

No. 1-11-2635

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. 09 C6 61354
)	
TORRENCE JOHNSON,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence refuted defendant's claim that he acted in self-defense when he discharged a firearm in the direction of another; \$5 vehicular fee vacated; judgment affirmed in all other respects.

¶ 2 Following a bench trial, defendant Torrence Johnson was convicted of aggravated discharge of a firearm and sentenced to three years' probation. On appeal, he contends that the State's evidence failed to show beyond a reasonable doubt that he was not justified in firing three warning shots to stop a brawl on the front lawn of his home, and that the imposition of the \$5 court system fee was improper.

¶ 3 Defendant was charged with one count of aggravated discharge of a firearm in that he knowingly and intentionally discharged a firearm in the direction of Lynette Collins on July 21, 2009. He was also charged with six counts of aggravated unlawful use of a weapon for carrying a firearm on his person while he was not on his own land or in his own abode. These charges stemmed from Sharon Stanford's attempt to retrieve her truck from her husband Eric Stanford. The truck was parked near the home of Eric's relatives at 158 West Glen Lane in Riverdale, Illinois. When Sharon and her sister, Lynette Collins, arrived at that location, an argument ensued between Sharon and Eric, followed by a fight among their respective relatives. During this melee, defendant came out of his home at 158 West Glen Lane, and fired his gun three times.

¶ 4 At trial, Collins testified that on July 21, 2009, she and Sharon drove to the Riverdale area where Sharon's truck was parked and there encountered Eric, who was standing next to the truck. After their attempts to start the truck failed, Sharon and Eric went inside defendant's home, and exited 20 minutes later arguing. Ten of Eric's relatives and friends also exited the house, and while they were talking outside, Collins' son, Doral, and her nephews Markel Robinson and Kionta Collins arrived in a car. At that point, Sharon's son hit someone in Eric's family. The police arrived and told everyone to go their separate ways, but allowed Sharon and her family to wait for the tow truck. The police then left the scene at 7:30 p.m.

¶ 5 Collins further testified that while they were waiting for the tow truck, a boy struck Collins' son, Doral, in the jaw, then fled. Markel's cousins and sisters arrived on the scene, and a brawl started among the 50 people assembled, only 12 of whom were from Collins' side of the family. As the fight continued there, Collins tried to break it up by pulling people off each other. As she did so, she observed defendant, who was eight feet away from her, shoot his gun in the air. Collins then looked at defendant, and he said, "bitch you're not going to run." Collins did not run, and defendant then shot near her feet, and said, "bitch, I said you're not going to run."

He then shot near her feet again. Collins responded by slowly walking backwards while looking at defendant.

¶ 6 Markel Robinson testified that Sharon Stanford is the aunt of his wife, Sheena Robinson. Sharon called Markel on July 21, 2009, and told him that her husband hit her and that she was trying to get her truck back from him. Markel went to 158 West Glen Lane with Doral Collins and Sharon's son, Kionte Collins, and saw Sharon and Eric arguing. Others joined in and when the police arrived, they told everyone, except those waiting for the tow truck, to move on.

¶ 7 The fighting erupted again after someone hit Doral in the face. A gun was fired, and Markel saw defendant, who was eight feet away from him, fire in the direction of Collins' feet, but she was not engaged in the fight. Defendant said something to Collins, which Markel was unable to hear, then fired another shot at her feet. Collins slowly walked away, and as police sirens were heard, defendant ran into his house.

¶ 8 Sheena Robinson testified that when she arrived at 158 West Glen Lane at the time in question, she observed a brawl, and tried to break up the fight. As she did so, she heard a gunshot, and observed defendant, six feet away from her, holding a gun. She then saw him aim the gun "downward towards" the feet of Collins, who was four feet away from him, then tell her, "bitch run," before he twice fired his gun at her feet.

¶ 9 Riverdale police officer Lugo testified that he responded to a domestic disturbance at 158 West Glen Lane, and when he arrived, Eric's family went into the residence. He then told Sharon and her family that they could wait outside for the tow truck, and left to respond to another call in the area. While he was gone, he received another call regarding shots fired near 158 West Glen Lane. When he returned to that location, he observed 40 people fighting "on the sidewalk, and in the park, in the whole area." Collins told him that defendant fired in her direction, and as he

looked at the residence, he observed defendant just outside of it. When Collins pointed at defendant, Officer Lugo proceeded toward the residence, and defendant fled inside.

¶ 10 Assistant State's Attorney Shawn McCarthy testified that he spoke with defendant on July 22, 2009, with Detective Dakried. Defendant provided a signed statement in which he stated that he watched the fight from the side of the house he shares with his mother, and as the fight grew, he took out a handgun and fired it once in the air. The fight continued, so he went to the front of the house, 20 feet away from the fight, and fired another bullet in the air. He then fired a third time into the ground near where people were standing to get them to leave. He was arrested a few minutes later.

¶ 11 Defendant testified in his own behalf regarding the events that transpired on July 21, 2009. He related that he told his uncle, Eric, that Sharon had arrived, and after that, an altercation ensued. While the fight was going on, he was in the backyard of his home with his mother and girlfriend, and a man tried to move through the gate. He pushed the gate back on him, and the man then fired his gun. Defendant, in turn, fired his gun into the air. As defendant walked back towards the house, the man came running back, and defendant opened the gate, yelled at everyone to leave, and fired a shot into the ground 20 feet away from Collins. He then fired a third shot into the air.

¶ 12 Defendant denied shooting in anyone's direction or intending to shoot at anyone. He explained that he fired the gun because the altercation was making its way inside of his home, and he wanted everyone to leave. Defendant further testified that he tried telling ASA McCarthy that a man started firing a gun at him, but he would not listen to him.

¶ 13 At the close of evidence, the trial court found defendant guilty of aggravated discharge of a firearm. In doing so, the court observed that the evidence clearly showed that people were fighting "all over," and the dispositive question was whether defendant shot at the complainant.

The court noted that Collins' testimony that defendant fired the weapon twice at her feet, and addressed her as "bitch," was corroborated by that of Markel and Sheena. The court also noted defendant's claim that he fired his gun in response to someone trying to get in his backyard, and that he fired into the ground and nowhere near complainant, was incredible; and further, that the State's witnesses were believable and testified consistently.

¶ 14 On appeal, defendant contends that the State failed to show that he was not justified in firing three warning shots to stop a brawl on the front lawn of his home. He maintains that he had the fundamental right to use a handgun to defend these core interests, and that the use of force was reasonable under the circumstances as he caused no physical harm.

¶ 15 As an initial matter, defendant asserts that our standard of review is *de novo* because the matter is a question of law. We disagree. Defendant is challenging the sufficiency of the evidence (*People v. Pulley*, 345 Ill. App. 3d 916, 920 (2004)); and, in such a case, the standard of review is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (*People v. Williams*, 193 Ill. 2d 306, 338 (2000)). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *People v. Jordan*, 130 Ill. App. 3d 810, 813 (1985). For the reasons that follow, we do not find this to be such a case.

¶ 16 To prove defendant guilty of aggravated discharge of a firearm, the State must show that defendant knowingly and intentionally fired the gun in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2010). Defendant claims that he was justified in firing warning shots in the ground in defense of himself, his family, his home and his property.

¶ 17 Self-defense is an affirmative defense, and once raised, the State must prove beyond a reasonable doubt that he did not act in self-defense, as well as 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 him; (2) the danger of harm was imminent; (3) he was not the aggressor; (4) the use of force was necessary; and (5) his subjective belief that a danger existed which required the use of force applies and that his belief was objectively reasonable. *Lee*, 213 Ill. 2d at 224. If the State negates any one of these elements, defendant's claim of self-defense fails. *Lee*, 213 Ill. 2d at 225.

¶ 18 Here, the parties primarily focus on the reasonableness of defendant's belief that the circumstances warranted the use of the force employed. Defendant maintains, as he did at trial, that he was justified in shooting three warning shots to stop the brawl in his front yard, which he feared would spread to his house and jeopardize the safety of his family, himself, his home, and his property. The State argues to the contrary that there was no evidence that Collins used any force that was intended or likely to cause death or great bodily harm to defendant or anyone else at the scene, and that his conviction should be upheld.

¶ 19 These conflicting theories involve credibility determinations to be made of the witnesses by the trier of fact. *Lee*, 213 Ill. 2d at 225; *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). Here, the trial court rejected defendant's premise, and found defendant guilty of knowingly and intentionally discharging his firearm in the direction of Collins.

¶ 20 Viewed in the light most favorable to the prosecution, the evidence showed that Collins was trying to break up the fight, and was not the aggressor, nor did she threaten unlawful force against defendant. In addition, Collins and two other witnesses testified that defendant fired his gun in close proximity to, and in the direction of, Collins' feet, and two of those witnesses testified consistently that defendant addressed Collins as "bitch," before discharging his gun.

Although defendant claimed that he was firing warning shots to a mob which he feared threatened the safety of himself, his family and his home and property, the State's evidence showed that defendant focused on Collins and fired in her direction. These circumstances were sufficient to allow a rational trier of fact to find beyond a reasonable doubt that defendant's belief that the situation justified the discharge of a firearm was unreasonable (*Lee*, 213 Ill. 2d at 226), and thereby reject defendant's justification for his actions (*People v. Brown*, 406 Ill. App. 3d 1068, 1083 (2011)).

¶ 21 In so concluding, we find unpersuasive defendant's reply argument that his use of the gun to fire warning shots was not deadly force because it was not such an act that would likely cause death or bodily harm. The trial court found defendant's account of the incident incredible, including his justification for firing his weapon in Collins' direction. We cannot say that this decision was unreasonable given the evidence showing that Collins did not threaten defendant, nor was she or anyone else shown to be armed or employing that level of force against him to justify his actions. *Lee*, 213 Ill. 2d at 224-25.

¶ 22 We also find defendant's reliance on *People v. McGrath*, 193 Ill. App. 3d 12 (1989) and *In re S.M.*, 93 Ill. App. 3d 105 (1981), misplaced. Here, unlike *McGrath*, 193 Ill. App. 3d at 22, 28-30, the people fighting did not pursue and attack defendant; instead, Collins, who defendant specifically targeted, was trying to break up the fight outside of his home. In *S.M.*, the reviewing court found that the minor respondent acted under the reasonable belief that he was in immediate danger of death or great bodily harm when he fired his gun after he was chased, surrounded and confronted by four older teenagers who knew he had a gun, but were not deterred in their persistence. *In re S.M.*, 93 Ill. App. 3d at 110. Here, there was no evidence, other than defendant's, that the crowd or Collins was advancing on defendant and his home. Rather, the evidence shows that defendant specifically aimed his gun and fired twice at Collins' feet, after

addressing her as "bitch," thereby establishing himself as the aggressor in this case (*People v. Jeffries*, 164 Ill. 2d 104, 128 (1995)), and further negating his claim of self-defense.

¶ 23 Finally, defendant contends, the State concedes, and we agree that the trial court improperly assessed a \$5 court system fee against defendant because that fee only applies to vehicle offenses. 55 ILCS 5/5-1101(a) (West 2010); 625 ILCS 5/1-100 (West 2010). Defendant was not convicted of such a crime, and pursuant to our authority under Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we vacate the \$5 fee, and direct that the fines and fees order be modified to that effect.

¶ 24 In light of the foregoing, we vacate the \$5 fee, and affirm the judgment of conviction in all other respects.

¶ 25 Affirmed as modified.