

2011 IL App (2d) 100396-U  
No. 2-10-0396  
Order filed October 26, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08-CF-1497
	)	
ANTWAN D. YOUNGBLOOD,	)	Honorable
	)	Allen M. Anderson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Schostok concurred in the judgment.

**ORDER**

*Held:* (1) The State disproved beyond a reasonable doubt defendant's claim of self-defense; evidence showed that, although defendant and the victim engaged in a confrontation, defendant drove away, returned with a baseball bat, chased the victim, and hit him repeatedly in the head; thus, the jury was entitled to find, among other things, that defendant was the aggressor; (2) although defendant struck the victim multiple times, and although at trial the State argued that each strike could support a separate conviction, the indictments did not distinguish among them, and thus we vacated all but the most serious (attempted first-degree murder) conviction.

¶ 1 Following a jury trial, defendant, Antwan D. Youngblood, was convicted of attempted first-degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2008)), armed violence (720 ILCS 5/33A-2(a) (West 2008)), and two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(1) (West 2008)). He

was sentenced to concurrent prison terms of 16 years for attempted first degree murder, 7 years for armed violence, and 5 years for each aggravated battery. On appeal, defendant claims that (1) the State failed to prove beyond a reasonable doubt that he did not act in self-defense when he hit the victim and (2) his convictions of armed violence and aggravated battery have to be vacated because all of his convictions arose from a single act. We affirm in part and vacate in part.

¶ 2 The facts relevant to resolving this appeal are as follows. The indictments for the offenses of which defendant was convicted all provided that defendant hit the victim, Antonio Wright, “about his head.” None of the indictments attempted to differentiate the blows to the head that Wright suffered. However, in opening statements, the State indicated that the evidence would show that defendant struck Wright three times with a baseball bat.

¶ 3 The evidence presented at trial revealed that, in May 2008, Wright and Bryant Ferguson were on the roof of Ferguson’s home, using a BB gun to shoot at passing cars, among other things. Defendant was driving one of the cars they shot at that night. After defendant’s car was struck, defendant got out of his car to investigate. Defendant argued with Wright and Ferguson before getting back into his car and driving away.

¶ 4 Later, defendant returned to Ferguson’s home, and Wright and defendant got into a fight. Ferguson believed that Wright struck defendant during that fight, but he did not believe that Wright threatened defendant with a knife. Wright testified that he and defendant punched each other in the face. Wright denied threatening or stabbing defendant with a knife, as he was not carrying a knife at that time. After the fight ended, defendant got into his car and drove away.

¶ 5 After defendant left, and while Wright was waiting for his stepfather to arrive, defendant returned to Ferguson’s home. Defendant got out of the car and approached Ferguson’s home, holding something in his hands. Wright testified that defendant had a baseball bat in his hands.

Upon seeing defendant, Wright and Ferguson ran. Defendant followed Wright, who climbed over a fence. When Ferguson found Wright, Wright was lying in the street, in a pool of blood. Wright testified that, after defendant followed him over the fence, the next thing he remembered was that he was lying in the street. Wright could not describe what happened next, as the next thing he remembered was waking up in the hospital.

¶ 6 An officer who arrived on the scene noted that Wright had a cut above his left eyebrow and that blood was coming out of Wright's ear. In searching the area, the officer found a BB gun on the roof of Ferguson's home. Later, the officer went to the hospital where Wright was transported and took custody of Wright's personal belongings. A small black pocket knife was one of the items that the officer took into custody.

¶ 7 A neurosurgeon who examined Wright at the hospital testified about the injuries Wright sustained. Among other things, the neurosurgeon stated that Wright's skull was fractured in several places on the side and back and that pieces of skull bone were imbedded in Wright's brain. Wright's skull was repaired using metal plates, and, because of pressure due to Wright's brain swelling, the neurosurgeon put Wright into a barbiturate coma. Wright remained in this state for several days. As a result of the injuries Wright sustained, Wright suffers from hearing, memory, and vision problems.

¶ 8 When the police approached defendant, defendant initially denied being involved in the incident. However, defendant later gave the police his version of what transpired that night, telling one officer that, when he got out of his car to investigate what had hit his car, Wright and another man came running at him from a gangway. Defendant punched Wright, and Wright staggered backwards. At that point, defendant realized that he had been stabbed. Defendant retrieved a baseball bat from his car and ran towards Wright. As Wright began running backwards, defendant

lifted the bat over his head and swung the bat, striking Wright on the arm. Wright continued moving backwards, and defendant lifted the bat over his head and swung the bat again, striking Wright on the head. Wright staggered, and because Wright had not fallen down, defendant lifted the bat over his head and swung the bat, striking Wright in the head again.

¶ 9 When the police asked defendant about a girl named Cynette Flowers, defendant admitted that he knew Flowers but denied being romantically involved with her. Defendant advised the police that, several weeks before Wright was injured, he received a phone call from someone who warned defendant to stay away from the caller's girlfriend. Defendant told Flowers about the call, and Flowers told defendant that Wright was the caller. Defendant confronted Wright about the call, and, after some discussion about Wright making the call to impress Flowers, defendant believed that he and Wright had settled the matter.

¶ 10 Defendant also told the police that he went to the hospital the night of the incident to get treatment for his stab wound. After checking in under the name of his cousin, giving emergency room personnel his grandmother's address in Chicago, and stating that he sustained his injury while playing football, defendant was treated for a one-centimeter laceration to his left lateral chest wall. Treatment involved giving defendant anesthesia to explore and stitch the wound.

¶ 11 In closing argument, the State noted how the evidence revealed that defendant struck Wright at least three times. That is, as defendant told the police, he swung the bat at Wright, first striking Wright on the arm. Defendant then struck Wright at least two more times after that, causing Wright to sustain injuries to the side and back of his head. The State theorized that defendant could have administered the first blow because he was angry and frustrated. As to the second blow, defendant may have hit Wright because he wanted to scare Wright. With the third blow, the State suggested

that someone would hit a victim that many times in the head only in an attempt to kill the victim.

Based on these theories, the State asked the jury to find defendant guilty on each count.

¶ 12 The jury found defendant guilty of attempted first-degree murder, armed violence, and two counts of aggravated battery. Defendant moved for a new trial, arguing that he was not proved guilty beyond a reasonable doubt. Defendant never argued in the trial court that any of his convictions were based on precisely the same act. The trial court denied the motion, and defendant was sentenced. This timely appeal followed.

¶ 13 There are two issues raised in this appeal. That is, we are asked to consider (1) whether the State proved beyond a reasonable doubt that defendant did not act in self-defense and (2) whether defendant's convictions arose from a single act, thus mandating that his convictions of armed violence and aggravated battery be vacated. We address each of these arguments in turn.

¶ 14 The first issue we consider is whether the State proved beyond a reasonable doubt that defendant did not act in self-defense. When assessing the sufficiency of the evidence, we ask whether, when viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Anderson*, 188 Ill. 2d 384, 392 (1999). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding what reasonable inferences to draw from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004). A reviewing court will not substitute its judgment for that of the trier of fact on questions concerning the sufficiency of the evidence, unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of guilt. *People v. Ranstrom*, 304 Ill. App. 3d 664, 678 (1999).

¶ 15 Once a defendant raises the affirmative defense of the use of force in defense of a person (720 ILCS 5/7-1 (West 2008)), the State has the burden of disproving it beyond a reasonable doubt,

in addition to proving the elements of the charged offense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). The elements of self-defense are that (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 believed that a danger existed requiring the use of the force applied; and (6) this belief was objectively reasonable. *Id.* at 225. If the State negates any one of these elements, the defense fails. *Id.*

¶ 16 Here, viewing the evidence in a light most favorable to the State, the jury could conclude that the State disproved self-defense beyond a reasonable doubt. First, the jury could find that no unlawful force was threatened against defendant. Although Wright and Ferguson fired a BB gun at defendant's car, the evidence indicated that neither man had the BB gun when defendant attacked Wright. Moreover, although there was evidence suggesting that Wright was in possession of a pocket knife when the attack occurred, none of the evidence revealed that Wright threatened to use the pocket knife to stab defendant. Although defendant believed that he was stabbed before he went to his car to retrieve a baseball bat, defendant never indicated that he saw Wright with a knife. And, given the superficial nature of the wound, the jury could find that the injury was caused by something other than a pocketknife. Moreover, the evidence showed that, when defendant attacked Wright, Wright and Ferguson were running away from defendant. Under such circumstances, a rational jury could find that neither Wright nor Ferguson threatened defendant with unlawful force.

¶ 17 Second, the State's evidence revealed that Wright was beaten only after defendant returned to Ferguson's home a third time. When defendant did so, he exited his car, carrying a baseball bat in his hands. Wright and Ferguson saw the baseball bat and ran away from defendant. Instead of leaving the area after Wright and Ferguson fled, defendant followed Wright, climbing over a fence

in order to catch him. Based on this evidence, a rational jury could find that defendant was the aggressor.

¶ 18 Citing *People v. Thomas*, 58 Ill. App. 3d 402 (1978), defendant contends that Wright should be viewed as the aggressor. In *Thomas*, the evidence revealed that the defendant acted with a sudden and intense passion, and, as a result, the jury should have been given a voluntary manslaughter instruction. *Id.* at 406. Specifically, the evidence established that the victim had beaten the defendant twice within a period of 18 hours, the victim told the defendant to stay out of the neighborhood, and the victim held the defendant to the ground while the victim searched the defendant. *Id.* Within seconds of being held to the ground, the defendant shot the victim. *Id.*

¶ 19 These same types of facts are not present here. Even assuming that, similar to *Thomas*, Wright and defendant had a confrontation concerning Flowers before defendant beat Wright, defendant told the police that, when his conversation with Wright ended, he considered the matter resolved. Moreover, even though Wright and Ferguson shot at defendant's car, Wright and defendant engaged in a fist fight, and defendant allegedly suffered a mild stab wound, these acts did not justify defendant's act of striking Wright multiple times in the head with a baseball bat. See *People v. Bailey*, 141 Ill. App. 3d 1090, 1104 (1986) ("The provocation must be proportionate to the retaliation it generates[.]"). What makes this case distinguishable from *Thomas* is that, unlike the defendant in *Thomas*, the State's evidence revealed that defendant here left the scene each time that Wright provoked him. Thus, unlike in *Thomas*, a rational jury could find that there was a significant time separation between the provocation and defendant's deadly act. See *id.* (quoting *People v. Coleman*, 124 Ill. App. 3d 285, 289 (1984)) (no error arose when jury not instructed on provocation, as evidence revealed that the defendant attacked victims only after victims left the

scene and were walking back to their car, and, thus, “ ‘sufficient time had lapsed between the alleged provocation and the homicide to permit the voice of reason to be heard.’ ”).

¶ 20 Third, the jury could find that any danger of harm defendant faced was not imminent. Although the evidence revealed that Wright and Ferguson had access to a BB gun and Wright may have had a pocket knife, the State’s evidence showed that neither of these weapons was used to threaten defendant. That is, the State’s evidence indicated that Wright never displayed the knife before defendant attacked him. And, as to the BB gun, the State’s evidence suggested that neither Wright nor Ferguson possessed it when defendant attacked Wright. Rather, the police found it on the roof of Ferguson’s home when the area was searched after the attack. Moreover, as noted, the State’s evidence revealed that Wright and Ferguson were running away from defendant when defendant retrieved the baseball bat from his car. Defendant easily could have gotten into his car and driven away, but, instead, the State’s evidence established that defendant chose to chase Wright, following him as he climbed over a fence and hitting him several times with a baseball bat once defendant caught him.

¶ 21 Fourth, from the State’s evidence, a rational jury could find that defendant’s use of force was not necessary. The State’s evidence indicated that neither Wright nor Ferguson threatened to harm defendant when the attack occurred. When Wright was struck, the first blow hit him on the arm, as Wright was attempting to deflect the bat. This evidence suggests that defendant was facing Wright when defendant hit Wright the first time. The evidence then indicated that, at some later point, defendant began hitting Wright in the back and side of his head. This evidence suggests that Wright was turned away from defendant and in no position to attack him.

¶ 22 Fifth, the State’s evidence established that the attack occurred when defendant returned to Ferguson’s home for a third time. When defendant arrived at Ferguson’s home, he retrieved a

baseball bat from his car before approaching the men. The men saw defendant with the bat and ran. Defendant chased Wright as he was attempting to run away from defendant. Given this evidence, a rational jury could conclude that defendant did not actually believe that a danger existed requiring the use of the force applied.

¶ 23 Last, even if defendant believed that a danger existed that required the use of force applied, a rational jury could find that defendant's belief was not reasonable. Again, the State's evidence indicated that neither man approached defendant in an aggressive way when defendant came to Ferguson's home the last time.

¶ 24 Having concluded that, based on the evidence, a rational jury could have found that the State disproved beyond a reasonable doubt that defendant acted in self-defense, we consider whether defendant's convictions of armed violence and aggravated battery must be vacated because all of his convictions arose from a single act. Defendant, recognizing that he did not raise this issue in the trial court, asks us to review it for plain error. The State, citing *People v. Marston*, 353 Ill. App. 3d 513, 516 (2004), waives argument on the application of the plain-error rule. Given the State's position, we consider the merits of defendant's claim. Our review is *de novo*. *People v. Young*, 362 Ill. App. 3d 843, 852 (2005).

¶ 25 Defendant's argument is premised on *People v. Crespo*, 203 Ill. 2d 335 (2001). In *Crespo*, the defendant stabbed the victim three times and was charged with various offenses, including aggravated battery and armed violence. *Id.* at 344-45. As charged in the indictment, the aggravated battery and armed violence counts did not differentiate the separate stab wounds. *Id.* at 342. Rather, the counts merely offered alternative theories of criminal culpability. *Id.* Likewise, at trial, the State "portray[ed the] defendant's conduct as a single attack." *Id.* at 344. In reiterating that a defendant has a fundamental right to be informed of the nature and cause of the criminal accusations against

him so that he may prepare a defense, the court noted that the defendant would not have known until the cause was on appeal that the State considered each of the separate stabs a separate offense. *Id.* at 345. Accordingly, the court held that the indictment must indicate that the State intends to treat the conduct of a defendant as multiple acts in order for multiple convictions to be sustained. *Id.*

¶ 26 Since *Crespo*, our supreme court has consistently held that “findings of guilt for multiple offenses \*\*\* can *only* be sustained if the charging document reflects the State’s intent to apportion the accused’s conduct and prosecute the accused for multiple crimes.” (Emphasis added.) *In re Samantha V.*, 234 Ill. 2d 359, 378 (2009). Although, as in *Crespo*, our supreme court has looked at what transpired at trial in determining whether the State intended to treat the defendant’s conduct as a single act or many separate and distinct acts, the court has done so only to support conclusions that, *consistent* with the charging instrument, the State intended to treat the defendant’s conduct as a single act (see *id.* at 377) or separate acts (see *People v. Bishop*, 218 Ill. 2d 232, 248 (2006)).

¶ 27 This case is admittedly different, in that, as the State concedes, the indictments do not refer to individualized blows to Wright’s head, yet, at trial, the State argued that each individual blow supported a separate conviction. Despite that difference, we must conclude that defendant cannot be convicted of all four offenses, because the indictments, which alone control the resolution of this issue, never differentiated between the blows. *Samantha V.*, 234 Ill. 2d at 378. Accordingly, we vacate all of defendant’s convictions except for his conviction of attempted first-degree murder. See *People v. Burrage*, 269 Ill. App. 3d 67, 72-73 (1994) (noting that, when multiple convictions are based on the same physical act, a defendant can be convicted of only the most serious offense).

¶ 28 For these reasons, the judgment of the circuit court of Kane County is affirmed in part and vacated in part.

¶ 29 Affirmed in part and vacated in part.