

2018 IL App (1st) 151777-U

No. 1-15-1777

Order filed August 8, 2018.

Third 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. 12 CR 11478
)	
BYRON WINTERS,)	The Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for second degree murder is affirmed over his contention that the State failed to prove beyond a reasonable doubt that he did not act in self defense.

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

self defense where the evidence showed that he was justified in using deadly force and acted reasonably when fearing for his own life. We affirm.

¶ 3 Defendant, along with co-defendant Anfernee McCormick¹, was charged with two counts of first degree murder (720 ILCS 5/9-1 (West 2012)), stemming from an incident that occurred on April 19, 2012, in the vicinity of the 3500 block of West Douglas Boulevard. Count one alleged that defendant, without lawful justification, intentionally or knowingly stabbed and killed Dorsey Liberty with a knife. 720 ILCS 5/9-1 (a)(1) (West 2012). Count two alleged that defendant, without lawful justification, stabbed and killed Liberty with a knife, knowing that such act created a strong probability of death or great bodily harm. 720 ILCS 5/9-1 (a)(2) (West 2012). Prior to trial, defendant informed the State that he would be raising the affirmative defense of self-defense. Defendant and McCormick were tried simultaneously

¶ 4 The evidence adduced at trial showed that, in April 2012, Willie Johnson and Shantel Easley resided together with their children in Johnson's house. Following an argument with Johnson, Easley took the children and moved in with her aunt. On April 19, 2012, Johnson, along with the victim, Dorsey Liberty, and several other individuals arrived at Easley house in an effort to retrieve the children. There, an argument ensued between Johnson's friends and Easley's family members and friends. Multiple witnesses observed that, during the argument, defendant was armed with a knife and Liberty was armed with a bat. After hitting defendant with the bat, Liberty attempted to run away, but slipped and fell. Defendant stabbed Liberty fourteen times, including in the back, face, chest, and legs. Liberty was transported to Mount Sinai Hospital where he succumbed to his injuries.

¹The co-defendant is not a party to this appeal.

¶ 5 Anthony Lewis testified that on April 19, 2012, about 11 a.m., he met with his cousin Sherry Phillips, who had two brothers, Willie Johnson and Kenard Randolph. Lewis learned that Johnson and his girlfriend Shantel Easley had separated and Easley moved out of Johnson's house with their two children. Johnson wanted his children returned to him and went to the apartment where Easley was residing. Lewis accompanied Johnson and Kenard to the apartment. There, Lewis saw six to seven men, including defendant standing on the porch of the building. Defendant was holding two knives. Johnson asked for his children. Defendant ran off of the porch and began chasing him and Kenard. After a short while, Lewis realized no one was chasing him and stopped running.

¶ 6 On cross-examination, Lewis acknowledged that he did not see Liberty with a weapon and did not see Liberty being stabbed.

¶ 7 Kelvin Rich testified that on April 19, 2012, he accompanied Johnson, Lewis, Phillips and Liberty to the 3500 block of West Douglas to help Johnson retrieve his children from Easley. When the group arrived in the area, Rich saw defendant chasing Kenard with a knife. Kenard ran to Johnson's car and jumped inside. Liberty exited the car, carrying a "pole or something." Rich saw Liberty swing the pole once or twice at defendant and then turn to run back to the car. Liberty slipped and fell, face first, onto the ground and defendant began stabbing Liberty in the back. Someone then came up and hit Liberty in the back with a pole. Rich did not see anything in Liberty's hands when defendant was stabbing him. Liberty was eventually able to get back into the car and the group drove him to the hospital. Rich took Johnson's car to a carwash to clean the blood from the back seat. While Rich was at the car wash, he was met by police officers. Rich

went to the police station where he identified defendant in a photo array and approximately six days later in a lineup as the person who stabbed Liberty.

¶ 8 On cross-examination, Rich acknowledged that Johnson is his friend and he “backed” him up whenever possible. Rich admitted that Johnson was “big and mean” and that Johnson and Easley had problems in their relationship that usually resulted in violence. During the incident, Rich saw defendant holding only one knife and Liberty was carrying a heavy pole that was about four feet in length, when he exited the car to confront defendant. Rich acknowledged that, in his grand jury testimony, he minimized the length of the pole. Rich never called the police about the stabbing nor did he tell the police at the hospital about the stabbing.

¶ 9 Willie Johnson testified that, in April of 2012, he resided at his mother’s house with his mother and two daughters. Johnson’s girlfriend Easley resided at the house “off and on.” On April 18, 2012, Johnson drove the children to Easley’s aunt’s house located near Grenshaw Street and Pulaski Road. On the following day, Johnson went to pick up the children and saw Easley and McCormick, outside of the house, placing the kids inside a minivan. Johnson also saw defendant and another unidentified individual inside the van. Johnson pulled up next to the minivan and asked for his children. The unidentified individual exited the van, holding “the club.” Johnson left the area to pick up Liberty and a person named “Hood.”

¶ 10 Johnson then drove to Easley’s house on Douglas and stopped in the alley behind the minivan. Johnson saw several people, including defendant, on the porch of the house. Johnson testified that the people on the porch were armed with weapons and defendant had a knife. Kenard exited Johnson’s car and defendant began chasing him with a knife. Johnson drove onto Douglas, where Liberty exited the car, holding a bat. Liberty ran towards defendant and hit him

with the bat. After doing so, Liberty tried to run away, but slipped on the wet grass. Defendant stabbed Liberty in the back as he lay in the middle of the street. McCormick hit Liberty in the back with a weightlifting bar. Johnson exited the car and helped Liberty to the car and told Rich to drive to the hospital. Johnson identified defendant from a photo array and lineup as the person who stabbed Liberty.

¶ 11 On cross-examination, Johnson testified that he was not angry with Easley, but just wanted his children back because Easley did not have any clothes or medicine for the children. When Johnson initially confronted Easley, she was placing the children into the minivan. Johnson did not chase Easley from her aunt's house. When Johnson arrived at the Douglas address, defendant and other persons, who were standing on the porch, went inside the house to retrieve weapons. Johnson admitted Liberty ran out of a moving car toward defendant, causing defendant to turn and run towards his house. Johnson acknowledged that Liberty was carrying a bat and struck defendant one time in the side. Johnson did not stay at the hospital, call 911 or inform the hospital staff about Liberty's injuries.

¶ 12 The parties stipulated that, if called: (1) evidence technician Samuel Muniz of the Chicago Police Department would testify that he recovered blood swabs from Johnson's car, a black knit hat from the street near the Douglas address and a red plastic knife handle; (2) Doctor Lauren Woertz, a medical examiner employed by Cook County, would testify that, after she performed the autopsy on Liberty, she determined that he died from multiple stab wounds and the manner of death was homicide. Doctor Woertz determined Liberty received a total of 14 stab wounds, including two to the right side forehead; one to the right side of the chest; two to the right side of the abdomen; two to the right elbow; two to the right forearm; two to the left side of

the back; one to the lower midline of the back; one to the left thigh; and one to the right knee. The two stab wounds to the right side of the abdomen and the two stab wounds to the left side of the back were deep enough to penetrate the lungs; and (3) Casandra Richards, a forensic scientist specializing in fingerprint analysis employed by the Illinois State Police, would testify that a fingerprint lifted from the red knife handle matched defendant's fingerprints. The State rested and defendant's motion for a directed finding was denied.

¶ 13 Defendant called Easley, Gabrielle Marshall, Larry Byrd, Donna Marshall, Latrice King and Ramsey Barnes to testify to the events of April 19, 2012. Each witness testified, in essence, that Willie Johnson had a reputation for his anger and violence, and they were afraid of him. On the date in question, the witnesses observed Johnson and several other men arrive in the alley behind the Douglas address. The men, who were armed with sticks, poles, bats, and "2x4's," began shouting and throwing rocks and debris onto the back porch. Johnson also began breaking the windows of the minivan. The witnesses observed defendant, McCormick and Byrd leave the porch and chase Johnson and the other men. Only King observed defendant stabbing the unarmed Liberty.

¶ 14 Shantel Easley testified that, three or four days after she had been involved in a fight with Johnson, her boyfriend, she began residing with her aunt Kimberly Wright on the 3900 block of West Grenshaw. Easley described the fight as physical with Johnson slapping and punching her several times and then choking her. Easley testified that Johnson was physically abusive to her and had previously choked and slapped her. He had also previously hit her while she was pregnant. On April 19, 2012, Easley called McCormick, her brother, to help her move out of Johnson's house and to the Douglas apartment. Defendant, McCormick and Byrd arrived in

Donna Marshall's green minivan with defendant driving the van. As McCormick was helping her load the children into the van, Johnson arrived in his white Impala with several people inside the car. Johnson parked his car along the side of the van blocking its path. Johnson shouted that he wanted his children and Easley replied, "[Y]ou ain't taking my kids."

¶ 15 Defendant was eventually able to exit the parking space and drove the van toward the Douglas apartment. Johnson followed the van for several blocks in his car. Easley phoned the police from the van. When the group arrived at the Douglas apartment, defendant parked the van in the rear of the building. Johnson arrived a short time later with about six to eight other individuals. Johnson and his acquaintances were armed with golf clubs and bats. Johnson began yelling for his children. Easley testified that there were about six to eight individuals standing on the back porch of the apartment, including defendant, McCormick and Byrd. Johnson continued yelling that he wanted his children back. Johnson and his acquaintances then started throwing rocks and bottles onto the porch. The individuals standing on the porch threw the objects back in the direction of Johnson. Easley testified that Liberty walked to the bottom of the stairs of the porch and threw a brick at the van window. Defendant ran off of the porch and chased Liberty. Other individuals at the scene ran after defendant and Liberty. Easley ran to the front of the building and saw Liberty trying to get into Johnson's moving car. As he did so, the back door of the car struck him and he fell to the street. Defendant jumped on top of Liberty and began stabbing him. When Liberty was able to stand up, McCormick hit him, causing him to fall to the ground. Easley testified that the police eventually arrived on the scene and instructed her to obtain a restraining order and an order of protection against Johnson.

¶ 16 On cross-examination, Easley acknowledged that, in her grand jury testimony, she did not testify that Liberty threw a brick. Easley also acknowledged that McCormick had a bat in his hand when he ran off the porch and chased after defendant and Liberty. McCormick struck Liberty in the head and leg with the bat. Liberty did not have anything in his hands when defendant was stabbing him. Defendant was holding two knives when he chased Liberty. Easley did not tell the police that defendant stabbed Liberty.

¶ 17 On re-direct examination, Easley testified that Liberty hit defendant in the face with a metal bat and defendant became angry. A few minutes later, defendant stabbed Liberty.

¶ 18 Defendant testified that he met Johnson in 2011 and considered him to be dangerous and a “hothead.” On the Easter Sunday prior to April 19, 2012, as defendant was driving several people to church, Johnson drove next to him and tried to “ram” his car. Defendant and Johnson exited their cars and got into a fist fight. As they did so, several individuals exited from a van that had been following Johnson’s car and attacked defendant, who “balled up” into a fetal position as they punched and kicked him. Defendant sustained cuts and scrapes from the incident. Defendant testified that he was afraid of Johnson and feared that Johnson and the others would come back and “finish whatever they [were] trying to accomplish.”

¶ 19 On the date in question, defendant resided in an apartment on the 3500 block of Douglas. About 10:30 a.m., McCormick received a phone call from Easley, who asked him to pick her and her children up at her aunt’s house. Defendant drove McCormick and Byrd to Pulaski and Grenshaw. There, he parked the van while McCormick went upstairs to the apartment to retrieve Easley and her children. As Easley and McCormick were loading the van, Johnson “came out of nowhere” and pulled up next to the van blocking its path. Johnson began “yelling for his kids”

and was “angry, mad.” Byrd exited the van with “the club” and threatened to break the windows on Johnson’s car. Johnson got back into his car and reversed so defendant could exit the parking space with the van. As defendant drove to the Douglas apartment, he noticed that Johnson was following the van. Defendant testified he was “scared and frightened,” and, during the pursuit, travelled about 50 miles per hour. Johnson eventually stopped following the van.

¶ 20 When defendant arrived at the Douglas apartment, he parked the van next to the building and went inside. Johnson arrived in the area with several other individuals. The group was armed with “bats and stuff.” Defendant went into the apartment so he could “arm himself” and grabbed a knife from the kitchen. When defendant went outside, he saw Johnson, who was holding a bat, demanding for his children. Johnson began knocking out the taillights of the van. Defendant ran off the porch to “intimidate” Johnson and to scare him from the property. When defendant did so, everyone “scattered.” Defendant ran toward Douglas to look for a police car. As he was running, defendant saw Johnson’s car. He also saw Liberty, with whom he was not familiar, walking toward him holding a baseball bat. Liberty hit defendant “hard” in the shoulder with the bat. Defendant stepped backwards to avoid being hit again. Liberty reached forward and grabbed him and they started “tussling.” The pair stepped off the curb and fell to the ground. Defendant testified that they started to stand up at the same time and, as they did so, he stabbed Liberty because he wanted Liberty to let go of him. Someone then struck defendant in the hand with which he was holding the knife, causing the knife to break. McCormick grabbed defendant and Liberty ran to Johnson’s car.

¶ 21 Defendant testified that he did not think Liberty’s injuries were fatal because he saw him run to the car. Defendant acknowledged that police arrived on the scene and he did not inform

them that he stabbed Liberty. Defendant eventually learned that police were looking for him. Defendant testified that, when he went to the police station, he learned about the homicide and was scared and panicked, and lied to the police.

¶ 22 On cross-examination, defendant acknowledged that he did not call the police as he drove Easley to the apartment on Douglas and Johnson followed the van. Defendant could not remember how many times he stabbed Liberty. Defendant acknowledged that he told the police he was playing basketball when the stabbing occurred, but could not provide the names of the other individuals with whom he was playing. Defendant also acknowledged that, when he was questioned by an assistant state's attorney (ASA) about what was going through his head when he stabbed Liberty, he replied "I don't know."

¶ 23 McCormick testified that, on the day in question, he observed Liberty, who was carrying a bat, and another man run out of Johnson's car. Liberty hit defendant with the bat and the two "started wrestling." McCormick saw defendant use a "striking motion," but was not sure if defendant had a knife. After Liberty dropped the bat, McCormick picked it up and chased the second man that had exited Johnson's car. McCormick saw that defendant and Liberty were exchanging punches. McCormick told Liberty to get off of defendant and then hit Liberty in the leg and arm with the bat. McCormick testified he never saw defendant with a knife and the motions defendant was making were punching motions, not stabbing motions. McCormick admitted that it was possible defendant had a knife and that the motions he was making were stabbing motions.

¶ 24 The court found defendant guilty of second degree murder. In doing so, the court noted that defendant performed the acts which caused the death of Liberty and when he did so he knew

the acts created a strong probability of death or great bodily harm. The court rejected defendant's affirmative defense of self-defense because, although Liberty started the fight and defendant was justified in defending himself, he was not justified in stabbing Liberty fourteen times. However, the court found that defendant proved by a preponderance of the evidence that, at the time of the stabbing, he believed the circumstances to be such that he was justified in using deadly force, but his belief was unreasonable.

¶ 25 The court denied defendant's motion for new trial and the matter proceeded to sentencing. After hearing arguments in aggravation and mitigation, the court sentenced defendant to 10 years' imprisonment.

¶ 26 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he did not act in self-defense.

¶ 27 The standard of review on a challenge to the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense

beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 28 In this case, defendant was found guilty of second degree murder. Defendant does not dispute that the State established the requisite elements of this offense. Rather, he contends that the State failed to prove beyond a reasonable doubt that he did not act in self defense where he, after initially being attacked by Liberty, continued stabbing him even after Liberty dropped the baseball bat.

¶ 29 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 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)). 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 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. 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 may consider the probability or improbability of the defendant's account,

circumstances surrounding the crime, and relevant testimony of other witnesses. *Young*, Ill. App. 3d at 920.

¶ 30 Here, the court found that the State negated the sixth element of self defense *i.e.* that defendant's belief was objectively reasonable. Defendant argues that he had a reasonable belief that the circumstances warranted the use of deadly force.

¶ 31 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant did not act in self defense where his use of deadly force against Liberty was not objectively reasonable. The record shows that although Liberty struck defendant with a bat, after he did so, he attempted to flee, but slipped and fell. Defendant then got on top of Liberty and stabbed him fourteen times in the back, head, chest, arm, and leg. Both of the State's witnesses, Rich and Johnson, and three of defendant's witnesses, Easley, King and Byrd, testified that they did not see Liberty with a weapon in his hand when defendant was stabbing him. This court has found that the use of deadly force is not justified against an antagonist once the antagonist has been disarmed or disabled. *People v. Chavez*, 228 Ill. App. 3d 54, 71 (1992); *People v. Stokes*, 102 Ill. App. 3d 909, 916 (1981); *People v. Limas*, 45 Ill. App. 3d 643, 652 (1977). Therefore, once Liberty was disarmed, defendant was not justified in using deadly force against him. *Stokes*, 102 Ill. App. 3d at 916. As mentioned, the issue of self defense is a question of fact to be determined by the trier of fact after it considers the circumstances surrounding the crime. *Young*, 347 Ill. App. 3d at 920. Here, the evidence presented and the reasonable inferences therefrom, support the trial court's finding that the State negated defendant's claim of self defense.

¶ 32 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Shipp*, 52 Ill. App. 3d 470 (1977) in support of his argument that a defendant in a self-defense situation is not required to have perfect judgment. In *Shipp*, the victim and the defendant had a tumultuous relationship spanning several years. The victim had killed his first wife and served a prison sentence for that murder. After the victim's release from prison, the victim and the defendant began a business relationship. During the course of their relationship, the victim shot the defendant five times and served a penitentiary sentence for that offense. Upon his release from prison, the victim and the defendant married. During the course of their short marriage that ultimately ended in divorce, the defendant endured several beatings at the hands of the victim. The victim vowed to kill the defendant if he ever saw her with another man. After their divorce, the victim confronted the defendant and her male companion, and threatened the other man before coming after the defendant, who was armed with a handgun. The defendant fired at the victim five times before killing him. The victim continued advancing toward the defendant even after she began shooting. The defendant was ultimately convicted of voluntary manslaughter. In reversing the defendant's conviction, this court found that "where the initial use of deadly force was justified, a claim of self-defense will not necessarily be negated by the fact that several shots were fired, or that the last shot was fired after the attack was over, since the party assailed is not expected to have perfect judgment." *People v. Shipp*, 52 Ill. App. 3d at 477.

¶ 33 Here, unlike in *Shipp*, defendant and Liberty did not have a tumultuous relationship involving violence, nor had Liberty previously threatened to kill defendant. More importantly, unlike the victim in *Shipp*, Liberty was not continuing to advance toward defendant. Rather, after hitting defendant with the bat, Liberty attempted to retreat, but slipped and fell. Defendant then

got on top of Liberty and stabbed him numerous times, including in the back, as he lay on the ground.

¶ 34 We are likewise not persuaded by defendant's reliance on *People v. Evans*, 259 Ill. App. 3d 195 (1994). In *Evans*, the victim was the defendant's husband and would frequently physically abuse the defendant. The abuse often times resulted in the defendant needing to be hospitalized. On the day of the homicide, the victim was intoxicated and began beating and spitting on the defendant. In an effort to make him stop, the defendant pushed the victim's face. The victim became enraged and threatened to break the defendant's neck. The victim struck the defendant in the back of the head forcing her to bend forward. From this position, the defendant was able to pick up a kitchen knife from the floor and stab the victim, who continued to threaten to break her neck. The defendant ran out the house with the victim pursuing her. The defendant was ultimately convicted of first degree murder and this court reversed after finding that the State had not proved beyond a reasonable doubt that the defendant's use of deadly force was unreasonable or the force she employed was unnecessary. Here, unlike in *Evans*, defendant cannot demonstrate that his use of deadly force—in the form of stabbing Liberty 14 times, including in the back—was reasonable or necessary where the evidence showed that Liberty attempted to retreat from the conflict, fell to the ground, and was unarmed.

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.