

No. 1-11-0430

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 13348
)	
KENNETH TAYLOR,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove that defendant had beyond a reasonable doubt caused "severe bodily injury" to victim of home invasion, overcoming defendant's statutory affirmative defense.

¶ 2 Following a bench trial, defendant Kenneth Taylor was convicted of home invasion and was sentenced to 16 years in prison. On appeal, he asserts that his conviction for home invasion

must be vacated because the State failed to prove beyond a reasonable doubt that he caused the victim "serious bodily injury" for the purpose of an affirmative defense. We affirm.

¶ 3 David Riff, who was 68 years old at the time of the trial, testified that he left his residence at 2218 West Oakdale in Chicago around 10 a.m. on July 12, 2010 to attend cardiac therapy related to a heart stent procedure which had been performed in January 2010. He returned around 2:14 p.m. with a female friend. Riff's residence was a two-story frame single family home with a front room and a small hallway leading to a kitchen in the back. A door from the kitchen led to a back porch. The only staircase in the residence led from the second floor of the residence to the kitchen. Glass windows on the second floor opened and led to the roof of the back porch, and one window was located about three feet from the top of the staircase.

¶ 4 After entering his home from the front door, Riff noticed that things were "just disarranged" and mentioned to his friend that he believed he had been burglarized. The two continued down the narrow hallway towards the rear of the residence, observing, *inter alia*, that cabinet doors were open and items from a window sill had been dumped into the kitchen sinks. Soon after entering the kitchen, Riff heard footsteps and observed defendant coming down the stairs, carrying a container. Riff then ran over to the back door leading to the porch and opened it, which had the effect of covering the door to the stairway, leaving a gap about eight or nine inches. Riff testified that he did this so that defendant could not "get out," and would therefore remain "on the stairs."

¶ 5 Riff then testified that defendant began "pushing on" the door, and struck Riff through the gap between the door and the stairs "six or eight times," breaking Riff's glasses. Ultimately, Riff fell backwards in the kitchen, and defendant was able to "come around" the door, exiting the residence through the porch and into the backyard. Riff agreed that he had previously testified at a hearing that after he "slammed the door," defendant "reached around the door with his hand

and punched [Riff] alongside the head," breaking his glasses, but said that he was never asked how many times he had been hit.

¶ 6 Riff subsequently received treatment from "one doctor" for a "pulled ligament in [his] neck," that "they can't do nothing with." Although the doctor told him it would "eventually go away," Riff still felt pain in his neck.

¶ 7 Chicago police officer Dave Diaz testified that he received a call of a burglary around 2:15 p.m. on July 12, 2010, and responded to the vicinity of 2218 Oakdale. He apprehended defendant near the Chicago River by Western Avenue. Defendant was in possession of a coffee can filled with change and jewelry, both of which were eventually determined to have been taken from Riff's residence.

¶ 8 During closing argument, defense counsel referred to the affirmative defense of escape, which had initially been raised in his pretrial amended answer to the State's motion for discovery. Defense counsel argued that defendant fled the home at "his first opportunity" through the door which was "the only available exit" and "he did not intend to hurt anyone or cause any harm, only to flee." In rebuttal, the State pointed out that defendant could have fled out of the window at the top of the stairs, leading to the roof and the porch, without harming himself or could have surrendered. Instead, defendant chose "to pound" Riff's head numerous times, push the door, knock Riff to the ground and cause injury. The State further argued that the affirmative defense was contemplated for a situation where, unlike here, defendant would just walk out or surrender without causing or attempting to cause injury. The State also noted that 28-year-old defendant was 40 years younger than 68-year-old Riff.

¶ 9 The trial court found defendant guilty of home invasion and rejected defendant's escape defense as follows:

"My understanding of the affirmative defense as it's outlined in the statute and also in the case is that, and consistent with the intent of the legislature, is that in a situation where a person suddenly discovers that the place, the home that they've entered is now occupied, has to put [sic] peacefully. Because the whole essence of home invasion, that's different from residential burglary, is that this is a violent entry and a violent action that took place inside. And so the legislature intended that there is an affirmative defense to home invasion if upon being discovered in the home you either surrender peacefully or you leave peacefully without causing serious bodily injury. [Defense counsel] argues that there was no intent to harm. It does not appear that the affirmative defense requires that the State disprove an intent to cause serious bodily harm, only that serious bodily harm did result. I've heard testimony in this matter. The testimony that I believe is that Mr. Riff was struck eight or nine times in the face and that he suffered a pulled ligament in his neck. He had gone to the doctor and sought treatment. In my view, that's the kind of serious bodily harm that the legislature intended to avoid by creating the affirmative defense. I do find that [defendant] did cause serious bodily injury to Mr. Riff, who was present. As a result, the affirmative defense does not lie."

The court proceeded, finding defendant guilty of home invasion.

¶ 10 On appeal, defendant contends that the trial court erred in finding him guilty of home invasion beyond a reasonable doubt because he raised the escape defense, which requires the State to prove that defendant, in the act of escape or surrender, either attempted to cause or actually caused serious bodily harm to the victim.

¶ 11 When presented with a challenge to the sufficiency of the State's evidence, a reviewing court must determine 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. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Id.*, citing *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 12 Here, defendant admits that the State established the elements of home invasion by entering Riff's home, remaining in the home until he knew that Riff and his companion were present, and intentionally causing "injury" to Riff. 720 ILCS 5/12-11(a) (West 2010). Defendant, however, relies on the defense of escape as defined in the home invasion statute:

"[i]t is an affirmative defense to the crime of home invasion that the accused who knowingly enters the dwelling place of another and remains in such dwelling place until he or she knows or has reason to know that one or more persons is present either immediately leaves such premises or surrenders to the person or persons lawfully present therein without either attempting to cause or causing serious bodily injury to any person present therein." 720 ILCS 5/12-11(b) (West 2010).

¶ 13 Where a defendant raises an affirmative defense, other than insanity, the State must disprove it beyond a reasonable doubt just as it must prove the elements of the crime beyond a reasonable doubt. 720 ILCS 5/3-2(b) (West 2010). Based on the escape defense in the home invasion statute, the question becomes whether defendant escaped without either attempting to cause *or* causing serious bodily harm to Riff.

¶ 14 Defendant claims that the State failed to prove that he caused "serious bodily injury" to Riff. Whether a victim's injuries rise to the requisite level of injury is generally a question for the trier of fact. *People v. Doran*, 256 Ill. App. 3d 131, 136 (1993). Here, the trial court specifically found that defendant caused serious bodily injury to Riff and the injuries, as described by Riff in his testimony, entailed "the kind of serious bodily harm that the legislature intended to avoid by creating the affirmative defense." The court noted that 68-year-old Riff was struck eight or nine times in the face, had his eyeglasses broken, suffered a pulled ligament in his neck, which still caused him pain months after the crime, and sought treatment from a doctor who maintained that nothing could be done to help him. Defendant left the home only after Riff fell backwards in the kitchen.

¶ 15 We agree with the trial court that the State sufficiently established that defendant caused serious bodily injury to the victim (Riff) for the purpose of the escape defense in the home invasion statute. We are guided by the decision in *People v. Moreira*, 378 Ill. App. 3d 120, 122-23 (2007), where the evidence at trial showed that when the victim returned home, the defendant was present, they physically struggled as the defendant attempted to leave, and they both sustained injuries. The victim sustained swelling to her right eye, scratches on her face, rug burns to her knees, bite marks on her wrist and forehead, and bruises on her back. The defendant had a cut on his right hand and a stab wound to his back. *Id.* at 123. The court found that the

defendant could not invoke the affirmative defense to home invasion because the defendant had not left the victim's "premises or surrendered to her without causing serious bodily injury."

¶ 16 Even assuming, *arguendo*, the evidence did not show defendant *actually* caused serious bodily injury to Riff, the same result is warranted because the escape defense does not apply where a defendant attempts to cause serious bodily injury during his escape. Here, the evidence clearly established that defendant was attempting to cause serious bodily injury to Riff for the purpose of fleeing. After being repeatedly punched by defendant, Riff fell backwards which allowed defendant to flee. Defendant's actions do not allow him to employ the defense of escape under the home invasion statute.

¶ 17 Viewing the evidence in the light most favorable to the prosecution we find no reason to overturn the trial court's determination in this respect.

¶ 18 For the foregoing reasons, we affirm judgment of the trial court.

¶ 19 Affirmed.