

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 220211-U

NO. 4-22-0211

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 29, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
BERNARDGIEO GREENE JR.,	)	No. 20CF240
Defendant-Appellant.	)	
	)	Honorable
	)	Katherine S. Gorman,
	)	Judge Presiding.

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JUSTICE BRIDGES delivered the judgment of the court.  
Justices Steigmann and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* As we find no issues of potential merit to support an appeal, we grant the Office of the State Appellate Defender's motion to withdraw as counsel on appeal, and we affirm defendant's convictions and sentence.

¶ 2 Defendant, Bernardgieo Greene Jr., appeals from his convictions of aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2020)) and aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2020)). The Office of the State Appellate Defender (OSAD) was appointed to represent defendant on appeal, and OSAD now moves to withdraw as counsel, alleging that the appeal presents no issues of arguable merit. We grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the Peoria County circuit court.

¶ 3 I. BACKGROUND

¶ 4 On July 7, 2020, defendant was charged by indictment with attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 2020)), aggravated domestic battery (720 ILCS 5/12-

3.3(a) (West 2020)), and aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2020)). The charges alleged that he stabbed his girlfriend, Chelsea Baum, on April 30, 2020.

¶ 5 Before trial, defense counsel asked that defendant be evaluated for fitness to stand trial. Defendant was subsequently found fit, and the parties stipulated that the doctor who examined him was an expert in psychiatry and would testify consistently with her report. The trial court stated that it had independently reviewed the report and agreed with the conclusion that defendant was fit to stand trial.

¶ 6 Defense counsel then asked that defendant be evaluated for sanity at the time of the offense, and the trial court granted the request. Defense counsel subsequently informed the court that she had received the evaluation and that they would not be pursuing a mental illness defense. However, at a later hearing counsel asked that defendant again be evaluated for fitness to stand trial based on her conversations with him. After speaking with defendant during the hearing, the trial court ordered another evaluation. The psychiatrist conducted a second fitness evaluation of defendant and added an addendum to her report again finding him fit for trial. The parties stipulated that the psychiatrist was an expert and to the report's contents. The trial court stated that it had reviewed the report and agreed with the assessment.

¶ 7 At defendant's jury trial, police officers testified to being dispatched to an apartment on April 30, 2020, at about 11 p.m. for a call that a father had stabbed a mother. On the apartment's second floor, they found Baum lying on the ground with blood on her face, and defendant lying face down partially on top of her. They were in the doorway of the children's bedroom, and there was a knife near defendant's right hand. Baum was screaming for help, and defendant appeared to be unconscious. When an officer went to handcuff defendant, he suddenly woke up and started getting up, so he was tazed. Defendant had a seizure and received medical

attention. An officer accompanied defendant to the hospital and saw that he had several small stab wounds on the lower right side of his back.

¶ 8 The video footage from an officer's body camera of what they encountered at the apartment was played for the jury, without sound. Defendant's police interview at the hospital was also video recorded and played for the jury. Defendant said that he and Baum had been arguing, and when he began going into the bathroom, she stabbed him in the back. He got the knife from her and then stabbed her in the face four or five times in self-defense to protect himself and the kids. Defendant later admitted that Baum had never stabbed him. Rather, he stabbed Baum several times and then got another knife from downstairs when the first knife broke. He then broke down the door to the children's room, and one of the boys stabbed him. During the interview, defendant said several times that he was not in his right mind when the incident occurred.

¶ 9 Baum testified as follows. Baum and defendant had twin girls together, who were two years old. Baum was also the mother of two boys: D.N. was 12 years old and C.N. was 10 years old. On April 30, 2020, she and defendant had been in a dating relationship for about six years, and he lived with her and the children. That night, Baum was putting the girls to bed in their room, and defendant came in and started jumping around and making funny faces to entertain them. Defendant then started breathing very hard and collapsed. He subsequently rolled to his stomach and started "dry humping the floor and moaning." Baum called defendant's name and asked if he was okay, but he did not respond, so Baum told the kids to call 911 for medical help. Defendant jumped up and aggressively asked why Baum was going to "call the people" on him and cheat on him.

¶ 10 Defendant told C.N. to get a knife, and C.N. went downstairs and started crying. Defendant followed C.N., and Baum followed defendant. Baum told C.N. to go upstairs and stay on the phone with 911. Defendant was in the kitchen talking about Baum cheating on him, and he stabbed her in the head with a knife. Baum started running upstairs, and defendant stabbed her again, at which point she fell to the floor. Defendant may have passed out or the knife may have broken, because the stabbing stopped. Baum made her way up the stairs, but then defendant came up the stairs with a different knife and stabbed her several times. Baum got the knife away from defendant by grabbing the blade, and she slid it under the door of the kids' room.

¶ 11 Baum lost consciousness, and when she came to, defendant was trying to break down the door to the children's room. She grabbed his knees and screamed. She went in and out of consciousness after that, and later woke up in the hospital. Baum remained in the hospital for five days due to multiple stab wounds. The optic nerve in her right eye was severed, causing her to be blind in that eye. She further had blood in her lungs and scars on her face.

¶ 12 Baum and defendant had argued the night before the incident but not that day. In the days leading up to the incident, defendant had referred to himself as God and seemed a little paranoid, but Baum thought that he was trying to "shut people out." Baum never stabbed defendant.

¶ 13 The parties stipulated that a treating nurse would testify that Baum had multiple facial lacerations, lacerations to her upper right chest, a laceration to her wrist, a punctured lung, was stabbed in the eye, and had fractures to her nasal bone and right maxillary bone.

¶ 14 Defendant provided the following testimony. The night before the incident, he and Baum had argued, so he stayed at a friend's place. He returned to the apartment at about 7 or 8 p.m. on August 30, 2020. Later, he was entertaining the girls in their room by jumping around,

and he fainted. When he came to, Baum was sitting next to him with a knife beside her, and the kids looked worried. Defendant's side was hurting and bleeding, and he asked Baum what she did. Baum cried but did not respond. Defendant went downstairs to look for his phone, which he found in the kitchen. Baum came downstairs with something black in her hand and then ran back upstairs. Defendant grabbed a knife and followed her upstairs. When Baum reached for the children's door, he closed the door and started stabbing her. Baum was holding a knife at this point, and defendant felt threatened for his own safety and the children's safety. He was not trying to harm Baum but rather reacted quickly. Afterward, he broke down the door to make sure the girls were okay. The door did not lock, but defendant could not open it because he had blood on his hand. Defendant later fainted. Defendant admitted that he did not know if one of the boys had originally stabbed him, but he still stabbed Baum.

¶ 15 In rebuttal, the State submitted a certified copy of defendant's prior conviction of theft with intent to defraud.

¶ 16 The jury found defendant not guilty of attempted murder and guilty of aggravated domestic battery and aggravated battery.

¶ 17 Defendant filed a posttrial motion arguing that he was not proven guilty beyond a reasonable doubt, particularly because he had established that he acted in self-defense and that the trial court erred in allowing the police body camera video to be played for the jury.

¶ 18 The trial court denied the motion on March 14, 2022, and proceeded to the sentencing hearing. The parties agreed that the court would impose a sentence only on the aggravated domestic battery count due to the one-act, one-crime doctrine. They further agreed that the sentencing range was probation or three to seven years' imprisonment.

¶ 19 After the parties’ arguments, the trial court stated that it had considered the presentence investigation reports, the evidence and argument, the statutory factors in aggravation and mitigation, defendant’s character and history, and the circumstances and nature of the offense. It had further considered defendant’s mental health issues, Baum’s testimony, and the video, which was “one of the most horrific things” it had ever seen. The children either saw or heard defendant ferociously beat and stab their mother. She had \$162,000 in medical bills and would have to live for the rest of her life with the consequences of defendant’s actions. Imprisonment was necessary to protect the public, and probation would deprecate the offense’s seriousness and be inconsistent with the ends of justice. The trial court sentenced defendant to the maximum of seven years’ imprisonment, stating that it would have sentenced him to a longer term if the sentencing range allowed it.

¶ 20 Defendant filed a motion to reconsider arguing that the sentence was excessive in light of defendant’s character and criminal history and that the trial court failed to consider the extent of defendant’s mental health issues. The trial court denied the motion, and defendant appealed.

¶ 21 The trial court appointed OSAD to represent defendant on appeal, and on August 15, 2022, OSAD moved to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), on the basis that the appeal lacks merit. This court granted defendant leave to file a response to OSAD’s motion by September 19, 2022, but defendant did not respond.

¶ 22 II. ANALYSIS

¶ 23 Pursuant to *Anders*, 386 U.S. 738, and *People v. Jones*, 38 Ill. 2d 384 (1967), OSAD moves to withdraw as counsel. Appellate counsel states in his motion that he had read the record and found no issue of arguable merit. Counsel lists four potential issues for review:

(1) whether the trial court erred in finding defendant fit to stand trial; (2) whether the trial court erred in allowing the State to play the body camera video for the jury; (3) whether defendant was proven guilty beyond a reasonable doubt; and (4) whether the trial court abused its discretion in sentencing defendant. We agree with appellate counsel that none of these potential issues have arguable merit.

¶ 24

#### A. Fitness to Stand Trial

¶ 25

There is a statutory presumption that a defendant is fit to stand trial. 725 ILCS 5/104-10 (West 2020). A defendant is considered unfit if he is unable to understand the nature and purpose of the proceedings against him or assist in his defense. *Id.* Fitness refers to a defendant's ability to function within the context of a trial and does not relate to a defendant's competence in other areas, such that a defendant may be fit to stand trial even though his mind might otherwise be unsound. *People v. Brown*, 2020 IL 125203, ¶ 19. A trial court may order that an expert perform an examination of the defendant and submit a report to the court. 725 ILCS 5/104-11(b) (West 2020). The issue of a defendant's fitness is a constitutional issue, and to comport with due process, a court may not just accept the parties' stipulation to the expert's ultimate conclusion or merely rely on the expert's ultimate opinion without evaluating the basis for that opinion. *People v. Corbett*, 2022 IL App (2d) 200025, ¶ 56. Whether there is a *bona fide* doubt of the defendant's fitness is generally a matter within the trial court's discretion. *People v. Khan*, 2021 IL App (1st) 190679, ¶ 55.

¶ 26

Here, the trial court granted two requests by defense counsel to have defendant evaluated for fitness to stand trial. Both times, the psychiatrist reported that defendant was fit. The parties stipulated that the psychiatrist was a qualified expert and would testify consistently with her reports, and the trial court stated that it had independently reviewed the reports and

agreed with the conclusion that defendant was fit to stand trial. Therefore, there is no potentially meritorious argument that the trial court erred in finding defendant fit to stand trial.

¶ 27

#### B. Body Camera Video

¶ 28

Defense counsel filed a motion *in limine* before trial to bar the State from introducing the audio and video recordings from the officers' body cameras. However, at the hearing on the motion, counsel stated that she understood that the images could come in because it showed the crime scene, but she had an issue with the audio because children could be heard crying. The trial court ruled that the video could be played without the audio. Defendant raised the issue of the video in his posttrial motion.

¶ 29

Rulings on motions *in limine* and on the admission of contested video evidence are reviewed for an abuse of discretion. *People v. Collins*, 2020 IL App (1st) 181746, ¶ 20. Here, there can be no meritorious argument that the trial court erred in allowing the visual component of the video into evidence, because counsel ultimately contested just the audio portion in conjunction with the motion *in limine*. Further, the ruling cannot be said to be an abuse of discretion because the video showed the crime scene as it appeared when the police arrived.

¶ 30

#### C. Sufficiency of the Evidence

¶ 31

When examining the sufficiency of the evidence, we must determine 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not reverse a criminal conviction



based on insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Murray*, 2019 IL 123289, ¶ 19.

¶ 32 A person commits aggravated domestic battery if he knowingly causes great bodily harm, permanent disability, or disfigurement in committing a domestic battery. 720 ILCS 5/12-3.3(a) (West 2020). A person commits domestic battery if he knowingly and without legal justification causes harm or makes physical contact of an insulting or provoking nature to a family or household member. 720 ILCS 5/12-3.2 (West 2020). A person commits aggravated battery, as pertinent here, if he commits a battery and knowingly causes great bodily harm or permanent disability or disfigurement. 720 ILCS 5/12-3.05 (West 2020).

¶ 33 In this case, it was undisputed that defendant and Baum had a relationship and lived together, that defendant stabbed Baum multiple times, and that Baum suffered serious bodily harm as a result, including losing sight in one eye. Therefore, the only contested issue at trial was defendant's claim of self-defense.

¶ 34 Once a defendant raises the affirmative defense of self-defense, 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 offense. *People v. Gray*, 2017 IL 120958, ¶ 50. The elements of self-defense are: (1) unlawful force threatened against a person; (2) the threatened person was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the threatened person actually and subjectively believed that a danger existed requiring the use of force applied; and (6) the threatened person's beliefs were objectively reasonable. *Id.*; see also 720 ILCS 5/7-1(a) (West 2020). The defendant's claim of self-defense fails if the State negates any one of these elements. *Gray*, 2017 IL 120958, ¶ 50.

¶ 35 Defendant claimed that he acted in self-defense because he had stab wounds on his back when he regained consciousness, he saw Baum with a knife next to her at that time, she later came downstairs with something that could have been a knife, and then she ran upstairs to the children's room still holding a knife. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that the State negated multiple elements of self-defense such that the defense failed. In particular, defendant admitted during his videotaped interview that he stabbed Baum before he was stabbed, he admitted at trial that one of the boys may have stabbed him, and Baum testified that she never stabbed defendant. Further, the evidence showed that the danger of harm was not imminent, stabbing Baum was not necessary for safety, and defendant's beliefs were not objectively reasonable that Baum was a threat to him and that the situation required the force he used. As such, there is no meritorious argument that can be made that defendant was not proven guilty beyond a reasonable doubt.

¶ 36 D. Sentence

¶ 37 Defendant's conviction of aggravated battery was merged into his conviction of aggravated domestic battery, and he was sentenced to seven years' imprisonment for the latter conviction. The possible sentencing range was probation or three to seven years' imprisonment. 720 ILCS 5/12-3.3(b) (West 2020); 730 ILCS 5/5-4.5-35(a) (West 2020).

¶ 38 A trial court has wide latitude in sentencing a defendant to any term prescribed by statute as long as it does not ignore relevant mitigating factors or consider improper aggravating factors or incompetent evidence. *People v. Cook*, 2021 IL App (3d) 190243, ¶ 38. A reviewing court gives substantial deference to the trial court's sentencing decision because the trial court has observed the defendant and the proceedings and is therefore in a much better position to consider the sentencing factors. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 9. We will not

disturb the trial court's sentencing decision absent an abuse of discretion, which occurs only where the sentence is greatly at variance with the law's spirit and purpose, or manifestly disproportionate to the nature of the offense. *Id.*

¶ 39 Here, the trial court stated that it considered, among other things, the statutory factors in aggravation and mitigation, defendant's character, history, and mental health issues, and the circumstances and nature of the offense. It noted that the children had either seen or heard defendant ferociously beat and stab their mother, who had \$162,000 in medical bills and permanent injuries and scars as a result. In light of the disturbing nature of the event and the significant injuries to Baum, we agree with OSAD that there can be no meritorious argument on appeal that the trial court abused its discretion in imposing a statutorily permitted seven-year sentence.

¶ 40 III. CONCLUSION

¶ 41 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that this appeal presents no issue of arguable merit. Thus, we grant OSAD's motion to withdraw and affirm the judgment of the Peoria County circuit court.

¶ 42 Affirmed.