

2017 IL App (1st) 150400-U

No. 1-15-0400

Order filed December 8, 2017

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 2937
)	
LONIKA WELCH,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Conviction affirmed where the evidence was sufficient to establish that defendant was guilty of second degree murder and did not act in self-defense.

¶ 2 Following a bench trial, defendant Lonika Welch was convicted of second degree murder (720 ILCS 5/9-2 (West 2012)) and sentenced to five years' imprisonment. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt she did not act in self-defense

where the evidence established she was justified in her use of deadly force and acted reasonably, in fear for her own life. We affirm.

¶ 3 Defendant was charged with two counts of first degree murder (720 ILCS 5/9-1 (West 2012)) in relation to an incident that occurred on January 5, 2013, which resulted in the death of defendant's mother, Angela Welch. The State charged that defendant (1) intentionally or knowingly stabbed and killed Welch and (2) stabbed Welch knowing it created a strong probability of death or great bodily harm. Prior to trial, defendant informed the State that she would be raising the affirmative defense of self-defense.

¶ 4 At trial, Brian Richardson testified that he and defendant were in a romantic relationship and had a young child together. On January 5, 2013, Richardson, defendant, and their daughter had been living with Welch at her home for approximately three months. Around 2:00 or 3:00 p.m., Richardson and defendant took a quick walk to the store. When they returned, Welch was preparing to leave. Richardson described Welch's behavior as "kind of fidgety like in a hurry so she could get out of the house." Welch returned about 45 minutes later and seemed to be "a little bit more and more fidgety and more bouncy." Richardson assumed Welch was under the influence of both drugs and alcohol, as he knew her to use both.

¶ 5 Approximately, one hour later, defendant and Welch began arguing over \$40 that Welch owed defendant. Richardson was upstairs, but could hear the argument escalating, so he went downstairs to break it up. When he entered the room, Welch "threw a blow" and punched defendant in the right side of her face, knocking her onto the couch. Richardson turned to help defendant up, and Welch came charging in the direction of Richardson and defendant with a bat. Richardson assumed she was trying to hit defendant, although when she swung the bat,

Richardson's shoulder blocked the blow. He did not see the bat make contact with defendant's person, but defendant "did fall back." Richardson "snatched" the bat from Welch and placed it in another room so she could not get to it.

¶ 6 Defendant went upstairs and Richardson followed behind asking defendant to "just leave." Defendant told Richardson to "go ahead" because she wanted to "deal with this today." Welch was downstairs "ranting and raving," "steady hollering," and "pacing back and forth." Richardson grabbed his daughter and left the house to get their automobile from the garage. As he was leaving, Welch told him to "get this bitch out of my house before I kill her." Richardson pulled around to the front of the house, parked, and went inside to convince defendant to leave with him. When he got into the house, he asked Welch if she could keep an eye on his daughter, who was still inside the vehicle. Welch agreed.

¶ 7 Richardson went upstairs to convince defendant to leave, and she responded, "no, I want to deal with it today." Richardson was concerned about his daughter in the vehicle, so went back downstairs. As he walked past Welch, he asked her if she could give him \$10 for gas so he could get his daughter out of the situation. Welch had "calmed down" and was no longer yelling. She said "I will do you one better," gave Richardson \$40, and told him "now get my granddaughter out of that cold a*** car." Richardson went outside to get his daughter, which took about three to five minutes.

¶ 8 Richardson stated, "as soon as I walked in the door, I seen them locked in with each other." Defendant and Welch were "standing," "facing one another," "locked in together." They were "tussling," but he "didn't see them swinging or anything." Richardson set his daughter down and "immediately jumped in to separate them." He did not hear any conversation going on

between defendant and Welch, and defendant did not say anything to Richardson. He noticed defendant holding a “steak knife” with a black handle in her right hand, so he “grabbed her arm and took the knife from her.” Welch then picked up her phone and “started saying you messed up now. You messed up now.” Richardson did not recall Welch telling defendant that she stabbed her.

¶ 9 Prior to separating defendant and Welch, Richardson did not see any blood. But, after separating them, he noticed Welch was bleeding and had nothing in her hands. Defendant went upstairs, while Richardson tended to Welch. Richardson saw blood coming from Welch’s “shoulder area.” He took her phone and called 911. The operator informed him to apply pressure with a clean towel to Welch’s wounds. While Richardson was tending to Welch, defendant came downstairs, said “I am out of here,” and left the house.

¶ 10 Shortly thereafter, paramedics arrived and began administering medical assistance to Welch. As they were administering care, police officers were questioning Richardson. He directed the officers to where the knife and baseball bat were located. Welch was taken to the hospital by ambulance, and subsequently died.

¶ 11 Richardson identified photographs depicting the inside of the house and of the knife that was used by defendant. Richardson testified he did not inform detectives that, after “the incident involving the bat,” he left the house with defendant and their child for approximately one half hour. Richardson denied informing detectives that Welch told defendant “you stabbed me” and the 911 operator that defendant had stabbed her. Richardson also denied telling detectives that defendant was “running out the back door” and said “f*** this s***.” Richardson further denied

saying “I didn’t give her a chance to hit nobody [with the bat]” when he gave a videotaped statement to an Assistant State’s Attorney and a detective.

¶ 12 Chicago police officer Anderson testified that, on the evening of January 5, 2013, he and his partner responded to a call regarding a stabbing. When they arrived at the house, he noticed Richardson holding a baby on the front porch and Welch “standing on the porch leaned up against the frame of the doorway.” Welch was “very excited, gasping for air, breathing heavily.” She kept saying that she needed help because she had been stabbed. Anderson noticed “[s]mall stains of blood” on Welch’s clothing, and he tried his best to calm her down. When paramedics and other officers arrived, Anderson heard Welch tell the paramedics that her daughter had stabbed her.

¶ 13 Anderson spoke to Richardson with Officer Stapleton and Stapleton’s partner present. Richardson informed the officers that, upon his return to the house, defendant and Welch were fighting and defendant had a knife. Richardson said he had tried to break them up and, at that time, defendant reached over him and stabbed Welch. Anderson received a description of defendant and left the house to look for her. Welch was “unresponsive” when he left.

¶ 14 Anderson searched the area for about 30 to 40 minutes, but could not locate defendant so he went back to his routine patrol. Around 11:20 p.m., Anderson went back to the house and arrested defendant, who was in the alleyway behind the house. After defendant was arrested, she was transported to the hospital for treatment of a cut on her hand. Anderson admitted that the first time he made any mention of Richardson saying defendant reached over and stabbed Welch was when he spoke to the Assistant State’s Attorney on the day of trial.

¶ 15 The parties stipulated, *inter alia*, that Leslie Cittandino, an expert in Forensic Biology, would testify that she examined a black handled knife that was approximately 9.25 inches long with a blade that was approximately 5 inches long and .75 inches wide. From her testing, she concluded that there was blood on the knife.

¶ 16 Dr. Adrienne Segovia, a forensic pathologist with the Cook County Medical Examiner's Office, testified that she conducted an autopsy of Welch on January 6, 2013. She testified that the cause of Welch's death was multiple stab and incised wounds and the manner of death was homicide. Segovia noted 12 injuries to Welch's body: stab wounds to the left side of her chest into her left lung, right side of her back into her right lung, front and back of her right arm, and front and back of her left arm; cuts on the front of her left ear and on the left side of her neck with bruising, likely caused by blunt force trauma; and a small scrape mark on her left upper lip. There were no wounds found on Welch's hands. The toxicology reports revealed Welch's blood tested positive for cocaine in the amount of .14 microgram per millimeter. This indicated that cocaine had been used up to several hours prior to Welch's death.

¶ 17 The court denied defendant's motion for a directed finding.

¶ 18 Defendant testified that during her stay with Welch, they had a "strained" relationship. Defendant recalled a time in November 2012 where Welch punched her in the face, splitting her lip and loosening a tooth, which eventually fell out. Defendant did not hit Welch and did not report the incident to police.

¶ 19 On January 5, 2013, at approximately 3:00 p.m., defendant and Richardson left the house to go to the store. Once they got back, Welch left the house for about one hour and returned around 6:00 p.m. When Welch returned, her eyes were red and defendant could sense that she

had an attitude because she seemed “peevisish” and “irritable.” Defendant explained that Welch became “aggressive” and “[v]ery confrontational” when she used certain drugs.

¶ 20 Defendant approached Welch and asked her to repay the \$40 that she owed defendant. Welch told defendant, “I’m not giving you s***.” The verbal argument “didn’t last long” because Welch “muffed” defendant in her face, which was “like a slap” with an open hand. Defendant responded by “slam[ming]” a beer out of Welch’s hand. Welch then punched defendant in the left side of her face. Defendant grabbed Welch and they began to “tussle.” Richardson intervened and tried to separate them. As Richardson was standing in between Welch and defendant, Welch grabbed a bat and swung it at defendant. The bat “grazed” the side of defendant’s face but the impact of the swing was mostly blocked by Richardson. Defendant went upstairs, where she could hear Welch downstairs “boasting about what she had previously done” and saying “get this b*** out of here before I kill her.”

¶ 21 Defendant began packing her things to leave. She went downstairs and saw Richardson getting their daughter ready to go to their automobile. Defendant agreed to leave with Richardson, but she was not ready to go at that time as she wanted to end the confrontation with Welch. Defendant was “angry” and “hurt.” Richardson left to get the vehicle and defendant went back upstairs. When she came downstairs, Welch approached defendant and said “are you getting your s*** to get out, because I want my house empty.” As they were talking, defendant noticed Welch had a knife in her right hand and Welch began moving the knife around as she was talking.

¶ 22 Welch was about one to two feet away from defendant. Defendant “didn’t want to believe” that Welch would harm her, but she was “afraid that she would” because defendant

“didn’t know what her intention was.” Defendant was “talk[ing] with [her] hand” and said “this is what you owe.” Defendant brought her hand up to her face and Welch came “towards” defendant with the knife. Defendant’s first reaction was to grab Welch’s hand so she could not stab her. Defendant tried to block Welch and her hand was cut with the knife.

¶ 23 Defendant fell back onto the couch and she and Welch began “tussling.” Defendant was “grabbing at the knife” while Welch was choking defendant. Defendant was “hitting at” Welch and trying to defend herself. Defendant did not know that she had the knife and she just wanted Welch to get off her. Welch’s hands were around defendant’s neck, choking her, and defendant did not think Welch was hurt because Welch “never stopped” fighting with her. Richardson came back into the house and broke up the fight. Defendant denied reaching around Richardson to stab Welch in the back. Defendant recalled letting go of the knife, but did not recall Richardson taking the knife out of her hand.

¶ 24 After defendant and Welch were separated, Welch was trying to get her phone to call the police. Welch stated that she could not breathe and told defendant to “get the f*** away” from her and to “just f*** get out.” Defendant did not know Welch was bleeding because she did not see any blood. Defendant left the house to look for a pay phone. She could not find one, so she proceeded to a store near her house to use the phone there instead. Defendant heard sirens as she was walking, so she no longer needed to call the police, but still went to the store to get a cigar to calm her nerves. Later, defendant returned to the house, but could not get in because no one was home. She was approached by the police and subsequently arrested.

¶ 25 Defendant identified photos of her hand depicting “cuts” she received from defending herself from the knife.¹ She identified a photo of her neck with scratches and welts she received from Welch choking her and a photo of scratches from Welch on her back.² Defendant went to the hospital to treat a cut sustained on her hand. The hospital cut the loose skin that was hanging and wrapped it. Her injuries did not require any stitches.

¶ 26 Defendant stated that she kept “stabbing at” Welch because she was continuing to fight her. Defendant did not realize she had stabbed Welch because she did not see any blood and Welch never said “you stabbed me.” When defendant left the house, Welch was still talking. Defendant stated that she never meant to hurt Welch.

¶ 27 The court found defendant guilty of second degree murder on both counts. It did not believe defendant “woke up that day deciding” she was going to kill her mother. Nevertheless, it did not find defendant’s actions legally justified. It found that there was enough evidence - the exhibits as well as Richardson’s testimony - to show “conflict that could be described as provocation. Enough to mitigate the first degree murder to the offense of second degree murder.” The court denied defendant’s motion for new trial, merged the charges, and sentenced defendant to five years’ imprisonment. The court denied defendant’s motion to reconsider sentence. This appeal followed.

¶ 28 Defendant contends the State failed to prove beyond a reasonable doubt that her belief that use of deadly force in self-defense was required was not objectively reasonable when the evidence established that, over the course of a few hours, Welch punched and scratched defendant, grazed her with a baseball bat, threatened to kill her, and attacked her with a knife.

¹ The photographs were entered into evidence at trial, but are not in the record on appeal.

² The photographs were entered into evidence at trial, but are not in the record on appeal.

¶ 29 On a challenge to the sufficiency of the evidence, we must determine 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. Brown*, 2013 IL 114196, ¶ 48. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on issues pertaining to conflicts in testimony, the credibility of witnesses, or the weight of the evidence. *Id.* To sustain a conviction, “[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant’s guilt.” *People v. Hall*, 194 Ill. 2d 305, 330 (2000). Additionally, the trier of fact is not required to disregard inferences that normally flow from the evidence or to seek out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Despite this deference, a conviction will be reversed if the evidence is so improbable or unsatisfactory as to justify a reasonable doubt of the defendant’s guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 30 To sustain defendant’s conviction for second degree murder, the State was required to prove all of the elements of first degree murder beyond a reasonable doubt. See 720 ILCS 5/9-2 (West 2012). More specifically, that defendant, without lawful justification, intentionally or knowingly stabbed and killed Angela Welch with a knife (720 ILCS 5/9-1(a)(1) (West 2012)) or stabbed her knowing that it created a strong probability of death or great bodily harm (720 ILCS 5/9-1(a)(2) (West 2012)). Upon satisfying that burden, it was incumbent upon defendant to prove by a preponderance of the evidence a mitigating factor, that she either (1) was acting under a sudden and intense passion resulting from serious provocation by Welch, or (2) believed that the circumstances were such that she was justified in using the force employed in self-defense, but

her belief was unreasonable. 720 ILCS 5/9-2 (West 2012). The mitigating factors present in the second degree murder statute are not elements of the offense; rather, they lessen the culpability and the severity of the punishment. *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998).

¶ 31 Self-defense is an affirmative defense, and once a defendant raises it, “the State has the burden of proving beyond a reasonable doubt that defendant did not act in self-defense, in addition to the elements of the charged offense.” *People v. Lewis*, 2012 IL App (1st) 102089, ¶ 17 (citing *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995)). A person is justified in using force against another in self-defense “when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force.” 720 ILCS 5/7-1(a) (West 2012). However, a person is justified in using force which is intended to or likely to cause death or great bodily harm “only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” *Id.*

¶ 32 The elements of self-defense are: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) 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). If the State negates any of these six elements, the defendant's self-defense claim fails. *Jeffries*, 164 Ill. 2d at 127-28.

¶ 33 The issue of self-defense is always a question of fact to be determined by the trier of fact. *People v. Young*, 347 Ill. App. 3d 909, 920 (2004). The trier of fact is not required to believe a defendant's account, even if it was the only one, and it may consider other facts and

circumstances that contradict the defendant's story or raise serious questions about its probability. *People v. Liddell*, 32 Ill. App. 3d 828, 830 (1975). The trier of fact may consider the probability or improbability of the defendant's account, circumstances surrounding the crime, and relevant testimony of other witnesses. *Young*, 347 Ill. App. 3d at 920. As such, it does not have to accept a defendant's claim of self-defense. *Id.* Further, one is not justified in using deadly force against an antagonist once the antagonist has been disarmed or disabled. *People v. Stokes*, 102 Ill. App. 3d 909, 916 (1981).

¶ 34 There is no question that defendant fatally stabbed Welch. The parties' arguments center on the sixth element of self-defense, on the reasonableness of defendant's belief that the circumstances warranted her use of deadly force to defend herself against Welch. Viewed in the light most favorable to the State, we find that the evidence was sufficient to prove beyond a reasonable doubt that defendant's belief that deadly force against Welch was required to prevent death or great bodily harm to herself was unreasonable.

¶ 35 Defendant maintains she had "every reason to believe" that Welch was "set on fulfilling her threat from moments before to kill her" because Welch had punched her, scratched her, and swung at her with a baseball bat, and then attacked her with a knife. But, defendant's initial physical altercations with Welch had already ended. Both Welch and defendant were on different floors of the house and Welch, according to Richardson's testimony, was calmly watching her granddaughter, who was in the car when Richardson went upstairs to get defendant. Further, defendant readily went downstairs to where Welch was waiting when Richardson went to get the child from the car at Welch's behest.

¶ 36 It is thus unclear who started the second altercation, in which, defendant testified, Welch approached her with a knife. Nevertheless, as the trial court found, based on all of the evidence, there was unquestionably “conflict” as to what happened that could be described as “provocation.” Thus, the evidence was sufficient to support a second degree murder conviction, if defendant’s belief in her use of force was unreasonable.

¶ 37 The evidence supports a finding that defendant’s belief that her use of deadly force was justified was unreasonable. Defendant testified she was afraid of Welch after the bat incident. When Welch approached her with a knife, defendant was afraid Welch “would harm” her. Defendant claimed she kept stabbing Welch because Welch “was relentless [and] never stopped,” but also claimed she did not know she had stabbed Welch. But, if Welch initially had the knife as defendant claims, defendant got it away from her during the struggle and, instead of tossing it aside or disengaging from the fight, then stabbed the unarmed Welch 12 times. “The use of deadly force is not justified where the victim, even though initially the aggressor, has been disarmed or disabled.” *People v. Lee*, 243 Ill. App. 3d 1038, 1043 (1993). Once Welch was unarmed, defendant was not justified in using deadly force against her. *Id.*; *Stokes*, 102 Ill. App. 3d at 916. Further, defendant received very minimal wounds - scratches, welts, and cuts that only required being wrapped in a bandage - while Welch sustained 12 knife wounds to numerous parts of her body, including several deep stab wounds that led to the collapse of both her lungs, indicating the ferocity of defendant’s response to the unarmed Welch.

¶ 38 In sum, reviewing the evidence in the light most favorable to the State, we hold that any rational trier of fact could have found beyond a reasonable doubt that defendant’s belief that deadly force was necessary against Welch was unreasonable. Accordingly, the State proved

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beyond a reasonable doubt that defendant did not act in self-defense and we affirm the second degree murder conviction.

¶ 39 Affirmed.