

SIXTH DIVISION

April 12, 2019

Modified upon denial of rehearing May 17, 2019

No. 1-17-0016

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 CR 18183
	)	
NASHANTE BOYD,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Connors concurred in judgment.

**ORDER**

¶ 1 **Held:** We affirm the conviction of defendant-appellant, Nashante Boyd, for aggravated discharge of a firearm. The State proved the defendant discharged a firearm in the direction of Shenika Wright. The trial court did not err in failing to consider self defense and defendant’s trial counsel was not ineffective for failing to raise it.

¶ 2 Defendant-appellant, Nashante Boyd, was arrested and convicted of aggravated discharge of a firearm and sentenced to 24-months of intensive probation. She was found not guilty of aggravated assault. The court heard testimony that on the night of the incident, the victim and a

companion were at a gas station on the west side of Chicago when they encountered the defendant. The defendant approached the victim, who was seated in her companion's car, and attempted to punch her through the car window. When the victim confronted the defendant, the defendant pulled a gun from her purse and fired a single shot. No one was struck by the bullet and the defendant then left the scene on foot. Defendant was arrested several days later after being identified by the victim in a police photo line-up. She now appeals her conviction for aggravated discharge of a firearm.

¶ 3 Before this court, defendant argues: (1) the State failed to prove her guilty of aggravated discharge of a firearm beyond a reasonable doubt, (2) the trial court violated her right to due process when it based its verdict on a faulty recollection of the trial testimony, (3) the trial court erred when it declined to consider self defense, and (4) her trial counsel was ineffective when he failed to explicitly raise self defense.

¶ 4 For the reasons stated more fully below, we affirm defendant's conviction for aggravated discharge of a firearm. In viewing the evidence in a light most favorable to the State, a trier of fact could reasonably conclude defendant discharged a firearm in the direction of Shenika Wright. Defendant's right to due process was not violated. The trial court did not err when it declined to consider self defense and trial counsel was not constitutionally ineffective for failing to raise it at trial.

¶ 5

#### JURISDICTION

¶ 6 The trial court sentenced defendant on December 13, 2016. Notice of appeal was timely filed on December 14, 2016. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing

appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 7

#### BACKGROUND

¶ 8 At trial, the State called only one witness, the victim, Shenika Wright. Wright testified that on September 18, 2015, at around 5 a.m., she and her companion, Johnny Jordan, drove to a Falcon Fuel gas station located at 4805 West Jackson Blvd. They parked in front of the store and went inside to make a purchase. After entering, Wright noticed the defendant inside the store. While Wright had known the defendant for a year or two, she did not know defendant's real name and only knew her as Tae Tae. Eventually, Wright returned to the passenger seat of the car. Defendant exited the store, approached the passenger side of the car and said something to Wright. At the time of trial, Wright could not remember what defendant said to her.

¶ 9 Wright claims that defendant then took a swing at her through the open passenger side window. Wright attempted to open the door but defendant pulled it back closed. Jordan exited from the driver seat and Wright climbed across to exit from the driver's door. Defendant had gone toward the diesel pumps at the station and Wright followed her. Wright admitted that prior to exiting the car she grabbed "something" from the back seat that she planned to use to hit defendant. She claimed Jordan grabbed the "something" from her hand after she got out of the car.

¶ 10 As Wright approached, defendant moved further away. Eventually, Wright came within 10 feet of defendant. She was about to fight defendant, when defendant pulled a gun from her purse and fired a single shot hitting the ground. Wright could not recall any detail about the gun. After discharging the gun, defendant tripped over the diesel fuel pump and fell to the ground. Defendant stood back up and took off running. Wright went into the store and called the police.

After the police arrived, she informed them that Tae Tae had shot at her. On September 26, Wright identified the defendant from a photo lineup. At the close of her direct testimony, Wright admitted she had three prior felony convictions related to possession and distribution of drugs.

¶ 11 On cross-examination, Wright could not remember the drugs she was convicted of delivering. She also could not remember any details about the object she grabbed from the back seat of the car. She denied it was a knife. She did not show the object to the police but claimed she did not have to because the police saw it on the gas station surveillance video. Wright did not know what happen to the object after Jordan took it from her hands. She admitted she never mentioned the object to the police or that Jordan had taken it from her. Wright stated that when the firearm was discharged, she was standing with four or five people but no one was hit. She did not know where the bullet struck the ground. After Wright concluded her testimony, the State rested.

¶ 12 Defendant then moved for a directed verdict on both counts. The trial court granted the motion as to the aggravated assault charge but denied the motion as to the aggravated discharge count. The court stated that whether the defendant had fired the weapon in the direction of Wright represented a credibility issue.

¶ 13 The defendant then called her only witness, Johnny Jordan. Jordan admitted Wright was his ex-girlfriend and he was with her in the early morning of September 18, 2015, at the Falcon Fuel. He explained that it was routine for the pair to go to the gas station to get something from the store. When defense counsel asked him what happen that morning, he stated, “[s]ome people had some few words. There was a lot of things going on that night.” He had seen defendant a couple of times before, but did not know her. He claimed that defendant and Wright “had words.” Jordan could not remember: (1) if he got out of the car, (2) if Wright exited the car, (3) if

defendant approached the car, (4) if he had “something” in his back seat, (5) if he took that “something” away from Wright, or (6) if a gun was fired. When specifically asked if defendant pulled out a gun and fired, Jordan responded, “no.” The State did not cross-examine Jordan. The parties then stipulated that Jordan had a prior conviction for possession of a controlled substance.

¶ 14 After hearing closing arguments, the trial court issued its findings. The court found Wright’s testimony to be credible as to the elements of the crime and that it established defendant discharged a firearm in the direction of another person, Shenika Wright. At the next hearing, the court sentenced defendant to 24 months’ intensive probation. This appeal followed.

¶ 15 ANALYSIS

¶ 16 In her first argument before this court, defendant contends the State failed to prove her guilty beyond a reasonable doubt. She argues that Wright’s testimony, the only evidence offered by the State against her, failed to prove she knowingly discharged a firearm in Wright’s direction as alleged in the charging instrument.

¶ 17 When a defendant argues the evidence was insufficient to sustain her conviction, the inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). In reviewing the sufficiency of the evidence, the appellate court will not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). It is the trier of fact’s function to assess witness credibility, weigh and resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). While the trier of fact’s findings regarding witness credibility are entitled to great weight, the determination is not conclusive. *Smith*, 185 Ill. 2d at 542. The fact finder’s acceptance of testimony as true does not guarantee that it was reasonable to do so. *People v. Cunningham*, 212

Ill. 2d 274, 280 (2004). After considering the trial court's findings, if this court is "of the opinion that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, we must reverse the conviction." *Smith*, 185 Ill. 2d at 541. "A criminal conviction cannot stand on appeal if the prosecution's evidence is so weak as to create reasonable doubt of the defendant's guilt." *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). However, an appellate court will only reverse a conviction where no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Smith*, 185 Ill. 2d at 541.

¶ 18 In her sufficiency argument, defendant contends the State failed to prove she discharged the firearm in the direction of Shenika Wright. In order to be found guilty of aggravated discharge of a firearm under section 24-1.2(a)(2) of the Criminal Code the State must prove that defendant "knowingly or intentionally \*\*\* discharge[d] a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person." 720 ILCS 5/24-1.2(a)(2) (West 2016).

¶ 19 After reviewing the evidence in a light most favorable to the State, a rational trier of fact could reasonably conclude that defendant fired in the direction of Wright. Wright provided the following testimony:

"Q. After she pulled the gun out of her purse what happened?

A. She pulled the gun out and like she shot it. She shot it towards one direction, but it was toward the ground.

Q. Okay. Did she have her arm extended toward you?

A. She had it towards our way. It like about three or four of us right there."

The trial court could reasonable infer that having her arm extended toward Wright meant the firearm was discharged in Wright's direction.

¶ 20 While defendant points out that Wright had just previously testified that defendant fired towards the ground, this testimony does not lead to the conclusion that the firearm was not also discharged in Wright's direction. Both statements can be true. Wright testified that defendant stood no more than 10 feet from her when the shot was fired and the gas station was well lit. Given this circumstance, Wright certainly would be able to tell if the gun was pointed in her direction. Defendant also contends Wright's testimony was incredible given that she forgot what she grabbed from the back of the car and that she had three prior felonies. The trial judge heard this testimony and was in a better position to consider Wright's credibility. *Wheeler*, 226 Ill. 2d 92, 114-15 (2007). The trial court determined Wright testified credibility when she stated that defendant had the gun "towards our way." This testimony was sufficient for the trial court to find that the elements of aggravated discharge of a firearm had been established.

¶ 21 In her next argument, defendant contends that the State failed to disprove she acted in self-defense during the event. However, the record shows that at no point during the proceedings below did the defendant raise the issue of self defense. She also did not file a post-trial motion raising the trial court's failure to consider self defense. It is well settled that in order to preserve a claimed error for review a defendant must raise a trial objection and file written post trial motion raising the issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The reason for this is to allow a trial court to correct alleged errors and allow for a new trial without the need for appellate review. *Id.* Given defendant's failure to properly preserve the issue, it has been forfeited and we decline to consider it. See *People v. Bardsley*, 2017 IL App (2d) 150209, ¶ 22 (finding that the affirmative defense of self defense is subject to forfeiture in a bench trial). As discussed in greater detail below, even if properly raised, the evidence presented did not implicate all of the elements necessary to raise a claim of self defense.

¶ 22 In her next issue, defendant argues that we should remand for a new trial because the trial court violated her right to due process by convicting her based on its faulty recollection of Wright's testimony. Defendant points out that while issuing his findings, the trial court stated that Wright testified that she knew where the bullet landed when it hit the ground.

¶ 23 Initially, we agree with the State that defendant has failed to properly preserve the issue by failing to object and file a post trial motion raising the issue. *Enoch*, 122 Ill. 2d at 189. Even if the issue had been properly preserved, we find this issue to be without merit. The State was not required to prove where the bullet landed. The aggravated discharge statute requires the State prove an individual "discharge[d] a firearm in the direction of another person." 720 ILCS 5/24-1.2(a)(2) (West 2016). Wright testified that the defendant had the firearm "towards our way" when she discharged it. The trial court, sitting as the finder of fact, found this to be a credible statement. Where the bullet landed is irrelevant. The trial court's misrecollection as to Wright's testimony on where the bullet landed does not represent a basis for setting aside the guilty finding. *People v. Cook*, 2018 IL App (1st) 142134, ¶ 106 (even if the trial court erred, a reviewing court will not reverse if the error is harmless).

¶ 24 Next, the defendant contends that the trial court erred in not considering self defense. As stated above, the failure to raise this affirmative defense at any point results in forfeiture on appeal. *People v. Blair*, 215 Ill. 2d 427, 443-44 (2005) (forfeiture means the issue could have been raised at trial, was not raised and is therefore barred on appeal).

¶ 25 Even if properly raised and preserved, the trial court did not err in refusing to consider it. Self defense is raised when some evidence is presented that demonstrates: (1) force was threatened against the defendant, (2) the defendant was not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the defendant actually believed that a

danger existed which required the use of the force applied, and (6) the defendant's belief was objectively reasonable. *People v. Spiller*, 2016 IL App (1st) 133389, ¶ 22. In order to raise a self defense affirmative defense, some evidence as to each element must be presented. *Id.* We disagree with the defendant that the evidence at trial was sufficient to put the issue of self defense before the trial court.

¶ 26 A review of the trial transcripts demonstrates that evidence as to several of the self defense elements was lacking. In the brief before this court, the defendant claims Wright "brandished some sort of weapon" at her, but Wright's testimony does not support this assertion. While Wright testified that she grabbed "something" from the back seat of Jordan's car, the "something" was never identified. Moreover, she also testified that upon exiting the car, Jordan grabbed the "something" from her hand. This testimony was not contradicted because Jordan testified that he could not remember if he did or did not grab the "something." The evidence presented also demonstrated that defendant was the aggressor and did not withdraw from the conflict. Wright testified that it was defendant who approached her while she sat in Jordan's car and it was defendant who tried to punch her through the window. After attempting to punch Wright, defendant remained at the gas station and did not attempt to withdraw.

¶ 27 The trial testimony of Wright did not present evidence on all the necessary elements of a self defense claim. Accordingly, the trial court did not err when it stated that it would not consider self defense. *People v. Taylor*, 344 Ill. App. 3d 929, 937 (2003) (a trial court is presumed to know and follow the law).

¶ 28 In her final argument, defendant claims her trial counsel was constitutionally ineffective because he failed to specifically raise a self defense affirmative defense. It has been well established that pursuant to both the United States and Illinois Constitution a criminal defendant

has the right to effective assistance of counsel at trial. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *People v. Albanese*, 104 Ill. 2d 504, 536 (1984). A defendant is denied the effective assistance of counsel if the counsel's performance falls below an objective standard of reasonableness, and counsel's deficient performance prejudiced the defense such that it undermines the confidence in the outcome of the proceedings. *People v. House*, 141 Ill. 2d 323, 388 (1990). Ineffective assistance of counsel claims are reviewed under a two-prong analysis set forth in *Strickland*. First, defendant must show that counsel's performance was objectively unreasonable. *People v. Villarreal*, 198 Ill. 2d 209, 228 (2001). The defendant must then show that but for the deficient performance "the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. We engage in a *de novo* review of an ineffective assistance of counsel claim. *People v. Stanley*, 397 Ill. App. 3d 598, 612 (2009).

¶ 29 We reject defendant's claim that her trial counsel was ineffective because she cannot satisfy the second, prejudice prong, of the *Strickland* analysis. *People v. Palmer*, 162 Ill. 2d 465, 475-76 (1994) (failure to satisfy either prong dooms an ineffective assistance claim). Even if her trial counsel had affirmatively raised self defense before the trial court, there would still be no evidence supporting all the necessary elements of a self defense claim to put it properly before the court. Defendant relies solely on Wright's testimony to raise a self defense claim, and as stated above, this testimony failed to present facts on all the required elements. Based on this, we must conclude that her attorney was not ineffective for failing to specifically raise a self defense affirmative defense at trial.

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, we affirm the defendant's conviction for aggravated discharge of a firearm.

¶ 32 Affirmed.