

THIRD DIVISION  
December 11, 2013

Nos. 1-10-3697 and 1-11-0303 (consolidated)

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 8018
	)	
LAWRENCE GREEN,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Justice Pierce concurred in the judgment.  
Presiding Justice Hyman dissented.

**ORDER**

- ¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant did not have a reasonable belief the force he used was necessary to protect himself from the victim, who initially struck defendant with a bat. Defendant's belief was unreasonable where the evidence showed that although the victim was initially the aggressor, defendant took the bat from the victim and had subdued him prior to the time defendant struck the prone victim several times with the bat.
- ¶ 2 Following a bench trial, defendant Lawrence Green was convicted of second degree murder of the victim Johnny Johnson. Green was initially sentenced to 15 years' imprisonment,

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which was later reduced to 10½ years after reconsideration. On appeal, Green contends that he was not proved guilty of second degree murder beyond a reasonable doubt because the State failed to prove that he did not act in self-defense where Johnson: (1) was the initial aggressor by hitting Green with a baseball bat; (2) continued to try to fight Green; and (3) exhibited combativeness even after Green left the scene. For the following reasons, we affirm the judgment of the trial court.

¶ 3

### BACKGROUND

¶ 4 Lawrence Green was charged with two counts of first degree murder of Johnny Johnson stemming from an altercation that occurred on March 15, 2008, at 3749 West Augusta Boulevard in Chicago, Illinois. As a result of complications from injuries sustained in the attack, Johnson died on February 24, 2009.

¶ 5 At trial, Dr. Ponni Arunkumar, an assistant medical examiner, testified that the cause of Johnson's death was broncho pneumonia. The autopsy revealed Johnson had multiple healed contusions indicative of blunt head trauma. Because the injuries caused Johnson to be hospitalized for a long period of time, he was prone to infections such as pneumonia. In Dr. Arunkumar's opinion, the manner of death was homicide given that the pneumonia resulted from a prolonged hospital stay due to blunt head trauma sustained as a result of Green's assault.

¶ 6 Zucchini McCoy, Johnson's neighbor, testified that on March 15, 2008, she was watching television in her second story apartment, when she heard Johnson yelling repeatedly. She then went to the window and saw Green entangled with Johnson near the entrance of the alley between the apartment buildings. Nothing obstructed the view from McCoy's window and the alley was well lit from the street light and passing cars.

¶ 7 At that point, McCoy went to retrieve her phone and came back to see Green kneeling on Johnson's chest. Green then began hitting Johnson in the head at least three to four times with

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clenched fists, and Johnson tried to fight back, moving his arms and feet. Neither man had any object in his hands. McCoy turned away to call the police and when she looked back, Green, now standing, was repeatedly striking Johnson in the head with a wooden object. At this time, Johnson remained on the ground and continued to struggle. McCoy testified that everything happened "in a matter of seconds."

¶ 8 McCoy further testified that Catherine Green, who was Green's mother and Johnson's girlfriend, came out of her house and yelled something at her son. Green then dropped the object and went to his car as Catherine kneeled next to the victim who had a pool of blood running from his head. McCoy did not see Johnson hit Green.

¶ 9 Catherine Green testified that she was Johnson's girlfriend and the two lived together with her daughter, LaShonda Smith, and two granddaughters. On March 15, 2008, Catherine went to Indiana during the afternoon and returned home around 7 p.m. Johnson came home later that evening and an argument ensued. During the argument, Johnson threatened Catherine, took her cellular phone, hit and pushed her, and hit her one-year old granddaughter whom Catherine was holding. Following this exchange, Johnson left to retrieve a bat from his car and soon returned threatening everyone in the house. Johnson then went back outside while Catherine stayed in the house with her daughter and grandchildren.

¶ 10 Catherine did not go outside until a woman ran in the house and told her Green and Johnson were fighting. When she went outside, Catherine testified that she saw Johnson lying on the ground bleeding with a bat nearby as Green was getting into his car without anything in his hands. Catherine denied telling Detective Sharre Hendricks the following day that she saw Green with a bat in his hands when she went outside and that she screamed at him to stop hitting Johnson. She also denied telling Hendricks that she saw Green throw the bat to the sidewalk,

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walk to his car, get into his car, and drive away. Catherine testified that she only screamed at Green asking him "what did you do?"

¶ 11 On cross-examination, Catherine testified that she previously told the grand jury that the bat was on ground next to Johnson when she first went outside. Catherine also stated that Johnson had been drinking since about 1 p.m. that day.

¶ 12 The parties then stipulated that Detective Hendricks would testify that Catherine told her she went outside after hearing a loud commotion and saw Green holding a bat in his hand standing over Johnson, who was lying on the pavement. She screamed at Green to stop hitting Johnson at which point he threw the bat down on the sidewalk, walked to his car, and drove away.

¶ 13 Defense witness Gregg Baghdade, a paramedic for the Chicago Fire Department, testified that about 9:24 p.m. on March 15, 2008, he responded to a call at 3749 West Augusta Boulevard. Baghdade testified that Johnson was conscious on arrival and his breath, as well as his behavior, was consistent with intoxication as he yelled, cursed, spit, and bit the paramedics on the scene. Paramedics used soft restraints to protect themselves from Johnson, who was "moving all around," and it took three paramedics to secure him to the back board. Johnson's combativeness, which lasted the entire duration of the ride to Mt. Sinai Hospital, prevented Baghdade from applying advanced life support care on the way there. Baghdade reported that in his experience, he has not seen a patient become as combative as Johnson merely due to severe pain. Baghdade also testified that he noticed a broken bat on the ground when he arrived at the scene. The parties also stipulated that personnel from Mt. Sinai Hospital would testify that Johnson remained combative while in the trauma bay and that he was so agitated that emergency department personnel had to intubate him.

¶ 14 Green's sister, LaShonda Smith, testified that on March 15, 2008, Catherine went to Indiana for the day. This upset Johnson, and when Catherine returned home, an argument ensued. The argument turned physical as Johnson grabbed Catherine's phone, slapped her with an open hand in the face, and hit Smith's one-year old child who was in her grandmother's arms at the time. Smith then went into another room to call Green to make sure he was still coming to pick up her daughter as he did every Friday. Smith did not mention the physical altercation between Catherine and Johnson. When Smith returned to the other room, Johnson had a bat in his hand and he began threatening everyone inside the house.

¶ 15 Smith further testified that she learned Green had arrived after her sister came inside to tell her. When Smith went onto the porch, she saw Johnson hit Green in the back with a bat. Green had nothing in his hands. Smith returned to the house and when she came back outside, the fight was over, Green was gone, and Johnson was lying conscious on the ground in the alley. Smith denied seeing Green strike the victim.

¶ 16 On cross-examination, Smith denied telling Detective Hendricks during her interview that she saw Green tussling on the ground with Johnson, that he punched Johnson in the face with a closed fist, and that Johnson fell down hard from the punch appearing "knocked out." Smith also denied telling the grand jury on March 20, 2009, that Green punched Johnson and took the bat after being struck in the back of the legs. Smith stated she could not remember if the grand jury asked her a question about whether Johnson was talking or moving in any way after the fight.

¶ 17 In rebuttal, the State offered a stipulation that Detective Hendricks would testify that Smith told her that after Johnson hit Green in the legs and upper back area with a baseball bat, the men tussled on the ground. Green then hit Johnson in the face causing him to go down hard and that he appeared "knocked out." The parties also stipulated that Assistant State's Attorney Michelle Spizzirri would confirm that on March 20, 2009, Smith testified before a grand jury that

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after Johnson hit Green in the back of his legs with a bat, Green punched Johnson and took the bat. Smith then responded “no” when asked by the grand jury whether Johnson was talking or moving in any way after being punched by Green.

¶ 18 On October 21, 2010, the trial court found Green not guilty of first degree murder, as charged in count I, based on the court's finding that there was insufficient evidence that the killing was intentional. On count II, under which Green was charged with first degree murder based on a strong probability of death or great bodily harm, the court found that the State had proved the offense, but further found that there were sufficient mitigating factors to support the lesser included offense of second degree murder. The court denied Green's motion for a new trial and sentenced him to 15 years' imprisonment, a term that was later reduced to 10½ years. Green timely filed this appeal, and now challenges the sufficiency of the evidence to sustain his conviction.

¶ 19 ANALYSIS

¶ 20 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt regarding defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

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¶ 21 In this case, where Green was convicted of second degree murder, the State was required to prove all of the elements of first degree murder beyond a reasonable doubt, *i.e.*, that Green performed the acts that caused Johnson's death, and that when he did so, he knew his acts created a strong probability of death or great bodily harm to Johnson. *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998); 720 ILCS 5/9-1(a)(2) (West 2008); 720 ILCS 5/9-2 (West 2008). Once the State satisfied that burden, it was incumbent upon Green to prove by a preponderance of the evidence that he was either acting under a sudden and intense passion resulting from serious provocation by Johnson, or believed that the circumstances were such that he was justified in using the force employed in self-defense, but that his belief was unreasonable. *Hawkins*, 296 Ill. App. 3d at 836; 720 ILCS 5/9-2 (West 2008).

¶ 22 In its response to Green's initial brief, the State maintains that Green is relying solely upon the mitigating factor of self-defense. Green disagrees and contends that he is not conceding that he did not act out of provocation. We note, however, that nowhere in his initial or reply briefs has Green otherwise addressed the issue of provocation. Rather, he concentrates solely on self-defense, and asserts that as his justification for the amount of force he used to defend himself. As such, we will limit our inquiry to that issue.

¶ 23 Self-defense is an affirmative defense raised by a defendant. *People v. Young*, 187 Ill. App. 3d 977, 984 (1989). The defendant must establish the following elements: (1) force was threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) defendant actually believed a danger existed that required the use of the force applied; and (6) his belief was objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). Once self-defense has been raised, the State has the burden of disproving it beyond a reasonable doubt. *People v. Hooker*, 249 Ill. App. 3d 394, 400 (1994). If the state negates any one of the self-defense elements, the

defendant's claim of self-defense must fail. *Id.* In this case, we focus on whether the evidence shows that defendant's subjective belief that his use of the force employed was objectively reasonable.

¶ 24 In reviewing the sufficiency of the evidence, the issue of self-defense is a question of fact to be determined by the trier of fact. *People v. Young*, 347 Ill. App. 3d 909, 920 (2004). In a bench trial, when the testimony of witnesses conflicts, the trial judge must determine their credibility, draw reasonable inferences from their testimony, and resolve conflicts in the evidence to determine whether the defendant's actions were reasonable. *People v. Felella*, 131 Ill. 2d 525, 534 (1989); see *Hooker*, 249 Ill. App. 3d at 401 (in resolving conflicts in the evidence, the trial judge noted that she must take the defense's witnesses' credibility into consideration since one was the defendant's wife and the other was the defendant's brother who told a different story at trial than when interviewed by police). Here, for the following reasons, we conclude that the State satisfied its burden of proving beyond a reasonable doubt that Green did not have a reasonable belief that the use of deadly force was necessary to protect himself.

¶ 25 It is undisputed that Johnson was the initial aggressor. The testimony of Catherine Green and Lashonda Smith established that Johnson, heavily intoxicated, first threatened the residents of his household and later Green, while wielding a bat. After Johnson struck Green, who was unarmed, on the back with the bat without provocation, the altercation ensued. Although McCoy testified that the altercation did not last long, the trial court had before it evidence that after Green took the bat away from Johnson and struck him with closed fists several times in the head, Johnson was lying on the ground. There was no evidence that after Green struck Johnson (so that he appeared "knocked out" according to Smith's statement to Hendricks), Johnson ever struck back or was able to get up from the ground. Further, although Johnson was later combative with paramedics who arrived on the scene, there is no evidence in the record regarding



the amount of time that elapsed between Green's departure and the paramedics' arrival and no one testified that Johnson was ever able to get up. The trial court was also entitled to discount the trial testimony of Green's mother and sister (who, after Johnson's passing, were clearly motivated to protect their son and brother), which contradicted their statements to Hendricks immediately after the occurrence and, in Smith's case, her testimony before the grand jury.

¶ 26 While we acknowledge the points made by the dissent and readily recognize that a reasonable trier of fact could have reached the opposite conclusion in this case, to do so on appeal would be to improperly substitute our judgment for that of the trial court. Although the dissent observes that McCoy never testified that Johnson was rendered defenseless, McCoy also did not observe the entire altercation and particularly, she turned away after she saw Green kneeling on Johnson's chest punching him and when she returned, Green was hitting Johnson with the bat. The evidence showed that Smith told both Detective Hendricks and the grand jury that Johnson appeared "knocked out" and was not moving after Green dealt him several blows to the head with closed fists. Based on the record, McCoy would not have observed this.

¶ 27 The defense further posits that Green's concern for the safety of other family members motivated him to continue striking Johnson with the bat (with such force that he broke it) until it was "safe" to leave. Not only is there no evidence in the record to support this conclusion, but the dissent also emphasizes how combative Johnson remained even after being hit with the bat, thus begging the question why Green would have believed it was safe to leave his family members behind.

¶ 28 In *People v. Brown*, 78 Ill. App. 2d 327 (1996), cited by the dissent, there was substantially more evidence, including defendant's testimony, that supported defendant's claim of self-defense. In fact, defendant's testimony regarding the circumstances of the altercation with the victim was "uncontroverted." *Id.* at 330. Further, the offense of manslaughter, of which

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defendant was convicted in *Brown*, required proof that defendant acted under a "sudden and intense passion," but no such evidence was adduced at trial. *Id.* In contrast, here the trial court was called upon to resolve disputed issues of fact and we see no reasoned basis to second-guess the conclusions it reached.

¶ 29 Viewing these surrounding facts and circumstances in the light most favorable to the State as we must (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that the State sustained its burden of disproving defendant's affirmative defense of self-defense beyond a reasonable doubt (see *Brown*, 78 Ill. App. 3d at 330-31), and affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.

¶ 31 PRESIDING JUSTICE HYMAN, dissenting:

¶ 32 I respectfully dissent. The critical issue is whether the State proved beyond a reasonable doubt that Lawrence Green acted on a reasonable belief that the physical force he used was necessary to protect himself from Johnny Johnson. When a defendant raises evidence of self-defense, the burden of proof does not shift to the defendant, but remains with the State. *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995) ("Once an affirmative defense is raised, the State has the burden of proving the defendant guilty beyond a reasonable doubt as to that issue together with all other elements of the offense.") Unlike the majority, I find that Green's belief was reasonable where the evidence showed that: (i) Johnson retrieved the bat from his car and initiated the threats, (ii) Johnson initially struck Green twice in the back with a baseball bat, (iii) the fight between Green and Johnson lasted a matter of seconds, (iv) throughout the fight Green was forced to continue defending himself, and (v) this was a single ongoing incident throughout which Green remained exposed to peril.

¶ 33 Green had to react quickly to an aggressive situation not of his making, and although he managed to wrest the baseball bat from Johnson during their tussling, Johnson remained a

formidable and dangerous adversary. While it is unknown how long Johnson was lying on the ground—for seconds or a bit longer— this defect in the evidence is on an issue for which the State bears the burden of proof, and the State did not sustain its burden. Even relying on the stipulation of Detective Hendricks suggests that at best Johnson "appeared" to be knocked out. "Appeared" is a far cry from incapacitated or unconscious. If Johnson was stung for an instant, that still does not preclude Green from having to defend himself. Testimony established that Johnson posed extreme personal risk of injury for the paramedics who arrived to transport him to the hospital and for the doctors and staff at the hospital, all of which belies that he was "knocked out," powerless to strike back, or unable to get up from the ground. In sum, the evidence presented by the State does not prove that Johnson was ever completely incapacitated or that Green was unjustified in his use of force.

¶ 34 The majority, as I read its recitation of the altercation, particularly paragraph 25, faults Green for not knowing ahead of time whether the punches to the head were enough to subdue a heavily intoxicated, violent individual. The law does not expect Green to be clairvoyant or possess psychic powers as to what Johnson's next move might be. Green had to deal with the stark reality of what was occurring in real time. On the other hand, the majority benefits from the clarity of hindsight and can freely speculate on Johnson's condition in the moments after Green hit him with his fist and what might have happened had Green walked away at that point.

¶ 35 Self-defense is an affirmative defense, and like other justifications, is a complete defense, meaning that an act committed in self-defense amounts to no crime at all. Once raised by the defendant with some evidence, the affirmative defense places on the State the burden of disproving the defense beyond a reasonable doubt. *People v. Rogers*, 263 Ill. App. 3d 120, 126-127 (1994). The State's evidence was spotty at best, and insufficient to dispose of the defense. It is undisputed that Johnson was the initial aggressor and Green was confronted by a peril not of

his own making. The evidence showed that Johnson was inebriated and attacked Green, without provocation, with a baseball bat to his back. Johnson was, therefore, required to defend himself.

¶ 36 The State argues that "the fight was over" once Green was lying on the ground and no longer had the bat, yet, the evidence does not support this myopic conclusion. To the contrary, witness McCoy testified that the fight between Johnson and Green was over "in a matter of seconds." Thus, the court should view the altercation as a whole.

¶ 37 The evidence shows that Johnson and Green were engaged in ongoing combat for a matter of seconds, during which Green pulled the baseball bat away from Johnson and struck him with the bat. McCoy testified that Johnson continued to struggle, swinging his arms and legs, and fought with Green the entire time. This description by McCoy belies the assertion that Johnson was incapacitated, and McCoy never testified that Johnson had been knocked out. The evidence also shows that Johnson remained combative for a significant period of time after the fight concluded. Paramedic Baghdade testified that due to Johnson's combativeness, which included yelling, cursing, spitting, and biting while at the scene of the fight, Baghdade and his fellow paramedics had to use soft restraints to protect themselves from Johnson. Baghdade further testified that it took three paramedics to subdue Johnson. Not only do Johnson's actions towards the paramedics demonstrate that Johnson posed a threat even when disarmed and on the ground, but it also indicates Johnson's strength, providing further support to the reasonableness of Green's belief. *See People v. Lynch*, 104 Ill. 2d 194, 200 (1984) (when theory of self-defense raised, victim's aggressive and violent character "tends to support defendant's version of facts").

¶ 38 The parties stipulated that hospital personnel would testify that Johnson was also extremely combative while in the trauma bay and, as a result, he had to be incubated. Therefore, the evidence shows that Johnson remained violent, even after Green was able to take away the baseball bat. This was not a case in which the initial aggressor was lying helplessly on the

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ground and the defendant could simply walk away. See *People v. Balfour*, 148 Ill. App. 3d 215, 233 (1986) (evidence supported trial court's conclusion that once victim was lying motionless on ground and defendant had turned away, defendant was not justified in returning to victim and using force likely or intended to cause great bodily harm or death). Because Johnson continued to pose a danger of violence to Green, under these circumstances, Green could reasonably believe that force used in striking Johnson with the baseball bat was necessary to protect himself. See *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998) ("The reasonableness of an individual's belief that the use of deadly force was necessary depends on the surrounding facts and circumstances and is a question of fact"); *People v. Sawyer*, 115 Ill.2d 184, 192 (1986) ("In the context of self-defense, it is the defendant's perception of the danger, and not the actual danger, which is dispositive").

¶ 39 While the majority finds that Green was not in an enclosed space and could have fled to his vehicle, the ongoing struggle with Johnson precluded this action. Green's mother, sister, and young nieces were at risk just inside the house. Requiring Green to just walk away during the course of the fight, instead of defending himself with reasonable force, would have left Green and his family vulnerable and exposed to Johnson, who continued to act in an erratic, aggressive, and combative manner. This is why it is inconsequential that Johnson did not have a weapon to pose a continuing threat to Green—Johnson's very presence in his then disturbed state of mind posed a threat. See *People v. Estes*, 127 Ill. App. 3d 642, 651 (1984) (Defendant needs only the subjective belief of imminently suffering great bodily harm or death to justify using deadly force.)

¶ 40 Further, the only evidence supporting a conclusion otherwise, *i.e.*, that Johnson was lying defenselessly on the ground at the time Green hit him with the baseball bat, was submitted through stipulation. Specifically, the parties stipulated that Officer Hendricks would testify that

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Smith told her that after Green hit Johnson in the face, Johnson fell down hard and appeared to be "knocked out." The parties also stipulated that ASA Spizzirri would testify that Smith testified before the grand jury that Johnson was not talking or moving in any way after being punched by Green. But, Smith did not provide similar testimony at trial and denied making those earlier statements. Although it is the province of the trier of fact to resolve any conflicts in evidence and to weigh witness credibility, this evidence was presented via stipulations and not live testimony. The trier of fact could not assess the credibility of Officer Hendricks and ASA Spizzirri. Under these circumstances, this evidence is of diminished significance in determining whether Johnson continued to pose a threat to Green after he was disarmed and on the ground.

¶ 41 Viewing these surrounding facts and circumstances in the light most favorable to the State (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009)), the State failed to meet its burden of disproving Green's affirmative defense of self-defense beyond a reasonable doubt. See *People v. Brown*, 78 Ill. App. 2d 327, 330-31 (1996) ("Despite the statement by the trial court, that defendant used excessive force in defending himself, that the use of the weapon was unwarranted and that the alleged attack by Jenkins was not of such a nature to warrant the acts of the defendant against Jenkins, we feel the People failed to prove, beyond a reasonable doubt, that defendant did not act in self-defense.").

¶ 42 The majority characterizes the State's failure to meet its burden of proof as an improper attempt of substituting another judgment for that rendered by the trial court. But the law is that "[w]here the record on appeal leaves a grave and substantial doubt as to the guilt of the defendant, the judgment of the trial court will be reversed. [Citation.]" *People v. Estes*, 127 Ill. App. 3d 642, 653-54 (1984). Under the circumstances presented, I cannot say that Green's belief that he was in danger of death or great bodily harm was unreasonable beyond a reasonable doubt. *Id.*

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¶ 43 Courts of review should set aside a defendant's conviction when the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). As explained above, this is such a case, and if *Beauchamp* and similar pronouncements of principles consistent with our constitutional duty have true meaning, then, on the record before us, Green's conviction and sentence should be reversed.