

2011 IL App (2d) 100705-U
No. 2-10-0705
Order filed December 1, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CM-7692
)	
BRETT CYRZAN,)	Honorable
)	Helen S. Rozenberg,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: The State disproved beyond a reasonable doubt defendant's claims of self-defense and defense of another: in light of conflicts in the evidence, the trial court was entitled to find that no unlawful force was threatened against defendant and that no imminent harm was threatened against another.

¶1 Following a bench trial, defendant, Brett Cyrzan, was found guilty of battery (720 ILCS 5/12-3(a)(1) (West 2008)) and was sentenced to a two-year term of probation. Defendant argues on appeal that the State failed to prove beyond a reasonable doubt that he did not act in self-defense or in defense of another. We affirm.

¶ 2 At trial, Jay Ryan Priebe testified that, on October 23, 2009, he met several friends at a bar called Jimmy V's. Priebe was friends with one of the bartenders, Danelle Pokorney. At about 10:30 p.m., Priebe went outside to smoke and observed a large man punch Danelle's father, Mark Pokorney. Priebe tried to restrain Mark Pokorney's assailant by grabbing him from behind. Priebe came up behind the assailant and tried to grab him, but Priebe fell backwards and the assailant fell on top of him. A few seconds after falling, Priebe felt someone strike him in the face, but he did not see who struck him. Priebe discovered that he was bleeding, and he was taken to a hospital where he received 21 stitches. Alexis Pregent, a bartender at Jimmy V's, testified that defendant was at the bar with Eddie Caslin. She described their behavior as "rowdy." Pregent saw Caslin punch Mark Pokorney. The next thing she saw was Priebe on the ground with defendant on top of him. Pregent testified that defendant punched Priebe.

¶ 3 Andrew Barnett testified for the defense that he observed his friend Eddie "exchange[] words" with Priebe. Mark Pokorney handed his glasses to Barnett and then walked up to Eddie, poked him a couple of times, and gave him "a little push." At that point, Ryan and some other people "got in Eddie's face" and "kind of jumped on him." Eddie punched Mark Pokorney. Priebe, Barnett, and several other people then tackled Eddie and ended up on the ground. Barnett tried to help Mark Pokorney up. Barnett saw defendant approach and start pulling people off of Eddie. Defendant picked up Priebe and Priebe tried to punch defendant. Barnett did not see whether defendant hit Priebe. Although Barnett and Eddie were friends, Barnett testified that they were not close friends. In contrast, Barnett had a close friendship with Mark Pokorney and his family. Barnett knew defendant from high school, but they were not friends.

¶ 4 Defendant testified that he went to Jimmy V's with Eddie Caslin. While talking with another friend, defendant saw Caslin engaged in a dispute with Priebe and someone named Brian. Other people appeared to be trying to separate Caslin from Priebe and Brian. Defendant observed Caslin strike Mark Pokorney in the face. At that point four or five people jumped on top of Caslin and the group ended up in a pile on the ground. Priebe and someone else were hitting Caslin in the face. Caslin was defenseless because his arms were pinned underneath his body. Defendant grabbed Priebe by the shoulders and tried to pull him away. When Priebe was standing, defendant released him. At that point Priebe took a swing at defendant and defendant struck Priebe in the head.

¶ 5 After the trial concluded, the trial court entered a written order providing: "Finding no basis to sustain the defense counsel's argument of self-defense, the Court finds the Defendant guilty of the offense of Battery, Bodily Harm." In his posttrial motion, defendant argued that the trial court's finding was erroneous because a defendant claiming self-defense need introduce only *some* evidence to support the theory, at which point the burden shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. See *People v. Lee*, 213 Ill. 2d 218, 224 (2004). Defendant argued that he met his burden by introducing evidence that he struck Priebe only after Priebe tried to hit him. In denying the motion, the trial court noted that it had left the impression "that the defendant hadn't presented sufficient evidence to show that self-defense was present." The trial court clarified its ruling by stating that defendant had presented sufficient evidence to raise the issue of self-defense. However, the trial court reasoned that the State had met its burden of proof to refute the defense. The trial court explained:

"What the defendant alleged is that he had to assist a friend and the Court's finding based on the defendant's testimony was that the defendant was jumping in to participate in

a fight, not looking to pull anybody out of a fight. The defendant entered the fight. He was not the aggressor. I believe that the State proved beyond a reasonable doubt, both with the victim's testimony and the demeanor of the defendant in testifying.

*** [The State] prove[d] beyond a reasonable doubt that the defendant did not act in self-defense.”

Specifically, the trial court found that the State proved beyond a reasonable doubt “that unlawful force was not threatened against the defendant.” Defendant filed a timely notice of appeal.

¶ 6 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When reviewing a challenge to the sufficiency of the evidence, “the relevant question 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 7 Our supreme court has explained that “[t]he 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. Defendant argues that the trial court’s finding that he was not the initial aggressor establishes that he “[was] justified in using force to protect or defend himself or another person (Eddie [Caslin]).” However, the State need negate only one of the elements of self-defense, not all six. *Id.* The trial court expressly found that no unlawful force was threatened against defendant. The evidence on that point was in conflict. Defendant and Barnett testified that Priebe tried to hit defendant, but that testimony was inconsistent with Priebe’s account of the incident. It was the trial court’s responsibility to resolve the conflict. See *Cooper*, 194 Ill. 2d at 431. Defendant argues that Barnett was the most credible witness because he was close friends with Mark Pokorney and he had no incentive to provide a false account in which Mark Pokorney essentially picked a fight with Caslin. What weight to give that consideration in evaluating the credibility of the witnesses was for the trial court to decide, and we will not substitute our judgment for that of the trial court in this regard. *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011).

¶ 8 Defendant also argues that he was entitled to use force to defend Caslin, but the evidence does not support this theory. Priebe testified that he was struck while attempting to restrain a “large man” who had just punched Mark Pokorney. Nothing in his testimony suggested that his conduct could have given the appearance he was putting anyone in danger. Defendant testified that before striking Priebe he had pulled Priebe off of Caslin and Priebe was on his feet. Thus, defendant’s testimony indicates that Priebe presented no imminent threat to Caslin.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 10 Affirmed.