

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).

NO. 4-10-0026

Filed 6/22/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: TERRANCE B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v.)	No. 09JD228
TERRANCE B.,)	
Respondent-Appellant.)	Honorable
)	Scott B. Diamond,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

Held: Where respondent testified he hit an adult woman to defend himself because she, in accusing respondent of hurting her relative, was yelling, cussing, and pointing a finger in his face, a rational trier of fact could have rejected his claim of self-defense.

In July 2009, the State filed a petition for adjudication of wardship, alleging respondent, Terrance B. (born in July 1992), was a delinquent minor because he committed aggravated battery (720 ILCS 5/12-4(b)(8) (West 2008)). The next month, the State filed a supplemental petition, asserting respondent committed theft (720 ILCS 5/16-1(a)(1)(B) (West 2008)) on July 14, 2009. After a November 2009 bench trial, the Macon County circuit court found respondent guilty of aggravated battery and adjudicated him a delinquent minor. In December 2009, the court made respondent a ward of the court, placed him on 12 months' probation, and dismissed the supplemental petition.

Respondent appeals, asserting the State failed to prove beyond a reasonable doubt

he did not act in self-defense.

I. BACKGROUND

The July 2009 petition for adjudication of wardship stemmed from respondent's alleged striking with his closed fist the face of Krissy Tolladay on the grounds of Eisenhower High School on July 1, 2009. The following evidence was presented at the adjudication hearing.

Krissy testified she was the mother of 16-year-old Randon Tolladay. In the summer of 2009, Randon was enrolled in the summer drivers' education program at Eisenhower. On July 1, 2009, Krissy went to Eisenhower with Randon and her nephew, Taylor McCullough, because she wanted to talk to the principal about an incident the day before in which some boys had hit Randon. She brought Taylor along for protection. When they arrived at Eisenhower, Taylor, who knew one of the boys involved in the earlier incident, went over to talk to the boys. Taylor ended up in a fight with one of the boys, and Krissy went over to where they were. She was yelling "stop" and "get away from him" at the other two boys that were with the one who was fighting Taylor. According to Krissy the following took place:

"I was screamed at by one of them, and he told me he'd punch me, and then I seen a water bottle fly through the air and it landed down by my foot. So, I looked down and seen the water bottle and I looked back up and he was standing there and punched me, and it threw me back and I lost my shoe, and so I looked down to get my shoe and somebody standing next to me grabbed my arm and I looked back up and he hit me two more times."

Krissy identified respondent as the person who struck her left eye with his fist three times in front

of Eisenhower. At the scene, she declined medical assistance because she did not think she was hurt. However, her eye later became more swollen and started hurting. Her eye also got progressively blacker.

Krissy denied telling the police officer who arrived at the scene, Jerry Wagoner, that she approached respondent to talk about Randon's incident. Krissy also denied she went to Eisenhower to confront respondent. Krissy insisted she never approached respondent and did not make any menacing or threatening moves toward him. Moreover, Krissy testified she thought she told Wagoner about the water bottle.

Randon testified that, as he was walking to Eisenhower for drivers' education on June 30, 2009, respondent and two other people hit him after he refused to give them money. The next day, Krissy drove him to drivers' education, and his cousin Taylor was with them. Randon testified Taylor came along to see if he knew the kids and, if he did, to tell them to leave Randon alone because he was his cousin. When they arrived at Eisenhower, they all got out of the car. Respondent was there, and Randon pointed him out to Taylor. Taylor said he was friends with respondent and was going over there to tell respondent to leave Randon alone because Randon was Taylor's cousin. Respondent came over to Krissy with a couple of other kids that had jumped Randon. One of the kids came up to Taylor, took off his shirt, and started fighting Taylor near Krissy's car. Krissy tried to break up the fight, and one of the kids threw a water bottle. When Krissy looked up, respondent punched her in the face. Krissy fell to the ground, and when she got back up, she ran toward respondent. Randon only saw respondent strike Krissy once. Randon did not see Krissy make any physical actions toward respondent prior to him striking her and did not hear her say anything to him.

Wagoner testified that, when he arrived at Eisenhower, Krissy was pointing at respondent and giving a description of him as respondent was walking away. According to Wagoner, "every bit of 100" people were at the scene when he arrived. He talked to about 20, and no one saw anything. Krissy reported to Wagoner that Randon had experienced problems at the school in the past; and she, Randon, and Taylor were going to the school to talk to the principal about the situation. When they pulled up at Eisenhower, Randon pointed out respondent as one of the people giving him problems, and Krissy confronted him. Krissy began speaking to him about the incident. While they were talking, a fight broke out between Taylor and several other people. During that altercation, respondent punched her in the face three times. Krissy never mentioned a water bottle to Wagoner but did state respondent made a comment she needed to get away from him before he punched her, or something similar.

James Wrigley, a juvenile detective with the Decatur police department, testified that on, July 6, 2009, he talked with Krissy, who had an obvious black eye and bruising on her right biceps. Krissy told Wrigley that on July 1, 2009, Randon identified respondent from the incident the day before, and she parked her vehicle in Eisenhower's circle drive and exited the car. Krissy approached respondent and started talking to him. Respondent threw a water bottle, and when she picked it up, respondent punched her three times in the face with a closed fist.

Respondent testified on his own behalf and presented the testimony of several other students who were present at Eisenhower on July 1, 2009. Deondre Barbee testified he saw some kids fighting and a lady come out of nowhere. She was talking and cussing at respondent. She kept pushing him, and then she left. When she came back, she put her hand in his face again, and he hit her. According to Barbee, she was threatening respondent. Respondent was

trying to get away, and she was pursuing him. Barbee never saw the woman swing, but she had a lot of hand motion.

Myisha Brazier testified a woman got out of her car, got in respondent's face, and hit him. Respondent was trying to move her away from him. The woman just kept hitting respondent, and respondent started hitting her back. Brazier did not see anyone throw a water bottle. After the woman was done fighting, respondent tried to walk away, and the woman came right back over to him and started fighting him again.

Anthony Layette testified he saw a woman get out of her car and approach respondent. She was yelling at respondent that he beat up her nephew, and respondent denied having anything to do with it. Respondent told the woman to leave him alone, and she kept on cussing at him. Respondent tried to leave, but the woman kept yelling and cussing at him. The woman had her finger in respondent's face and was pointing at him. Layette never saw the woman touch respondent. After five minutes, Layette left, and the woman was still talking to respondent. Layette never saw anyone throw a water bottle.

Respondent testified a woman got out of a car and had some people with her. The woman approached him and started cussing at him and telling him that he had hit her nephew. Respondent told her he had nothing to do with it. She started cussing and putting her finger in his face. She continued to point at respondent, and he hit her. Respondent was afraid she was going to hit him because of the cussing and the fact she was a grown woman. After he hit her the first time, she ran up to him, and he hit her again. Respondent just wanted to defend himself. He had told her to get away from him.

After hearing the parties' evidence, the trial court rejected respondent's self-

defense claim and found respondent guilty beyond a reasonable doubt. On December 16, 2009, the court sentenced respondent to 12 months' probation. On January 7, 2010, respondent filed a notice of appeal in compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). See Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001) (providing the rules applicable to criminal cases govern appeals from final judgments in delinquency minor proceedings, unless specifically provided otherwise). Accordingly, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. July 1, 1971).

II. ANALYSIS

Respondent's sole argument on appeal is the State failed to prove beyond a reasonable doubt he did not act in self-defense.

When reviewing a challenge to the sufficiency of the evidence, this court considers the evidence in a light most favorable to the prosecution and determines whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *In re Austin M.*, 403 Ill. App. 3d 667, 686, 941 N.E.2d 903, 918 (2010), *appeal allowed*, 239 Ill. 2d 554, 943 N.E.2d 1100 (2011). "We will not substitute our judgment for the judgment of the trier of fact unless the judgment was inherently implausible or unreasonable." *Austin M.*, 403 Ill. App. 3d at 686, 941 N.E.2d at 918 (quoting *In re Matthew K.*, 355 Ill. App. 3d 652, 655, 823 N.E.2d 252, 255 (2005)).

To properly raise a claim of self-defense, evidence of each of the following elements must exist:

"(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 force applied; and (6) the beliefs of the person threatened were objectively reasonable." *In re Jessica M.*, 399 Ill. App. 3d 730, 736-37, 928 N.E.2d 511, 517 (2010) (quoting *People v. Lee*, 213 Ill. 2d 218, 224-25, 821 N.E.2d 307, 311 (2004)).

The State bears the burden of proving beyond a reasonable doubt the defendant did not act in self-defense. *People v. Brown*, 406 Ill. App. 3d 1068, 1081, ___ N.E.2d ___, ___ (2011). If the State negates any one of the aforementioned elements, the respondent's claim of self-defense fails. *People v. Dillard*, 319 Ill. App. 3d 102, 106, 745 N.E.2d 185, 189 (2001). However, "[a] trier of fact is not obligated to accept a defendant's claim of self-defense, but instead must consider the probability or improbability of the testimony, the surrounding circumstances, and the testimony of other witnesses." (Internal quotation marks omitted.) *Jessica M.*, 399 Ill. App. 3d at 737, 928 N.E.2d at 517 (quoting *People v. Rodriguez*, 336 Ill. App. 3d 1, 15, 782 N.E.2d 718, 729 (2002)).

Specifically, respondent asserts the evidence at trial did not disprove any of the elements of self-defense beyond a reasonable doubt. However, even under respondent's version of the events, the record contains ample evidence for the trial court as the trier of fact to have found respondent was not threatened with unlawful force and his use of force was unnecessary. Respondent testified he feared for his safety because Krissy was a grown woman cussing and pointing a finger at him. According to respondent, she was yelling and cussing about respondent

hitting her nephew. Respondent acknowledged Krissy did not have any weapons and did not act like she was going to hit him until after he hit her. Moreover, the evidence showed it was respondent who verbally indicated he was going to punch Krissy before he did so. While one can act in self-defense even though he or she delivered the first blow, the concept of self-defense is to protect person, not pride. *People v. Woods*, 81 Ill. 2d 537, 543, 410 N.E.2d 866, 869 (1980). Based on the aforementioned evidence, the trial court could have found Krissy did not threaten respondent with the unlawful use of force and the punching of Krissy was unnecessary to protect his person. Such a finding is bolstered by Krissy's testimony she did not make any sort of menacing or threatening gestures toward respondent and did not touch him.

This case is distinguishable from *In re T.W.*, 381 Ill. App. 3d 603, 613, 888 N.E.2d 148, 157 (2008), where this court vacated the respondent's delinquency adjudication and wardship because the evidence indicated the respondent acted in self-defense. There, the alleged victim threatened to beat the respondent when she got on the school bus. *T.W.*, 381 Ill. App. 3d at 612, 888 N.E.2d at 157. The alleged victim then jumped up in the respondent's face and swung at her. *T.W.*, 381 Ill. App. 3d at 612, 888 N.E.2d at 157. Such evidence of the victim threatening and attempting to cause physical harm is not present in this case.

Similarly, this case is distinguishable from *People v. McGrath*, 193 Ill. App. 3d 12, 28, 549 N.E.2d 843, 853 (1989), where the evidence was insufficient to support the trial court's conclusion the defendants were not acting in self-defense. As in *T.W.*, the evidence in *McGrath* showed the complainants had made previous threats toward the defendants. The complainants also pursued the defendants to a residence, and there, the complainants "advanced toward the defendants, in the dark, in a threatening manner, with an avowed present determina-

tion and intent to inflict physical harm." *McGrath*, 193 Ill. App. 3d at 28, 549 N.E.2d at 853. In this case, no history of Krissy threatening respondent existed, and respondent's description of Krissy's actions did not indicate she was going to inflict physical harm.

Moreover, respondent emphasizes the fact Taylor started a fight with another kid before the incident between Krissy and respondent. However, the evidence indicates the other kid was the aggressor or at least a willing participant as Randon testified the kid took off his shirt before fighting Taylor. We disagree with respondent Taylor's fight somehow made Krissy's actions toward respondent threatening.

Last, the trial court could have believed Krissy's version of the events that she was attempting to break up the fight between Taylor and another person when respondent punched her in the face. We note a trier of fact's decision to believe the alleged victim's account of the attack, rather than the respondent's, is virtually unassailable on appeal. *Jessica M.*, 399 Ill. App. 3d at 738, 928 N.E.2d at 518. This court will not substitute its judgment for the trial court's on questions involving the credibility of the witnesses. *Jessica M.*, 399 Ill. App. 3d at 738, 928 N.E.2d at 518.

Accordingly, we find the evidence was sufficient for the trial court to reject respondent's self-defense claim and find him guilty of aggravated battery beyond a reasonable doubt.

III. CONCLUSION

For the reasons stated, we affirm the Macon County circuit court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against respondent as costs of this appeal.

Affirmed.