2021 IL App (2d) 200436-U
No. 2-20-0436
Order filed October 25, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kendall County
Plaintiff-Appellee,	)	
v.	)	Nos. 18-CF-410 18-CM-597
BRANDY BRESSER,	)	Honorable Joseph R. Voiland,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Defendant forfeited her argument that her right against self-incrimination was violated. Defendant's attorneys committed no discovery violation by tendering the surveillance video to the State or refusing to demand its return. The trial court did not err in its *Curry* admonishment. Defendant did not receive ineffective assistance of counsel. Finally, there was sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated battery to a peace officer. Therefore, we affirm.

¶ 2 Following a jury trial, defendant Brandy Bresser was convicted of two charges: aggravated battery of a peace officer involving contact of an insulting or provoking nature (720 ILCS 5/12-3(a), 3.05(d)(4) (West 2018)) and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2018)).

On appeal, defendant contends that: (1) she was deprived of her fifth amendment right not to incriminate herself; (2) her trial attorney committed a discovery violation when he failed to attempt to "claw back" the surveillance video of the arrest; (3) the trial court did not properly admonish her regarding the State's plea offer; (4) her trial counsel provided ineffective assistance; and (5) the State failed to prove her guilty beyond a reasonable doubt. We affirm defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 The essential facts underlying defendant's convictions are as follows. In November 2018, Officers Cody Klingberg, Kelli Smith, and Tomasz Sobieraj of the Montgomery Police Department were dispatched to defendant's residence to investigate a domestic violence disturbance. Upon arrival, Klingberg could hear people inside the residence arguing, so he proceeded up the sidewalk to the door to await the arrival of other officers. After knocking on the door, defendant opened it, walked outside, and closed the door behind her. The defendant appeared intoxicated and agitated, and she positioned herself between Klingberg and Sobieraj and the front door. As the officers spoke with defendant, Klingberg attempted to enter defendant's home, pursuant to police department protocols that when responding to domestic violence situations, the officers must make sure everybody in the house is okay. Defendant stood between the officers and the door, yelling and pushing herself into the officers preventing them from entering the residence.

¶ 5 Klingberg testified that he was able to move the defendant from in front of the door and then entered the residence. He was speaking with defendant's son when he heard noises and observed the other officers struggling while attempting to handcuff defendant outside the front door.

¶ 6 Smith testified as follows. She and Officer Sobieraj remained outside the residence with defendant while Klingberg was inside. Defendant became hysterical and started kicking the front

door to keep it open. Smith grabbed defendant's left hand and attempted to move her away from the door. Defendant began to struggle with her and Sobieraj, pulling away while they tried to restrain her. Smith said that while trying to restrain her, she lost hold of defendant's left hand and defendant struck her near her face, towards her neck and chin area. Smith told defendant that she was now under arrest, and they attempted to place her into custody.

¶ 7 Smith testified that defendant started "flailing her arms around," "pushing around and just moving her arms and making it hard to grab them." Smith said defendant had to be taken to the ground, where she continued resisting and struggling to prevent being arrested. Ultimately, the police officers subdued defendant and placed her under arrest. Defendant was taken inside the residence to obtain additional clothing because she was wearing only a robe.

¶ 8 Smith stated that once she arrived at the police station, she observed swelling, redness, and tingling on the right side of her cheek under the eye. She also had a cut on her left index finger. Photographs of her injuries were taken and introduced at trial. As a result, defendant was charged with aggravated battery and obstructing a police officer.

¶ 9 On February 5, 2019, pursuant to the State's discovery motion, defendant's then attorney, Teresa A. McAdams, tendered photos of defendant's injuries and videos of the incident taken from defendant's home surveillance cameras. During the trial, the State presented the video which was played for the jury.

¶ 10 The jury found defendant guilty of both charges. Defendant filed a posttrial motion for a new trial on July 10, 2020, which the trial court denied the same day. It then sentenced her to 12 months' probation. Defendant timely appealed.

¶ 11 II. ANALYSIS

¶ 12 A. Fifth Amendment Right Against Self-Incrimination

¶ 13 On appeal, defendant first contends that her fifth amendment right against self-incrimination was violated when her attorney compelled her to hand over to the State a highly incriminating video from her home's surveillance camera that depicted her entire encounter with the police leading to her arrest

¶ 14 As a threshold matter, the State contends that defendant has forfeited review of this issue by failing to enter a contemporaneous objection to the introduction of the video during trial and for failing to adequately raise this alleged "discovery violation" in a posttrial motion. *People v. Hillier*, 237 Ill.2d 539, 544 (2010). The State further argues that defendant's failure to provide a report of proceedings of the hearing for a new trial, and the lack of any record showing that defendant even objected to the video's admission, requires forfeiture. We agree.

¶ 15 Further, defendant's brief does not sufficiently develop her argument. Rule 341(h)(7) provides that an appellant's brief shall contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on," and that points not argued are forfeited. Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020). Here, defendant's argument is a single thirteen-line paragraph, in which she puts forth only broad constitutional arguments on the fifth amendment privilege against self-incrimination that cite to authority for only general propositions of law. This is inadequate.

¶ 16 An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *People v. Ortiz*, 313 Ill. App. 3d 896, 900 (2000). Hence, it is incumbent upon the appellant to present a record showing the

errors complained of, and, in the absence of a sufficient record, this court will presume that the omitted evidence supports the trial court's decision and the trial court correctly applied the law to the facts. *People v. Leon*, 306 Ill. App. 3d 707, 714 (1999); *City of Elgin v. Hawthorne*, 204 Ill. App. 3d 807, 812 (1990). As there is no transcript of the hearing on the motion for a new trial or any record that defendant made a contemporaneous objection to the introduction of the video, there is no basis for holding that the trial's court denial of her motion was error.

¶ 17 Defendant does not provide a background as to how defendant was compelled to turn over the surveillance video to the State and demonstrate how her constitutional rights were violated. Moreover, she does not demonstrate the relationship between the cases cited and the claims raised on appeal. We note that a court of review is not required to search the record to find a reason for reversing the trial court's judgment. *Husted v. Thompson-Hayward Chemical Co.*, 62 Ill. App. 2d 287, 296 (1965). On the contrary, a reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented, as here, are forfeited. *People v. Bartlett*, 175 Ill. App. 3d 686, 691 (1988).

¶ 18 B. Violation of Illinois Discovery

¶ 19 Defendant next argues that her previous attorney committed a discovery violation leading to a breach of attorney-client privilege when the attorney turned over to the State the surveillance video that captured her encounter with the police. Defendant alleges that this willful disclosure violated Illinois Supreme Court Rule 201(p) (eff. July 30, 2014) when her attorney failed to pursue its return through "claw back" from the State. She contends that such a violation of the applicable discovery rules is a fifth amendment violation that warrants a remand for a new trial. In her posttrial motion, defendant claimed that the turning over of the surveillance video was a discovery violation that deprived her of her fifth amendment right against self-incrimination.

¶ 20 The State proceeds to identify several areas of deficiency in the record. First, it argues that there is nothing in the record to support defendant's claim that the video was privileged material or work product, other than her bare legal conclusion that the surveillance video was "privileged and confidential." Second, the record on appeal is incomplete in that it fails to include the transcripts from the hearing on defendant's motion for a new trial. Third, the record on appeal does not establish that defendant objected to the admission of the video evidence before or during trial. The State contends because of defendant's failures, coupled with her deficient brief; this issue should be considered forfeited. We agree.

¶ 21 Under Rule 341(h)(7) (eff. Oct. 1, 2020), a reviewing court is entitled to have issues clearly defined, with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). The holding in *Obert* is absolutely clear: a reviewing court "is not a repository into which an appellant may foist the burden of argument and research," nor does the court act as an advocate or search the record for error, and an appellant forfeits any contention that is unsupported by argument or by citation to authority. *Id*. Here, defendant's argument fails on all fronts, for it lacks any cohesiveness, lacks any meaningful citation to authorities, and lacks any reference to any page of the record on appeal.

¶ 22 As discussed supra ¶ 17, an appellant has an obligation to develop their arguments with citation to authority and provide the appellate court with a sufficient record for review. Again, defendant has failed to do either. Here, she has not included a transcript of her hearing on her motion for a new trial, and the motion itself fails to include points relied upon or support for her conclusion. Further, her brief's argument lacks cohesion and meaningful citations to authority and the record. Defendant cites only one decision touching on this issue, viz., *People v. Adam*, 51 Ill. 2d 46 (1972), merely described the factor of an attorney-client privilege, and defendant does not

attempt to explain how *Adam* advances her argument in this appeal. Accordingly, defendant's argument is forfeited.

¶ 23 C. Improper *Curry* Admonishment

¶ 24 Defendant next asserts that she was denied her "constitutional right" to be informed of the direct consequences of accepting or rejecting the plea offer that had been offered by the State when the trial court failed to state the terms of the plea offer in definite detail. Here, prior to jury selection, the State asked the trial court to admonish defendant, pursuant to *People v. Curry*, 178 Ill. 2d 509 (1997), regarding the plea offer that had been earlier extended to defendant. The State advised the court that the plea offer was significantly less than the minimum available should defendant be convicted, and it wanted to make sure it was communicated to her and that she understood the offer, which she had rejected.

¶ 25 Thereafter, the following colloquy occurred:

"THE COURT: There was an offer of proposed settlement of this matter that was stated to you?

THE DEFENDANT: Yes.

THE COURT: Did you receive that offer?

THE DEFENDANT: I did.

THE COURT: Did you understand it?

THE DEFENDANT: I did.

THE COURT: You understand that you have the right to accept that offer, you have the right to reject that offer and stand on your right to trial?

THE DEFENDANT: I understand.

THE COURT: You understand if you reject the offer at this time and this matter

goes to jury and the jury convicts you, you understand that the State is not limited by the terms of the offer as to what kind of sentence should be imposed. Neither the State but, more importantly, the Court is not limited by the terms of the offer that was proposed to you. Do you understand?

THE DEFENDANT: I do.

THE COURT: Based upon the offenses that you've previously been admonished, the charges that you've been charged with, the sentence that could be imposed upon you if you were found guilty of these charges. Again, that maximum sentence is no way limited based upon the offer that was previously tendered to you by the State.

THE DEFENDANT: I understand.

THE COURT: You understand that this is your right and not your attorney to accept or reject this offer?

THE DEFENDANT: I understand.

THE COURT: Obviously you're getting advice from your attorney as to whether you should or should not accept this offer. You understand that you ultimately have the determination as to whether you accept this offer?

THE DEFENDANT: I do understand.

THE COURT: Knowing that, you're rejecting the offer that was previously tendered by the State?

THE DEFENDANT: Right."

The trial court then proceeded to jury selection.

¶ 26 Defendants have a constitutional right to be reasonably informed of the direct consequences of accepting or rejecting a plea offer. *Curry*, 178 Ill. 2d at 528. Under Illinois

Supreme Court Rule 402 (eff. July 1, 2012), the trial court must inform the defendant of the nature of the charge and the sentencing range prescribed by law before accepting a guilty plea, but the court is under no duty to so inform the defendant if he or she rejects the plea offer.

¶ 27 Under the unique factual circumstances presented in *Curry*, our supreme court found that defense counsel was ineffective for erroneously advising the defendant about the consequences of rejecting a plea offer. *Curry*, 178 Ill. 2d at 536. The defendant was charged with two counts of criminal sexual assault and one count of residential burglary. The State offered to dismiss the residential burglary charge and one of the criminal sexual assault charges and recommend a sentence of 4½ years' imprisonment if he would agree to plead guilty to one count of criminal sexual assault. Unaware that consecutive sentencing would be mandated, defense counsel informed the defendant that even if he were convicted of any of the three charges, he would only receive a sentence close to four years' imprisonment. Based on this information, the defendant rejected the plea offer and proceeded to trial. He was convicted of all three counts and sentenced to a mandatory 12-year prison term. Our supreme court held that the record, which included defense counsel's affidavit admitting his erroneous advice and the defendant's reliance upon it, supported the defendant's contention that, but for counsel's erroneous advice, he would have accepted the State's offer, and found defense counsel ineffective. *Id.* at 536.

¶ 28 The State contends that defendant forfeited any issue as to her *Curry* admonishments because she failed to contemporaneously object at the trial. Generally, a defendant forfeits any issue he fails to object to at trial. *In re M.W.*, 232 Ill. 2d 408 (2009) (citing *People v. Piatkowski*, 225 Ill. 2d 551 (2007)). " 'This principle encourages a defendant to raise issues before the trial court, thereby allowing the court to correct its errors *** and consequently precluding a defendant from obtaining a reversal through inaction.' " *Id*. (quoting *Piatkowski*, 225 Ill. 2d at 564). Here,

defendant did not object at her trial and, thus, any issue related to *Curry*'s admonishment is forfeited. Nevertheless, this court has the authority to overlook a party's forfeiture of an issue and instead address its merits. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05 (2002). A reviewing court may consider a forfeited argument, particularly where, as here, the issue is a legal one and is fully briefed by the parties on appeal. See *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 11 (1996). The forfeiture rule is a limitation on the parties and not the jurisdiction of the courts. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 300 (1995). Moreover, a reviewing court may consider an issue not raised in the trial court if the issue is fully briefed and argued by the parties. *People ex rel. Daley v. Datacom Systems Corp.*, 146 Ill. 2d 1, 27, (1991). Given the State has sufficiently briefed and argued this issue to facilitate review, we have chosen to address this argument on the merits.

¶ 29 Although it was the State that asked the court to admonish defendant pursuant to *Curry*, it is clear the State merely wanted a record that (1) it had made a plea offer to defendant, (2) the offer had, in fact, been communicated to defendant, (3) defendant understood the offer, (4) defendant had rejected the offer, and (5) the plea offer was no longer available for defendant to accept. Furthermore, it should be noted that defendant is not contending that her attorney's failure to request the *Curry*'s admonishment amounted to ineffective assistance of counsel. Nor does defendant argue that, but for the trial court's failure to advise her with specificity of the minimum and maximum of the plea offered by the State, she would have accepted the plea offer and avoided trial. Instead, defendant's sole argument is that the trial court's failure to state the offer in detail pursuant to *Curry* requires reversal of defendant's conviction and remand for a new trial.

¶ 30 In this case, although the trial court and the State characterized the admonishment as a "*Curry* admonishment," *Curry* is clearly distinguishable. Contrary to defendant's assertion that the

trial court was required to admonish defendant with more specificity regarding the minimum and maximum sentence prescribed by law, the record indicates that the trial court did, in fact, properly query defendant regarding her knowledge of the plea offer. Unlike in Curry, defendant has not raised the issue of ineffective assistance of counsel, and she makes no claim that, but for the court's inadequate Curry admonishment, she would have accepted the State's plea offer. Moreover, the record indicates that the trial court admonished defendant after she had rejected the State's offer. Thus, the trial court was under no obligation to admonish her. Even assuming, *arguendo*, that the trial court had an obligation to inform defendant with more specificity of the nature of the charges, the fact that the court may have failed to admonish defendant as to her minimum and maximum sentence should not, in and of itself, provide grounds for reversal of the trial court's decision, unless real justice has been denied or defendant has been prejudiced by the inadequate admonishment. *People v. Davis*, 145 Ill. 2d 240, 250 (1991). In *People v. Williams*, 2012 IL App (2d) 110559, this court held that the defendant was not entitled to withdraw his plea despite being inaccurately admonished where he did not allege that he would not have pleaded guilty absent the faulty admonishments. *Id.* ¶ 18 (citing *Davis*, 145 Ill. 2d at 250). Thus, because the defendant in *Williams* did not allege that he would have done anything differently had he been properly admonished, he could not establish prejudice. The record here shows defendant had already rejected the plea offer before the court provided its *Curry* admonishments. Additionally, the State had made it clear that the offer was no longer available for defendant to accept by stating "and that there's no way she could get the offer." In light of the fact that no plea offer remained for defendant to accept, defendant cannot establish any prejudice, and the court had no duty to admonish defendant pursuant to *Curry*.

¶ 31 D. Ineffective Assistance of Counsel

¶ 32 Defendant argues that her counsel was ineffective for failing to recover defendant's home surveillance video and for failing to request a jury instruction on self-defense. We disagree.

¶ 33 To succeed on a claim of ineffective assistance of counsel, a defendant must establish both (1) that counsel's performance fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Dupree*, 2018 IL 122307 7, ¶ 44, (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)). Satisfying the first prong requires a defendant to overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy. *Id.* Matters of trial strategy are generally immune from claims of ineffective assistance of counsel. *Id.* A defense attorney's decision about whether to raise the issue of self-defense and to seek to have the jury instructed on it can be a matter of trial strategy. See *People v. Sanchez*, 2014 IL App (1st) 120514, ¶ 31.

¶ 34 Regarding defendant's first claim of ineffectiveness for trial counsel's failure to recover defendant's home surveillance video from the State, she argues that as an experienced attorney, her counsel should have recognized that the surveillance video would be extremely harmful to defendant in that it depicted the entire incident, showing defendant struggling with the officer at the front door. Defendant contends that her trial counsel should have attempted to "claw back" the video and also object to its introduction into evidence, and that such failure fell below the standard of reasonableness.

¶ 35 Defendant asserts that her trial counsel was ineffective for failing to "claw back" the home surveillance video and for not contemporaneously objecting to its introduction during trial. Here the evidence make clear it reasonable to conclude simply that the video was a part of defense counsel's trial strategy to show defendant's actions were "reflexive," and further, to impeach the

officer's testimony as to the amount and type of force used to subdue the defendant. Beyond her allegation, defendant does not offer any further argument other than conclusory statements in support of her contention, nor does she cite any authority for that contention.

¶ 36 Once again, as discussed supra ¶ 17, a point raised, but not argued or supported by citation to relevant authority, is forfeited because it fails to satisfy Illinois Supreme Court Rule 341(e)(7) (eff. Oct. 1, 2020); *People v. Wendt*, 163 Ill.2d 346, 351, (1994). Consequently, defendant has forfeited this argument.

¶ 37 Defendant next argues that her trial attorney was deficient because he failed to request a jury instruction on self-defense. Defendant argues that once her trial attorney acquiesced to the introduction of the video for purposes of showing the excessive force used by the police officers, his failure to request an instruction on self-defense evinces deficient performance. Defendant claims she was prejudiced by her lawyer's omission because a self-defense instruction should have been given, and the jury would have been more likely to find in defendant's favor.

¶ 38 In general, a defendant is entitled to a jury instruction on self-defense whenever such a theory is supported by some evidence, however slight. *People v. Everette*, 141 Ill. 2d 147, 157 (1990) (defendant is entitled to instructions on those defenses which the evidence supports). A defendant claiming self-defense must show "(1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *People v. Lee*, 213 Ill. 2d 218, 225 (2004); see also 720 ILCS 5/7-1(a) (West 2018) ("A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself

or another against such imminent use of unlawful force."). If any of these elements cannot be sustained by the evidence, no jury instruction on self-defense is warranted. *Lee*, 213 Ill. 2d at 311 ("If the State negates any one of these elements, the defendant's claim of self-defense must fail.").

¶ 39 As an initial matter, we note that defendant's brief provides only scant support for an analysis of the claims of ineffective assistance, and therefore it fails to satisfy the requirements of Supreme Court Rule 341 (eff. Oct. 1, 2020). The State is correct that defendant's brief lacks adequate citation to relevant authority. Despite raising two separate allegations of ineffectiveness, defendant cites only one case, *People v. Sims*, 374 Ill. App. 3d 427 (2007). Defendant alleges *Sims* support her argument that counsel should have requested a self-defense instruction. This is not the case. *Sims* did not involve a claim of ineffective assistance of counsel. Rather, *Sims* involved a case where the trial court erred in refusing to provide a self-defense instruction. *Id.* at 430-31, 435. It is manifestly obvious *Sims* has absolutely nothing to do with an ineffective assistance of counsel claim, as it was the trial court who refused to give the instruction. Resultantly, it does not lend support here for her argument that her trial counsel was ineffective by failing to tender a self-defense instruction to the jury. Defendant's brief does cite four cases which are referenced simply for general propositions of law on ineffective assistance of counsel: (1) *Strickland v. Washington*, 446 U.S. 668 (1984) (cited for the standard for claims of ineffective assistance of counsel); (2) *People v. Patterson*, 217 Ill. 2d 407 (2005) (cited for the proposition that a claim of ineffectiveness may be resolved on a showing that there was reasonable probability the circuit court would not have granted a motion); (3) *People v. Griffin*, 178 Ill. 2d 65 (1997) (cited for the proposition that a claim of ineffectiveness may be resolved on the ground that defendant did not suffer prejudice); and (4) *People v. Albanese*, 104 Ill. 2d 504 (1984) (cited for the proposition that a claim of ineffectiveness may be resolved on *Strickland's* prejudice prong alone).

¶ 40 Here, the lack of a cohesive legal argument, a reasoned basis for defendant's contentions, or citation to the record or supporting authority, and apparent failure to comply with Rule 341, this court would be justified in striking her brief and dismissing the appeal. A reviewing court is entitled to the benefit of clearly defined issues with pertinent authority cited and a cohesive legal argument. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5.

¶ 41 Notwithstanding defendant's defective brief, this court has decided to address the issue of ineffectiveness for not seeking a self-defense instruction because we understand this claim, we are not hindered by a lack of a transcript, and we have the benefit of appellee's brief. Even if we assume that there was enough evidence to support a self-defense instruction, defense counsel may have concluded that a self-defense theory would have been incompatible with the theory presented since it would require defendant to admit to battering the officer. Self-defense is an affirmative defense (720 ILCS 5/7–14 (West 2018)), and "[s]ince defendants denied committing the acts, and the State's evidence did not show that defendants' use of force was justified, the trial court properly refused the instruction." *People v. Diaz*, 101 Ill. App. 3d 903, 915 (1981).

¶ 42 Thus, a request for an instruction for self-defense would have been inconsistent with the theory put forth at trial that defendant's contact with the officer was unintentional and reflexive. See *People v. Gill*, 355 Ill. App. 3d 805, 811 (2005) ("To seek an instruction saying that [defendant's] resistance was in self-defense would be contrary to her counsel's trial strategy and is not error."). Defense counsel made the strategic decision to argue the evidence, both the testimony and the video, which he argued showed the defendant being aggressively roughed up and manhandled by the officers, only to have her hand pull out of the grip of one of the officers striking her in the chin and chest. Defendant thus denied ever battering the officer. The fact that defendant's trial attorney was ultimately unsuccessful in his strategy "does not mean he performed

unreasonably and rendered ineffective assistance." *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007). Rather, defense counsel's failure to seek such an instruction was the product of reasonable trial strategy, consistent with counsel's defense that defendant did not resist the officer, did not commit a battery against the officer, and her contact with the officer was unintentional.

¶ 43 E. Sufficiency of the Evidence

¶ 44 We also note that defendant does not contest her conviction for obstructing a peace officer. Moreover, the State contends that this claim is now subject to the doctrines of forfeiture since defendant does not cite any authority or present any argument that the evidence presented at trial was insufficient to sustain her conviction for obstructing a peace officer. Accordingly, we find defendant has forfeited any contentions related thereto (see Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing)), and we summarily affirm her conviction for said offense, and we will limit our discussion of the evidence presented at trial to the aggravated battery count.

¶ 45 Lastly, defendant challenges the sufficiency of the evidence supporting her conviction of aggravated battery against Officer Smith. Specifically, defendant claims that the State failed to prove that she knowingly made contact with Officer Smith in an insulting or provoking manner to support a conviction for aggravated battery. Defendant contends that her contact with Officer Smith was essentially a defensive act after she had been grabbed and had both of her arms pulled, which caused her to reflexively pull her arm back, resulting in the contact.

¶ 46 When assessing the sufficiency of the evidence claims, we inquire " '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.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the prosecution. *Id*. at 42. We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill.2d 311, 334 (2010).

¶ 47 In this case, defendant was found guilty of one count of aggravated battery of a peace officer. To prove aggravated battery, the State must first establish that the defendant committed a battery. A person commits battery "if he or she knowingly without legal justification by any means *** (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2018). The State may enhance battery to aggravated battery if it establishes that the defendant knew that the victim was a "peace officer." 720 ILCS 5/12-3.05(d)(4) (West 2018). A person commits aggravated battery when, "in committing a battery, *** he or she knows the individual battered to be" a "peace officer" who is "performing his or her official duties" (720 ILCS 5/12-3.05(d)(4)(i), (iii) (West 2018)).

¶ 48 Here, defendant conceded that she knew Officer Smith was a police officer who had been summoned to her home to investigate a domestic violence incidence. She also admitted that she was upset and felt violated when Officer Klingberg grabbed her, moving her from the doorway while wearing only a bathrobe. In addition, defendant admitted that she pushed Officer Smith in her chest to get her off and away from her because she would "not let go of me." On cross-examination, defendant testified as follows:

> "[STATE'S ATTORNEY] Q: You took your left hand, extended it out towards her, and struck her in the lower face and neck area, didn't you?
>
> [DEFENDANT] A: No, my arm came out to get her off of me. I hit her chest, I

pushed her chest.

Q: You pulled your arm backwards, that's how your arm came out, right? Yes or no?

A: Yeah.

Q: She was in front of you?

A: Yes.

Q: Not behind you?

A: She was in front of me.

Q: She didn't pull your arm back towards her, did she?

A: No.

Q: You took your arm, pushed it forward and struck her, right?

A: My arm came out in defense, yes."

The evidence is uncontradicted that Officer Smith tried to get defendant to stop kicking the door by first verbally commanding her to stop and then taking hold of defendant's hands in an attempt to move defendant away from the door. While turning defendant around, Officer Smith lost her hold of defendant's left hand, which allowed defendant to use her left hand to strike her in the face near her chin and neck. Although defendant denied striking Officer Smith in the face, defendant testified that she had extended her left arm and pushed Officer Smith in the chest. Also, while transporting defendant to the police station, Officer Smith testified that she overheard defendant's husband ask defendant why she was being arrested, and defendant responded, "I fucking hit her." This testimony supported that defendant's contact with Officer Smith was made knowingly and not a reflexive act. Moreover, we are not persuaded by defendant's argument because it ignores both the testimonial and video evidence introduced during trial. In her challenge to this conviction,

defendant asks us to reweigh the evidence and reevaluate witness credibility, but we will not do so; the evidence was not "improbable, unconvincing or contrary to human experience." *People v. Shaw*, 2015 IL App (1st) 123157, ¶ 20. Accordingly, we conclude that a reasonable trier of fact could have found defendant knowingly made contact of a provoking nature with Officer Smith.

¶ 49 Defendant additionally claims the evidence failed to establish beyond a reasonable doubt that her contact with Officer Smith was insulting or provoking. To support her claim, defendant simply re-argues that it was Officer Smith who initiated the contact by grabbing and pulling both of defendant's arms. In determining whether a contact is insulting or provoking, generally the context of the contact may enable a trier of fact to decide whether the contact was insulting or provoking. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49. Insulting or provoking contact does not require that the victim suffer harm or sustain injuries. *People v. DeRosario*, 397 Ill. App. 3d 332, 334 (2009).

¶ 50 Here, the record reflects that from the moment the police officers arrived, defendant refused to cooperate. She attempted to block Klingberg from entering the residence; she was flailing her arms around, struggling with the officers, when she struck Smith in the chin area. Together with defendant's own characterization that she extended her arm and pushed Smith, the evidence Smith experienced tingling in her right cheek under the eye and observed swelling and redness after being struck, as well as having received a cut on her left index finger, clearly evinces contact that was not incidental, and was insulting and provoking. After reviewing the record in the light most favorable to the prosecution, we conclude that a reasonable trier of fact could have found defendant's contact with Smith was insulting or provoking. The video, which is part of the record on appeal, contains a segment depicting defendant trying to prevent the officers from entering the residence, kicking toward the door, and flailing her arms. As Smith attempted to move defendant

from the door, defendant then pulled her arm away from Smith, striking Smith in the chin/face area, and pushed her in the chest. The video evidence of the Smith's subjective reaction to being pushed further supports the trier of fact's finding that the contact itself was insulting or provoking. In addition, the victim's reaction at the time of the contact would enable the trier of fact to infer the victim was insulted or provoked. *People v. Fultz*, 2012 IL App (2d) 101101, ¶ 49, supports the contention the jury could infer that Smith was insulted and provoked by defendant's contact. After reviewing the record in the light most favorable to the prosecution, we conclude that the evidence was sufficient to prove beyond a reasonable doubt defendant knowingly made contact of an insulting or provoking nature with Smith.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we affirm the judgment of the Kendall County circuit court.

¶ 53 Affirmed.