2017 IL App (1st) 142580-U

SECOND DIVISION
February 14, 2017

No. 1-14-2580

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 13 CR 16199
	)	
OTIS COLLINS,	)	Honorable
	)	James M. Obbish
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm defendant's conviction where the evidence was sufficient to prove him guilty beyond a reasonable doubt of aggravated battery and where the trial court elected not to believe defendant’s contention that he acted in self-defense.

¶ 2 Following a bench trial, Otis Collins, the defendant, was convicted of aggravated battery causing great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2012)) and sentenced to three years' imprisonment. On appeal, he argues his conviction should be reversed because the State failed to prove he did not act in self-defense beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged by indictment with two counts of armed robbery, six counts of aggravated battery, and two counts of aggravated unlawful restraint following an altercation on August 10, 2013 in Chicago. At trial, the following evidence was presented.

¶ 4 Kevin Altheimer testified that, on August 9, 2013, he gathered with his family for a dinner following the funeral for his brother. Altheimer had three or four cans of beer at the dinner before returning to his residence at 1923 South Troy around 8:30 p.m., with his mother and another brother. He then walked with his brother to buy two six packs of beer at a liquor store at 16th and Kedzie. On his way, Altheimer saw a man on 16th and Kedzie whom he knew as "Low C," and the man was identified in court as defendant. Altheimer had seen defendant "well over a hundred times" over a four-year period and had noticed him "off and on" with a cane, but noticed he was also able to do things without the use of his cane. Altheimer purchased the beer and returned home. He drank two or three beers and shared the rest with his brother and the tenants in the building.

¶ 5 Shortly before midnight, Altheimer returned to the store to purchase a 40-ounce beer. After he bought it, he went to a vacant lot near the liquor store where he and others gathered to drink. Altheimer stayed there for about 20 minutes before walking home. On the way, someone came up from behind him and went through his back left pocket. Altheimer turned to look at the

offender but then turned back when he heard someone coming towards him. He testified that "he didn't get a good look at" the person who approached from behind, but that person was black.

¶ 6 In front of him was defendant, who "swung at" Altheimer. Altheimer ducked and put up his left hand to defend himself. A nearby girl stated that he was bleeding, and Altheimer put his hand on his throat and felt blood running down. He said, “Low C, you cut me.” Defendant then swung his cane and hit Altheimer on the "middle part" of his arm.

¶ 7 Altheimer returned home and an ambulance took him to the hospital, where he received 17 stitches in his throat. As a result of the stabbing, he has a five-inch scar and has lost feeling on the left side of his neck. Altheimer denied having any conversation or argument with defendant prior to the stabbing and further denied having any weapons on him. He testified that he discovered at the hospital that he was missing $9, the change from the beer purchase.

¶ 8 Altheimer testified that he remembered giving a statement to Assistant State's Attorney Glen Runk on August 10, 2013, at 11:35 a.m., wherein he never mentioned another black man behind him prior to the stabbing. He stated that he did not mention the other man because the Assistant State's Attorney thought he was talking about defendant and "didn't question [Altheimer] in regards to if it was someone else."

¶ 9 On cross-examination, Altheimer stated that he talked with an officer while at the hospital but did not mention another person approached him from behind. He further testified that defendant neither went into his pocket nor had his money. Altheimer testified that he did not have a conversation or argument with defendant but that defendant "came up and swung on me."

¶ 10 Brian Miskell of the Chicago Fire Department testified that, on August 10, 2013, he was assigned to an ambulance and dispatched to 1923 South Troy. There, he encountered Altheimer, who had a laceration to the left side of his neck. Altheimer said he was a robbery victim and that he believed a box cutter caused the laceration. Miskell noted that Altheimer did not have any problems speaking or walking and did not appear to be impaired by alcohol or drugs.

¶ 11 Chicago police officer Jason Barnes testified that, on August 10, 2013, he received information that an offender, who was involved in a crime, was nearby. Barnes proceeded to the vicinity of 1428 South Kedzie, where a man, identified in court as defendant, was taken into custody. Barnes searched defendant and recovered a bloody box cutter from his pants pocket. The box cutter was inventoried under inventory number 12974600.

¶ 12 The parties stipulated that an evidence technician would establish that a buccal swab was obtained from Altheimer and a forensic scientist would testify a blood sample was recovered from the box cutter. The parties further stipulated that another forensic scientist would testify that testing and analysis of the blood sample matched the DNA profile of Altheimer generated from the buccal swab.

¶ 13 The trial court granted defendant's motion for a directed finding with respect to the armed robbery counts.

¶ 14 The parties stipulated that Officer Guiterrez would testify that he responded to St. Anthony's Hospital where he met with Altheimer. Altheimer told him that, after leaving the liquor store, he walked southbound on Kedzie and was approached by a black man, who

immediately cut him in the neck with a box cutter. The man reached into Altheimer's front left pocket and removed $9.

¶ 15 The parties stipulated that Detective Perez-Kubelka would testify that, on August 10, 2013, around 11:35 a.m., he interviewed Altheimer. Altheimer stated that as he was walking, he felt someone, who he identified as "Low C," reaching into his left front pocket.

¶ 16 Defendant testified that on August 10, 2013, he was present at 16th and Kedzie with a group of 8 to 10 people. Altheimer and two others approached, and defendant asked Altheimer where his money was. Defendant and Altheimer then began to argue over a $5 loan. Defendant testified that Altheimer "got big-headed and started towards [defendant] and [defendant] went into his pocket." Inside his pocket, defendant had a box cutter, which he pulled out with his right hand. His left hand was holding a cane, which he had been using for over a year because of an injury. Defendant told Altheimer that Altheimer wasn't going to hurt him and to back away. He denied any intent to hurt Altheimer. Defendant was worried Altheimer would take his cane, causing him to fall and hurt himself.

¶ 17 Defendant began to walk away when Altheimer reached for him. Defendant then "swung out," and Altheimer grabbed his neck saying, " 'man you shouldn't of [*sic*] cut me.' " Defendant responded, " 'you shouldn't' have rushed for me, man.' " Defendant walked away and was later arrested across the street.

¶ 18 On cross-examination, defendant stated that he told Detective Pulcanio, who was investigating the incident, that between 9 and 11 people were present in the area and that he told Altheimer "don't walk up on me." He told Pulcanio that he was not going to let Altheimer hurt

him. Defendant stated that he saw Altheimer "reaching to grab me and my cane" but did not see him with any weapons. Defendant testified, "[w]hen [Altheimer] started walking up on me, that's when I went into my pocket and got my box cutter, because I thought [Altheimer] was going to grab me."

¶ 19 The trial court found defendant guilty of five counts of aggravated battery causing great bodily harm, merging the counts into one. It found defendant not guilty of both aggravated battery with a bludgeon and aggravated unlawful restraint.

¶ 20 The court denied defendant's written motion for a new trial and sentenced defendant to three years' imprisonment. Defendant filed a timely notice of appeal.

¶ 21 On appeal, defendant argues the State did not prove beyond a reasonable doubt that he did not act in self-defense when he struck Altheimer with the box cutter. Specifically, he contends that the State failed to prove he was the aggressor and that he was not in fear of imminent bodily harm.

¶ 22 When challenging the sufficiency of the evidence, the standard of review is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Williams,* 2016 IL App (1st) 133459, ¶ 37. In a bench trial, the trial judge, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or

inconclusive that it creates a reasonable doubt of the defendant's guilt." *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 23 At trial, defendant argued he was not guilty as he acted in self-defense. To establish self-defense, the defendant must show: (1) that unlawful force was threatened against him; (2) he was not the aggressor; (3) he believed the danger of harm was imminent; (4) the force used was necessary; (5) he actually and subjectively believed a danger existed that required the use of force applied; and (6) his beliefs were objectively reasonable. *People v. Lee,* 213 Ill. 2d. 218, 225 (2004). After a defendant presents some evidence of self-defense, the State has the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Rodriguez,* 336 Ill. App. 3d 1, 15 (2002). The State satisfies its burden if it negates *any one* of the elements beyond a reasonable doubt. *People v. Jeffries,* 164 Ill. 2d 104, 128 (1995) (emphasis in original).

¶ 24 Whether a defendant acted in self-defense is a question reserved for the trier of fact. See *People v. Felella,* 131 Ill. 2d 525, 533 (1989). Further, the question of whether the defendant was the initial aggressor is reserved for the trier of fact. *People v. De Oca,* 238 Ill. App. 3d 362, 367 (1992). The trier of fact "is not obligated to accept a defendant's claim of self-defense," but instead must consider the probability or improbability of the testimony, the surrounding circumstances, and other witness's testimony in weighing the evidence. *Rodriguez,* 336 Ill. App. 3d at 15. Although it is not necessary for the aggressor to be armed to justify self-defense, "it must appear the aggressor is capable of inflicting serious bodily harm without the use of a deadly weapon, and is intending to do so." *People v. Hawkins,* 296 Ill. App. 3d 830, 837 (1998).

¶ 25 Defendant first argues the State failed to prove he was the aggressor in the altercation with Altheimer. Specifically, he argues that no witness identified him as the aggressor and his own testimony shows Altheimer was the aggressor because Altheimer approached "big-headed" and tried to grab defendant or his cane. We disagree. Altheimer testified that he did not have any conversation or argument with defendant prior to being slashed with the box cutter. He claimed he turned forward, saw defendant, and defendant then "swung on him," cutting him. Thus, based on Altheimer's testimony, the trial court could have found that the State proved beyond a reasonable doubt that defendant was the aggressor when he cut Altheimer unprovoked.

¶ 26 Defendant argues that, because the trial court granted defendant's motion for a directed finding with respect to the armed robbery counts, Altheimer's testimony was not credible. Specifically, he contends that, given the unreliability of Altheimer's testimony regarding the armed robbery, it is unreasonable to conclude defendant attacked first. However, the trial court never explicitly found Altheimer not credible. Rather, defendant's citation to the record only establishes that the trial court granted his motion for a directed finding with respect to the armed robbery counts. It did not express any credibility determination or explain why the State failed to prove beyond a reasonable doubt the armed robbery counts. Additionally, the trial court heard the evidence presented at trial, and it could accept or reject as much testimony as it desired. *People v. Nelson,* 246 Ill. App. 3d 824, 832 (1993). We decline defendant's invitation to reweigh the evidence. See *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25 (2009).

¶ 27 Defendant points to his own testimony that Altheimer approached him "big-headed" and reached for him or his cane to support his argument he was not the aggressor. However, the trial

court explicitly rejected defendant's testimony in this regard. It noted, "I don't believe [defendant's] testimony with respect that this was almost like some sort of an accident as he was just trying to prevent [Altheimer] from reaching, taking his cane away from him so that it was such that he would fall down." It further found, with respect to the slashing, that it "[didn’t] believe [defendant] was acting in self-defense at this point in time." Both Altheimer and defendant testified to different accounts of what occurred, but the trial court rejected defendant's version of the events. Indeed, the trial court "is not required to believe the defendant's testimony." *Nelson,* 246 Ill. App. 3d at 832.

¶ 28 Defendant further argues the State failed to prove beyond a reasonable doubt that defendant did not reasonably fear great bodily harm or that his single strike with the box cutter was unreasonable. He notes that, although Altheimer was unarmed, a "physical disparity" between two individuals can still place one person in fear of great bodily harm. Defendant argues that he "had difficulty standing up" and required assistance of a cane, while Altheimer was younger and "ambulatory."

¶ 29 However, Altheimer testified that he had seen defendant do things without the use of his cane. He further testified that he did not have any conversation with defendant before defendant struck him. Given this testimony, the trial court could have concluded defendant did not reasonably fear great bodily harm from Altheimer. In fact, the trial court noted that defendant "[chose] to use a box cutter when he [was] not in any way justified in using a deadly weapon." Further, the trial court rejected the idea defendant was in fear of great bodily harm, noting instead that "[defendant] was mad and so he pulled his box cutter and he cut [Altheimer]." For

these same reasons, we reject defendant's argument that the State failed to prove that his one swing of a box cutter was unreasonable where the defendant caused an injury to the victim's neck that required 17 stitches to repair, left a five-inch scar and the victim lost feeling on the left side of his neck. Viewing the evidence in the light most favorable to the State, we cannot say the trial court erred in rejecting defendant's claim of self-defense.

¶ 30 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.