2017 IL App (2d) 150458-U
No. 2-15-0458
Order filed April 28, 2017



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Jo Daviess County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 14-CM-77 |
| PAT A. HIPPCHEN, | ) | Honorable Kevin J. Ward, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: The State disproved beyond a reasonable doubt defendant's claim of defense of personal property, as the jury was entitled to credit the State's evidence that defendant was the initial aggressor.

¶ 2 Following a jury trial, defendant, Pat A. Hippchen, was convicted of battery (720 ILCS 5/12-3(a) (West 2012)) and sentenced to court supervision. She appeals, contending that the State failed to prove beyond a reasonable doubt that her actions were not a reasonable defense of her personal property from an attempted robbery. We affirm.

¶ 3 Dawson Rollinger died in a one-car accident on May 17, 2014. A funeral luncheon was held at the Apple River Events Center on May 22.

¶ 4 Mark Lease testified that, as he and his family were leaving the building, there was a commotion outside. As he was putting his children in his minivan, he saw defendant come up to write down his license number. She had a pen and a notepad in her hand. Lease stepped in front of the license plate so that she could not write it down.

¶ 5 As he was standing there, David Rollinger, Dawson's father, approached defendant from behind. Rollinger said that they were attending a funeral for his son and told her to leave the premises. Defendant said something about people squealing tires and that she was going to report it to the police. According to Lease, defendant swung at Rollinger, and Lease grabbed her wrist to keep her from stabbing him with the pen. As he did so, defendant bit his right wrist. They struggled briefly as Lease tried to free his wrist. Because his children were watching from the van, he wanted to get free without harming anyone. As soon as defendant released his wrist, he returned to the event center to clean the wound.

¶ 6 Rollinger testified that as he was leaving the center he saw defendant and a group of people yelling and screaming at each other. Defendant was "swinging stuff around" and said that she did not have to leave. Rollinger saw defendant go after Lease and Frances Halferty. She was arguing with Rollinger's son. When Rollinger asked her to leave, she got mad and refused.

¶ 7 The argument became physical when Rollinger told her that he "wanted that book" with the license plate numbers. Defendant bit him as he got the book out of her hand. He wanted to look at the numbers she had written down. On further questioning, Rollinger said that defendant bit him before he reached for the book. That made him mad, and he grabbed the book from her.

He later testified that he could not be sure whether he took the book before or after defendant bit him, as he was still in shock from his son's death at that point and "everything happened so fast."

¶ 8 After he grabbed the book, he started walking away. Defendant followed him through the parking lot and started stabbing him with the pen. He was stabbed in the arm and the face. His nephews then restrained him.

¶ 9 On cross-examination, Rollinger testified that he gave a statement to police in which he stated that defendant was there "trying to start some crap." He said that he was aware of some people "laying rubber" on Stagecoach Road in honor of his son.

¶ 10 Halferty testified that as she was leaving the event center she saw defendant arguing with some people in the parking lot. Defendant was swinging her arms. As Rollinger approached defendant, she began threatening him. Defendant and Rollinger began arguing. Defendant was yelling that "we were tearing up the town and terrorizing people and that she was going to have us all arrested." Rollinger was trying to convince defendant to just leave and call the police.

¶ 11 Halferty went to intervene because Rollinger was "pretty wobbly." She tried to talk to defendant, who began yelling. Halferty asked her to calm down because they had just buried Dawson Rollinger and needed their moment. Defendant grabbed Halferty's hand and squeezed it, shoving her backward in the process.

¶ 12 As Rollinger started walking away, defendant ran up behind him and began stabbing him with the pen. She struck him at least once before others intervened.

¶ 13 On cross-examination, Halferty testified that she was surprised by defendant's reaction, because she had worked for years with the elderly and people who get angry easily and she had never encountered anyone "that I couldn't walk up to and calmly talk to them and get them to

calm down." Halferty told defendant that they were at a funeral, and she heard the others do so. There was also a sign in the driveway.

¶ 14 Brian Bohnsack, the Warren police chief, testified that he responded to a disturbance at the Apple River Events Center. He talked to defendant, who said that she was there to get the license plate numbers of people who were doing "burn-outs" by her house. Bohnsack did not observe any injuries to defendant.

¶ 15 Steven Hippchen, defendant's husband, testified that Stagecoach Road was about 100 feet from his house. On May 22, 2014, he heard a police siren followed by the sound of "high performance cars" on Stagecoach Road. From his backyard, he saw the cars on Second Street gun their engines and "peel[]out." He identified a photograph showing tire marks on the pavement near his home.

¶ 16 He and defendant went to Warren for lunch. On the way, they saw another group of tire marks on Stagecoach Road. He was appalled that anyone would drive that recklessly. When they returned to Apple River, they saw a lot of high-performance cars at the center. He knew that Dawson Rollinger had passed away, but he was not aware of any funeral arrangements.

¶ 17 Defendant testified that on May 22 she saw tire marks on Stagecoach Road and her husband told her about cars laying down rubber in town. Upon returning from lunch, she saw "hotrods" at the center and thought that they might be part of a car show. She stopped at the center to note the cars' license plate numbers, which she intended to give to the police. She did not see any signs advertising a car show.

¶ 18 As she was speaking to Lease, Rollinger grabbed at her and tried to take her notebook. She believed that she was being assaulted. She got away momentarily but Rollinger came at her again from behind. He grabbed at her wrist. She tried to break free but could not. As she was

being dragged, she bit his arm. Rollinger ultimately got her notebook. While struggling with Rollinger over the notebook, she scratched him with the pen.

¶ 19 On cross-examination, defendant denied that several people told her that she was at a funeral. At the very end of the incident, she understood that it was a funeral. She did not remember biting Lease. She did not intend to scratch Rollinger during the struggle over the notebook.

¶ 20 The jury found defendant guilty. The court sentenced her to one year of supervision and a $200 fine. Defendant timely appeals.

¶ 21 Defendant contends that she was not proved guilty beyond a reasonable doubt. She contends that it is virtually undisputed that Rollinger forcibly took her notebook and that her use of force was justified as a defense of her personal property.

¶ 22 Where a defendant challenges on appeal the sufficiency of the evidence, the relevant question is whether, after viewing all the evidence in a light most favorable to the prosecution, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). A reviewing court may not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 23 Defendant claims that her conduct was justified because she was defending herself from a robbery attempt. She contends that Rollinger was admittedly attempting to forcibly take her notebook, that robbery is a forcible felony, and that she was justified in using force to prevent it. The State responds that the jury could reasonably find that defendant was the initial aggressor and thus that the defense was unavailable.

¶ 24 Section 7-3 of the Criminal Code of 2012 (the Code) provides as follows:

> "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 prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect." 720 ILCS 5/7-3(a) (West 2014).

¶ 25 Conversely, section 7-4 of the Code provides as follows:

> "The justification described in the preceding Sections of this Article is not available to a person who:
>
> > "(b) Initially provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or
> >
> > (c) Otherwise initially provokes the use of force against himself." 720 ILCS 5/7-4(b), (c) (West 2014).

¶ 26 A claim of defense of property is largely governed by the same principles as a claim of self-defense. To raise a claim of self-defense, a defendant must present evidence that (1) force was threatened against the defendant; (2) the defendant was not the aggressor; (3) the danger of harm was imminent; (4) the force threatened was unlawful; (5) the defendant actually believed that a danger existed and that the kind and amount of force he used were actually necessary to avert the danger; and (6) defendant's beliefs were reasonable. *People v. Dunlap*, 315 Ill. App. 3d 1017, 1025 (2000). Self-defense is an affirmative defense, and once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense. *People v. Lee*, 213 Ill. 2d

218, 224 (2004). If the State negates any one of these elements, the defendant's claim of self-defense must fail. *Id.* at 225. However, a self-defense claim is not available to someone who was the initial aggressor. See *People v. Heaton*, 256 Ill. App. 3d 247, 257 (1994). Words alone may be sufficient to qualify someone as the initial aggressor. *Id.*; see also *People v. Greschia*, 53 Ill. 295, 300 (1870); *People v. Barnard*, 208 Ill. App. 3d 342, 350 (1991).

¶ 27 Here, there was evidence from which the jury could reasonably conclude that defendant was the initial aggressor. Rollinger, Lease, and Halferty all testified that defendant was yelling at people in the parking lot before Rollinger even approached her. Halferty testified that defendant was extremely angry and shoved her with no provocation. Lease testified that defendant bit him. Notably, Lease testified that defendant swung at Rollinger before he made any attempt to take her notebook.

¶ 28 The judgment of the circuit court of Jo Daviess County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 29 Affirmed.