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2017 IL App (3d) 160633-U

Order filed August 2, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0633
JATINDER S. SANDHU,	)	Circuit No. 16-CM-390
Defendant-Appellant.	)	Honorable Edward A. Burmila, Jr., Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Holdridge and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The evidence was sufficient to prove beyond a reasonable doubt that defendant did not act in self-defense. Any error in the trial court's finding that the victim was not the initial aggressor was harmless beyond a reasonable doubt.
- ¶ 2 Defendant, Jatinder S. Sandhu, appeals his conviction for domestic battery. Defendant argues the trial evidence was insufficient to prove him guilty beyond a reasonable doubt, and the trial court erred by misapplying the facts and/or misinterpreting the law of self-defense when it found defendant was the initial aggressor. We affirm.

## FACTS

¶ 3

¶ 4

Defendant was charged by criminal complaint with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) in that defendant knowingly and without legal justification caused harm to Christine Savarimuthu by striking Savarimuthu about the head.

¶ 5

A bench trial was held. At trial, Savarimuthu testified she was 29 weeks pregnant with defendant's child. On the date of the incident, Savarimuthu was in a romantic relationship with defendant. She told defendant via telephone that she believed she was pregnant. She told him to bring her money to pay for an abortion. Defendant went to Savarimuthu's dormitory at Lewis University at approximately 6:15 p.m. Defendant drove Savarimuthu to two nearby restaurants on campus for food.

¶ 6

After they received their food, Savarimuthu and defendant got into defendant's vehicle. Savarimuthu asked defendant what was wrong because he had been "acting different." Defendant then "started calling [Savarimuthu] names and being verbally abusive." Defendant called Savarimuthu a "hoe." Savarimuthu swung her left arm out to hit defendant, but he blocked it. Defendant then drove back to Savarimuthu's dormitory. The drive lasted approximately one minute. Defendant punched Savarimuthu with his right hand once while driving, striking her left temple area. Defendant parked near Savarimuthu's dormitory and punched Savarimuthu twice more. Defendant then pulled Savarimuthu's head onto the center console and held it there. Defendant told Savarimuthu to get out of the vehicle, and she walked to her dormitory. Savarimuthu did not try to punch defendant again when they were parked at her dormitory.

¶ 7

Savarimuthu stated she was in her room for approximately 30 minutes. Defendant then texted her saying he was sorry, and he was coming back. Defendant came up to Savarimuthu's room and knocked on her door for approximately 10 to 15 minutes. Eventually, Savarimuthu

opened the door and defendant entered. Defendant apologized to Savarimuthu. Savarimuthu was upset, and she punched herself in the right side of her face. There was no bruising on the side of Savarimuthu's face where she punched herself. Defendant attempted to stop Savarimuthu from punching herself. Defendant wanted to stay in the relationship, but Savarimuthu wanted to end it. Defendant left at approximately 9:30 p.m., and Savarimuthu did not try to stop him from leaving.

¶ 8 The next morning, Savarimuthu saw a counselor. After talking to the counselor, Savarimuthu made contact with a university police officer. Savarimuthu completed a written statement at the request of the officer. An officer photographed Savarimuthu's face and tooth. At some point on the day after the incident, Savarimuthu noticed one of her front, bottom teeth was chipped. It was not chipped before she went to get food with defendant on the night of the incident. Savarimuthu identified three photographs of her on the day after the incident. Savarimuthu said the photographs showed bruising under her left eye and her chipped tooth.

¶ 9 Defendant testified he was previously in a relationship with Savarimuthu. The day before the incident, Savarimuthu told defendant she was pregnant. They both decided Savarimuthu should get an abortion. Savarimuthu told defendant to bring her money to pay for the abortion.

¶ 10 The next day, defendant went to Savarimuthu's dormitory at approximately 6 or 7 p.m. Defendant drove Savarimuthu to two nearby cafeterias where she got some food to go. They got back into defendant's vehicle, and defendant asked Savarimuthu if he was the father of her baby. Savarimuthu replied, "[Y]ou mother fucker. What you think, I'm a whore?" Savarimuthu then started punching defendant in the face while he was driving. After Savarimuthu hit defendant approximately three times, he began blocking the blows. Defendant asked Savarimuthu to stop, but she did not. Defendant called Savarimuthu a "hoe" after she started hitting him. Defendant

had to stop the vehicle because Savarimuthu would not stop hitting him. Defendant estimated Savarimuthu hit him approximately 15 to 20 times before he stopped the vehicle.

¶ 11 After stopping the vehicle, defendant turned the interior lights on, and Savarimuthu stopped hitting him. Defendant told Savarimuthu to get out of the vehicle. Savarimuthu said they needed to talk and asked defendant to drive to the parking lot behind her dormitory. Defendant drove to that lot. As soon as defendant turned the interior lights off, Savarimuthu hit herself with a closed fist on both sides of her face approximately 20 times. She also hit defendant a couple more times. Defendant said on prior occasions, Savarimuthu hit him or herself when she got upset.

¶ 12 Defendant parked his vehicle, and Savarimuthu started hitting him again. Defendant held her hands. Savarimuthu exited the vehicle. Defendant drove to McDonalds “to let her cool off.” Defendant sent Savarimuthu a text message saying he would give her the money for the abortion. Defendant went back to Savarimuthu’s dormitory because he “was scared that she [would] show up at [his] work or she \*\*\* [would] cause problems.” Savarimuthu told defendant to give her the money and leave. Defendant said he would not give her the money at that time, but he would go with her the next day to her appointment. Savarimuthu then struck herself on both sides of her face approximately 10 times. Defendant tried to stop Savarimuthu from hitting herself, and she punched him in the face again. Defendant tried to leave, but Savarimuthu blocked the door, preventing him from leaving. Eventually, defendant left. Defendant stated he did not punch Savarimuthu at any time on the date of the incident.

¶ 13 After hearing closing arguments, the court found defendant guilty. The court reasoned:

“And counsel has focused the Court’s attention on the issue of self-defense in this case, and if the defendant has established a case of self-defense even by the most

minute evidence the State has to prove beyond a reasonable doubt that it was not a case of self-defense.

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Also although it's a notion that has fallen to disuse I guess for lack of a better word, there are fighting words that can be said that instigated a response. They're provocation, and accusing a woman of a lack of chastity, of being with other men are fighting words. And the defendant was clear, the victim was clear he said wait a minute, am I really the father? And she struck him. That's not self-defense. That's provocation. So he interjected the second bombshell into the conversation. First the unexpected pregnancy and then I don't think I'm the father, and she reacted. Experience tells us that a woman confronted with such a choice will react. She was provoked. I can't see it any other way, and the defendant striking her thereafter was retaliation.

If I look at the credibility of these two individuals, the defendant wants me to believe that this woman delivered 45 closed fist blows within a two or three minute period of time, and that's impossible, just impossible. He said that she struck him 25 times and struck herself 20 times within a two or three minute period of time in the vehicle with a closed fist.

\*\*\*

But the incident that happened in the car was a result of provocation. The defendant retaliated. He did not have the right to retaliate after causing the incident to come to a fruition, and he's guilty of the charge."

¶ 15

## ANALYSIS

¶ 16

### I. Sufficiency of the Evidence

¶ 17

Defendant argues he was not proven guilty of domestic battery beyond a reasonable doubt because the State failed to prove that he did not act in self-defense. To prove defendant committed the offense of domestic battery, the State was required to establish defendant caused bodily harm to Savarimuthu “knowingly without legal justification” and Savarimuthu was defendant’s “family or household member.” 720 ILCS 5/12-3.2(a)(1) (West 2016). Defendant does not dispute that the State proved he caused bodily harm to Savarimuthu or that she was a household or family member. Rather, defendant contends the State failed to prove beyond a reasonable doubt that defendant did not act in self-defense.

¶ 18

Once a defendant raises the affirmative defense of self-defense, “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). Section 7-1(a) of the Criminal Code of 2012 (720 ILCS 5/7-1(a) (West 2016)) provides: “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 other’s imminent use of unlawful force.” The *Lee* court set forth the elements of self-defense as follows:

“The elements of self-defense are: (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.” *Lee*, 213 Ill. 2d at 225.

If the State negates any one of the able elements, a defendant's self-defense claim must fail. *Id.*

¶ 19 Viewing the evidence in the light most favorable to the State (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)), we hold that defendant did not act in self-defense. Savarimuthu testified she punched defendant once, and he blocked the blow. He then punched her in the left temple three times. Savarimuthu testified that she did not strike or attempt to strike defendant again after she punched him initially. Savarimuthu identified photographs taken the next day showing that her face was bruised under her left eye and her tooth was chipped. Even accepting that Savarimuthu was the initial aggressor, there was no imminent threat of harm to defendant after she delivered the initial punch. Once defendant blocked the punch, any belief he may have had that he needed to punch Savarimuthu in the face three times for his own protection was objectively unreasonable. Thus, the testimony of Savarimuthu rebutted the third and sixth elements of self-defense.

¶ 20 In coming to this conclusion, we reject defendant's contention that "the record is silent regarding how much time elapsed between Savarimuthu's initial attack and the physical response from [defendant]" such that there was "no evidence supporting a conclusion that [defendant] had become the aggressor at any point." Savarimuthu testified she punched defendant, and he blocked the blow. He then punched her once during the one-minute drive to her dormitory. After defendant parked his vehicle, he punched her two more times. Thus, the record shows at least a minute elapsed between Savarimuthu's initial punch and defendant's last two punches. Even if defendant's three blows immediately followed Savarimuthu's initial punch, defendant's "physical response" exceeded the amount of force necessary to defend himself. There was no longer a threat of imminent physical harm after defendant blocked Savarimuthu's punch. Defendant's subsequent strikes to Savarimuthu's head were retaliation, not self-defense.

¶ 21 We also reject defendant’s reliance on *People v. Perkins*, 11 Ill. App. 3d 828, 830 (1973). In *Perkins*, the defendant and his wife testified that the defendant only shot the alleged victim because he reasonably believed it was necessary to defend himself against the victim’s knife. *Id.* The court held this testimony, together with the victim’s testimony that he was in possession of a knife at the time of the incident but did not attempt to use it, “should have created[ ] a reasonable doubt of [the defendant’s] guilt in the mind of the trial court.” *Id.* Here, the trial court expressly rejected defendant’s testimony that Savarimuthu struck him 15 to 20 times in the vehicle, finding it to be implausible. Instead, the court accepted Savarimuthu’s testimony that she punched defendant only once, he blocked the punch, and he then punched her in the face three times. We defer to the trial court’s credibility finding (See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009)) and reassert our holding that Savarimuthu’s testimony rebutted defendant’s claim of self-defense.

¶ 22 II. Trial Court’s Finding that Defendant was the Initial Aggressor

¶ 23 Defendant argues the trial court misinterpreted the law of self-defense and/or misapplied the law to the facts when it found defendant was the initial aggressor because defendant’s “fighting words” provoked Savarimuthu to punch him. However, even if we accept that the trial court erred by determining defendant was the initial aggressor, the error was harmless. Establishing defendant was not the initial aggressor was only one of the six elements of self-defense set forth in *Lee*. See *Lee*, 213 Ill. 2d at 225. Savarimuthu’s testimony that she struck defendant only once, defendant blocked the punch, and then defendant punched her in the face three times rebutted two of the other elements of self-defense. Specifically, this testimony showed (1) there was no imminent threat of harm at the time defendant punched Savarimuthu, and (2) any belief that defendant was required to punch Savarimuthu to protect himself was



objectively unreasonable. The trial court expressly accepted Savarimuthu's account over defendant's conflicting testimony. Thus, it is clear beyond a reasonable doubt the trial court would have found defendant did not act in self-defense even if it had not determined defendant was the initial aggressor.

¶ 24 In coming to this conclusion, we reject defendant's reliance on *People v. Hernandez*, 2012 IL App (1st) 092841. In *Hernandez*, the court held that the trial court applied the wrong standard regarding the knowledge element of the identity theft statute. *Id.* ¶ 64. The *Hernandez* court held that the proper inquiry where the trial court omits an element of the offense is whether it is clear beyond a reasonable doubt defendant would have been found guilty absent the error. *Id.* ¶ 67. The *Hernandez* court held that because the knowledge element was contested, it was not clear beyond a reasonable doubt that the trial court would have found defendant guilty absent the error. *Id.* ¶ 71. Here, although defendant and Savarimuthu gave conflicting testimony as to how many punches were delivered and who delivered the punches, the trial court expressly found Savarimuthu's testimony to be more credible than defendant's testimony. Thus, the court would have found defendant did not act in self-defense even if it found Savarimuthu was the initial aggressor.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 27 Affirmed.