2013 IL App (2d) 110560-U
No. 2-11-0560
Order filed March 14, 2013



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 09-CF-2470 |
| TONY W. OLIVER, | ) | Honorable George J. Bakalis, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held*: We defer to the trial court's resolution of conflicting evidence, and we cannot say that the trial court's decision to rely on the State's witnesses' testimony was so unreasonable or unsatisfactory as to leave a reasonable doubt as to defendant's guilt; viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that the State disproved defendant's self-defense claim; and the trial court considered Martin's prior inconsistent statement in the context of determining his credibility and not as substantive evidence.

¶ 2 Following a bench trial, defendant, Tony W. Oliver, was convicted of aggravated battery (720 ILCS 5/12-4(a) (West 2008)) and was sentenced to 180 days in jail and 30 months' probation.

On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he did not act in self-defense in stabbing the victim because: (1) the testimony presented by the State was inconsistent and was contradicted by the physical evidence; (2) the trial court applied the wrong standard for self-defense; and (3) the trial court considered impeachment evidence substantively. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 29, 2009, the State charged defendant with two counts of aggravated battery in violation of sections 12-4(a) (great bodily harm) and 12-4(b)(1) (use of a deadly weapon) of the Criminal Code of 1971 (Code) and one count of unlawful use of a weapon by a felon in violation of sections 24-1.1(a) and 24-1.1(e) of the Code. 720 ILCS 5/12-4(a), 12-4(b)(1), 24-1.1(a), 24-1.1(e) (2008).

¶ 5 A bench trial began on April 6, 2011. The victim, Louis Hernandez, testified as follows. On August 29, 2009, between 6:30 and 7 p.m., Hernandez arrived at the Wyndham Hotel in Lisle to attend his high school reunion. When the reunion ended at midnight, Hernandez and about 20 people went to the hotel bar until it closed at 1 a.m. Hernandez had one beer at the bar. After leaving the bar, Hernandez went to the front desk and booked a room next to his friend's, Sam Contreras's, room. The rooms, 601 and 602, were adjoining suites on the sixth floor. When Hernandez got up to the rooms there were about 15 people there, "sitting around, hanging around, talking, laughing. The radio was on." People were "reminiscing." Hernandez drank one beer and ordered pizza and a case of beer. Hernandez did not have a knife in his room or on his person and did not see anyone in the room carrying a knife. After about an hour "[t]here was a loud bang on the door." Hernandez "assumed it was the pizza delivery guy." Hernandez opened the door, saw

defendant "standing there," and asked defendant if "we could help him" and "if we were being too loud." Defendant did not answer Hernandez so Hernandez asked defendant again, again there was no response, so Hernandez asked defendant a third time, and again defendant did not respond. Defendant took a step back and Hernandez took a step into the hallway to try to explain that, if they were being too loud, "hey, let me know, and we will turn the music down."

¶ 6 When the prosecutor asked Hernandez, "What happened next?" Hernandez testified as follows:

> "Some of it's a little blurry. I don't know if—you know, I have read the police reports multiple times. I don't know if I am getting confused by reading them or what I actually physically remember seeing and feeling.
>
> But I remember walking out a little bit further into the hallway next to him. And the only thing I remember is Sam [Contreras] yelling he's got a knife. And as Sam yelled it, I looked at Sam. And there was an object in [defendant's] right hand."

Hernandez also testified as follows. After he noticed the object in defendant's hand, defendant swung at him. Hernandez put his hands up and he did not remember anything after that. The next thing he remembered was Theresa Zepeda holding his chest and then waking up in the hospital emergency room.

¶ 7 Hernandez had about seven or eight light beers "over the course of the whole night"; he never became intoxicated and was not concerned with driving home that night. He drank three or four light beers at the open bar before 7:30 or 8 p.m., one light beer with dinner, he ate his entire chicken dinner, he drank two more drinks at the open bar between 8:30 and midnight, one light beer at the hotel bar between midnight and 1 a.m., and one drink in his room between 1:30 and about 3 a.m.

During cross-examination, defendant testified that he told an assistant state's attorney that he was frustrated about the case and that if he would have known that the case was going to take this long, "I wish my friends would have killed [defendant] that night."

¶ 8 The parties stipulated that Doctors Nancy Schubert and Jeffrey Rosen would testify that Hernandez's blood alcohol content at the hospital was .157.

¶ 9 Dennis Stenson testified as follows. He attended the high school reunion on the night of the stabbing. Stenson drank "a couple of beers" at the reunion. He was not intoxicated. After the reunion he went to the bar and then upstairs to the victim's and Contreras' adjoining hotel rooms. After about three minutes, the altercation between defendant and the victim occurred. Stenson did not drink anything while in the hotel rooms prior to the altercation. Stenson heard people yelling in the hallway. There were about twenty people in the hallway. Defendant and the victim were walking down the hallway towards the elevator. Defendant was swearing at the victim. Defendant was "very angry and upset." The victim said to defendant, "can't we just handle this like adults?" But defendant replied, "F U." Defendant had a knife in his right hand. Stenson told the victim that defendant had a knife in his hands. Stenson told the police that he convinced defendant to "close" the knife. The victim and defendant continued to argue and defendant opened the knife and swung at the victim, stabbing him. Just before defendant stabbed the victim, Stenson jumped on his back and put him in a choke hold. James Emanuel took the knife out of defendant's hand. Contreras was there as well. Stenson did not hit defendant and did not know how defendant sustained his injuries. On cross-examination, he testified that he had "no idea" how many beers he had consumed from 6:30 p.m until 3:00 a.m. After the stabbing, Stenson spoke to the person at the front desk of the

hotel. The desk attendant told Stenson that a man in a blue shirt had been down to the front desk twice to complain about loud music.

¶ 10 James Emanuel testified as follows. He attended the high school reunion on the night of the stabbing. Emanuel consumed 10 drinks during the course of the eight- or nine-hour evening. Emanuel weighed 225 pounds and was over six feet tall. He did not believe he was intoxicated at any point that night. After the reunion ended, Emanuel went to the victim's room. There were seven or eight people in the room, maybe more. Emanuel heard a loud bang and saw the victim go into the hall. Emanuel went into the hallway and saw defendant and the victim arguing as the victim's back was against the wall. Defendant was "right tight on top of [the victim]." There were more than 10 people in the hallway because "people were opening their doors." Defendant "looked upset," "emotional," and "mad." The victim told defendant to "act like an adult." Emanuel then heard somebody say, "he's got a knife," and defendant made a stabbing motion at the victim. Emanuel saw red on the victim's shirt. Emanuel grabbed defendant's hand, grabbed the blade of the knife with his other hand, got on one knee and pried open defendant's fingers. The knife fell and Emanuel threw it to the side and picked it up and placed it by the wall. Emanuel then went down the hall after defendant and tackled him with Samuel Contreras, and Denny Stenson. Emanuel "had [defendant's] arm wrapped in from of me." Emanuel never saw anyone strike defendant. Police officers arrived and handcuffed defendant.

¶ 11 Samuel Contreras testified as follows. He was good friends with the victim, had been the victim's classmate, had known the victim for 33 years, and he and the victim were godfathers to each other's children. On the night of the incident, Contreras had one drink before the reunion, one or two drinks before dinner, one drink with dinner, three drinks after dinner, one drink at the hotel bar, and

one drink in his room after the bar closed. Contreras testified that he was "buzzed" but not intoxicated. Contreras was aware of a civil suit relating to the incident; he was going to be a witness in it and had a "great concern" about the outcome of the trial.

¶ 12 Contreras also testified that he and the victim had adjoined hotel rooms. While Contreras was in the rooms after the reunion he heard a loud "pounding at the door." The victim looked through the peephole, saw defendant, went into the hallway and asked defendant why he had kicked the door. Contreras followed the victim when he went into the hallway and stood four or five feet behind him as he spoke with defendant. The victim walked down the hallway toward defendant and defendant walked toward the victim. The victim asked defendant "what his problem was." Defendant replied, "why [is it] loud, what is [your] problem?" Defendant was upset, "in a threatening mode [and] had a knife in his right hand." The knife was closed at the time and had a black handle. The victim circled defendant so that the victim was facing Contreras and defendant was "in the middle of us." Contreras told the victim that defendant had a knife. Contreras believed the knife was a switch blade knife and he could not tell if the blade was open. Defendant's friend was behind Contreras and said, "well, look how many MF's are here." Contreras turned around to see defendant's friend and someone screamed that there was a fight. Contreras turned back around and yelled out again that defendant had a knife. The knife was in defendant's right hand. Defendant wielded the knife at the victim. Contreras grabbed defendant around the waist and defendant lunged at the victim, hitting him in the chest with the knife. The victim said, "I got hit, I got hit" and fell to the ground. Contreras "pinned" defendant "against the left side of the hallway." Emanuel was on the ground with defendant and Stenson was on defendant's back. Defendant was "kind of

crouched on the ground." "We had trouble subduing him." Emanuel took the knife from defendant and said "I got the knife." Defendant ran down the hallway. Someone ran after him.

¶ 13 Teresa Zepeda testified as follows. She arrived at the hotel for the reunion with Sara Hernandez, the victim's ex-wife. Zepeda had known the victim since the third grade, was a "good friend of his" and kept in "pretty close contact with him." She drank two glasses of wine on the evening of the incident. After the reunion ended, she went to the hotel bar and then to the victim's and Contreras's rooms. There was a "loud bang." Two people went to the door. About a minute or two later, Zepeda went down the hallway to see what was going on. There were about four other people in the hallway, the victim, Contreras, Stenson and defendant. Defendant and the victim were face-to-face, "just talking." They were "two doors down" from room 601. "It looked like the victim and defendant were arguing"; their voices were raised and "they weren't standing *** far apart." Zepeda came between defendant and the victim and the defendant told Zepeda to "f**k off." Defendant then pushed the victim, and defendant and the victim bumped chests and "started to fight." By "fight," Zepeda meant "chest bumped." Zepeda and her friends tried to stop them. Then, defendant pulled out a black knife with his right hand, stabbed the victim in the chest and waved the knife around wildly. The victim said, "I am hit, I am hit" and fell to the ground. Zepeda used her hands to try to help stop the bleeding. Prior to falling to the ground, the victim did not strike defendant. Zepeda never saw defendant take the knife from the victim. The incident occurred one or two doors down from the victim's room.

¶ 14 Sara Hernandez testified as follows. She is the victim's ex-wife and the mother of his children. Sara attended the reunion and had four drinks the entire evening. When the hotel bar closed she went up to room 601. After hearing a loud bang, the victim opened the door and walked

into the hallway. Sara walked into the hallway too. The victim said, "if we were being too loud, why didn't you just be a man about it and come tell us." Then, "there were words. *** And then there was an altercation." Defendant pushed the victim first and then the victim pushed defendant back. Defendant's back was against the wall. More people came out into the hall and three or four people tried to pull them apart. No one punched or struck defendant. Then, Sara "heard somebody yell, Louie, watch out, he's got a knife." Sara heard the victim say that he had been "hit" and he fell to the ground. The victim was about halfway down the hall when he fell to the ground. Defendant tried to leave the hallway but someone pinned him down and held him down until the police came. Sara never saw the victim punch defendant.

¶ 15 Judy Moore testified as follows. While Moore walked from her room to the victim's room, she saw defendant at the end of the hall, near rooms 602 and 603. Defendant slammed the double doors in the hall, he seemed "very angry." Moore asked defendant if there was a problem and defendant replied that "they are being too damn loud in that room." Defendant also told Moore that he had called the front desk and "that was where he going now because they are still not being quiet." Defendant walked away. Moore then went to the victim's room and told the people in the room that defendant was "going to report that they were being too loud." The victim, Contreras, and Sara left the room and stopped defendant in the hallway. At first, they argued near room 604 or 605. Then they moved down the hallway and fought. Defendant broke away from the fight and ran down the hallway and got into a "scuffle" with other people.

¶ 16 Lance Martin testified as follows. At the time of the trial, Martin was 46 years old and had known defendant since they were in the seventh grade. They attended the race together in Joliet the evening before the stabbing. Martin drank between six and eight beers at the race between four and

ten p.m. Defendant drank about the same amount as Martin. They arrived at the hotel around midnight and went straight to sleep. About two a.m., Martin woke up because of the noise in the room next door and could not figure out how to call down to the front desk so he went down to the front desk and spoke to the attendant about the noise. Martin returned to his room and tried to fall back asleep for about a half an hour but the noise of the party next door kept him awake. Martin then called down to the front desk and defendant woke up. Martin told defendant what had been going on and defendant then said that he would go down and speak with somebody at the front desk. Defendant slammed the door as he left the room. After about 30 seconds Martin heard "a lot of noise in the hallway." It sounded like yelling and running. Martin exited his room and saw defendant about 100 feet down the hallway. There were 10 to 12 people in the hallway and defendant was surrounded by three or four people. Defendant and the victim were arguing, yelling and swearing, face-to-face. Martin could not see anything in defendant's hands. A fight broke out and someone started yelling at Martin and "we almost got chest to chest." Then there was a "free-for-all" and "a bunch of people just kind of pushing back." At that point, two men wrestled defendant to the ground and one man beat defendant in the back of the head. Martin dove at the man beating defendant and "tackled him off [defendant]." That was the last thing Martin remembered because he was beaten in the head several times to the point of blacking out. At some point, Martin heard somebody say that someone had been stabbed.

¶ 17 Lisle police officer Jennifer Schebo testified as follows. At 3:00 a.m. on the night of the incident, she arrived at the hotel with other officers in response to a report of a stabbing. Schebo interviewed Martin who had a bruise above his right eye and a small laceration on his chest. Martin was calm. He told Schebo that he went down to the front desk at about 2:00 a.m. to make a

complaint that room 601 was being noisy; he returned to his room and the noise continued. Martin told Schebo that after about an hour defendant left the room to make another complaint and after a few minutes Martin heard yelling in the hallway. Martin also told Schebo that he came out of his room, saw a large group of people in the hallway and that defendant was "chest to chest with another guy." Martin told Schebo that "as he approached closer, he could—he saw [defendant] with a knife and three or four people right around him." Martin then said that "they took [defendant] to the ground."

¶ 18 Defendant testified as follows. At the time on the incident, defendant lived in Indianapolis, Indiana, and worked as an "IT project manager." On the morning of August 29, 2009, defendant and his friend, Lance Martin, drove from Indianapolis to Lisle, Illinois, and checked in at the Wyndham Hotel before driving to Joliet, Illinois, to watch a car race. Defendant and Martin arrive at the race about 4:00 p.m. and left the race for the hotel about 10:00 p.m. Defendant drank about six or seven beers while at the race. Defendant and Martin did not arrive at the Wyndham Hotel until about midnight due to heavy traffic and went up to their room to "retire." Defendant and Martin were staying in room 603. At about 2:00 or 3:00 a.m., defendant woke up because he heard Martin on the phone and loud music and talking in the room next door. Martin told defendant that he had gone to the front desk to "try to get the party to quiet down [but] the front desk indicated that they couldn't do anything about it." Defendant told Martin that he would go down to the front desk and see what he could do. Defendant explained to Martin that he might have "a little more pull" because defendant was a Wyndham rewards member and the room was "in his name." "Flustered" and angry at being woken in the middle of the night, defendant slammed the door as he left his room.

¶ 19 Defendant also testified as follows. Defendant walked down the hallway toward the elevators and, the victim, a "very well-dressed [Hispanic] man," asked defendant, "are we being too loud?" Defendant replied, "Don't worry about it. I am going down to the front desk." Someone behind the victim yelled, "do you have a problem, honkey?" There were about three or four people behind the victim. Defendant proceeded to walk down the hallway, the victim moved in front of defendant, blocking his path, but defendant walked around the victim. The victim walked with defendant "another ten feet or so" and moved in front of defendant a second time. Defendant told the victim, "leave me alone, get out of my way," and walked around the victim a second time. About 80 feet down the hallway, the victim moved in front of defendant a third time. Defendant became "a little bit scared because there are four people surrounding me. And it's pretty obvious to me that there is a confrontation getting ready to happen, that this guy is going to kick my ass." Defendant realized that walking around the victim was "not going to solve this problem." Defendant and the victim exchanged words. They were "face-to-face." Defendant told the victim to get out of his way and leave him alone. Defendant used cuss words and "at that point" the victim shoved defendant. Defendant shoved the victim back and the victim pinned defendant against the wall. Four individuals surrounded defendant and punched him from "all different angles[,] in the side of the head, the back of the head." Defendant was "sucker punched." Defendant fell to the ground, grabbing the victim's legs and "we are all going to the ground." While defendant was on the ground on his hands and knees, someone who was standing and facing him had a knife in his hand. Defendant "grabbed at the knife and quickly removed it from the hand that was holding it." Defendant could not say who he took the knife from because he was not looking up at the time, he was "looking at legs and hands." When defendant had the knife he was still on his hands and knees

and he swung it "just to get anyone that [was] hitting me away from me." Defendant felt like he hit someone with the knife. Then the "beating [became] even more vicious." Someone pried the knife from defendant's hand, the beating stopped and defendant ran down the hall toward the elevators. But defendant did not make it to the elevator because he was tackled and beaten again; one man beat defendant in the head and a woman kicked him in the ribs. The elevator doors opened and a police officer exited the elevator, handcuffed defendant and began asking him questions. Defendant sought medical attention at the hospital where his blood was drawn.

¶ 20 Defendant also testified that he was "fearing for his life the entire time." Defendant testified that he was in a strange city, it was three in the morning, "these guys are drunk, he was "surrounded by these very stocky individuals that were facing off to me [and] it became quite apparent to me that I was going to be beaten." Defendant also testified that he saw the knife, he "definitely felt like [his] life was in danger, that they were going to stab [him]."

¶ 21 On cross-examination, defendant testified as follows. Before defendant took the knife away, as he was being beaten he thought he was going to black out. Defendant's finger was cut at some point before or as he took the knife away. Defendant did not tell the police or anyone at the hospital about the cut on his finger because he was in a neck brace and on a backboard and "[t]hey could observe me."

¶ 22 The parties stipulated that defendant's blood alcohol concentration at the hospital was .033.

¶ 23 On April 7, 2011, the trial court found defendant guilty of all three counts of aggravated battery. On May 5, 2011, defendant filed a "Motion To Reconsider and For a New Trial." On June 2, 2011, the trial court denied defendant's posttrial motion, granted defendant's motion to dismiss count three (unlawful use of a weapon by a felon), and merged counts one and two. The trial court

sentenced defendant to 180 days' imprisonment and 30 months' probation. On June 6, 2011, defendant filed a notice of appeal.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he did not act in self-defense in stabbing the victim. Self-defense is an affirmative defense, and once defendant raises it and provides some evidence of it, the State has the burden of proving beyond a reasonable doubt that defendant did not act in self-defense, in addition to the elements of the charged offense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). The standard of review for self-defense 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). A person is justified in using deadly force only when he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another person, or the force threatened is a forcible felony. 720 ILCS 5/7-1 (West 2012). Thus, a person acts in self-defense where: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the person threatened actually and subjectively believed a danger existed and the use of force was necessary to avert it; and (6) the beliefs of the person threatened were objectively reasonable. 720 ILCS 5/7-1 (West 2012); see also *Lee*, 213 Ill. 2d at 225. If the State negates any of the above elements beyond a reasonable doubt, the defendant's claim of self-defense fails. *Id.*

¶ 26 Defendant argues that it was unreasonable for the trial court to believe the State's witnesses because they were impeached numerous times and gave inconsistent and contradictory accounts of

the events leading up to the stabbing. Defendant notes that the State's witnesses contradicted each other about how many people were in the victim's room and in the hallway, whether defendant knocked on the door, how the incident began, and the details of the confrontation, the knife, the stabbing and its aftermath, and whether defendant was standing or kneeling in the hallway. Further, defendant argues that the State's witnesses were unbelievable because none of them testified to hitting defendant or seeing defendant being hit.

¶ 27 It is the responsibility of the trier of fact, and not this reviewing court, to determine witness credibility, the weight to be given the testimony, and the reasonable inferences to be drawn from the evidence. See, *e.g.*, *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 228 (2010). This is especially true where the evidence is conflicting. *People v. Mullen*, 141 Ill. 2d 394, 403 (1990); see also *People v. McCoy*, 378 Ill. App.3d 954, 963 (2008) (where a defendant testifies to a different version of events than that presented by the State's witnesses, it is for the trier of fact to determine which version to believe).

¶ 28 It was the province of the trial court, which saw and heard the testimony, to resolve the inconsistencies among the witnesses' conflicting descriptions of events. See *Lee*, 213 Ill. 2d at 225. In this case, the trial court relied on the testimony of Zepeda and Sara. Zepeda testified as follows. She drank two glasses of wine the evening of the incident. Defendant and the victim argued in the hallway. Zepeda came between defendant and the victim and the defendant told Zepeda to "f**k off." Defendant then pushed the victim and defendant and the victim bumped chests and they "started to fight." Defendant had a knife in his hand, stabbed the victim in the chest and then waved the knife around wildly. The victim said, "I am hit, I am hit" and fell to the ground. Zepeda used her hands to try to stop the bleeding. Zepeda never saw defendant take the knife from the victim.

¶ 29 Sara testified as follows. Defendant pushed the victim first and then the victim pushed defendant up against the wall. Several people tried to separate defendant and the victim. Sara heard someone say that defendant had a knife. Sara heard the victim say that he had been "hit" and he fell to the ground. Defendant tried to leave the hallway but someone pinned him down and held him down. Sara never saw the victim punch defendant. Further, Emanuel testified that defendant stabbed the victim as defendant was "right on top" of the victim who had his back up against the wall.

¶ 30 We must defer to the trial court's resolution of conflicting evidence, and we cannot say that the trial court's decision to rely on Zepeda's and Sara's description of events was so unreasonable or unsatisfactory as to leave a reasonable doubt as to defendant's guilt. Zepeda and Sara testified that defendant pushed and punched the victim first and stabbed the victim. Zepeda testified that defendant did not take the knife from the victim. Thus, Zepeda's and Sara's testimony clearly negates defendant's claim of self-defense. Accordingly, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that the State disproved defendant's self-defense claim.

¶ 31 Defendant also questions the credibility of the victim, Contreras and Stenson because they had been drinking heavily. However, the trial court did not rely heavily, if at all, on their testimony. Further, Zepeda and Sara, the witnesses upon which the trial court relied upon most heavily, testified that they drank two glasses of wine and no more than four drinks over the course of about eight hours, respectively. In addition, evidence of a witness's use of drugs or alcohol may be used to impeach a witness, but it is within the province of the fact finder to determine the witness's credibility and the weight to be placed on her testimony. See *People v. Foster*, 322 Ill. App. 3d 780,

789-90 (2000). Even if the trial court believed that the State's witnesses were intoxicated, it was still allowed to believe their version of events over defendant's. See *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007) (it is within the province of fact finder to believe drug-using witness over other witnesses).

¶ 32 Next, defendant argues that the physical evidence contradicts the State's witnesses. In particular, defendant notes that photographs of the blood-stained carpet indicated that the stabbing occurred further from the victim's room than the State's witnesses recalled. The photographs corroborated the testimony of defendant, Martin and Moore, who all testified that the incident occurred closer to the elevator. Thus, defendant argues, his version of events was more credible; he was moving away from the confrontation, he was trying to get help from the front desk, he did not go to the victim's room to start a fight, and he did not have a knife. However, defendant ignores that it was within the province of the trial court to resolve conflicts in the evidence, determine the credibility of the witnesses and the weight of their testimony, and to draw reasonable inferences therefrom. *Williams*, 193 Ill. 2d at 338. A conflict in physical evidence and witness testimony regarding distance, "even where not completely reconcilable," is not a sufficient grounds for reversal unless the evidence is so improbable that it raises doubts as to the defendant's guilt. *People v. Major*, 244 Ill. App.3d 1013, 1019 (1993). The potential conflict presented by defendant does not reach this level. Even if the witnesses erred as to the distance or location of the stabbing, it would not necessarily render the remainder of their testimony incredible.

¶ 33 Defendant also notes that Moore's testimony corroborated defendant's testimony because she testified that, as she walked down the hall toward the victim's room, defendant told her he was going to the front desk to complain. Defendant argues that this corroborated his testimony that he did not

knock on the victim's door, was walking away from the situation, and had no reason to be armed since he was going to the front desk. Although defendant's version of events may have been corroborated by certain evidence, an alternative version of events was presented by the State's witnesses. It was for the trier of fact to determine which version of events to believe. *McCoy*, 378 Ill. App. 3d at 963.

¶ 34 Defendant contends that the victim had a motive to lie because he hired a lawyer to represent him in a civil suit against the hotel. Defendant also notes that Contreras testified that he had "great concern" about the outcome of the trial. Defendant argues, therefore, that the victim and "his friends" were discredited and that no reasonable trier of fact could have believed the State's theory of the case beyond a reasonable doubt. Defendant cites *People v. Schott*, 145 Ill. 2d 188 (1991) and *People v. Washington*, 375 Ill. App. 3d 1012 (2007), to support his argument. In *Schott*, the State's key witness and only eyewitness, the victim, was contradicted as to where, when and how many times the alleged offense occurred; prior acts of sexual abuse; and whether she told anyone about the alleged offense. *Id*. at 206-07. In addition, the victim admitted that she previously lied to a judge, accusing her uncle of the same act of which the defendant stood accused. *Id*. at 207. In *Washington*, the defendant's conviction for attempted murder was reversed because there was "no remotely consistent account of the events *** or [the] defendant's role in them." Washington, at 1029. The defendant's three alleged accomplices testified inconsistently as to who actually shot the victim. *Id*. at 1025. Here, while there were some inconsistencies in some of the testimony of the State's witnesses, they are not close to the level found to be reversible error in *Schott* and *Washington*. There was no evidence that the State's witnesses lied and it was uncontradicted that defendant stabbed the victim. Thus, *Schott* and *Washington* are distinguishable from the case at bar.

¶ 35 Defendant cites *People v. Bush*, 414 Ill. 441 (1953) and *In re Interest of S.M.*, 93 Ill. App. 3d 105 (1981), to support his argument that he was acting in self-defense. In *Bush*, the defendant was "assaulted first." *Bush*, 414 Ill. at 444. In *S.M.*, the respondent tried to avoid a confrontation by apologizing to his pursuers and immediately retreating. *S.M.*, 93 Ill. App. 3d at 110. In this case, the evidence viewed in a light most favorable to the State showed that defendant assaulted the victim first by pushing him. Thus, rather than trying to avoid a confrontation, defendant was the aggressor. Accordingly, this case is distinguishable from *Bush* and *S.M.*

¶ 36 Defendant argues that the victim had a violent personality as evidence by the fact that he told an assistant State's attorney that he wished his friends had killed defendant the night of the stabbing. Defendant contends that this evidence supports his version of events. He cites *People v. Lynch*, 104 Ill. 2d 194 (1984), to support his argument. In *Lynch*, the Illinois supreme court held evidence of the victim's propensity for violence that tended to support the defendant's version of the facts and was admissible. *Id*. at 200. The court remanded the case for a new trial so the jury could have "all the available facts." *Id*. at 200, 203. In this case, the trier of fact heard the evidence regarding the victim's alleged propensity for violence. Thus, *Lynch* is distinguishable from this case.

¶ 37 Defendant also argues that the trial court's finding that defendant was beaten after the stabbing was based on "an inaccurate summary of the evidence." Defendant argues that the testimonies of Zepeda, Sara, Moore and Contreras all support his version of the facts; that he was beaten before he stabbed the victim. However, not one of these witnesses testified that defendant was beaten before defendant stabbed the victim. Further, Moore testified that after defendant and the victim argued defendant ran down the hallway got into a "scuffle" with other people. Thus, the

trial court's finding that defendant was beaten after he stabbed the victim is supported by the evidence.

¶ 38 Next, defendant argues that the trial court applied the wrong standard for self-defense. Defendant contends that the trial court erroneously believed that defendant had to be physically assaulted before he could defend himself. The record does not support defendant's argument. Defendant notes that in finding defendant guilty the trial court stated:

> "What happened is [defendant] got the hell beat out of him once this knifing took place. Whether it was Mr. Stenson, Mr. Emanuel, I don't know who did it. But they certainly beat him up. There is no question about that.
>
> But in my mind, that happened after the stabbing took place. It was not a justified stabbing. It was not self-defense at this point. He may have been fearful of the situation. But nothing had happened up to that point in time."

Defendant also notes that in denying his motion for a new trial the trial court stated:

> "Again[,] if it was a situation where I felt that was a group of people who were in the process of attacking [defendant] and punching him, then I would think that that theory certainly would be viable, but my finding here in this case was that that is not what took place."

¶ 39 The record indicates that the trial court made these statements in the context of discussing credibility. The trial court made it clear that it did not find defendant credible. Defendant's version of events is that while he was being beaten he saw someone standing with a knife; defendant grabbed the knife and swung it. The State's witnesses testified that defendant pushed and or punched the victim first, defendant was not beaten before the stabbing and defendant produced the knife. Thus, the trial court's statements indicate only that it believed the State's witnesses' version of the events

rather than defendant's. We agree with defendant that "it is not necessary that blood be first drawn before the right of self-defense arises." *People v. Speed*, 52 Ill. 2d 141, 146 (1972). However, the trial court did not say otherwise. Rather, the trial court's statements, in their entirety, indicate that it had a clear understanding of the law. A person acts in self-defense where, *inter alia*, the person threatened was not the aggressor. See *Lee*, 213 Ill. 2d at 225. The trial court believed that defendant was the aggressor. Thus, the trial court correctly applied that law and found that defendant's claim of self-defense was negated. See *id*.

¶ 40 Lastly, defendant argues that the trial court erred by considering the prior inconsistent statement of Martin as substantive evidence. When prior inconsistent statements are made out of court, they are hearsay and thus inadmissible as substantive evidence, but the prior statement may be used for the sole purpose of impeaching and undermining the credibility of the witness. *People v. Smith*, 177, Ill. 2d 53, 83 (1997).

¶ 41 Martin, defendant's friend, testified that before the stabbing and while the victim and defendant were arguing in the hallway, he did not see anything in defendant's hands. The prosecutor asked Martin about an oral statement he gave to officer Schebo, in which he said that he saw a knife in defendant's hand. Martin testified that he did not "remember saying that" and that he "did not say that." The State called Schebo who testified that Martin told her that "he saw [defendant] with a knife."

¶ 42 When making its ruling, the trial court stated that it had to determine, "the credibility of the witnesses who testified and to try to discern from the various testimonies the course of events that took place." In this context, the trial court considered the credibility of all of the witnesses, remarking in particular on the credibility and testimonies of Zepeda and Sara who were the victim's

friend and ex-wife, respectively. The trial court found Zepeda and Sara credible and then stated the following regarding Martin:

> "We have the testimony of Mr. Martin who is the friend, frankly, of the defendant. And frankly, his—I know he denied it in his testimony. But the testimony of the officer, who has no reason to come up here and fabricate this, is that Mr. Martin told her that he saw the defendant with a knife in his hand."

¶ 43 Defendant contends that, in making its ruling, the trial court indicated that it considered Schebo's testimony regarding Martin's prior inconsistent statement as substantive evidence. However, we presume the trial court considered only admissible evidence and disregarded inadmissible evidence when reaching its conclusion. *People v. Naylor*, 229 Ill. 2d 584, 603 (2008). Such a presumption is overcome only if the record affirmatively shows that the trial court considered inadmissible evidence. See *People v. Robinson*, 368 Ill. App. 3d 963, 976 (2006). In this case, the record indicates that the trial court considered Martin's prior inconsistent statement in the context of determining his credibility and not as substantive evidence.

¶ 44 III. CONCLUSION

¶ 45 We hold the State adduced sufficient testimony to negate, beyond a reasonable doubt, defendant's claim of self-defense. As such, we affirm defendant's conviction and sentence for aggravated battery.

¶ 46 Affirmed.