the right side of Morrow's neck with the box cutter. Defendant did not say anything to Morrow before he pushed her onto the bed and cut her neck.

¶ 6 Morrow got down onto the floor on her knees in a crawling position. She felt blood "gushing out of" her neck. Defendant was on the side of her. Morrow saw the box cutter and tried to reach for it. Defendant grabbed Morrow's hand and sliced the top of it with the box cutter. He repeatedly punched Morrow in the face and the back of her head with his fists. He struck her bottom lip, the top of her left eye, and her cheek. Defendant did not say anything to Morrow as he struck her. When he stopped beating her, Morrow crawled out of the bedroom and into the hallway. "A." exited the bathroom and stood in the hallway screaming. Morrow's blood was "covering" "A.". Morrow crawled to the front door of the apartment with blood flowing out of her neck "like a faucet." Morrow did not recall entering the bathroom. Morrow crawled into the hallway outside of her apartment. Defendant stood over her and handed her a towel to hold against her neck.

¶ 7 The police and an ambulance arrived and transported Morrow to Stroger Hospital. Morrow sustained a 10-centimeter cut on the right side of her neck. The tendon on the top of her right hand was also cut. Morrow received three or four stitches to her left cheek and her bottom lip, four stitches near her eye, stitches to her right hand, and numerous stitches on the inside and outside of her neck. A tube was inserted in the back of Morrow's neck for three days to drain the blood from her wound. Morrow underwent surgery on her right hand to repair the cut tendon. Scars remain on her neck, hand, and eye, and she has a lump on her lower lip. In court, Morrow identified photographs taken in the hospital of the cut on her neck and the cut near her left eye. She also identified photographs taken inside her apartment depicting numerous blood stains in the hallway, bedroom and bathroom. Morrow identified the box cutter defendant used to cut her.

¶ 8 Morrow testified that a prior incident occurred on December 4, 2008. About 9 a.m., Morrow was asleep on the couch and "A.", who was six months old, was asleep in Morrow's bed. Defendant broke into Morrow's apartment and struck her in her face and body with a clothing iron. Defendant grabbed a mirror from the wall and used it to strike Morrow in her head and body. He then grabbed a knife from the kitchen and "poked" Morrow's right hand, cutting it. Defendant also beat Morrow in her face. Morrow's landlord knocked on the door. Defendant did not flee, but remained there holding "A." The police arrived and arrested defendant. Paramedics transported Morrow to the hospital where she was treated for the cut on her hand and a "busted" mouth. Morrow's face was swollen and she had bruises on her arms and legs.

¶ 9 Morrow also testified that on September 18, 2010, she and defendant were still involved in an on-and-off relationship. Defendant called Morrow on the phone and told her that he wanted to kill her, but could not.

¶ 10 On cross-examination, Morrow testified that they were inside her apartment for 10 to 15 minutes before defendant displayed the box cutter. They were not arguing or fighting, and defendant said nothing to her before he assaulted her. Morrow acknowledged that defendant called 911, brought her a towel to press against her neck to help stop the bleeding, and remained with her until paramedics arrived. During a prior incident on November 6, 2008, she and defendant were living together and had a fight during which Morrow stabbed defendant in the back with a knife. Morrow was arrested but not prosecuted because defendant did not press charges. Morrow denied knowing that defendant was attacked with a box cutter in October 2010.

¶ 11 On redirect examination, Morrow explained that the incident on November 6, 2008, began as a verbal argument and escalated when defendant punched Morrow on the right side of her jaw. While defendant was still in front of her, and in close proximity to her, Morrow reached around him and stabbed him in the back. Morrow then called 911.

¶ 12 Chicago police officer Leopoldo Morales testified that about 7:45 p.m. on December 4, 2012, he and his partner, Officer Homero Garza, responded to a call regarding a stabbing at an apartment on Van Buren Street. When they arrived on the seventh floor, Morales observed Morrow sitting on the hallway floor with her back against the wall, holding a rag against the right side of her bleeding neck. Defendant was standing next to Morrow. Morrow had blood on her face and hands, and blood was splattered on the floor where she was sitting. Morales asked Morrow “[w]ho did this to you?” Morrow pointed directly at defendant and said “[h]im.” Morales and Garza immediately arrested defendant.

¶ 13 Chicago police detective Gabriel Gomez testified that on December 4, he and his partner, Detective Charles Hernandez, arrived at the apartment where other officers were guarding the

scene. Gomez observed blood stains near the doorway that led through the hallway and all the way to the rear bedroom and bathroom. In the bedroom, Gomez observed a gray box cutter lying on the bed. No other knives or cutting instruments were found in the bedroom. In the hallway that led from the bedroom to the bathroom, Gomez observed a pool of blood on the floor and a trail of blood leading into the bathroom. In the bathroom, Gomez observed blood on the floor, sink, and in the bathtub. There appeared to be a bloody footprint on the bathtub wall. In court, Gomez identified photographs depicting the blood he observed in the hallways and bathroom.

¶ 14 Gomez and Hernandez returned to the police station where defendant was in custody. Gomez observed that defendant's boots were covered in blood, and there were blood stains and spatter on his pants and jacket. Defendant had no injuries, blood, cuts or bruises on his face or hands. Gomez and Hernandez went to Stroger Hospital and observed Morrow's injuries, including the large laceration on her neck. Morrow had dried blood "all over her face." The detectives could not interview Morrow at that time because she was having difficulty speaking.

¶ 15 Dorion Wiley, an attending trauma and critical care surgeon at Stroger Hospital, treated Morrow in the emergency room for her lacerations and wounds. Morrow had five wounds that needed to be repaired, and she had been struck in the head and had lost consciousness. Morrow's wounds included a one-inch laceration near her left eye, a half-inch laceration on her left jaw, a very small laceration on her lower lip, a large two-inch laceration on the back of her right hand, and a very large stab wound that went from the front to the back of her neck. Wiley explained that the neck wound was a stab wound rather than a laceration due to its depth. A stab wound in the neck requires a diagnostic workup of the underlying structures including the great vessels, the trachea or windpipe, and the esophagus. The wound to Morrow's neck was 10 to 12

centimeters in length, or about 5 to 6 inches. Morrow underwent a CT angiogram, which was a CAT scan of her blood vessels, to ensure that her carotid and vertebral arteries were not injured. They were not. Morrow also underwent a CAT scan of her head because she had lost consciousness and Wiley needed to ensure that she did not suffer a brain injury.

¶ 16 Wiley repaired Morrow's wounds except for her hand wound which involved a tendon and required specialized care from a hand surgeon. Although stab wounds are usually not sewn closed due to the high risk of infection, Morrow's stab wound was "so large and gaping" that Wiley closed it, put a drain in place, and treated her with antibiotics. Morrow's stab wound involved several layers of muscle, subcutaneous fat and soft tissues, which were all closed with absorbable sutures, and her skin was sewn closed with removable sutures. Wiley did not count the number of sutures Morrow received, but explained that a suture is placed about every millimeter, and 10 centimeters is 100 millimeters. Wiley testified that any injury to the neck is considered life-threatening and potentially fatal because of the large blood vessels, airway, and esophagus contained therein.

¶ 17 The State presented a stipulation that blood found on defendant's jacket and boots contained Morrow's DNA. The State presented another stipulation that the blade of the box cutter measured approximately 2.5 centimeters in length and up to 1.7 centimeters in width. In addition, the State presented a stipulation that defendant had a 2007 conviction for possession of a controlled substance, which was offered in support of the UUWF charge.

¶ 18 Defendant testified that he had known Morrow for about 10 years, and they had an on-and-off dating relationship which ended on December 1, 2012. On December 4, between 4:30 and 5 p.m., defendant picked up "A." from preschool. He normally picked her up from school

twice a week. Defendant called Morrow and sent her a text message notifying her that he was picking up "A." before he did so. After he and "A." left the school, Morrow called defendant and asked him if he had already picked up their daughter. He replied that he had and that he was taking her to McDonald's. Morrow hung up the phone.

¶ 19 Morrow arrived at McDonald's 15 minutes after defendant and "A.". Defendant and Morrow began arguing, but not yelling. Defendant decided that he no longer wanted to speak to Morrow. They agreed that he should retrieve the rest of his belongings from her apartment. They left McDonald's and walked to the apartment, arguing the entire way. While walking, defendant called a friend to help him transport his belongings.

¶ 20 When they entered the apartment, "A." said that she needed to use the bathroom, and defendant walked her there. "A." entered the bathroom and defendant entered Morrow's bedroom. Morrow followed defendant into the bedroom and they continued arguing. Defendant walked around to the other side of the bed to retrieve some of his belongings. Morrow withdrew a knife from underneath the mattress and held it up so defendant could see it. Morrow always kept a knife under her mattress. Morrow rushed defendant to finish packing his belongings and told him "[y]our five minutes is up." Defendant told Morrow that he would be leaving and asked her to give him more time. Defendant walked towards Morrow and asked her to put down the knife. He told her that he was not going to walk past her while she was holding the knife in her hand. Morrow lowered the knife, but as defendant got closer to her, she raised it up again.

¶ 21 Defendant told Morrow that he had a box cutter and withdrew it from his pocket. As defendant walked towards Morrow, she raised the knife in her right hand. Defendant held the box cutter in his right hand. When defendant got closer to Morrow, she jumped. Defendant



grabbed Morrow's right hand with his right hand while still holding the box cutter. Morrow grabbed defendant's right hand with her left hand. Defendant wrestled Morrow to the bed. He asked her to drop the knife, but she refused. They wrestled for a short time, and defendant removed the knife from her hand. Morrow grabbed the box cutter in defendant's hand, and he removed her hand from it. Morrow kicked defendant off of her, with both of them remaining on the bed. Defendant's right hand, in which he still held the box cutter, was next to Morrow's neck, but not touching her neck. Defendant testified that he never cut Morrow.

¶ 22 Defendant fell off the bed, then stood up. Morrow stood up and turned towards the bed. Defendant thought Morrow was reaching for the box cutter lying on the bed, so he hit her. Morrow fell onto the floor. As defendant walked out of the bedroom, "A." ran in and asked him what was wrong. Defendant told her that he was leaving. "A." ran to Morrow. Defendant turned around and saw that Morrow was on her knees on the floor and was "leaking blood" from her hand. Defendant knelt down next to Morrow and tried to look at her hand, which was bleeding all over "A.'s" hoodie. Defendant then observed that Morrow's neck was cut. He immediately called 911.

¶ 23 The 911 operator advised defendant to have Morrow sit down, stay in one spot, and apply pressure to stop the bleeding. Defendant lifted Morrow from the floor and walked her to the bathroom. Morrow saw the cut on her neck in the bathroom mirror and became hysterical. Morrow washed her hand in the sink while defendant held a towel against her neck. Morrow asked defendant "how did this happen?" Defendant replied that he did not know, but that it had to have occurred when she kicked him off of her.

¶ 24 Morrow stood by the bathtub and told defendant “[d]on’t leave me like this.” Defendant held Morrow’s hand and told her that he would not. "A." began crying, and when defendant turned around to pick her up, Morrow fell and hit her head on the bathtub. Defendant helped Morrow out of the bathtub, and she sat on the edge of the tub while defendant tended to the wound on her neck. Defendant told Morrow that he had called for an ambulance, and that it would be best if he left. Morrow and "A." told him not to leave. He replied that he would stay because it would not look right if he left.

¶ 25 Defendant heard the ambulance coming and walked Morrow down the hallway inside the apartment. He called 911 again because Morrow’s hand was “leaking like a faucet.” Morrow began panicking and “flinging her hands everywhere.” Defendant tried to wrap Morrow’s hand and continued applying pressure to her neck. When they reached the front door of the apartment, Morrow put her back against the door and told defendant “[t]hey’re going to take our baby.” Defendant opened the apartment door and told Morrow that they needed to go by the elevator so the paramedics could give her medical attention immediately. They exited the apartment into the hallway. Morrow placed her back against the wall and slid down to the floor where she sat.

¶ 26 The police exited the elevator, pointed guns at defendant’s face, and told him to put his hands up and step away from Morrow. The police asked defendant what happened and he told them. The police handcuffed defendant in the outer hallway and entered the apartment. An officer exited the apartment with the steak knife Morrow had been holding and asked defendant if that was the object that cut Morrow. Defendant told him “no” and that he had a box cutter. The officer reentered the apartment and threw the knife into the kitchen sink. The officer exited the

apartment and told defendant that he did not see a box cutter. Defendant told him that it should be on the bed, and the officer reentered the apartment and recovered the box cutter.

¶ 27 Defendant testified that on a prior occasion on November 6, 2008, he and Morrow were arguing. Morrow grabbed defendant, then stepped back, looked at him, and apologized. Defendant asked her why she was apologizing. He looked in a mirror and saw a knife in his back. Morrow had stabbed the knife into his back all the way to the handle. Defendant went to the hospital. The police came, but defendant did not press charges against Morrow.

¶ 28 On another occasion on October 26, 2010, defendant and Morrow were not dating, and defendant was living with his grandmother. Defendant and Morrow got into an argument over the phone. Morrow arrived at defendant's grandmother's house with a male friend and continued arguing with defendant. Morrow cut defendant with a box cutter. Defendant was injured, but did not seek medical treatment. He called the police and filed a report, but Morrow was not arrested.

¶ 29 Defendant testified that when he saw Morrow pull out the knife during the incident in this case, he feared that she was going to injure him. He did not intend to kill Morrow on the date of this incident.

¶ 30 Defendant testified that during his first interview with Detective Gomez, he stated that he and Morrow had not been arguing. He told Gomez that he had displayed a box cutter, Morrow grabbed him, and when he fell on top of her she was accidentally cut. During a second interview with Gomez the following night, defendant admitted that he and Morrow had been arguing. He stated that he pulled the box cutter on Morrow, they got into a scuffle over it, and she was accidentally cut. Defendant acknowledged that his statements to Gomez were different than his trial testimony. Defendant thought that if he told Gomez the truth, the Department of Children

and Family Services would become involved due to the violence between him and Morrow, and he did not want to risk them taking his daughter.

¶ 31 On cross-examination, defendant testified that on the day of the incident, he and Morrow argued about their daughter sleeping in the same bed as Morrow and another man. Defendant was carrying the box cutter because he used it every day at work. Morrow kept knives everywhere in her home. While defendant rushed to collect his belongings, Morrow threatened him stating that the Chicago police and security told her that she could kill defendant inside the apartment if he did anything wrong because they had a history of domestic violence. Morrow checked her paperwork to see if her order of protection against him was still valid. When Morrow held the knife in her hand and jumped, she did not lunge at defendant or jump directly at him, but because they were in a tight location, he thought she was trying to stab him.

¶ 32 When Morrow kicked defendant off the bed, the box cutter fell out of his hand and onto the bed, and he had no further contact with it. When Morrow reached for the box cutter on the bed, defendant punched her twice on the left side of her face. Morrow fell to the floor, and the knife she was holding fell behind the bed. Defendant acknowledged that he did not actually see the police officer put the knife in the kitchen sink, but saw the officer walk towards the sink and heard the clink of the metal inside the sink. Defendant acknowledged that during the interviews at the police station, he did not state that Morrow had a knife or threatened him with a knife. Moments later, defendant testified that he did tell the officers that she had a knife. He then testified that he remembered “probably” telling one of the detectives about the knife, but did not think he told all of the officers about it. In regards to the stab wound to Morrow’s neck,

defendant testified “I’m responsible for the wound because it was due to the box cutter in my hand. That was the only way she could have got cut, but it was not intentional when she got cut.”

¶ 33 In rebuttal, Officer Garza testified that when he and Morales arrived at the scene, defendant stated that he and Morrow had been wrestling and he accidentally cut her, but he did not mean to hurt her. Defendant never said that Morrow was holding a knife, lunged at him with a knife, or that he was trying to remove a knife from her hand when he cut her.

¶ 34 Detective Gomez similarly testified that during his two interviews with defendant at the police station, defendant never stated that Morrow had a knife, lunged at him with a knife, or that he was trying to remove a knife from her hand when he cut her. Defendant admitted that he pulled out a blade and held it in Morrow’s face. Gomez did not observe a knife in the bedroom.

¶ 35 The trial court stated that it “had great difficulty with the defendant’s explanation as to how these wounds occurred in this particular matter.” It further stated that it was convinced that defendant was the perpetrator, and that he had no legal justification in inflicting the wounds. The court found that it only needed to address the attempted murder charge because all of the other charges were proven beyond a reasonable doubt. The court stated:

“One only need to look at the pictures and the location of these wounds and the severity of these wounds. There is nothing in the law that indicates what the proper length of time is necessary for intent, both before and after the act. But one looks at the wound to the neck. That wound was intentional, severe and with the intent to end someone’s – to take someone – the other person’s life in this particular matter.”

Accordingly, the trial court found defendant guilty on all counts.

¶ 36 In his motion for a new trial, defendant argued that the State failed to prove beyond a reasonable doubt that he had the specific intent to kill Morrow. At the hearing on the motion,<sup>1</sup> defense counsel argued that the State did not prove the element of intent where the evidence showed that defendant did not flee from the scene after Morrow was injured, but instead, called for emergency assistance, helped Morrow attempt to stop the bleeding, and was present when the authorities arrived. The State responded that defendant's actions and the severity of Morrow's neck injury showed that, at the time defendant inflicted the injury, he had the specific intent to kill Morrow. The State argued that the fact that defendant later changed his mind, called 911, and gave Morrow a towel did not negate his intent at the time of the injury.

¶ 37 The trial court stated that the issue was defendant's intent at the time he committed the offense. The court found that it was "very evident" from the testimony and photographs, as well as the nature of Morrow's injuries, that defendant had the specific intent to commit first degree murder when he injured Morrow. The court stated that although it was clear that afterwards defendant was remorseful about what he had done, abandonment is not a defense. The court found that defendant saved Morrow's life, but only after he tried to take it. Accordingly, the court denied defendant's posttrial motion.

¶ 38 The trial court merged all of the counts of aggravated domestic battery, aggravated battery, and domestic battery into one count of aggravated domestic battery. The court sentenced defendant to concurrent prison terms of 18 years for attempted first degree murder, 5 years for aggravated domestic battery, and 3 years for UUWF. The court also assessed defendant \$744 in fines, fees and court costs, and awarded him 1270 days of pre-sentencing custody credit.

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<sup>1</sup> Defendant's posttrial motion was heard by Judge Alfredo Maldonado following the retirement of Judge Clayton J. Crane, who presided over the trial.

¶ 39 On appeal, defendant first contends that his attempted murder conviction should be vacated because the State failed to prove that he had the specific intent to kill Morrow where he had the opportunity to kill her, but instead, called 911 and provided her with life-saving medical assistance. Defendant concedes that it is “uncontested” that he cut Morrow in the neck with a box cutter and that her injuries were serious. He argues, however, that there was nothing stopping him from killing her if he truly wanted her dead, and if he intended to kill her, he would have continued using the box cutter rather than abandoning it and reducing the degree of his attack by hitting her. Defendant further argues that his life-saving actions demonstrate that he never intended to kill Morrow where he immediately called 911, pressed towels against her neck to stop the bleeding, moved her to the hallway so she could receive medical assistance as soon as possible, and stayed with her until help arrived.

¶ 40 The State responds that defendant’s intent to kill was demonstrated by the character of his assault and the severity of the injury where he used a deadly weapon to inflict a six-inch stab wound to Morrow’s neck that required over 100 stitches. The State points out that Dr. Wiley testified that the wound was life-threatening. The State argues that defendant did all that was necessary to kill Morrow, and that it was only a matter of luck that he did not cut her blood vessels, airway or esophagus. The State further argues that defendant did not immediately call 911 after stabbing Morrow, but instead, repeatedly punched her in the head while she was on the floor bleeding. The State also asserts that defendant did not follow the 911 operator’s instructions to keep Morrow in one place, and instead, moved her around the apartment. The State notes that defendant previously expressed his desire to kill Morrow, and argues that his trial testimony where he claimed he acted in self-defense was not credible.

¶ 41 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 42 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 43 To prove defendant guilty of attempted murder in this case, the State was required to show that, without lawful justification and with an intent to kill, he cut Morrow about the neck, which constituted a substantial step towards committing first degree murder. 720 ILCS 5/8-4(a),



9-1(a)(1) (West 2012). An intent to kill can be established by evidence of the surrounding circumstances including the character of the assault, use of a deadly weapon, and the nature and extent of the victim's injuries. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 59. Defendant's intent to kill can be inferred when it is shown that he willingly and voluntarily committed an act, the natural tendency of which is to destroy another person's life. *Id.* Whether defendant had an intent to kill is a determination for the trier of fact, and on appeal, that finding will not be disturbed unless there is a reasonable doubt as to defendant's guilt. *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 39.

¶ 44 Here, viewed in the light most favorable to the State, the record shows that the evidence was sufficient for the trial court to find that defendant had the specific intent to kill Morrow. Morrow testified that on December 4, defendant unexpectedly picked up their daughter from school, which he had never done before. He then asked to come to Morrow's apartment to retrieve some of his belongings. When they arrived at the apartment, their daughter entered the bathroom and defendant entered the bedroom, followed by Morrow. After placing a few items on the bed, defendant approached Morrow and withdrew a box cutter from his jacket pocket. Defendant pinned Morrow down on the bed, held her arms crossed in front of her chest, and sliced the right side of her neck with the box cutter. Morrow got on the floor in a crawling position and felt blood "gushing out of" her neck. Defendant was on the side of her. When Morrow reached for the box cutter, defendant grabbed her hand and sliced the top of it with the box cutter, cutting her tendon. Defendant then began punching Morrow in the face and the back of her head with his fists, injuring her bottom lip, the top of her left eye, and her cheek. When defendant stopped hitting Morrow, she crawled into the hallway, at which time "A." exited the

bathroom and began screaming. Morrow had no recollection of entering the bathroom, and at some point, she lost consciousness.

¶ 45 From this evidence, the court could find that defendant's use of a deadly weapon to slice Morrow's neck open as he had her pinned down on the bed and unable to move showed he had the specific intent to kill her. In addition, the court could find that the character of the assault further demonstrated defendant's intent to kill Morrow where, after he sliced her neck open, he sliced the top of her hand and repeatedly punched her in the face and head, causing additional injuries and causing her to lose consciousness.

¶ 46 Moreover, the record reveals that the trial court properly considered the nature and extent of Morrow's neck injury in determining that defendant intended to kill her. The evidence showed that the cut to Morrow's neck was not a laceration, but a very large deep stab wound about six inches in length that extended from the front to the back of her neck. The wound involved several layers of muscle, subcutaneous fat and soft tissues. Wiley testified that although stab wounds are usually not sewn closed due to the high risk of infection, Morrow's neck wound had to be sewn closed with a drain in place because it was "so large and gaping." The interior layers of muscle, fat and tissue were all sewn closed with absorbable sutures, and her skin was sewn closed with approximately 100 removable sutures. A photograph of Morrow's open neck wound taken at the hospital depicts the severity of the injury. The trial court specifically referred to the photograph when it found that defendant intended to kill Morrow, stating "[t]hat wound was intentional, severe and with the intent to end someone's – to take someone – the other person's life in this particular matter."

¶ 47 We find no merit in defendant's argument that the State did not prove his intent to kill because there was nothing stopping him from killing Morrow if he truly wanted her dead, and if he intended to kill her, he would have continued using the box cutter rather than abandoning it and reducing the degree of his attack by hitting her. Abandonment is not a defense to criminal attempt. *People v. Winters*, 151 Ill. App. 3d 402, 406 (1986). The fact that defendant failed to complete the murder does not show that he lacked the intent to do so. Furthermore, defendant's claim that there was nothing stopping him is belied by the record which shows that their four-year-old daughter emerged from the adjacent bathroom and began screaming when she saw Morrow profusely bleeding. Both Morrow and defendant testified that "A." was covered in her mother's blood. "A.'s" presence may have prevented defendant from continuing his attack on Morrow.

¶ 48 In addition, defendant's argument that his acts of calling 911 and giving Morrow a towel to press against her neck show that he had no intent to kill her is unpersuasive. This court has previously found that a defendant's conduct after the purported attempt is one of the surrounding circumstances the fact finder may consider when determining whether the defendant had an intent to kill at the time he took the substantial step. See *People v. Parker*, 311 Ill. App. 3d 80, 90 (1999). In this case, according to defendant's own testimony, he called 911 after "A." had exited the bathroom, run to Morrow, and was covered with Morrow's blood. The fact that defendant called 911 and followed the operator's instructions after his daughter discovered her mother bleeding profusely, began screaming, and became covered in her blood does not in any way negate his intent to kill Morrow at the time he slashed her neck.

¶ 49 Based on this record, we find that the evidence of the surrounding circumstances in this case including the character of defendant’s assault on Morrow, his use of a deadly weapon, and the nature and extent of Morrow’s neck injury clearly established that defendant had the specific intent to kill Morrow. *Carlisle*, 2015 IL App (1st) 131144, ¶ 59. Accordingly, we will not disturb the trial court’s findings that defendant possessed the required intent, and that the State proved him guilty beyond a reasonable doubt of attempted first degree murder. *Petermon*, 2014 IL App (1st) 113536, ¶ 39.

¶ 50 Defendant next contends, and the State agrees, that this case must be remanded to the trial court to address the fines and fees issues raised in his opening brief. Specifically, defendant argues that the \$250 DNA ID system fee (730 ILCS 5/5-4-3(j) (West 2012)) and the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) were erroneously assessed and should be vacated. Defendant further argues that monetary credit for the days he spent in presentencing custody should be applied against several fees that he claims are fines.

¶ 51 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the “imposition or calculation of fines, fees, and assessments or costs” and “application of *per diem* credit against fines.” Ill. S. Ct. R. 472 (a)(1), (2) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that “[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” on the ground of

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any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we “remand to the circuit court to allow [defendant] to file a motion pursuant to this rule,” raising the alleged errors regarding the imposition of fees and the application of *per diem* credit against fines. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 52 Affirmed; remanded as to fines, fees and costs.