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2011 IL App (3d) 090702-U

Order filed August 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellee,)	La Salle County, Illinois,
)	
v.)	Appeal No. 3-09-0702
)	Circuit No. 08-CF-738
GABRIEL ROSAS,)	
)	Honorable
Defendant-Appellant.)	H. Chris Ryan,
)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved the defendant guilty of aggravated battery with a firearm and aggravated discharge of a firearm beyond a reasonable doubt based upon a theory of accountability in that the evidence showed that the defendant shared a common design with the principal who committed the crime.

¶ 2 Following a bench trial defendant Gabriel Rosas was found guilty, based upon accountability, of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1), 5-2(c) (West 2008)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2), 5-2(c) (West 2008)) for

a shooting committed by his brother, Simon Rosas Herndandez. The defendant was sentenced to concurrent 10 and 5 year terms of imprisonment. On appeal, the defendant argues that he was not proven guilty beyond a reasonable doubt. We affirm.

¶ 3

FACTS

¶ 4 The evidence showed that on Saturday, November 15, 2008, the defendant, along with Simon and Miguel Torres, went to a house-warming party at the home of Ubaldo Aguirre. The defendant was dating Aguirre's sister, Rebecca Aguirre, who was also at the party. Fernando Rosas (no relation to the defendant) attended the party with his brother, Alejandro Rosas. All of the guests were invited to spend the night.

¶ 5 During the party a verbal and physical altercation took place between Rebecca and the defendant. Rebecca told Fernando that she was upset and crying because the defendant had hit her. Ubaldo and Fernando confronted the defendant. Fernando called the defendant a coward and said, "I want to teach you how you treat a woman." According to Fernando and Alejandro, the defendant threatened to kill Fernando and said that he was "marked for dead." Ubaldo heard the defendant say that he was going to come back and get Fernando and that things were not going to end that night. Neither Ubaldo nor Rebecca heard the defendant threaten to kill Fernando. Ubaldo asked the defendant to leave. The defendant left with Simon and Miguel. The remaining guests stayed overnight.

¶ 6 The following morning, the defendant, Simon, and Miguel returned unexpectedly in the defendant's truck. Ubaldo allowed them into the house after the defendant assured him that they were there just to eat and drink some beer. The three men stayed in the kitchen drinking beer. According to Ubaldo, the defendant repeatedly told him that he was "sorry for what he was going

to do."

¶ 7 After a few hours, Fernando decided to leave because he could sense that "something [was] no good." As Fernando was attempting to leave, Simon shoved him toward the kitchen and punched him in the eye. The men began fighting, and Ubaldo had to restrain the defendant from becoming involved in the fight. At some point during the fight, Simon ran out of the house. After a few seconds Fernando and Alejandro went outside to locate him. Simon came back toward the house and pointed a shotgun at Fernando's face. Fernando told Simon not to shoot him and tried to calm Simon down. According to Fernando and Ubaldo, the defendant came out of the house and said, "Kill that mother f***, shoot that mother f***[.]" At that point, Simon pumped the shotgun, shot Fernando in the left leg, and fired a shot toward Alejandro that hit the grass in front of Alejandro. After the shooting, Fernando was bleeding heavily and went into the house. Fernando testified that the defendant came into the house and asked, "[W]ho is the man now?"

¶ 8 A BB rifle and a BB pistol had been on the mantel in the living room prior to the shooting. Ubaldo testified that he saw Alejandro take the BB pistol outside but Alejandro had put the pistol down after he saw Simon with the shotgun. Ubaldo did not see anyone take the BB rifle outside. Rebecca testified that Fernando and Alejandro each grabbed one of the BB guns and ran out of the living room. She also testified that the BB rifle appeared on the couch after Fernando and Alejandro returned from outside after the shooting. Alejandro testified that he took the BB pistol outside but got rid of it when he saw that Simon had a shotgun, and that Fernando grabbed the BB rifle from the mantel but had placed it on the top of the couch before he went outside. According to Alejandro, Simon never saw him or Fernando with either gun.

¶ 9 After the incident, Simon threw the shotgun in the bed of the defendant's truck and sat in the backseat. The defendant and Miguel got into the truck, and the defendant drove the truck away. Lieutenant Charles Foster with the La Salle police department stopped the defendant's truck after receiving a police broadcast that three suspects armed with a shotgun were in a white pickup truck. When Foster stopped the truck, he saw the shotgun in plain view in the bed of the truck.

¶ 10 According to Simon and the defendant, they had returned to Ubaldo's house on Sunday morning because they wanted to eat and the defendant wanted to work out his problems with Rebecca. Simon testified that after the fight in the living room he went outside to wait for the defendant and Miguel to leave, but Fernando came out of the house with what he thought was a pistol. Simon testified that Fernando told him to put down the gun but was advancing toward him with the pistol, so Simon fired toward the ground but shot Fernando. According to Simon, he fired a second shot because Alejandro was continuing to advance toward him. Simon testified that the defendant never told him to fire the shotgun at anyone.

¶ 11 The defendant testified that the shotgun was in his truck because he had gone hunting early Saturday morning. As for Sunday morning, the defendant denied telling Ubaldo that he was sorry for what he was going to do. The defendant testified that he observed Fernando exit the house with a pistol in his hand just before the shooting and heard two shots outside while he was still in the house.

¶ 12 The defendant testified that he had lied to police about instructing Simon to get the shotgun out of the his truck because he was trying to protect Simon. Sergeant Michael Renner of the La Salle County sheriff's office testified that the defendant said that he had told Simon to get

his shotgun from the truck.

¶ 13 The trial court found, among other things, that: (1) Simon and the defendant had a plan when they returned to Ubaldo's residence on Sunday morning to "set things right" and then things "got out of hand"; (2) Fernando and Alejandro were unarmed at the time of the shooting; (3) Simon did not act in self-defense; (4) the defendant's testimony was very "suspect"; and (5) the State's witnesses were credible. The defendant was found guilty of aggravated battery with a firearm and aggravated discharge of a firearm by accountability. The defendant appealed.

¶ 14 ANALYSIS

¶ 15 First on appeal, the defendant argues that, because Simon acted in self-defense, there was not a crime for which he could be accountable. We affirm the trial court's finding that Simon did not act in self-defense.

¶ 16 Once a defendant raises self-defense as an affirmative defense, 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. Lee*, 213 Ill. 2d 218 (2004). The elements of self-defense are: (1) unlawful force was threatened against 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 that 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 218. If the State negates any one of the elements of self-defense, the defendant's claim of self-defense must fail. *Lee*, 213 Ill. 2d 218. The standard of review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that the defendant did not act in self-

defense. *Lee*, 213 Ill. 2d 218.

¶ 17 Here, the evidence showed that Simon was the aggressor in that: (1) Fernando was attempting to leave when Simon punched him; and (2) Simon left the house and returned toward the house with a shotgun. Additionally, Simon's use of force was not objectively reasonable. Witnesses for the State testified that Fernando and Alejandro were unarmed when Simon fired the shotgun at them, and the trier of fact found that testimony credible. Therefore, a rational trier of fact could have found beyond a reasonable doubt that Simon did not act in self-defense.

¶ 18 On appeal the defendant also contends that the State failed to prove him guilty beyond a reasonable doubt of both offenses. We disagree.

¶ 19 In assessing whether evidence was sufficient to prove a defendant guilty beyond a reasonable doubt, the reviewing court must determine whether, in viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Perez*, 189 Ill. 2d 254 (2000). A conviction should not be reversed unless the evidence is so improbable or unsatisfactory that reasonable doubt exists regarding the defendant's guilt. *Perez*, 189 Ill. 2d 254.

¶ 20 In Illinois, a defendant is accountable for the conduct of another if "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008). The mere presence of the defendant at the scene of a crime does not render him accountable for the offense. *People v. Taylor*, 164 Ill. 2d 131 (1995). Active participation is not required to be found guilty under an accountability theory. *Taylor*, 164 Ill. 2d 131. A defendant may be deemed to be accountable

for acts of another person if the defendant shared that person's criminal intent or if there was a "common criminal plan or purpose." *Taylor*, 164 Ill. 2d at 140-41. A common purpose or design may be inferred from the circumstances surrounding the offense. *Taylor*, 164 Ill. 2d 131.

¶ 21 Viewing the evidence in the light most favorable to the State, we hold that a rational trier of fact could find that the defendant and Simon shared in a common criminal purpose. The evidence, so viewed, showed that on Saturday night, the defendant said that Fernando was marked for dead and that he was going to kill Fernando. On Sunday morning, Simon and the defendant returned to Ubaldo's home in the defendant's truck that contained the defendant's shotgun. Leading up to the shooting, the defendant: (1) indicated to Ubaldo that he was about to do something that he was sorry for; (2) tried to join in the physical altercation Simon started with Fernando after Fernando had tried to leave but was prevented from doing so by Ubaldo; (3) instructed Simon to get his shotgun; and (4) told Simon to shoot the defendant. It was not until the defendant instructed Simon to shoot the defendant that Simon pumped the shotgun. Following the shooting, while Fernando was bleeding profusely, the defendant indicated to Fernando that he was "the man" and drove himself, Simon, and Miguel away from the scene.

¶ 22 The foregoing evidence showed that the defendant participated in a common purpose with Simon of seeking revenge on Fernando for confronting the defendant about hitting Rebecca. Thus, the evidence supports the trial court's ruling that the defendant was guilty under a theory of accountability. Viewing the evidence in the light most favorable to the prosecution, we conclude the defendant was proven guilty beyond a reasonable doubt and affirm.

¶ 23 CONCLUSION

¶ 24 We affirm the judgment of the circuit court of La Salle County.

¶ 25 Affirmed.