2023 IL App (4th) 220304-U

NO. 4-22-0304

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 13, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Boone County
CRAIG M. SEROTZKE,	)	No. 19CF84
Defendant-Appellant.	)	
	)	Honorable
	)	Ryan A. Swift,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice DeArmond and Justice Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed defendant's convictions and remanded for a new trial where the trial court committed second-prong plain error by failing to instruct the jury of the State's burden of disproving defendant's affirmative defense of self-defense.

¶ 2 Following a jury trial, defendant, Craig M. Serotzke, was found guilty of five counts of felony domestic battery (720 ILCS 5/12-3.2(a)(1), (b) (West 2018)). The trial court sentenced defendant to concurrent terms of nine years' imprisonment on each count. Defendant appeals, arguing that (1) his trial counsel was ineffective for failing to object to the introduction of a video of defendant's postarrest statements, (2) counsel was ineffective for failing to object to an exhibit that referenced two prior convictions, and (3) the jury was not properly instructed regarding defendant's affirmative defense of self-defense. We reverse and remand for a new trial based on our resolution of the third issue.

¶ 3 I. BACKGROUND

¶ 4 In April 2019, defendant was charged with five counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2018)), alleging that on April 5, 2019, defendant punched Scotia Knuffman (count I), kicked her (count II), dragged her by the hair (count III), bit her (count IV), and slammed her head on the ground (count V). Because defendant had three prior convictions for domestic battery or a similar offense from another jurisdiction, each count was charged as a Class 3 felony. See 720 ILCS 5/12-3.2(b) (West 2018). Defendant's answer to discovery noted that he intended to rely on the affirmative defense of self-defense.

¶ 5 Prior to trial, the State filed, *inter alia*, two motions *in limine* seeking to introduce evidence of defendant's prior convictions. Specifically, the State sought to introduce defendant's (1) May 11, 2017, conviction for violation of an order of protection in Winnebago County case No. 16-CF-2977; (2) August 1, 2013, convictions for aggravated battery of a peace officer and violation of an order of protection in Boone County case No. 12-CF-41; (3) January 30, 2013, conviction for "Domestic Abuse Assault, Second Offense" in Washington County, Iowa case No. FECR005826; (4) March 24, 2011, conviction for domestic battery in Boone County case No. 09-CF-328; and (5) January 12, 2010, conviction for aggravated battery of a peace officer in McHenry County case No. 09-CF-1179.

¶ 6 The trial court ruled that, if defendant testified, the State could impeach him with evidence of his (1) 2017 Winnebago County conviction for violation of an order of protection, (2) 2013 Boone County convictions for aggravated battery of a peace officer and violation of an order of protection, and (3) 2013 Iowa conviction for "Domestic Abuse Assault, Second Offense." The court ruled that those convictions were also admissible pursuant to section 115-20 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-20 (West 2018) (providing

that evidence of a defendant's prior conviction for, *inter alia*, domestic battery or violation of an order of protection is admissible in a later prosecution for those offenses when the offenses involve the same victim)). The court also ruled that defendant's 2011 Boone County conviction for domestic battery and 2010 McHenry County conviction for aggravated battery of a peace officer were "prohibited from being admitted" to impeach defendant if he testified because they were "older, cumulative and therefore less probative on the issue of credibility." Finally, the court ruled that evidence of the offense resulting in defendant's 2013 Iowa conviction for "Domestic Abuse Assault, Second Offense" was admissible pursuant to section 115-7.4 of the Code (725 ILCS 5/115-7.4 (West 2018) (providing that evidence of a defendant's commission of another domestic violence offense is admissible in a criminal prosecution in which the defendant is accused of a domestic violence offense)).

¶ 7 Defendant's jury trial commenced in November 2021. The following evidence was adduced. Knuffman testified that she met defendant about 12 or 13 years before and they started dating. On April 5, 2019, Knuffman was at her home in Belvidere, Illinois, working in her upstairs bedroom. At about 4:15 p.m., defendant arrived home intoxicated, came upstairs, and fell onto the bed. Knuffman immediately left with her son and drove to a Walmart parking lot, where they remained for more than an hour. Knuffman testified that she left the house because, given "the past," "I knew I was going to be beaten."

¶ 8 Eventually, Knuffman drove back home. Knuffman entered the house through the door next to the driveway, which led into the kitchen. Knuffman testified that, as she walked through the door, defendant grabbed her by her shirt, picked her up, and threw her to the floor. Defendant then hit Knuffman in the face, kicked her in her chest and "all over [her] body," and hit her head into the floor. Defendant dragged her into the living room by her hair. Knuffman

testified that she attempted to fight back and was "going for either the groin or his eyeballs." While Knuffman tried to get defendant off of her, defendant bit her finger. Defendant then started pulling Knuffman up the stairs, but he lost his grip on her. Knuffman ran out the back door and called for her son, who met her at the car. They drove to the police station.

¶ 9 Knuffman testified that another incident involving defendant occurred on June 5, 2011. Knuffman explained that, on that date, she and defendant were at a horse auction in Kalona, Iowa. Knuffman was sitting on a horse, but it reared up and "flipped over on [her]" after defendant started whipping the horse to get it to move. Defendant started yelling at Knuffman, so Knuffman took the horse back to the stall to take the saddle off. While Knuffman did so, defendant came up to her and started kicking her left knee and hitting her. Defendant took the saddle off the horse and threw it at Knuffman. Knuffman started running and climbing over a gate, but defendant grabbed her by the hair and pulled her down. Knuffman screamed for help, and a woman called 911. Defendant was arrested.

¶ 10 Knuffman testified that she has had multiple orders of protection against defendant. Knuffman testified that defendant violated orders of protection (1) in Boone County on March 4, 2012 and (2) in Winnebago County on November 15, 2016. Knuffman noted that defendant was arrested on both occasions.

¶ 11 The State offered People's Exhibits 4, 5, and 6 into evidence, and they were admitted without objection from defendant's counsel.

¶ 12 Exhibit 4 was a certified copy of the January 30, 2013, judgment as well as the trial information (the charging instrument) in Washington County, Iowa case No. FECR05826. The judgment showed that defendant had been convicted, pursuant to a guilty plea, of "Domestic Abuse Assault, Second Offense" as a result of the June 5, 2011, incident. The judgment noted

that “Domestic Abuse Assault, Second Offense” was a “lesser included offense of the crime charged in the Trial Information.” The trial information showed that defendant had been charged with “Domestic Abuse Assault, 3rd or Subsequent Offense.” The trial information noted that “defendant was convicted of Domestic Abuse Assault on 12/8/08, in McHenry County, Illinois, in Criminal No. 08CM002418” and that “defendant was convicted of Domestic Abuse Assault on 3/24/11, in Boone County, Illinois, in Criminal No. 2009CF328.”

¶ 13 Exhibit 5 was a certified copy of defendant’s 2013 Boone County convictions for aggravated battery of a peace officer and violation of an order of protection.

¶ 14 Exhibit 6 was a certified copy of defendant’s 2017 Winnebago County conviction for violation of an order of protection.

¶ 15 Deputy Charles Schutz of the Boone County Sheriff’s Office testified that he spoke with Knuffman at the Boone County Public Safety Building on April 5, 2019. Schutz found Knuffman sitting in the lobby. Schutz testified that Knuffman had blood and marks on her face, as well as a scratch or cut on one of her arms. Knuffman was very upset, her face was flushed and red, and it appeared as though she had been crying. The State showed Schutz photographs taken at the police station depicting Knuffman with a bloody face and injuries on her finger and arm. Schutz testified that the photographs, which the State admitted into evidence, fairly and accurately depicted Knuffman’s injuries. Schutz testified that, after speaking with Knuffman, Knuffman was transported to the hospital.

¶ 16 Sonal Williams, an emergency room nurse practitioner, testified that she treated Knuffman at the Saint Anthony Medical Center emergency department in Rockford, Illinois, on April 5, 2019. Williams testified that Knuffman had nasal bleeding, superficial lacerations on the right side of her arm, hand, and elbow, and tenderness and contusions throughout her body.

Williams explained that Knuffman told her that "her significant other was intoxicated, hit her in multiple areas, [and was] throwing her around. She was kicked, hair was pulled, in that respect."

¶ 17 Deputy Nicholas Funk of the Boone County Sheriff's Office testified that, at about 5 p.m. on April 5, 2019, he and other deputies responded to a 911 hang-up call at Knuffman's residence. The deputies searched the residence but found no one inside. Funk testified that one deputy left to meet with Knuffman at the Public Safety Building while he and the other deputies stayed behind. The deputies then conducted a K-9 search of the wooded area and fields outside the house to locate defendant, but they could not locate him. Funk testified that "approximately an hour" after he had arrived at the scene, he observed defendant walking toward the residence from a barn at the end of the driveway. Funk yelled for defendant to stop, but defendant continued to walk into the house. Eventually, defendant exited the residence with a jacket. Funk and Schutz then took defendant into custody, and Funk transported defendant to jail. Funk testified that he smelled alcohol on defendant's breath. While in Funk's squad car, defendant was belligerent and yelling. Funk testified that defendant said the incident was a "he said, she said" situation and that "he was going to kill [Knuffman] when he is released." Funk explained that defendant never mentioned anything about self-defense, Knuffman hitting him, or any injuries that he sustained.

¶ 18 The State offered Exhibit 7, a video recording of defendant inside Funk's squad car while Funk transported defendant to jail. Exhibit 7 was admitted and published to the jury without objection. In the video, defendant told Funk, "You guys only been out here a million-gazillion times over this broad wanna f*** call people on bulls***." Defendant also stated, "You guys gotta feel like idiots when you guys get calls out here to this place." Defendant also referred to Knuffman as a "ding-dong," "someone who did wrong," and "some senile,

whack-job girl" who was calling the police "over nothing." Defendant told Funk that "nobody was touched, nobody did anything." Defendant further stated that if the police "ever mistreat my mother, you guys are gonna pay for it." He also called Funk a "f*** idiot" and stated that the police were a "bunch of morons" who were "chasing around she-said, he-said bulls***." Defendant told Funk that Knuffman had fallen over, hit her face, and was chasing the dog. Defendant stated that he was going to be "back out there in a week anyways" and would "kill the b***" for "all the times she's screwed my life up." Defendant asked what would happen with his things at the house, and Funk explained that defendant would need to make arrangements to get his things when he "got out." Defendant responded, "What if that's 10 years?" Defendant also stated that he was tired of the police coming to the house and listening to Knuffman's "stories" all the time, calling Knuffman a "lying a*** b***."

¶ 19 Defendant testified in his defense. Defendant explained that he and Knuffman dated for about 13 years and started living together at Knuffman's farm about 8 years prior to trial. Defendant testified that, on April 5, 2019, he did chores on the farm until about 11 a.m. Thereafter, defendant's neighbor picked him up to run errands. At about 12:30 p.m., defendant and his neighbor stopped somewhere to play slot machines. They were there for about an hour and 45 minutes, during which time defendant had four to six beers. They then drove back to the farm, where defendant's neighbor dropped defendant off at about 2 or 3 p.m.

¶ 20 Defendant testified that no one was home when he returned, and he fell asleep on the living room sofa. According to defendant, he woke up after Knuffman hit him in the head with a stapler. Defendant testified that Knuffman was "standing there," shaking her hands, getting in his face, and yelling, "You don't love me. You're spending all your money. You don't help me with nothing." Defendant testified that he "pushed her away because she was getting in

my face. I was woken up uncomfortably, hit by her. You know, it happened fast, you know. Get back away from me. I'm waking up here." Defendant explained that Knuffman came at him again while she was yelling, and he pushed her again, causing her to fall over the dogs behind her. Defendant denied biting Knuffman and pulling her hair. Defendant also denied slamming Knuffman onto the ground. Defendant testified that Knuffman "fell on the ground" after he pushed her. He then went outside to work on a trailer in the driveway. While defendant was working, he saw Knuffman driving down the road.

¶ 21 Defendant acknowledged that he said that he was going to kill Knuffman while he was in Funk's squad car. Defendant explained that he did not mean that he wanted to cause harm to her but said it "more out of disappointment. I can't believe this is happening again."

¶ 22 Defendant's account of the June 5, 2011, incident at the horse auction in Iowa differed from Knuffman's. Defendant testified that, while he and Knuffman were riding horses, he noticed that Knuffman, a type 1 diabetic, was "starting to lose her sugar a little bit." Defendant got Knuffman off the horse and started putting the horses away. While he did so, Knuffman started "falling into the gates and making a commotion," causing a woman to call the police and an ambulance. Defendant testified that, because he "didn't get a travel permit to leave the state," he went to his truck but was arrested. Defendant claimed that he was "not found guilty" in the resulting case but had entered a "no contest plea because that case ended up being ran with a case here from Boone County."

¶ 23 On cross-examination, defendant acknowledged that he never told the police that Knuffman had hit him with a stapler. Defendant further acknowledged that, although it was his testimony that Knuffman hit him with a stapler and he pushed her twice, causing her to fall over

the dogs, the squad car video showed him telling Funk that nobody was touched and that nobody did anything.

¶ 24 Knuffman testified in rebuttal that she did not hit defendant with a stapler on April 5, 2019.

¶ 25 During the jury instructions conference, defendant's counsel submitted Illinois Pattern Jury Instruction, Criminal, No. 24-25.06 (4th ed. 2000) (hereinafter IPI Criminal 4th), providing that one is "justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [himself] against the imminent use of unlawful force." The State objected, asserting that defendant was not entitled to a self-defense instruction because defendant denied committing the charged acts. Defendant's counsel responded that defendant testified that Knuffman hit him in the head and defendant pushed her off several times. The trial court gave the self-defense definition instruction over the State's objection.

¶ 26 The State then asserted that the "notes for the defense instruction say that when this instruction is given, the other [instructions] have to be, I guess, edited to—without lawful justification." The State argued that doing so would not "match up" since defendant was not "alleging self-defense" as to the charged acts. The trial court did not include the phrase "without legal justification" in the instruction defining domestic battery. The court also refused to instruct the jury in the issues instruction on the proposition that the State had to prove that defendant was not justified in using the force he used.

¶ 27 Without objection from defendant, the trial court also ruled that Exhibit 4 (the documents relating to defendant's 2013 conviction in Iowa) could go back with the jury during its deliberations.

¶ 28 The jury found defendant guilty on all five domestic battery counts, and the trial court sentenced defendant to concurrent terms of nine years' imprisonment on each count. This appeal follows.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant argues that (1) his trial counsel was ineffective for failing to object to the admission of Exhibit 7, the squad car video containing his inflammatory statements; (2) counsel was ineffective for failing to object to Exhibit 4, which referenced two prior convictions the trial court had not deemed admissible; and (3) the court plainly erred in failing to properly instruct the jury on his affirmative defense of self-defense. Because defendant's jury instruction argument is dispositive of this appeal, and because defendant's remaining arguments were not litigated below, we consider only the jury instruction issue.

¶ 31 Defendant argues that he was denied a fair trial because the jury was not properly instructed regarding his affirmative defense of self-defense.

¶ 32 Defendant concedes that this issue is not preserved for review because his counsel raised no objection. While we would normally find that defendant forfeited appellate review of this issue, Illinois Supreme Court Rule 451(c) (eff. Apr. 8, 2013) provides that substantial defects in criminal jury instructions are not waived by failing to make a timely objection if the interests of justice so require. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Our supreme court has explained that Rule 451(c) is coextensive with the plain-error clause of Rule 615(a), and the rules are construed identically. *Piatkowski*, 225 Ill. 2d at 564.

¶ 33 Under the plain-error doctrine, a reviewing court may consider unpreserved error when (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 565.

¶ 34 Defendant contends that second-prong plain error occurred because, although the trial court gave the jury a self-defense instruction, the jury was not instructed that the State had the burden of disproving his affirmative defense of self-defense. Defendant also asserts that the instruction defining domestic battery did not include the words "without legal justification," and the issues instruction for domestic battery did not include the phrase "the defendant was not justified in using the force which he used." The State responds that no error occurred because defendant was not entitled to a self-defense instruction in the first instance.

¶ 35 Self-defense is an affirmative defense that necessarily constitutes an admission by the defendant that he committed the crime for which he is being prosecuted. *People v. Cacini*, 2015 IL App (1st) 130135, ¶ 44. As self-defense presupposes the intentional use of force in defense of one's person, no self-defense instruction is applicable to an act that a defendant denies committing. *Cacini*, 2015 IL App (1st) 130135, ¶ 44. To instruct the jury on self-defense, the record must include some evidence of the following factors: (1) force is threatened against a person, (2) the person threatened is not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the person actually and subjectively believed a danger existed which required the use of the force applied, and (6) the person's beliefs were objectively

reasonable. *Cacini*, 2015 IL App (1st) 130135, ¶ 44. The defendant's self-defense claim fails if the State negates any one of the foregoing elements. *Cacini*, 2015 IL App (1st) 130135, ¶ 44.

¶ 36 The defendant bears the burden of presenting evidence sufficient to raise the issue of self-defense unless the State's evidence raises the issue. *Cacini*, 2015 IL App (1st) 130135, ¶ 45. Self-defense may be raised even if a defendant's own testimony is inconsistent with that theory. *Cacini*, 2015 IL App (1st) 130135, ¶ 45. Additionally, a defendant is entitled to a jury instruction on self-defense even if very slight or only some evidence exists to support the theory of self-defense. *Cacini*, 2015 IL App (1st) 130135, ¶ 45. It is within the trial court's discretion to determine which issues are raised by the evidence and whether an instruction should be given. *Cacini*, 2015 IL App (1st) 130135, ¶ 46.

¶ 37 The State argues that defendant's claim that the trial court inadequately instructed the jury on self-defense fails because defendant was not entitled to a self-defense instruction in the first instance, and therefore, no reversible plain error occurred. Specifically, the State contends that, in charging defendant with five counts of domestic violence, it alleged that defendant (1) punched Knuffman, (2) kicked her, (3) dragged her by the hair, (4) bit her, and (5) slammed her head on the ground. Citing *Cacini* and *People v. Brown*, 2017 IL App (3d) 140921, the State asserts that, because defendant (1) denied biting Knuffman, pulling her hair, and slamming her head on the ground; (2) insisted that all he did was "push" Knuffman; and (3) told Funk that no one did anything, defendant did not explicitly admit to any of the specific conduct alleged in the domestic battery counts. Thus, according to the State, no self-defense instruction was warranted. This argument misconstrues *Cacini* and *Brown*.

¶ 38 In *Cacini*, the defendant was charged with attempted first degree murder and two counts of aggravated battery of a peace officer. *Cacini*, 2015 IL App (1st) 130135, ¶ 26. At trial,

the victims, Kristopher Rigan and Thomas O'Shaughnessy, both police officers, testified that they were wearing civilian clothes, with their duty belts and their police stars visible. *Cacini*, 2015 IL App (1st) 130135, ¶ 7. They approached the defendant's vehicle because they believed the defendant had been involved in a drug transaction. *Cacini*, 2015 IL App (1st) 130135, ¶ 8. According to Rigan, they announced that they were the police, and when Rigan opened the door to the defendant's vehicle, the defendant punched him several times. *Cacini*, 2015 IL App (1st) 130135, ¶ 9. Rigan claimed that the defendant said that he was not going to jail, then the defendant pulled him partially into the vehicle by his vest and belt and drove away while he was hanging out of the vehicle. *Cacini*, 2015 IL App (1st) 130135, ¶ 10. Rigan testified that the car door flung back and squeezed his legs, and the defendant punched him several more times until the defendant pushed him out of the car, causing the car to run over part of Rigan's body. *Cacini*, 2015 IL App (1st) 130135, ¶ 10.

¶ 39 The defendant testified that when Rigan and O'Shaughnessy approached his vehicle, he thought he was being carjacked because they did not announce themselves as police officers. *Cacini*, 2015 IL App (1st) 130135, ¶¶ 22-23. The defendant explained that he was trying to get away, and he drove off while Rigan was trying to get him out of his car. *Cacini*, 2015 IL App (1st) 130135, ¶ 23. The defendant testified that he never grabbed anyone, kicked or hit anyone, pulled anyone into his car, or intentionally injured anyone. *Cacini*, 2015 IL App (1st) 130135, ¶ 25. The defendant testified that the only thing that hit Rigan was the car door as the defendant drove away. *Cacini*, 2015 IL App (1st) 130135, ¶ 25.

¶ 40 The trial court ruled that self-defense instructions were warranted, but contrary to the Committee Note to IPI Criminal 4th No. 24-25.06A, the court failed to include the language

"That the defendant was not justified in using the force which he used" as the final proposition of each of the charged offenses. *Cacini*, 2015 IL App (1st) 130135, ¶¶ 36, 38.

¶ 41 After the defendant was convicted, he appealed, arguing, *inter alia*, that the trial court plainly erred in failing to properly instruct the jury that the State had to prove beyond a reasonable doubt that the defendant was not justified in using the force he used. *Cacini*, 2015 IL App (1st) 130135, ¶¶ 26, 33. The State argued that no plain error occurred because the defendant was not entitled to a self-defense instruction in the first instance. *Cacini*, 2015 IL App (1st) 130135, ¶ 43. The State noted that the defendant had maintained at trial that he never struck the officers or intentionally injured anybody, and at most, he testified only that he struggled with Rigan and drove away, causing the car door to hit Rigan. *Cacini*, 2015 IL App (1st) 130135, ¶ 43. The appellate court rejected that argument, explaining that the defendant did present some evidence that he used force to get away from the officers, believing them to be carjacking him. *Cacini*, 2015 IL App (1st) 130135, ¶¶ 48, 52. The appellate court noted that, although the defendant "presented very slight evidence of defendant's use of force," the defendant acknowledged that he struggled with Rigan and intentionally accelerated his car to get away, causing the door to strike Rigan. *Cacini*, 2015 IL App (1st) 130135, ¶ 48. The appellate court thus held that the defendant was entitled to a self-defense instruction and further held that the trial court's failure to properly instruct the jury pursuant to IPI Criminal 4th No. 24-25.06A constituted second-prong plain error, as it denied the defendant a fair trial. *Cacini*, 2015 IL App (1st) 130135, ¶ 55.

¶ 42 In *Brown*, the defendant was charged with domestic battery. *Brown*, 2017 IL App (3d) 140921, ¶ 3. At trial, the victim testified that the defendant became angry, then lunged at her and choked her. *Brown*, 2017 IL App (3d) 140921, ¶ 5. An officer who later spoke with the

defendant testified that the defendant had told him that the victim " 'accused him of cheating and pushed him, so he grabbed her by the neck to push her off of him, and then when she wanted to walk away, he grabbed her.' " *Brown*, 2017 IL App (3d) 140921, ¶ 7. The defendant, however, testified that he never told the officer that he pushed the victim, and he denied ever touching the victim. *Brown*, 2017 IL App (3d) 140921, ¶ 9. The trial court granted the defendant's counsel's request for a self-defense instruction, and the jury found the defendant guilty. *Brown*, 2017 IL App (3d) 140921, ¶¶ 10-12.

¶ 43 The defendant appealed and argued, *inter alia*, that his counsel was ineffective for requesting a self-defense instruction because "he denied committing the necessary act (a battery)," and therefore, the evidence did not meet the minimal threshold required for a self-defense instruction to be given. *Brown*, 2017 IL App (3d) 140921, ¶¶ 19, 23. The appellate court rejected that argument, explaining that, while obtaining a self-defense instruction "requires that a defendant admit to the act," the rule "does not *forbid* defendant from *denying* the act." (Emphases in original.) *Brown*, 2017 IL App (3d) 140921, ¶ 24. Thus, a self-defense instruction can still be given where a "defendant makes conflicting statements—once denying the act, and once admitting to it." *Brown*, 2017 IL App (3d) 140921, ¶ 24. The court explained that, although the defendant testified that he never touched the victim on the day in question, the State presented evidence that the defendant claimed to have pushed the victim after she began pushing him. *Brown*, 2017 IL App (3d) 140921, ¶ 25. The court concluded that because "evidence of defendant's admission to the act in question—in this case, a battery—was introduced, the circuit court properly delivered the self-defense jury instruction upon defense counsel's request." *Brown*, 2017 IL App (3d) 140921, ¶ 25. Thus, the court held, defense counsel was not ineffective

for requesting a jury instruction to which the defendant was entitled. *Brown*, 2017 IL App (3d) 140921, ¶ 26.

¶ 44 Contrary to the State's argument, *Cacini* and *Brown* establish that a self-defense instruction was warranted here. Although defendant (1) denied biting Knuffman, pulling her hair, and slamming her into the ground and (2) stated in the squad car that no one was touched and no one did anything, defendant nevertheless presented some evidence in support of a theory of self-defense. Specifically, defendant testified that Knuffman hit him in the head with a stapler while he was asleep, and he pushed her away because she was getting in his face as he woke up. Defendant testified that Knuffman came at him again while she was yelling, and he pushed her once more, causing her to fall over their dogs. While this evidence of defendant's use of force against Knuffman was "slight," it was enough to meet the threshold required for a self-defense instruction to be given. See *Brown*, 2017 IL App (3d) 140921, ¶ 25; *Cacini*, 2015 IL App (1st) 130135, ¶ 48.

¶ 45 We do hold, however, that second-prong plain error occurred because, although the trial court gave the self-defense instruction pursuant to IPI Criminal 4th No. 24-25.06, the court failed to instruct the jury that the State had the burden of proving beyond a reasonable doubt that defendant did not act in self-defense.

¶ 46 A fair trial requires that the jury not be permitted to deliberate a defendant's guilt or innocence of the crime charged without being told the essential elements of that crime. *Cacini*, 2015 IL App (1st) 130135, ¶ 49. Once the defense raises the affirmative defense of self-defense, the State bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *Cacini*, 2015 IL App (1st) 130135, ¶ 49. The jury must be instructed as to the defense and the State's corresponding burden of proof. *Cacini*, 2015 IL App (1st) 130135, ¶ 49.

"Instructions convey to the jury the correct principles of law applicable to the evidence presented at trial so that the jury may arrive at the correct conclusion according to the law and the evidence." *Cacini*, 2015 IL App (1st) 130135, ¶ 50. Under Rule 451(a), the trial court is required to use the Illinois Pattern Jury Instructions, Criminal, related to a subject when the court determines that the jury should be instructed on the subject. Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013).

¶ 47 Under second-prong plain-error analysis, the prejudice to the defendant is presumed because of the importance of the right involved, regardless of the strength of the evidence. *Cacini*, 2015 IL App (1st) 130135, ¶ 54. Second-prong plain error applies to structural error, that is, a systemic error which erodes the integrity of the judicial process and undermines the fairness of the defendant's trial. *Cacini*, 2015 IL App (1st) 130135, ¶ 54. An omitted jury instruction constitutes plain error when the omission creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, thereby threatening the fairness of the trial. *People v. Hale*, 2012 IL App (4th) 100949, ¶ 22. A defendant need not prove beyond doubt that his trial was unfair because the omitted instruction misled the jury to convict him; the defendant need only show that the error caused a severe threat to the fairness of the trial. *Hale*, 2012 IL App (4th) 100949, ¶ 22.

¶ 48 Here, the trial court properly gave IPI Criminal 4th No. 24-25.06, which defines self-defense. However, the Committee Note provides that IPI Criminal 4th No. 24-25.06A is also to be given. That instruction provides that the proposition, "That the defendant was not justified in using the force which he used," should be given as the final proposition in the issues instruction for the offense charged. IPI Criminal 4th No. 24-25.06A. Similarly, the Committee Note to IPI Criminal 4th No. 11.11, the instruction defining domestic battery, provides that the

phrase "without legal justification" must be included whenever an instruction on an affirmative defense is given. The trial court failed to give these instructions, and in doing so, it committed error.

¶ 49 We further determine that the failure to provide the omitted instructions on the issue of self-defense, which was central to the case, created a severe threat to the fairness of defendant's trial. The jury was never instructed that the State had the burden to prove, beyond a reasonable doubt, that defendant was not justified in using the force he used. As a result, the jury may have concluded that defendant had to prove that he acted in self-defense and not held the State to its burden of proving all elements, including that defendant's use of force was not justified. Thus, we hold that the erroneous jury instructions constituted second-prong plain error. Accordingly, we reverse defendant's convictions for domestic battery and remand for a new trial on those offenses.

¶ 50 Double jeopardy does not bar defendant's retrial for these offenses, because the evidence against defendant, when viewed in the light most favorable to the prosecution, was sufficient to convict him of domestic battery beyond a reasonable doubt. *People v. McKown*, 236 Ill. 2d 278, 311 (2010).

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we reverse and remand for a new trial.

¶ 53 Reversed and remanded.