2018 IL App (1st) 153004-U

No. 1-15-3004

Order filed June 20, 2018.

Third Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 14 CR 7211 |
| | ) | |
| MARRIKESS LUCIOUS, | ) | The Honorable |
| | ) | Matthew E. Coghlan, |
| 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 domestic battery affirmed where the evidence proved beyond a reasonable doubt that defendant was not acting in self-defense.

¶ 2 Following a bench trial, defendant Marrikess Lucious was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and sentenced to three years' imprisonment.[1] Defendant

[1]Defendant Marrikess Lucious is also referred to as Maurice Lucious in various portions of the record. He was charged under both names.

appeals his conviction, arguing the State failed to prove beyond a reasonable doubt that defendant was unjustified in his actions where the victim was the initial aggressor. We affirm.

¶ 3 Defendant was charged with 18 counts of aggravated battery, aggravated domestic battery, and domestic battery stemming from his burning his cousin Darnell Lucious and minor nephew Jamarion Moore with boiling water and striking Darnell with his fist.[2]

¶ 4 At trial, Darnell testified that defendant was his cousin. On April 1, 2014, they lived with their grandmother on West Jackson Boulevard. On that day, Darnell was in the kitchen speaking with his cousin Jerome, his grandmother, and his uncle about their living situation with defendant. Dinner was being prepared. Defendant came into the kitchen through the back door. Darnell and defendant exchanged words and got into an altercation. Defendant pointed his finger at Darnell's face, but did not make contact, and the two men "started exchanging blows" until Jerome broke up the fight.

¶ 5 Darnell and defendant stood up and Jerome got between them. Darnell was near the back door and "was trying to leave" because he did not want to have an altercation to affect his grandmother's health and he was embarrassed. As he tried to leave, it looked as if defendant "was trying to get away and knocked over" a pot of boiling water and meat on the stove, "and the pot accidently went off the stove." When defendant "flung his arm, the water just tilted over," hitting the floor and splashing everywhere. Darnell jumped in front of his aunt to protect her from the water and was struck on the left arm by the boiling water, suffering burns. He did not go to the hospital or receive treatment for his burns, but still had scarring on his arm at the time

[2]Darnell Lucious shares the same last name with eyewitness Jerome Lucious. We therefore refer to them by their first names.

of trial. Darnell testified that the fight had been over for a minute or minute and a half before the water was spilt.

¶ 6 Darnell acknowledged giving a statement to Detective Gustafson and Assistant State's Attorney ("ASA") Amanda Warmington. He denied telling them he saw defendant "snatch" his arm away from Jerome, pick up the pot and "fling" it at him and that defendant then charged at him and punched him. He claimed he asked these statements to be changed in the written statement that he signed but the changes were not made. Darnell asserted defendant was trying to break away from Jerome and that's how the pot got hit. He stated that, when he and defendant were separated, they were three or four feet apart.

¶ 7 Jerome Lucious testified that defendant is his cousin. On April 1, 2014, Jerome was at his grandmother's house with his children, including Jamarion. He was reading in the kitchen when his cousin Darnell came in to talk to his grandmother and uncle about defendant. When defendant walked in the kitchen through the backdoor, Darnell "told defendant off." Defendant then "indexed" Darnell by putting his index finger on Darnell's forehead. Jerome stood up because he recognized the "incident [was] getting hot." Darnell threw a punch at defendant and both men ended up fighting on the floor. Jerome kept telling them to get up, and eventually Darnell pulled himself away from defendant.

¶ 8 Jerome told defendant to calm down, "shoed" him back, and got in between the men to prevent them from "trampling" on their grandmother. In the heat of the moment, defendant "snapped and threw" a pot of nearly boiling water "straight towards" Darnell, hitting him in the arm. Jamarion was also hit by the boiling water. Prior to the pot being thrown, Jerome was no longer between the two men because he felt the situation was calming down a little bit, but they were "still in opposition." The fight "had been separated," and Darnell was not going after

defendant when the water was thrown. Jerome had not touched anyone when he separated the men. They had broken up the fight themselves.

¶ 9 Chicago police detective Gustafson was assigned to the case on April 3, 2014. He spoke to Darnell with ASA Warmington, who prepared a written statement which Darnell signed. Gustafson testified that Darnell told Warmington he "saw Maurice snatch his arm away from Jerome and grab a pot of water from the stove." Gustafson testified that any changes Darnell requested were made to the statement and initialed by all parties. If Darnell asked them to change something, they did.

¶ 10 Defendant turned himself in on April 3, 2014. After speaking with Darnell, Gustafson advised defendant of his *Miranda* warnings and then interviewed him. Defendant explained that he and Darnell got into an argument, Darnell shoved him, defendant grabbed the pot of water and threw it at his cousin, and they then fought. Darnell and Jamarion were both burned by the boiling water.

¶ 11 The State presented a certified copy of defendant's prior May 13, 2004, conviction for domestic battery.

¶ 12 At the close of the State's evidence, the court granted defendant's motion for a directed finding on eight of the counts, finding no evidence supporting great bodily harm or permanent disfigurement. The State *nolle prossed* four counts. Defendant did not put on any witnesses.

¶ 13 The trial court found defendant guilty of four counts of domestic battery toward his cousin Darnell for causing bodily harm to him (720 ILCS 5/12-3.2(a)(1) (West 2014)) and making contact of an insulting or provoking nature with him (720 ILCS 5/12-3.2(a)(2) (West 2014)) when he burned and struck him. It found defendant not guilty of the two remaining charges based on injuries to Jamarion.

¶ 14 The trial court found that an argument had occurred between defendant and Darnell, defendant "indexed" Darnell, and they began fighting. Darnell punched defendant and ended up on top of him before Jerome stepped in and broke up the fight. Defendant then grabbed the pot and intentionally threw it at Darnell, causing his injuries. The court noted the offenses were Class 4 felonies given defendant's prior 2004 domestic battery conviction. The court subsequently denied defendant's motion to reconsider or for a new trial and sentenced defendant to three years' imprisonment, merging the counts. It denied defendant's motion to reconsider sentence and defendant filed his notice of appeal.

¶ 15 Defendant argues this court should reverse his conviction because the State failed to prove beyond a reasonable doubt that his actions were unjustified in defending himself against Darnell.

¶ 16 When reviewing the sufficiency of the evidence, this court will not retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we must consider " '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.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court must draw all reasonable inferences from the record in favor of the State. *Davison*, 233 Ill. 2d at 43. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000). A criminal conviction will not be set aside unless the evidence is

so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 17 Defendant's sole argument on appeal is that he was acting in self-defense and the State failed to prove beyond a reasonable doubt that he was not justified in defending himself against Darnell. In order to prove defendant guilty of domestic battery as charged, the State needed to establish that defendant, without legal justification, caused bodily harm to Darnell and that Darnell was a family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2014). Defendant does not deny that bodily harm occurred to Darnell or that Darnell was a family or household member. So we only examine whether defendant's actions were done without legal justification.

¶ 18 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. Gray*, 2017 IL 120958, ¶ 50. The use of force is justified in self-defense where: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of great bodily harm or death 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. 720 ILCS 5/7-1(a) (West 2014); *Gray*, 2017 IL 120957, ¶ 50. If the State negates any of these elements, the defendant's self-defense claim fails. *Gray*, 2017 IL 120957, ¶ 50.

¶ 19 As an initial matter, we note that defendant did not raise self-defense at trial. Rather, he predicated his defense upon the accidental nature of the injuries, arguing that he did not intentionally harm Darnell or Jamarion. He now raises self-defense for the first time on appeal. Even if, as defendant claims, the State's evidence set forth every element of the affirmative

defense, this is not sufficient to trigger the requirement that the State disprove the defense. *People v. Bardsley*, 2017 IL App (2d) 150209, ¶ 17. Instead, defendant should have raised the self-defense claim at trial and his failure to do so forfeits the self-defense claim on appeal. *Id*. Nevertheless, the State does not argue forfeiture, and we will consider the argument. *People v. Williams*, 193 Ill. 2d 306, 347 (2000) ("The rules of waiver are applicable to the State as well as the defendant in criminal proceedings")

¶ 20 Self-defense is an affirmative defense which defendant may raise only if he presents some evidence of each element of defense or if State's evidence raises it. *People v. Anderson*, 234 Ill. App. 3d 899, 906 (1992). If any of these elements are missing, the self-defense claim fails. *People v. Lee*, 213 Ill. 2d 218, 225 (2004). The question of whether a defendant acted in self-defense is a question of fact for the fact finder. *People v. Estes*, 127 Ill. App. 3d 642, 651 (1984)

¶ 21 The evidence at trial was sufficient to establish beyond a reasonable doubt that defendant was guilty of domestic battery. Jerome's testimony showed that defendant intentionally threw a pot of boiling water at his cousin Darnell, causing him injuries. Although Darnell claimed the scalding was an accidental spill, he was impeached by his signed statement in which he claimed defendant flung the pot of boiling water at him. It was for the trial court as the trier of fact to determine the credibility of the witnesses, and resolve conflicts in the testimony. Brown, 2013 IL 114196, ¶ 48. The trial court here credited Jerome's testimony over that of Darnell. We defer to that credibility finding. *Cooper*, 194 Ill. 2d at 430. Accordingly, the evidence supports the court's finding that defendant was guilty of the domestic battery of Darnell.

¶ 22 Taking the evidence in the light most favorable to the State, it does not support defendant's self-defense claim. The evidence established that defendant made the initial physical

contact when he "indexed" Darnell after a verbal confrontation, thus making him the initial aggressor. Darnell then threw a punch and a fight ensued, which ultimately ended with both men standing up three or four feet away from each other with Jerome between them. At this point, the physical fight was over and, given Darnell's testimony that he was attempting to leave through the back door so as not to affect their grandmother's health, no unlawful force was being threatened against defendant. Jerome had stepped back because he felt the situation had calmed down. Yet one minute or one and a half minutes after the fight ended, defendant threw a pot of boiling water at Darnell, even though there was no threat of imminent harm to defendant warranting an act of self-defense. Even if, by throwing the first punch, Darnell was the initial aggressor, defendant could not reasonably believe that he was in danger of imminent death or great bodily harm warranting his use of boiling water to defend himself. The fight was over and Darnell was attempting to leave the room.

¶ 23 Defendant claims that the altercation was still ongoing after the two men were separated because Jerome testified that defendant and Darnell were still "in opposition." However, read in context, Jerome used this term to describe where the two men were standing in relation to each to other, not to describe the state of the altercation, because he also testified that he was not between them anymore and "fell back a little bit" because he felt the situation was calming down. Because the fight had ceased for a minute or minute and a half and Darnell was attempting to leave out the back door, defendant cannot have had an objectively reasonable belief that his use of the boiling water was necessary to protect himself from imminent harm. See *People v. Guja*, 2016 IL App (1st) 140046, ¶ 54 (the right of self-defense does not permit one to pursue and inflict injury upon even an initial aggressor after the aggressor abandons the quarrel). There was no testimony elicited that established or inferred that defendant actually and subjectively

believed a danger of imminent harm existed which required the use of force. The evidence does not demonstrate that defendant was in imminent danger of harm, that unlawful force was threatened against him, that his own use of force was necessary, or that he objectively, subjectively, or reasonably believed a danger existed warranting the throwing of the boiling water. Accordingly, defendant's self-defense claim fails.

¶ 24 A rational trier of fact could find the State proved beyond a reasonable doubt that defendant was guilty of domestic battery, and the evidence at trial did not support a self-defense claim. Therefore, we affirm defendant's conviction for domestic battery.

¶ 25 Affirmed.