

No. 120958

IN THE

SUPREME COURT OF ILLINOIS

 PEOPLE OF THE STATE OF
 ILLINOIS,

Plaintiff-Appellant,

-vs-

MATTHEW GRAY

Defendant-Appellee

) Appeal from the Appellate Court of
) Illinois, No. 1-13-4012.
)

) There on appeal from the Circuit
) Court of Cook County, Illinois, No.
) 11 CR 19547.
)

) Honorable
) Nicholas Ford,
) Judge Presiding.
)

 REPLY BRIEF FOR DEFENDANT-APPELLEE/CROSS-APPELLANT
 (CROSS-RELIEF ISSUE)

 MICHAEL J. PELLETIER
 State Appellate Defender

 PATRICIA MYSZA
 Deputy Defender

 CHRISTOFER R. BENDIK
 Assistant Appellate Defender
 Office of the State Appellate Defender
 First Judicial District
 203 N. LaSalle St., 24th Floor
 Chicago, IL 60601
 (312) 814-5472
 1stdistrict.eserve@osad.state.il.us

***** Electronically Filed *****

120958

03/27/2017

Supreme Court Clerk

COUNSEL FOR DEFENDANT-APPELLEE

II. Tina Carthron drank a pint of whiskey and 40 ounces of beer until she was so intoxicated she described herself as “high.” Where Tina could not remember whether she bit Matthew Gray, did not know how she ended up with cuts to her chest and back, and could not remember many things said during the incident, a reasonable doubt exists as to Matthew’s guilt. (Cross-Relief Requested)

Just like the parties below, the State in this Court does not contest the level of Tina Carthron’s intoxication during the events of this case: Tina drank a pint of Jack Daniel’s whiskey and another 40 ounces of Budweiser. (R. AA37-39, AA62, AA203-05); (St. Rep. Br. 1-7); *People v. Gray*, 2016 IL App (1st) 134012, ¶¶9-10 (appellate court detailing Tina’s alcohol consumption and subjective assessment of her sobriety). The State does not dispute Tina described her level of intoxication as being “high” and “still. . .drunk” on alcohol just before her altercation with Matthew. (R. AA37-39, AA62, AA67); (St. Rep. Br. 1-7) And the State does not contest Tina was so intoxicated on whiskey and beer that she could not remember whether she instigated the entire incident by biting Matthew. (R. AA69-70); (St. Rep. Br. 6)

Attempting to circumvent Tina’s self-admitted level of intoxication and faulty memory, the State relies upon two cases where the appellate court found sufficient evidence of guilt despite the defendants arguing the witnesses’ use of alcohol affected their credibility. (St. Rep. Br. 3) citing *People v. Bradford*, 194 Ill.App.3d 1043, 1046-47 (1st Dist. 1990); *People v. Vandiver*, 127 Ill.App.3d 63, 67 (1st Dist. 1984). First, the State’s appellate court authority is of questionable value where this Court in *People v. Pellegrino*, 30 Ill.2d 331, 333-34 (1964), found evidence insufficient where one eyewitness, despite not drinking any alcohol on the night of the incident, had engaged in a several week period of “drunkness” and where the witness admitted difficulty walking. *See also People v. McKibben*,

24 Ill.App.3d 692, 696 (1st Dist. 1974) (conviction reversed where witness readily admitted he was “high” on alcohol at the time of the incident).

Second, the witnesses in *Bradford* and *Vandiver* both denied their respective drinking rendered them either drunk or unable to recall salient details. *Vandiver*, 127 Ill.App.3d at 66; *Bradford*, 194 Ill.App.3d at 1047; *see also People v. Burgos*, 243 Ill.App.3d 993, 1000-01 (1st Dist. 1993) (evidence sufficient where witness admitted drinking “one beer prior to the time of the shooting”). Unlike either of those witnesses, Tina Carthron unambiguously testified she was so “high” or “drunk” on alcohol, having consumed a pint of whiskey and 40 ounces of beer, that she could not remember whether she bit Matthew. (R. AA37-39, AA62); (“Yes, I still was drunk” (R. AA67)); (Tina doesn’t remember whether she bit Matthew because, “Yeah, I was kind of drunk” (R. AA69-70)).

The State’s reliance upon *People v. McGuire*, 18 Ill.2d 257, 258-59 (1960), is equally unavailing where the intoxicated accomplices’ recollection of events was corroborated by a third party and more importantly was not contradicted by any defense evidence. Here, Tina’s version of events was contradicted by the physical evidence, namely the bite mark on Matthew’s chest, and was not corroborated by any independent witness as only Tina and Matthew were in his apartment when the incident occurred.

The State asks this Court to “not second-guess the jury’s decision to credit [Tina’s] testimony despite her [level of intoxication].” (St. Rep. Br. 4), citing *People v. Tenney*, 205 Ill.2d 411, 428 (2002). This Court has rejected such a rubber-stamping approach to a reviewing court’s sufficiency of the evidence analysis:

“However, the fact a judge or jury did accept testimony does not guarantee it was reasonable to do so. Reasonable people may on

occasion act unreasonably. Therefore, we reaffirm that the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court." *People v. Cunningham*, 212 Ill.2d 274, 280 (2004).

This Court has not hesitated to reverse a conviction, despite a jury's determination that a witness was credible, where the evidence was so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt as to the defendant's guilt. *People v. Steven Smith*, 185 Ill.2d 532, 542 (1999); *People v. Schott*, 145 Ill.2d 188, 206-07 (1991); *People v. Stevenson*, 25 Ill.2d 361, 365 (1962); *People v. Coulson*, 13 Ill.2d 290, 296 (1958). And this case is the perfect example as to why reviewing courts do not rubber-stamp a jury's credibility determination.

The remainder of the State's discussion as to Matthew's sufficiency argument attempts to downplay Tina's inconsistencies between her trial testimony and her prior statements as "collateral." (St. Rep. Br. 6) Whether Tina bit Matthew (R. AA69-70), whether Matthew choked Tina (R. AA188-89), whether an argument precipitated the incident (R. AA64), or whether the events occurred in the dead of night (1:30 a.m.) or in the morning light (7:30 a.m.) (R. AA39-40, AA188-89), are not collateral matters where Tina's ability to accurately recall the events, clouded by her extreme level of intoxication, was vital to the State's case. Tina's repeated, salient inconsistencies demonstrate her testimony is not worthy of belief, and the State cannot satisfy its heavy burden with such worthless evidence.

Finally, the State tries to save its conviction by arguing a rational jury could have found Matthew was unjustified in stabbing Tina even if she bit him. (St. Rep. Br. 7) A citizen is "not required to measure the precise amount of force he might use. . . to protect his person from the reasonably anticipated violence." *People v. Givens*, 26 Ill.2d 371, 376 (1962). "[I]t is not necessary that blood be first

drawn before the right of self-defense arises.” *People v. Speed*, 52 Ill.2d 141, 146 (1972). Simply put, the State is not correct in its statement that a rational jury could have found Matthew was unjustified in his use of force if Tina was biting him so hard that Matthew felt she was going to tear a hole in him. (R. AA237-38)

As the State’s sole witness to the events was unworthy of any belief, the State failed to prove Matthew Gray guilty beyond a reasonable doubt. This Court should reverse Matthew’s convictions.

CONCLUSION

For the foregoing reasons, Matthew Gray, Defendant-Appellee/Cross-Appellant, respectfully requests this Court reverse all of his convictions under Issue II. Alternatively, pursuant to Issue I, Matthew asks this Court to reverse his aggravated domestic battery convictions and remand for a new trial on his aggravated battery conviction.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

CHRISTOFER R. BENDIK
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLEE

CERTIFICATE OF COMPLIANCE

I, Christofer R. Bendik, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 4 pages.

/s/Christofer R. Bendik
CHRISTOFER R. BENDIK
Assistant Appellate Defender

No. 120958

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of Illinois, No. 1-13-4012.
)	
Plaintiff-Appellant,)	There on appeal from the Circuit Court of Cook County, Illinois , No. 11 CR 19547.
-vs-)	
)	
MATTHEW GRAY)	Honorable Nicholas Ford,
)	Judge Presiding.
Defendant-Appellee)	

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

Ms. Kimberly M. Foxx, State’s Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;

Mr. Matthew Gray, C/O Robert Gray, 5750 South Lafayette Avenue #1, Chicago, IL 60621

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Reply Brief in the above-entitled cause was submitted to the Clerk of the above Court for filing on March 27, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel, and mailed one copy to the Defendant-Appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Reply Brief will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Moses Kim
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

***** Electronically Filed *****

120958

03/27/2017

Supreme Court Clerk

No. 120958
IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of Illinois, No. 1-13-4012.
)	
Plaintiff-Appellant,)	There on appeal from the Circuit Court of Cook County, Illinois , No. 11 CR 19547.
-vs-)	
)	
MATTHEW GRAY)	Honorable Nicholas Ford,
)	Judge Presiding.
Defendant-Appellee)	

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

Ms. Kimberly M. Foxx, State’s Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;

Benjamin C. Weinberg, Counsel for *Amici Curiae*, Dentons US LLP, 233 South Wacker Drive, Suite 5900, Chicago, IL 60606;

Mr. Matthew Gray, C/O Robert Gray, 5750 South Lafayette Avenue #1, Chicago, IL 60621

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Reply Brief in the above-entitled cause was submitted to the Clerk of the above Court for filing on March 27, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, Cook County State’s Attorney Office, and Counsel for *Amici Curiae*, and mailed one copy to the Defendant-Appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Reply Brief will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Moses Kim
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

***** Electronically Filed *****

120958

03/28/2017

Supreme Court Clerk
