SIXTH DIVISION
March 28, 2014

No. 1-12-0643

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 6649
	)	
CHARLIS HARRIS,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for heinous battery and aggravated discharge of a firearm were supported by evidence proving her guilt beyond a reasonable doubt, and the sentences imposed for those convictions were neither excessive nor a result of an improper consideration of sentencing factors. However, defendant's conviction and sentence for aggravated unlawful use of a firearm must be vacated under the principles of the one-act, one-crime doctrine.

¶ 2 After a bench trial, defendant-appellant, Charlis Harris, was convicted of heinous battery, aggravated discharge of a firearm, and aggravated unlawful use of a firearm (AUUW). Defendant was, thereafter, sentenced to concurrent terms of 5 and 2 years' imprisonment, respectively, for aggravated discharge of a firearm and AUUW. Both of those sentences were to be served consecutively to a sentence of 13 years' imprisonment for heinous battery.

¶ 3 On appeal, defendant contends: (1) she was not proven guilty beyond a reasonable doubt of committing the offenses of aggravated discharge of a firearm or heinous battery; (2) her sentences for heinous battery and aggravated discharge of a firearm were excessive and resulted from an improper consideration of sentencing factors; (3) her conviction and sentence for AUUW must be vacated under the principles of the one-act, one-crime doctrine; and (4) the AUUW statute under which she was convicted is unconstitutional. For the following reasons, we affirm defendant's convictions and sentences for heinous battery and aggravated discharge of a firearm, but vacate her conviction and sentence for AUUW under the principles of the one-act, one-crime doctrine.

¶ 4 I. BACKGROUND

¶ 5 Defendant was charged by indictment with attempted first degree murder, heinous battery, aggravated discharge of a firearm, aggravated unlawful use of a firearm, and defacing the identification marks of a firearm. Each count related to actions defendant had allegedly undertaken on or about March 24, 2010.

¶ 6 The matter proceeded to a bench trial in November and December of 2012. At trial, the State first presented testimony from the following witnesses: (1) the primary victim, Serretta Rogers; (2) the victim's adult daughter, Keonna King; (3) the victim's adult cousin, Kiara Amos; (4) a Chicago police officer, Reginald Arrington; and (5) another Chicago police officer and evidence technician, David Scarriot. The State also introduced, by way of stipulation: (1) the testimony of Allen Osaba, a forensic expert employed at the Illinois State Police crime lab; and (2) testimony from another evidence technician, Officer Michael Scarriot. Finally, the evidence admitted during the State's case-in-chief included 35 photographs.

¶ 7 In general, the State's evidence tended to show that prior to the March 24, 2010, incident, both defendant and Ms. Rogers had both been involved in a relationship with the same man, Jason Smith. A rivalry and animosity had developed between the two women, and this situation ultimately led to a physical confrontation on March 13, 2010, involving defendant, Ms. Rogers, Mr. Smith, and Ms. King. This confrontation occurred at JD's Restaurant in Chicago, located near where both defendant and Ms. Rogers lived. Defendant and Ms. Rogers initially fought, and that initial fight ended due to Mr. Smith's intervention. When the two women began fighting again, Ms. King joined the fight on behalf of her mother.

¶ 8 Two weeks later, on March 24, 2010, Ms. Rogers and Ms. King drove to JD's Restaurant to pick up a lunch order. While they were still inside of Ms. Roger's car and parked on the street near the restaurant, defendant pulled up in her black SUV. Defendant's daughter, Tammesha Watkins, was a passenger in the SUV. Defendant began to yell at Ms. Rogers and Ms. King, and Ms. Rogers drove away. Defendant followed close behind, actually ramming the rear of Ms. Rogers's car on a number of occasions.

¶ 9 Ms. Rogers and Ms. King eventually arrived back at Ms. Rogers's residence, a three-story apartment building where she lived with her extended family. Ms. Rogers parked her car on the street, and defendant soon drove up and parked her SUV in the same direction alongside Ms. Rogers's car. Ms. Roger's testified that she was nearly pinned inside of her car at that time, and had to "squeeze" out of the driver-side door. At that time, defendant doused Ms. Rogers's face, ear, and hair with a brown liquid Ms. Rogers described as "acid" by throwing it out the passenger side window of the SUV. When Ms. Rogers tried to run toward the back of defendant's SUV, defendant again doused Ms. Rogers with the acid. At the time, Ms. Rogers did not feel anything

but she noticed that her clothes were "ragging off on me" and that she was able to "wipe *** the skin from my face."

¶ 10 Ms. Rogers then ran toward her residence, but before she got to the front door she looked back and saw defendant fire a shot from a gun in her direction. In their testimony, Ms. King and Ms. Amos confirmed that defendant had poured some type of liquid on Ms. Rogers and had fired a bullet in the direction of Ms. Rogers. They also testified that defendant then poured more of the liquid on the rear of Ms. Rogers's car and, thereafter, struck the windshield and driver-side window of Ms. Roger's car with a hammer. Defendant then drove away.

¶ 11 Ms. Rogers was, thereafter, taken to the University of Chicago Hospital in an ambulance. Photos taken on the day of the incident show significant burns and scarring to her face, hair, and lower back. Ms. Rogers spent over three weeks in the hospital, undergoing at least three surgical skin graft procedures for injuries to her ear, face, and lower back. After being released from the hospital, Ms. Rogers underwent additional surgeries upon her face. At trial, the trial court observed that Ms. Rogers still had scarring on her face, which Ms. Rogers had covered with her hair.

¶ 12 With respect to the police investigation, the State's evidence showed that police responded to the scene of the incident upon a report of shots fired and an acid attack. There, police observed Ms. Rogers's car had damage to its windshield and driver-side window. There was also a "caustic" liquid on its rear. A hammer was found in the parkway in front of Ms. Rogers's residence. Officer David Scarriot testified that he took photos of the crime scene, including of the front door of Ms. Rogers's residence, and did not note any bullets or bullet holes.

¶ 13 When the police later received a report that two victims had arrived at Jackson Park Hospital with burns, Officer Arrington went to that location and found defendant and her young

daughter, who was being treated for acid burns. Defendant had acid burns on her pants, and an unloaded .25-caliber handgun and a hammer in her purse. Defendant was taken to the police station while her daughter was treated for her burns. Additionally, Officer David Scarriot testified that he observed defendant's SUV in the parking lot of Jackson Park Hospital. The windshield was shattered, a .25-caliber shell casing was found on the running board of the vehicle, and a caustic substance was on the interior of the front, passenger side door. He took a sample of the substance and sent it to the Illinois State Police crime lab.

¶ 14 With respect to the State's stipulations, it was stipulated between the parties that Officer Michael Scarriot would testify that he recovered several items of clothing and a black wig from Ms. Rogers's residence on the date of the incident. It was further stipulated that Mr. Osaba, a forensic expert employed at the Illinois State Police crime lab, would testify that the wig and samples of the caustic substance recovered by the police tested positive for sulfuric acid, a caustic liquid that causes "severe burns to all body tissues."

¶ 15 At the conclusion of the State's case-in-chief, defendant moved for a directed finding of not guilty with respect to the charges against her. The trial court granted that motion, in part, finding that there was no evidence to support the charges alleging that defendant had: (1) attempted to murder Ms. King or had discharged a firearm in her direction; or (2) defaced the identification marks of a firearm.

¶ 16 Defendant then presented testimony from: (1) defendant herself; (2) defendant's then-nine-year-old daughter, Tammesha; and (3) defendant's former landlord, Janet Anderson. Defendant also introduced 10 photographs into evidence. Finally, defendant entered into evidence, by way of stipulation, the testimony of: (1) Philip Timoca, a triage nurse at Advocate Trinity Hospital; and (2) the president of Black Swan Manufacturing Company, Jeff Lichten.

¶ 17 In general, defendant's evidence tended to show that it was Ms. Rogers who was the aggressor in the initial altercation that occurred between Ms. Rogers, Ms. King, and defendant on March 13, 2010. Defendant testified that during this altercation, she was punched, kicked, and stabbed. It was stipulated that Philip Timoca would testify that late in the evening on that date, defendant was treated at Advocate Trinity Hospital for a two-centimeter wound to her forehead.

¶ 18 With respect to the incident on March 24, 2010, defendant and her daughter both testified that it was Ms. Rogers and Ms. King that initiated the incident at the restaurant by taunting defendant from Ms. Rogers's car. Ms. Rogers then sprayed mace into the open passenger-side window where Tammesha was sitting. After Ms. Rogers returned to her car, she motioned for defendant to follow her. Defendant did so solely to obtain Ms. Rogers's license plate. As she was following behind, Ms. Rogers repeatedly applied the brakes of her car suddenly, causing defendant's SUV to hit Ms. Rogers's car. Defendant ultimately followed Ms. Rogers to the location of Ms. Rogers's residence.

¶ 19 Once there, Ms. Rogers got out of her car with a hammer and struck the windshield of defendant's SUV. Additionally, Ms. King got out of the car with a knife, and other women came from Ms. Rogers's residence armed with bats and golf clubs. They too began to attack defendant. After defendant's SUV stalled, Ms. Rogers attempted to strike Tammesha with the hammer through the open passenger-side window. It was at this point, in an attempt at self-defense, that defendant threw "Black Swan" brand drain cleaner, which she had in her SUV, at Ms. Rogers through the open passenger-side window. Both defendant and Tammesha testified that the drain cleaner was used for a drain blockage at the apartment defendant rented, and defendant's landlord—Ms. Anderson—confirmed that the apartment building did, in fact, have

plumbing problems at the time of the incident. It was stipulated that Mr. Lichten would testify that his company's Black Swan brand drain cleaner contained 93-percent sulfuric acid.

¶ 20 Ms. Rogers then fled to her residence, dropping her hammer in the parkway as she ran away. Two of the other armed women remained outside, however, and they soon advanced on defendant again. Defendant then fired a single bullet into the air to warn the women off. Defendant then obtained a hammer from her glove box, exited her SUV, and struck Ms. Rogers's car. Thereafter, the other women finally left the scene. Defendant was then able to restart her SUV, and take her daughter to the hospital. There, defendant was arrested. At trial, defendant denied telling a police officer, in two statements made after she was arrested, several facts about her interactions with Ms. Rogers that were inconsistent with her testimony at trial.

¶ 21 In rebuttal, the State introduced a stipulation regarding the testimony of Detective Besteda of the Chicago police department. Therein, it was stipulated that Detective Besteda would testify that defendant had made two statements about the incident on March 24 and 25, 2010, after she had been provided a *Miranda* rights warning.

¶ 22 In the first statement, defendant stated that Mr. Smith had been cheating on her with Ms. Rogers. Defendant did not say anything about the restaurant during this first statement, instead stating that the March 24, 2010, incident began when Ms. Rogers "caught up" with defendant in front of Ms. Rogers home. It was Ms. Rogers who threw a substance through defendant's window, along with spraying mace inside of defendant's SUV. In the first statement, defendant claimed that Ms. Rogers had struck defendant's windshield with a golf club, and Ms. Rogers only retreated when defendant fired a bullet into the air. Defendant then struck the windows of Ms. Rogers's car, before taking her daughter to the hospital.

¶ 23 In the second statement, defendant acknowledged that the incident had started at the restaurant when Ms. Rogers began to taunt her about Mr. Smith and the previous March 13, 2010 incident. Angered, defendant began to follow Ms. Rogers after she drove away. Defendant admitted to bumping Ms. Rogers's vehicle at that time, and the two vehicles, ultimately, arrived at the location of Ms. Rogers's residence. There, Ms. Rogers began to threaten defendant's daughter with a hammer, and defendant threw some unknown, corrosive liquid at Ms. Rogers. Some of that liquid struck Ms. Rogers in the face, and some splashed off the inside of defendant's SUV and struck defendant's daughter. Ms. Rogers then ran toward her residence, and defendant then broke some of the windows in Ms. Rogers's car. When Ms. Rogers's family began to approach, at least one of them armed with a golf club, defendant fired one bullet into the air. Ms. Rogers's family scattered, and defendant drove her daughter to the hospital.

¶ 24 At the conclusion of the evidence, the trial court found defendant not guilty of attempted murder because the evidence did not establish defendant's intent to kill Ms. Rogers. However, the trial court found defendant guilty of the charges of heinous battery, aggravated discharge of a firearm, and aggravated unlawful use of a firearm. In announcing its ruling, the trial court specifically found defendant's testimony—that she acted in self-defense—to be incredible. Defendant's motion for a new trial was subsequently denied, with the trial court again noting that it found defendant's testimony to be incredible.

¶ 25 Thereafter, the trial court held a sentencing hearing. While the State presented argument but no additional evidence in aggravation, defendant presented testimony from the following witnesses in mitigation: (1) defendant's former landlord, Ms. Anderson; (2) defendant's aunt, Yolanda Terry; (3) defendant's cousin, Quinice Ewing; and (4) defendant's sister, Precious Harris. These witnesses all provided positive testimony regarding defendant's character,

describing her as a good tenant, mother, and employee. Defendant also made a statement in allocution, and the trial court had previously received a presentence investigation report. After arguments from the State and defendant, the trial court sentenced defendant to concurrent terms of 5 and 2 years' imprisonment, respectively, for aggravated discharge of a firearm and aggravated unlawful use of a firearm. Both of these sentences were to be served consecutively to a sentence of 13 years' imprisonment for heinous battery. Defendant's motion to reconsider that sentence was denied, and she filed a timely appeal.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant raises four separate challenges to her convictions and sentences. We address each in turn.

¶ 28 A. Sufficiency of the Evidence

¶ 29 Defendant first contends that she was not proven guilty beyond reasonable doubt of committing the offenses of aggravated discharge of a firearm or heinous battery, and that the State failed to disprove her claim of self-defense with respect to these convictions. We disagree.

¶ 30 1. Standard of Review

¶ 31 With respect to defendant's general challenge to the sufficiency of the evidence supporting her convictions, it is not the function of this court to retry defendant; rather, we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt.[1] *People v. Evans*, 209 Ill. 2d 194, 209 (2004); *People v. Collins*, 106 Ill. 2d 237 (1985). The trier of fact's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As

[1] The very similar standard applicable to defendant's claim of self-defense will be addressed below.

such, a reviewing court will not substitute its judgment for that of a trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so improbable or unsatisfactory, it leaves a reasonable doubt regarding defendant's guilt. *Evans*, 209 Ill. 2d at 209.

¶ 32 2. Aggravated Discharge of a Firearm

¶ 33 Defendant's initial argument is that the State failed to prove that she committed the offense of aggravated discharge of a firearm because it failed to prove that she fired a shot in the direction of Ms. Rogers.

¶ 34 Defendant was convicted of aggravated discharge of a firearm under count 5 of the indictment, which alleged that defendant "knowingly discharged a firearm in the direction of another person, to wit: Serretta Rogers." Indeed, pursuant to section 24-1.2(a)(2) of the Criminal Code of 1961(Criminal Code), "[a] person commits aggravated discharge of a firearm when he or she knowingly or intentionally *** [d]ischarges a firearm in the direction of another person ***." 720 ILCS 5/24-1.2(a)(2) (West 2010). Thus, "the plain language of the statute requires only two elements to complete the offense, namely, that the defendant (1) knowingly or intentionally discharged a firearm (2) in the direction of another person." *People v. Leach*, 2011 IL App (1st) 090339, ¶ 22. Here, there is no debate that defendant discharged a firearm during the incident in question. Rather, defendant contends only that the State "failed to prove that [defendant] shot at Rogers."

¶ 35 We disagree. Ms. Rogers, Ms. King, and Ms. Amos each testified that defendant fired a bullet in the direction of Ms. Rogers. Ms. King specifically identified a bullet hole in a picture of the front door of Ms. Rogers's residence, near where Ms. Rogers was purported to be located at the time defendant fired the gunshot. The testimony from these three witnesses was clearly

found to be credible by the trial court, and was more than sufficient to sustain defendant's conviction for aggravated discharge of a firearm. See *Siguenza-Brito*, 235 Ill. 2d at 228 ("the testimony of a single witness, if positive and credible, is sufficient to convict").

¶ 36 Nevertheless, on appeal defendant contends that the testimony of Ms. Rogers, Ms. King, and Ms. Amos was both internally inconsistent and inconsistent with the physical evidence and the testimony of Officer David Scarriot, defendant, and defendant's daughter. Specifically, defendant contends: (1) the testimony of Ms. Rogers, Ms. King, and Ms. Amos was inconsistent with respect to Ms. Rogers's exact location at the time of the gunshot; (2) the photograph of the front door to Ms. Rogers's residence does not, in fact, show a bullet hole; (3) Officer David Scarriot, a trained evidence technician, testified that he did not perceive any bullet damage in the area of the front door; and (4) defendant and her daughter both testified that defendant fired a single shot into the air. We find that none of these arguments support reversal of defendant's conviction for aggravated discharge of a firearm.

¶ 37 Initially, we note that all of these arguments essentially ask this court to reverse defendant's conviction based upon purported inconsistencies and contradictions in the evidence. This is not a request that comports with the proper standard of review applicable to our consideration of the sufficiency of the evidence. See *Siguenza-Brito*, 235 Ill. 2d at 228 ("A reviewing court will not reverse a conviction simply because the evidence is contradictory."); *People v. Szudy*, 262 Ill. App. 3d 695, 714 (1994) ("Although the evidence also could have supported the conflicting inference that defendant was innocent ***, this does not mean that defendant was not proven guilty beyond a reasonable doubt."). It was for the trial court to resolve any possible inconsistencies or conflicts in the evidence, and we will not substitute our

judgment for that of the trial court with respect to such a factual determination. *People v. Goodar*, 243 Ill. App. 3d 353, 357 (1993).

¶ 38 Moreover, we have thoroughly reviewed the evidence presented at trial. Any possible inconsistencies in the testimony of Ms. Rogers, Ms. King, and Ms. Amos, with respect to Ms. Rogers's exact location at the time of the gunshot, were minor. *People v. Wesley*, 382 Ill. App. 3d 588, 592 (2008) ("Minor inconsistencies in testimony do not, by themselves, create a reasonable doubt.").

¶ 39 Furthermore, we do not find any of the conflicting evidence regarding the purported bullet hole in the front door of Ms. Rogers's residence supports reversal of defendant's conviction for aggravated discharge of a firearm. It is true that Ms. King testified that a photograph of the front door showed a small bullet hole, while Officer David Scarriot testified that he took that photograph and did not note any specific damage to the door. Having reviewed the photograph contained in the record, it is not entirely clear what—if anything—it reveals with respect to a possible bullet hole. Even assuming Ms. King was incorrect about the purported bullet hole, however, this does not mean that the trial court was required to discount her other testimony that defendant fired a bullet in Ms. Rogers's direction. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22 ("The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases."). Nor was the trial court required to reject the similar testimony of Ms. Rogers and Ms. Amos.

¶ 40 It is also important to note that the State was not required to present *any* physical evidence to support a conviction for aggravated discharge of a firearm. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 76-78 (finding that physical evidence is not required to prove aggravated discharge of a firearm, poor marksmanship is not an affirmative defense, and that

while a defendant may argue that the failure to hit his or her target supports an inference that he or she did not aim at that target, the trial court was free to reject that argument and to draw instead the inference that defendant was simply an unskilled shooter).

¶ 41 Lastly, we reject defendant's attempt to have us credit the her testimony and that of her daughter—*i.e.*, that defendant fired a bullet into the air—over the contrary testimony of Ms. Rogers, Ms. King, and Ms. Amos. It is well recognized that a fact finder faced with conflicting versions of events is entitled to choose among those versions, and it need not accept the defendant's version from those competing versions. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). We find nothing unreasonable about the trial court's decision to find defendant's version of events—one in which she fired a bullet into the air—to be incredible. See *Wheeler*, 226 Ill. 2d at 116 ("a reviewing court must give the State the benefit of all reasonable inferences").

¶ 42 In sum, after reviewing all of the evidence in the light most favorable to the State, we do not find it to be so improbable or unsatisfactory that it leaves a reasonable doubt regarding defendant's guilt as to the offense of aggravated discharge of a firearm. *Evans*, 209 Ill. 2d at 209.

¶ 43 3. Bodily Harm and Permanent Disfigurement

¶ 44 We next consider defendant's assertion that the State failed to prove that she committed the offense of heinous battery.

Defendant was convicted of heinous battery pursuant to section 12-4.1(a) of the Criminal Code, which provides that "[a] person who, in committing a battery, knowingly causes severe and permanent disability, great bodily harm or disfigurement by means of a caustic or flammable substance, a poisonous gas, a deadly biological or chemical contaminant or agent, a radioactive substance, or a bomb or explosive compound commits heinous battery." 720 ILCS 5/12-4.1(a)

(West 2010) (repealed by P.A. 96-1551, art. 5, § 5-6, (eff. July 1, 2011)). On appeal, defendant contends only that the State did not prove beyond a reasonable doubt that Ms. Rogers suffered severe and permanent bodily harm or disfigurement. Specifically, defendant complains that the State failed to present any explicit testimony from Ms. Rogers or a medical professional that Ms. Rogers's injuries were in fact severe and permanent.

¶ 45 We disagree. Although due process requires the State to prove every element of an offense beyond a reasonable doubt, the State may properly rely on certain presumptions or inferences in proving those elements. *People v. Woodrum*, 223 Ill. 2d 286, 308 (2006). "These devices 'play a vital role in the expeditious resolution of factual questions, with the value of the presumption or inference resting on the strength of the connection between the elemental or ultimate fact presumed or inferred and the basic or evidentiary fact.' " *People v. Pomykala*, 203 Ill. 2d 198, 203 (2003) (quoting *People v. Hester*, 131 Ill. 2d 91, 98 (1989)). " 'An inference is a factual conclusion that can rationally be drawn by considering other facts. Thus, an inference is merely a deduction that the fact finder may draw in its discretion, but is not required to draw as a matter of law.' " *People v. Velez*, 2012 IL App (1st) 101325, ¶ 28 (quoting *People v. Funches*, 212 Ill. 2d 334, 340 (2004)).

¶ 46 Here, the State presented evidence that defendant twice doused Ms. Rogers with Black Swan brand drain cleaner. This is a product that was stipulated to contain sulfuric acid, a substance that causes "*severe* burns to all body tissue." (Emphasis added.) As a result, Ms. Rogers suffered burns to her ear, face, and lower back. One of Ms. Rogers's daughters and her niece testified that at the time of the incident, it appeared that Ms. Rogers's skin was "melting" and looked like a "melted candle." Photographs of Ms. Rogers on the date of the incident clearly show significant injuries to her face and lower back.

¶ 47 Thereafter, Ms. Rogers spent over three weeks in the hospital, where she underwent at least three surgical skin graft procedures. After Ms. Rogers was released from the hospital, she continued to undergo additional surgeries upon her face. At trial, well over two years after the incident, Ms. Rogers was observed by the trial court to still have scarring on her face. Ms. Rogers had to be prompted to show these injuries to the trial court at trial, as she attempted to hide them behind her hair.

¶ 48 From this evidence, the trial court inferred that Ms. Rogers had suffered severe and permanent bodily harm and disfigurement. It was the trial court's role to draw inferences from this evidence, and we will not substitute our judgment for that of the trial court on this issue. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 17. Indeed, as we have noted above, "a reviewing court must give the State the benefit of all reasonable inferences." *Wheeler*, 226 Ill. 2d at 116. We, therefore, reject defendant's argument on this issue.

¶ 49 4. Self-Defense

¶ 50 In her final challenge to the sufficiency of the evidence supporting her convictions for the offenses of aggravated discharge of a firearm and heinous battery, defendant contends the State failed to disprove that she acted in self-defense. We disagree.

¶ 51 As our supreme court has recognized:

> "Self-defense is an affirmative defense, and once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense. [Citation.] The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually

> and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable. [Citations.] If the State negates any one of these elements, the defendant's claim of self-defense must fail." *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004).

¶ 52 Because a defendant claiming this defense may not be the aggressor, it is well recognized that a nonaggressor has a duty not to become the aggressor, and a person may not provoke the use of force and then retaliate claiming self-defense. *People v. Heaton*, 256 Ill. App. 3d 251, 257 (1994). Furthermore, the right of self-defense does not justify harming an original aggressor after the aggressor abandons a quarrel or as an act of retaliation and revenge. *People v. De Oca*, 238 Ill. App. 3d 362, 368 (1992) (citing *People v. Thornton*, 26 Ill. 2d 218, 222 (1962), and *People v. Huddleston*, 176 Ill. App. 3d 18, 34 (1988)).

¶ 53 Finally, we note that the trier of fact "need not accept a defendant's claim of self-defense" (*People v. Grayson*, 321 Ill. App. 3d 397, 402 (2001)), and the issue of self-defense is always a question of fact determined by the trier of fact (*De Oca*, 238 Ill. App. 3d at 367). "The standard of review for this issue is whether, taking all of the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that defendant did not act in self-defense." *People v. Lee*, 311 Ill. App. 3d 363, 367 (2000).

¶ 54 Here, the trial court was presented with two different versions of the incident that occurred on March 24, 2010. In defendant's version, she was attacked by Ms. Rogers and her daughter two weeks prior at a restaurant and was taunted and sprayed with mace by Ms. Rogers at that same restaurant on the date of the incident. Defendant, thereafter, followed Ms. Rogers home solely in an attempt to get her license plate and call the police. Then, Ms. Rogers and her family aggressively confronted defendant and her own daughter, and defendant acted only in

self-defense by dousing Ms. Rogers with drain cleaner, firing a bullet in the air, and striking the windows of Ms. Rogers's car with a hammer.

¶ 55 In the State's version of events, defendant was angry and upset about the prior incident, and it was she who initiated a confrontation with Ms. Rogers at the restaurant on March 24, 2010. Defendant then followed Ms. Rogers home, repeatedly striking Ms. Rogers's car with her SUV and, ultimately, nearly pinning Ms. Rogers inside of her vehicle. Defendant then doused Ms. Rogers twice with drain cleaner, shot a bullet in her direction, and struck the windows of Ms. Rogers's car with a hammer. All of this was done in retaliation for the fact that Ms. Rogers and her daughter previously were victors in a physical altercation with defendant over defendant's and Ms. Rogers's respective relationships with Mr. Smith.

¶ 56 The trial court chose not to believe defendant's version of events, and instead found the State's version more credible. Taking all of the evidence in the light most favorable to the State, we see nothing unreasonable about this conclusion (*id.*), especially in light of the fact that defendant's trial testimony was significantly impeached by her two prior inconsistent statements to Officer Besteda. See *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 38 (prior inconsistent statements of a testifying witness impeach that witness's credibility).

¶ 57 Indeed, significant portions of defendant's version of events could be taken as true, and her claim of self-defense would still fail. Thus, even if it was believed that Ms. Rogers was the sole aggressor at both incidents at the restaurant on March 24, 2010, Ms. Rogers had abandoned the quarrel and headed home. As noted above, the right of self-defense would not justify harming Ms. Rogers after she had abandoned the quarrel, or as an act of retaliation or revenge. *De Oca*, 238 Ill. App. 3d at 368. Moreover, it was only after Ms. Rogers left the restaurant that defendant followed Ms. Rogers home while—as the trial court found—repeatedly and

aggressively striking Ms. Rogers's car. This action on the part of defendant, therefore, also effectively violated defendant's duty not to become the aggressor, and she was, therefore, not permitted to provoke the use of force and then retaliate against defendant by claiming self-defense. *Heaton*, 256 Ill. App. 3d at 257.

¶ 58 B. Sentencing

¶ 59 Defendant next contends that her sentences for heinous battery and aggravated discharge of a firearm were excessive and resulted from an improper consideration of sentencing factors.

¶ 60 A trial court may consider a number of factors to fashion an appropriate sentence, including the nature of the crime, protection of the public, deterrence, punishment, and defendant's age, rehabilitative prospects, credibility, demeanor, and character. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998); see also 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2010) (providing various statutory factors in aggravation or mitigation). The weight attributed to each factor in aggravation or mitigation depends on the particular circumstances of each case. *Kolzow*, 301 Ill. App. 3d at 8. When a defendant challenges her sentence on appeal, we generally defer to the trial court's judgment because it had the opportunity to observe the proceedings and is, therefore, in a better position than a reviewing court. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). We will not substitute our judgment for that of the trial court merely because we would have weighed the sentencing factors differently. *Id.* Accordingly, we review the trial court's sentencing determination for an abuse of discretion and will reverse a sentence within the prescribed statutory limits only if it varies with "the spirit and purpose of the law" or is "manifestly disproportionate to the nature of the offense." *Id.* at 209-10.

¶ 61 As noted above, defendant specifically challenges her sentences for heinous battery and aggravated discharge of a firearm. Heinous battery is a Class X offense punishable by a term of

6 to 45 years' imprisonment. 720 ILCS 5/12-4.1(b) (West 2010). Aggravated discharge of a firearm is a Class 1 felony (720 ILCS 5/24-1.2(a)(2), 1.2(b) (West 2010)), punishable by a term of 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2010)). Furthermore, it is undisputed that defendant was subject to consecutive sentences, because one of the offenses for which she was convicted was a Class X felony and she inflicted severe bodily injury. 730 ILCS 5/5-8-4(a) (West 2010). Thus, with respect to her convictions for heinous battery and aggravated discharge of a firearm, defendant faced a total possible sentence ranging from 10 to 60 years' imprisonment.

¶ 62 At the sentencing hearing, defendant presented the trial court with the following evidence and arguments in mitigation: (1) defendant had a childhood history of being sexually and emotionally abused, having a drug-addicted mother, and being raised in foster care due to her mother's addiction; (2) at the time of sentencing, defendant was a 28-year-old single mother of three young children; (3) defendant had been consistently employed as a certified nurse assistant; (4) defendant was a good tenant, mother, and employee; (5) defendant had been diagnosed with cervical cancer; and (6) defendant had no criminal history, her actions were provoked by Ms. Rogers, and defendant was, therefore, unlikely to reoffend. In her own statement to the trial court, defendant expressed remorse for her actions, asked for leniency, and requested a minimum sentence.

¶ 63 The State did not present the trial court with any additional evidence in aggravation at the sentencing hearing. Rather, the State argued that the trial court should impose near-maximum sentences in light of its position that the evidence established: (1) defendant was the initial aggressor on March 24, 2010; (2) defendant's actions were the result of a deliberate attempt to

hurt and disfigure Ms. Rogers; and (3) Ms. Rogers had, in fact, suffered serious, permanent injuries.

¶ 64 In announcing its sentences, the trial court specifically stated that it had considered the presentence investigation report, the fact that defendant had no prior criminal record, and that defendant had presented several positive character witnesses. The trial court also noted that defendant was a single mother who had been diagnosed with cancer, and the court expressed concern and sympathy with respect to defendant's current circumstances. The trial court considered all these factors to be "one side of the coin."

¶ 65 However, the trial court also noted that defendant acted intentionally and out of anger during the incident, and that her actions left Ms. Rogers with serious and permanent injuries. Ultimately, the trial court specifically rejected both the State's request for a near-maximum sentence and defendant's request for a minimum sentence. Rather, after considering the facts of the case and the arguments presented, the trial concluded that defendant should be sentenced to a term of 5 years' imprisonment for aggravated discharge of a firearm, to be served consecutively to a sentence of 13 years' imprisonment for heinous battery.

¶ 66 On appeal, defendant first asserts that the sentences imposed for these two convictions do not reflect a proper consideration of the significant mitigating evidence presented to the trial court by defendant, as compared to the lack of any significant aggravating factors presented by the State. We disagree.

¶ 67 The record reflects that the trial court thoroughly discussed and considered the evidence presented in mitigation in originally announcing its sentences. Later, in denying defendant's motion to reconsider those sentences, the trial court stated that it had considered "all the mitigating circumstances" and that this evidence was the very reason that—specifically with

respect to the heinous battery conviction—a sentence "relatively close to the minimum was appropriate." The trial court was not required to accord any greater weight to the mitigating evidence than to other sentencing factors. *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010). Indeed, "[i]n the end, defendant's arguments with regard to [these] mitigating factor[s] are nothing more than an invitation to 'assign greater weight to the mitigation evidence than did the trial court.' [Citation.] We will not engage in such reweighing." *People v. Davis*, 205 Ill. 2d 349, 371 (2002). Ultimately, we do not find that defendant's challenged sentences so varied with "the spirit and purpose of the law," or were so "manifestly disproportionate to the nature of the offense," that they amount to an abuse of discretion. *Stacey*, 193 Ill. 2d at 209-10.

¶ 68 In coming to this conclusion, we necessarily reject a number of other specific arguments raised by defendant on appeal. For example, defendant asserts that the trial court's 13-year sentence for heinous battery was excessive in light of sentences imposed for that offense in other, similar cases. However, our supreme court has long recognized that "a claim that a sentence is excessive must be based on the particular facts and circumstances of that case. If a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case." *People v. Fern*, 189 Ill. 2d 48, 62 (1999); *People v. Gutierrez*, 402 Ill. App. 3d 866, 901 (2010) (applying the *Fern* decision's reasoning). We, therefore, reject this argument without further comment.

¶ 69 We also reject defendant's argument that the trial court improperly considered in aggravation an element inherent in the offense of heinous battery: *i.e.*, the fact that Ms. Rogers suffered great bodily harm and was permanently disfigured. Defendant is certainly correct that it is generally improper for a sentencing court "use a factor implicit in the offense as an aggravating factor in sentencing." *People v. Robinson*, 391 Ill. App. 3d 822, 842 (2009). "At the

same time, however, a trial court may consider the nature and circumstances of the offense, including the nature and extent of each element of the crime that the defendant committed." *Id*. As our supreme court has recognized:

> "Sound public policy demands that a defendant's sentence be varied in accordance with the particular circumstances of the criminal offense committed. Certain criminal conduct may warrant a harsher penalty than other conduct, even though both are technically punishable under the same statute. Likewise, the commission of any offense, regardless of whether the offense itself deals with harm, can have varying degrees of harm or threatened harm. The legislature clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor. While the classification of a crime determines the sentencing range, the severity of the sentence depends upon the degree of harm caused to the victim and as such may be considered as an aggravating factor in determining the exact length of a particular sentence, even in cases where serious bodily harm is arguably implicit in the offense for which a defendant is convicted." *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986).

¶ 70 Here, the record clearly reflects that the trial court properly considered and commented on the nature and circumstances of defendant's commission of the offense of heinous battery in crafting an appropriate sentence. As the trial court itself stated in denying defendant's motion to reconsider her sentence, heinous battery involves severe and permanent great bodily harm or disfigurement and it "would be hard to give a sentence on [that] kind of charge without discussing the facts of the case."

¶ 71 Lastly, we reject defendant's assertion that the trial court improperly ignored two legitimate mitigating factors: (1) the unlikelihood that defendant would re-offend; and (2) Ms.

Rogers's provocation. As an initial matter, we note that defendant did not challenge her sentences on this basis at the sentencing hearing or in her written motion to reconsider her sentence. A defendant generally forfeits sentencing issues when she does not object at the sentencing hearing, or include them in a written motion to reconsider her sentence. *People v. Moore*, 365 Ill. App. 3d 53, 67 (2006).

¶ 72 Defendant's forfeiture aside, the record belies defendant's contention that the trial court ignored the evidence introduced to show that she was unlikely to re-offend. In fact, the record clearly shows that the trial court specifically noted that defendant had no prior criminal record and had presented several positive character witnesses. As the trial court stated, this evidence was among the other mitigating factors making up "one side of the coin." Rather than reject these mitigating factors out-of-hand, as defendant contends on appeal, we find that the record establishes that the trial court weighed all of this mitigating evidence against the other relevant sentencing factors. This is precisely what the trial court was supposed to do in crafting a sentence. *Kolzow*, 301 Ill. App. 3d at 8; 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2010).

¶ 73 Finally, defendant's contention that the trial court improperly ignored or dismissed evidence of Ms. Rogers's purported provocation is unfounded. Defendant is certainly correct that the fact that she might have acted "under a strong provocation" is a proper mitigating factor. 730 ILCS 5/5-5-3.1(3) (West 2010). However, here the trial court considered both incidents at the restaurant and repeatedly stated that it completely rejected defendant's assertion that she acted in self-defense with respect to this incident. Instead, the trial court concluded that defendant "went to the scene where [Ms. Rogers] lived with bad intentions." As we noted above, it was for the trial court to judge the credibility of defendant's testimony (*Kolzow*, 301 Ill. App. 3d at 8), and we generally will defer to the trial court's judgment because it had the opportunity

to observe the proceedings (*Stacey*, 193 Ill. 2d at 209). On the record before us, we find no reason to disturb the trial court's conclusion that defendant's sentence should not be significantly mitigated by any purported provocation on the part of Ms. Rogers or her family.

¶ 74 C. One Act, One Crime

¶ 75 We next address defendant's contention that her conviction and sentence for AUUW must be vacated on the grounds that it violates the one-act, one-crime doctrine.

¶ 76 As an initial matter, we note that defendant never raised this argument in the trial court. However, we will review defendant's contentions on this issue, as "a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis." *People v. Span*, 2011 IL App (1st) 083037, ¶ 81.

¶ 77 In *People v. King*, 66 Ill. 2d 551 (1977), our supreme court set forth what has since come to be known as the one-act, one-crime doctrine. As originally formulated, that doctrine concerned the potential for prejudice in the imposition of multiple convictions, and specifically provided "[p]rejudice results to the defendant only in those instances where more than one offense is carved from the same physical act. Prejudice, with regard to multiple acts, exists only when the defendant is convicted of more than one offense, some of which are, by definition, lesser included offenses." *Id*. at 566.

¶ 78 As our supreme court has more recently noted, "[d]ecisions following *King* have explained that the one-act, one-crime doctrine involves a two-step analysis. [Citation.] First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are

improper." *People v. Miller*, 238 Ill. 2d 161, 165 (2010). "[W]hen multiple convictions are obtained for offenses arising from a single act, a sentence should be imposed on the more serious offense, and the conviction on the less serious offense should be vacated." *People v. Lee*, 213 Ill. 2d 218, 227 (2004) (citing *People v. Garcia*, 179 Ill. 2d 55, 71 (1997)).

¶ 79 The State concedes this issue on appeal, and we agree that defendant's conviction for AUUW does violate the one-act, one-crime doctrine in that both this conviction and defendant's conviction for aggravated discharge of a firearm each arise out of the same act: *i.e.*, defendant's possession of a loaded firearm during the March 24, 2010, incident. Compare 720 ILCS 5/24-1.6(a)(1) (West 2010), with 720 ILCS 5/24-1.2(a)(2) (West 2010). Moreover, while aggravated discharge of a firearm is a Class 1 felony (720 ILCS 5/24-1.2(a)(2), 1.2(b) (West 2010)), punishable by a term of 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2010)), AUUW is a Class 4 felony (720 ILCS 5/24-1.6(d)(1) (West 2010)), punishable by a term of only 1 to 3 years' imprisonment (730 ILCS 5/5-4.5-45(a) (West 2010)). Pursuant to the principles of the one-act, one-crime doctrine, we, therefore, vacate defendant's conviction and sentence for the less serious offense of AUUW.

¶ 80 D. Constitutionality of the Aggravated Unlawful Use of a Firearm Statute

¶ 81 Finally, defendant asserts that the AUUW statute under which she was convicted, which prohibited her from possessing a loaded, uncased firearm outside the home (720 ILCS 5/24-1.6(a)(1) (West 2010)), unconstitutionally violates the second amendment of the United States Constitution (U.S. Const., amend. II) ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."). See also

People v. Aguilar, 2013 IL 112116, ¶ 22 (finding the statutory provision under which defendant was convicted to be a facially unconstitutional violation of the second amendment).

¶ 82 However, as we have already concluded that defendant's conviction for this offense must be vacated under the principles of the one-act, one-crime doctrine, this argument is now moot. See *People v. Blaylock*, 202 Ill. 2d 319, 325 (2002) ("A question is said to be moot when it presents or involves no actual controversy, interests or rights, or where the issues involved have ceased to exist."). Thus, while our supreme court's recent decision in *Aguilar* would seem to have clearly decided this issue in defendant's favor, we need not further consider this matter on appeal. *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 9 ("Illinois appellate courts generally will not review moot issues."); see also *People v. Brown*, 225 Ill. 2d 188, 200 (2007) ("If a court can resolve a case on nonconstitutional grounds, it should do so.").

¶ 83 III. CONCLUSION

¶ 84 For the foregoing reasons, we affirm defendant's convictions and sentences for heinous battery and aggravated discharge of a firearm. However, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 516(b)(1) (eff. Aug. 27, 1999)), we vacate her conviction and sentence for AUUW and direct the clerk of the circuit court to amend the mittimus to reflect the fact that this conviction and sentence has been vacated.

¶ 85 Affirmed in part; vacated in part; mittimus amended.