

No. 1-13-1640

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 8595
)	
WILLIAM SMITH,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's conviction for aggravated battery with a firearm affirmed over his claim that the evidence was insufficient to disprove his claim of self-defense.

¶ 2 Following a bench trial, defendant William Smith was found guilty of aggravated battery with a firearm, then sentenced to nine years' imprisonment. On appeal, defendant contends that his conviction should be reversed because the State failed to disprove his claim of self-defense beyond a reasonable doubt.

¶ 3 The record shows that defendant was charged with attempted murder and aggravated battery with a firearm in connection with an incident that took place on the south side of Chicago in the early morning hours of July 25, 2010. At trial, Keith Myles testified that he owned a two-

1-13-1640

flat apartment building in which Rasheen Black and his wife, Lakesha Jones, were tenants. Myles testified that a day or two before the incident, there had been an attempted burglary at his building. His tenants, Rasheen Black and Lakesha Jones, resided on the second floor of the building. He believed that it had been their apartment that someone had tried to burglarize. Around midnight on July 24, 2010, Myles discovered that his building had again been burglarized and then he heard shots coming from the gangway. Myles went outside where he met defendant who he knew. Defendant told him that he had caught someone trying to break into Myles' apartment, so defendant shot at the burglars, who escaped.

¶ 4 Defendant asked Myles not to call police, but Myles stated that he had already called them, and that he had to make a police report. Myles believed Black to be defendant's nephew, so he told defendant he needed to speak with Black to tell him about the burglaries. Sometime later, Myles and Black were having an argument on Myles' front porch when defendant intervened. Defendant pulled out a shiny revolver, held it close to the back of his leg pointing it at the ground, and told Myles not to speak to Black that way. Myles began arguing with defendant, but Felicia Jordan and Black stepped in between them. Jordan took Myles into his house, and Black took defendant across the street.

¶ 5 About 12 minutes later, Myles went back outside because he could not calm down, and saw defendant and Black across the street. He started walking away from them down the gangway toward his backyard. Defendant shouted at Myles in a way that suggested that defendant wanted to apologize, but Myles shouted profanity at defendant and kept walking. As Myles walked through the gangway, he heard a bang and "felt [his] pants jump," then realized that he had been shot in the leg. Several more shots were fired and he was hit twice in the left side of his back. Myles was taken to the hospital where he was in a coma for two weeks. Myles

identified a picture of his residence and circled where he was standing when he was shot. He also verified that he was convicted of aggravated unlawful use of a weapon in 2003, and sentenced to probation.

¶ 6 On cross-examination, Myles initially stated that one of the bullets entered his chest, just below his left nipple, but he retracted that statement and indicated that he was shot once in the leg and twice in the back. He confirmed that he owned a boat, and that the boat was near his residence that night, but denied throwing a handgun into the boat. He stated that he did not see who shot at him, and that he did not come outside with his own gun, nor was he drinking that evening. He also stated that he did not call the police after defendant pulled out his gun on the porch, and that he did not own a gun.

¶ 7 Black testified on behalf of defendant that he was returning home from an amusement park with his family around midnight on July 25, 2010, when he saw a police vehicle in front of his residence. Later that night, he observed defendant, Myles, and Jordan, who were all intoxicated, talking about the burglaries while on the porch drinking alcohol. He also testified that an argument broke out between defendant and Myles and both of them had a gun. He stated that Myles had a black gun which he always carried with him, and defendant had a silver gun. Jordan and Black were able to separate defendant and Myles, and Black took defendant across the street, while Myles went back into his home with Jordan.

¶ 8 Black further testified that Myles emerged from his home few minutes later holding his gun, and yelled at defendant across the street. He then came down the stairs of his porch, crushed a beer can in his hand, and pointed his gun at defendant. Black approached Myles, and Myles pushed him out of the way, then fired the first shot at defendant. Black laid on the ground as the two men fired at each other, and when he stood up, everyone was gone. He testified that Myles

fled through the gangway along the side of his house where he dropped his gun in his boat. He then came back through the gangway saying defendant shot him, so Jordan and Black led him back to his porch and gave him a pillow to lie on.

¶ 9 On cross-examination, Black stated that he did not know how much the people on the porch were drinking before he returned home that night. He also stated that he did not see defendant fire his gun, but that he could hear both men firing their guns, and that this was the first time he had seen defendant with a gun. When the police arrived, Black did not tell them anything about the events of that night because they were all friends and they agreed not to tell anybody.

¶ 10 Defendant acknowledged his prior convictions for possession of a controlled substance in 2006 and 2008, then testified to the events of July 25, 2010. He testified that he was on the porch of Myles' residence with Myles, Jordan, and Black drinking alcohol and talking about the burglaries that occurred the previous night. Myles and defendant started arguing about the money defendant owed him, and were eventually separated by Black and Jordan. Defendant testified that he had a gun, and he also saw Myles retrieve a gun from inside his home when he first came out onto the porch that night. After they were separated, defendant stood in the street talking to Black, while Myles retreated inside his home. A little while later, Myles emerged from his home with his gun and shouted at defendant. Defendant yelled back as Myles turned and started walking down the gangway adjacent to the house. Myles then turned and fired his gun at defendant, and defendant shot back trying to scare Myles, not hit him.

¶ 11 On cross-examination, defendant stated that he and Myles traded shots, that he was fleeing while shooting, and that after firing, he ran through an alleyway into a vacant lot. He also stated that on May 20, 2011, he met with an assistant State's Attorney (ASA) and waived his

Miranda rights, but that he did not remember telling the ASA that Jordan was not drinking that night, and that he and Myles were arguing about defendant selling drugs on the porch.

¶ 12 The parties then stipulated that, if called, Dr. Dennis Andrews would testify that Myles had multiple gunshot wounds to his upper left torso and right thigh.

¶ 13 In rebuttal, the State introduced certified copies of defendant's two convictions for possession of a controlled substance, and certified copies of Black's convictions for possession of a controlled substance and possession of a fraudulent I.D. card. The court received them for the limited purpose of impeachment.

¶ 14 Detective Sandra Bryant then testified that she was present for an interview with defendant, during which he stated that Jordan was not drinking on the porch with the rest of them, and that he and Myles were arguing about defendant selling drugs in the neighborhood. Detective Bryant testified that defendant stated that after being separated, Myles went into his gangway, then spun to face defendant and raised his gun. Defendant fired two shots at Myles. According to Detective Bryant, defendant stated that he had not seen Myles with a gun prior to that point. Defendant never indicated that Myles fired his gun first.

¶ 15 Following closing arguments, the court found defendant guilty of aggravated battery with a firearm, but not attempted murder. In reaching this conclusion, the court found that following a heated confrontation, defendant lost his temper and shot Myles, and was not acting in self-defense. The court concluded that this was an unjustified shooting based on the conduct of the participants immediately afterward, but found defendant not guilty of attempted murder because the State did not prove his intent to kill beyond a reasonable doubt. After considering the relevant factors in mitigation and aggravation, the court stated that defendant was acting in a

misguided attempt to stand up for his nephew and sentenced him to a term of nine years' imprisonment.

¶ 16 In this appeal from that judgment, defendant contends that the State's case in chief, which rested on Myles' improbable and incredible testimony, was insufficient to disprove his claim of self-defense beyond a reasonable doubt. Defendant further maintains that the State's failure to call Jordan, an important eyewitness to the event, should create a negative inference regarding her possible testimony.

¶ 17 To sustain defendant's conviction for aggravated battery with a firearm in this case, the State was required to prove that he committed battery and knowingly discharged a firearm and caused injury to another person. 720 ILCS 5/12-3.05(e)(1) (West 2014). Defendant does not dispute that his conduct satisfies the elements of this offense, but claims that his actions constitute the affirmative defense of self-defense.

¶ 18 "Self-defense is a right an individual is entitled to exercise in those situations where he reasonably believes that force is necessary to prevent death or great bodily harm to himself." *People v. Everette*, 141 Ill. 2d 147, 162 (1990). Defendant may assert the affirmative defense of self-defense when unlawful force was threatened against him, defendant was not the aggressor, defendant believed that the danger of harm was imminent, the use of force was necessary to avert danger, and the amount of force was appropriate. *People v. Shields*, 298 Ill. App. 3d 943, 947 (1998). To raise the issue, defendant must present some evidence regarding each element (*People v. Greene*, 160 Ill. App. 3d 1089, 1096-97 (1987)); however, once raised, the State need only negate one element of the claim beyond a reasonable doubt to defeat this affirmative defense (*Shields*, 298 Ill. App. 3d at 947). Whether the State has met its burden is determined by the trier of fact (*Greene*, 160 Ill. App. 3d at 1096), and that decision will not be disturbed on

review unless it is so improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt (*Shields*, 298 Ill. App. 3d at 948). We do not find this to be such a case.

¶ 19 Here, defendant first contends that the defense witnesses' testimony shows that Myles raised his gun and shot first, which caused defendant to act in self-defense and fire back at Myles. He maintains that although Myles testified that defendant shot first, his testimony is so improbable and contrary to human experience, that it cannot serve to negate the elements of his self-defense claim.

¶ 20 Viewed in a light most favorable to the prosecution, the evidence in this case shows that Myles and defendant got into an argument where defendant brandished a gun before being separated by Jordan and Black. After being unable to calm down in his home, Myles came back outside where he and defendant engaged in a verbal exchange from across the street. Myles then turned away from defendant to walk down the gangway beside his home and was shot three times. This evidence, and the reasonable inferences therefrom, were sufficient to support the trial court's decision to reject defendant's claim of self-defense. *Greene*, 160 Ill. App. 3d at 1097.

¶ 21 Defendant contends, however, that the State's entire case was based on the improbable and unbelievable testimony of a single witness, which could not serve to disprove his claim of self-defense beyond a reasonable doubt. Defendant maintains that Myles was the initial aggressor, and that his testimony that he did not have a gun when he confronted defendant again after the initial argument on his porch where he saw defendant with a gun is unbelievable. He further contends that Myles' testimony is so improbable and inconsistent that its veracity must be called into question.

¶ 22 At base, defendant contests the credibility determination made by the trial court. This matter, however, is within the province of the trial court (*People v. Sutherland*, 223 Ill. 2d 187,

242 (2006)), and we will not substitute our judgment for that of the trial court unless the proof is so unsatisfactory that a reasonable doubt of guilt appears (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)).

¶ 23 It is uncontroverted that Myles was shot once in the back of the leg, and twice in his upper, left torso. Although defendant claims in his reply brief that the State ignored a doctor's report establishing that defendant was shot twice in the front of his body. We have examined the report in the record before us and it does not appear to state that Myles was actually shot twice in the front of his body. Myles' testimony provides a reasonable explanation for the circumstances leading up to the shooting, and the stipulation of the medical witness corroborates his testimony regarding his injuries. Although defendant contends that Myles was the initial aggressor and that it is improbable that Myles would leave his house unarmed to confront defendant after the initial argument, Myles testified that he was not going outside to confront defendant, and that he did not address defendant until defendant yelled at him from across the street. Furthermore, Myles testified that he did not own a gun, and did not have one with him during his argument with defendant on the porch, or when he went back outside where he was shot by defendant.

Therefore, Myles' testimony that he was not the initial aggressor and did not even have a gun if believed by the trier of fact, negates defendant's claim of self-defense because there was no unlawful force threatened against him, and he was the initial aggressor. *Shields*, 298 Ill. App. 3d at 947. It is clear that the trier of fact believed Myles and not defendant and Black.

¶ 24 Although, defendant essentially contends that the trial court should have accepted the version of the incident as presented by Black and himself instead of that presented by Myles, this is not our prerogative. *Sutherland*, 223 Ill. 2d at 242. We will not disturb the trial court's credibility determination where the testimony is not so improbable or unbelievable that a rational

trier of fact could find that it failed to disprove defendant's claim of self-defense beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *Greene*, 160 Ill. App. 3d at 1096. In this case, the court accepted Myles' version of events as credible and rejected the version presented by Black and defendant. We have no basis for disturbing that determination.

¶ 25 Defendant next contends that we should draw a negative inference from the State's failure to call Jordan as a witness. He maintains that the State's failure to call Jordan implies that her testimony would have been unfavorable to the State's case.

¶ 26 We initially note that the State is not obligated to produce every witness to a crime, and the failure to produce a witness does not give rise to a presumption that the witness' testimony would be unfavorable to the prosecution. *People v. Jones*, 30 Ill. 2d 186, 190 (1964). A negative inference will arise from the State's failure to call a witness only if that witness appears to have special information relevant to the case, so that her testimony is not merely cumulative. *People v. Jimerson*, 69 Ill. App. 3d 403, 412 (1979). The evidence here shows that Jordan did not witness the shooting, and her testimony regarding the events for which she was present would have only amounted to cumulative evidence. *Id.* at 412. The State presented sufficient evidence through Myles to establish defendant's commission of aggravated battery with a firearm and disprove his claim of self-defense. *People v. Doll*, 371 Ill. App. 3d 1131, 1138 (2007). Thus, we find no negative inference arising from the State's failure to call Jordan as a witness under the circumstances reflected in the record. *People v. Scott*, 38 Ill. 2d 302, 306 (1967).

¶ 27 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.

1-13-1640