

2013 IL App (2d) 120010-U
No. 2-12-0010
Order filed February 27, 2013

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1642
)	
EDWIN NYDEN,)	Honorable
)	M. Karen Simpson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State disproved beyond a reasonable doubt defendant's claim of self-defense: the trial court was entitled to credit the State's evidence that the victim did not threaten defendant, rather than defendant's evidence to the contrary.
- ¶ 2 Following a bench trial in the circuit court of Kane County, defendant, Edwin Nyden, was found guilty of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2010)) and was sentenced to three years in prison. The trial court granted defendant's motion to reconsider his sentence and reduced the sentence to two years. We granted defendant leave to file a late notice of appeal. Defendant

argues on appeal that the State failed to prove beyond a reasonable doubt that he did not act in self-defense. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The following testimony was given at defendant's bench trial. Michael Casey, the victim, testified that, on June 27, 2010, at about 8 p.m., he was at Skeeter's Bar in Carpentersville. He had arrived alone, about an hour earlier, by motorcycle. He parked his motorcycle along the north side of the building, near an outside beer garden. There were about six or eight people in the beer garden. Between 7 and 8 p.m., Casey had a couple of beers and remained outside talking with friends. According to Casey, at 8 p.m., defendant, who had been present at the bar with his nephew, left the bar. While at the bar, Casey had not spoken with defendant or defendant's nephew. After defendant and his nephew left, only one other patron remained, along with Casey and the bartender, Alesha Wright. As defendant backed his vehicle out of a parking spot, he hit Casey's motorcycle, knocking it over. Casey was about 20 feet away. Casey walked up to the car and said, " 'You just hit my motorcycle. Do you have insurance?' " Defendant continued to look forward and did not respond. The vehicle was not moving. Casey repeated himself, and again defendant did not respond. Casey leaned over and put his left arm on the open window frame of the door. At that point, defendant "took off; hit the gas and pulled away." Casey's arm was caught by the door post. Defendant just "kept going." Casey tried to keep his footing, and "basically [he] got dragged along until [he] was able to get loose of the car." Casey was dragged about 40 feet. Casey sustained minor cuts and scrapes on his arm, and he had a headache. After Casey freed himself from the car, defendant continued to drive away. The police were called.

¶ 5 On cross-examination, Casey testified that he had been going to Skeeter's Bar for about five years. He usually went every other Sunday, but in summer he went more often. His motorcycle was a 2006 Road Glide Harley Davidson. He liked his bike, but considered it just "another vehicle." He was wearing a T-shirt and boots on the day of the incident. He had two or three beers. He was not angry when he saw defendant hit his bike; he assumed that defendant had insurance. He did not run to defendant's car, but he probably walked a little faster than normal. Wright and the other patron who was present at the bar walked over to defendant's car with him. He spoke to defendant in a calm manner; he did not scream. He did not stick his head through the window. He did not strike defendant. As he was being dragged by the car, he tried to stay on his feet. He fell when he freed his arm. Casey did not recall saying anything to defendant as he was being dragged. Casey never reached into the car to try to grab defendant.

¶ 6 Alesha Wright testified that she worked as a bartender for Skeeter's Bar on the evening in question. She had known Casey for about six years. At about 8 p.m., defendant was at the bar with a friend or relative; Casey was there with a friend. They were all outside in the beer garden. As defendant and his friend were leaving, Wright observed defendant back his car up the wrong way. When she saw that the car was going to hit Casey's motorcycle, she shouted, " 'Stop, stop, stop,' " but defendant hit the bike. She and Casey walked toward the car. They walked a little faster than normal, but they did not run. Casey spoke to defendant. Casey's voice was calm. Casey placed his hand on the open window frame. Casey did not raise his voice. Defendant did not respond to Casey, but the passenger said something that Wright could not hear. Defendant "hit the gas and took off and dragged *** Casey down the parking lot." Wright ran after the car while calling the police.

Defendant “did not exit the parking lot the proper way.” Wright had served defendant one beer. She had served defendant’s friend three beers.

¶ 7 On cross-examination, Wright testified that she served Casey one beer and a pizza. After the police arrived, Casey drank more beer. Casey’s daughter picked him up. Wright was the first person to approach defendant’s vehicle. Only she and Casey approached the car. She did not recall Casey’s friend approaching the car. She saw the passenger door open, but when it opened, defendant hit the gas. Casey had his hand on the window frame; he did not put his head through the window. Casey was “a very short man. He didn’t have to get down.” Casey did not try to stop defendant from speeding away.

¶ 8 Carpentersville police officer Joseph Murphy testified that he arrived at Skeeter’s Bar about 5 to 10 minutes after receiving the call. Three people were present: Casey, Wright, and another man. Casey was calm when Murphy spoke to him. Murphy photographed the injuries on Casey’s arm and, some time later, he photographed defendant’s car.

¶ 9 On cross-examination, Murphy testified that when he arrived at the bar he remained outside. He did not recall smelling any alcohol on Casey’s breath. Murphy interviewed Casey. The following colloquy took place concerning what Casey told him:

“Q. Did he tell you what happened?”

A. Yes, he did.

Q. When he told you what happened, did he tell you how he got caught by the car and dragged?

A. Yes.

Q. And did he indicate what body position he was [*sic*], where he was standing?

A. He was leaning into the driver's side window.

Q. When you said he was leaning in the driver's side window, does that—did he tell you that his head was past the door?

A. He didn't explain where the rest of his body was. He said he had one arm partially leaning in while speaking with him.”

Later, Murphy was asked whether he wrote in his police report what Casey had reported to him concerning his body position. After being given the report to refresh his recollection, Murphy testified that Casey told him that he was partially leaning through the driver's side window.

¶ 10 Following the presentation of its evidence, the State moved for a directed finding. The trial court denied the motion.

¶ 11 For the defense, John Giandonato testified that, on the evening in question, he arrived at Skeeter's Bar at about 6:30 p.m. with defendant, who was his uncle. They never went inside; rather, they sat at a picnic bench outside. Giandonato had two beers at most. Defendant did not order any alcohol; he drank iced tea. While at the bar, neither he nor defendant spoke with any other patrons. When they got into their car to leave, defendant put the car in reverse and slowly backed up. They heard a thump, and defendant stopped the car. There were about 10 people present. “They looked like Santa Claus;” they were all bikers with long beards. About a few seconds after hearing the thump, Giandonato went to exit the car to file a police report. Casey came out of nowhere and approached the vehicle. Casey put his hand around defendant's neck and said, “ ‘I'm going to kill you, MF.’ ” Giandonato shut the car door. When asked if any part of Casey's body came through the window, Giandonato said, “Yes.” According to Giandonato, Casey's left arm entered the car and went around defendant's neck. Giandonato testified:

“[His arm] was on [defendant], and [defendant] tried moving over; and I, in the meantime, getting out of the car to go file a police report. So [defendant’s] neck was being held. He went over and grabbed me, luckily, and pulled me in the car; and in the process, I think the guy’s hand slipped off his neck, but I’m not sure. He grabbed [defendant’s] shoulder at that time.”

Giandonato told defendant to go to Giandonato’s parents’ house where they could call the police.

¶ 12 On cross-examination, Giandonato testified that only one person came to the car after defendant hit the motorcycle. There were about 10 people near the picnic table. The car was moving forward when Casey ran up to it. Giandonato had his seatbelt on, but he was able to turn and see Casey’s body leave the car. “[H]e must have lost control. He tore—he tore the shirt [that defendant] was wearing, and he—we feared for our lives, at least I did.” Although they usually had cell phones with them, they did not call the police from the car; they headed for Giandonato’s parents’ house because it was closer than the police station. They were pulled over by the police before they got to his parents’ house. Giandonato has had four operations on his brain, which sometimes affects his memory. He also has a brain tumor.

¶ 13 Defendant testified that he was 68 years old and suffered from degenerative heart disease. He resided in Florida and, on the evening in question, he was in town to take care of Giandonato while Giandonato’s parents were on vacation. When he and Giandonato arrived at Skeeter’s Bar, there were “a lot of motorcycle people” present outside. They wore “leather jackets and the blue jeans and the chains hanging out of the pockets and bandanas and all that stuff.” They had “[b]eards and that, and mustaches, you know, and earrings.” Their beards were “long” and they had “earrings in their nose [*sic*].” If he had seen the motorcycles, he “would have drove away.” He parked the car,

sat on a bench outside, and ordered an iced tea; he did not like beer. When he and Giandonato left, he backed up and thought he heard a “clunk.” Giandonato told him that he saw a motorcycle tip over and started to get out of the car. Then Casey “just put his hand in the window around [defendant’s] neck and, like, hit [defendant’s] head like this (indicating), boom, and then put his arm around [defendant’s] neck, and, ‘Get out of the car, get out of your goddamn car, you know, godddamn car, get out.’ ” Casey was not calm when he approached the car; he was yelling. Defendant grabbed Giandonato and pulled him into the car. Defendant thought they were going to get beaten up. Defendant did not see Casey put his hands or elbow on the window ledge, because all he “could feel was [Casey] dragging [his] head around.” Casey grabbed defendant’s shirt and was “pulling [him], jerking [him].” Defendant just “peeled right out of there.”

¶ 14 On cross-examination, defendant testified that, when he arrived at the bar, there were about seven or eight people sitting outside. Defendant sat at a different picnic bench, because “[he] didn’t want to be around [those] motorcycle people. [He didn’t] even like motorcycle people.” When defendant bumped into the motorcycle, he intended to get out of the car. The car was in park. Giandonato was halfway out of the car when defendant was grabbed around the neck. Casey’s arm went around the back of defendant’s neck and pulled defendant toward the door. Defendant then reached over and grabbed Giandonato’s shirt and pulled him back into the car. When defendant put the car in drive and pulled away, Casey was no longer grabbing his neck. Somehow Casey “got loose.” Defendant “fe[lt] like [he was] going to be beat up, you know, like motorcycle gangs torture people that you read about it all the time. Think about it.” Defendant did not call the police. “[They] had a cell phone, but [they didn’t] know if them people [were] following [them] or coming

after [them.]” The car was pulled over by the police before they got home. Later, defendant spoke with a police officer at the police station, but he did not remember what he told him.

¶ 15 Defendant rested.

¶ 16 Murphy testified in rebuttal. According to Murphy, when he questioned defendant at the police station, defendant denied striking the motorcycle. Murphy smelled an odor of alcohol, but did not note that in his report. Murphy did not notice any damage to defendant’s shirt. Defendant did not tell him that anyone had grabbed him. Defendant told him that a man with a beer was yelling at him for hitting his motorcycle and that he feared for his safety. Defendant also told him that he had never made contact with anyone.

¶ 17 In issuing its ruling, the court found that the evidence was sufficient to establish the elements of the offense of aggravated battery. The court then considered the evidence relevant to the issue of whether defendant acted in self-defense. In so doing, the court noted that it came down to an issue of credibility and that there were several different aspects of the story that were at odds between the State’s witnesses and defendant’s witnesses. After considering various aspects of the witnesses’ testimony in detail, the court specifically rejected defendant’s version of the events. The court stated:

“[D]efendant testified about this fear of his life, this choking, the victim’s arm around his throat; and Officer Murphy testified there was no visible damage to the defendant. And more importantly, the defendant never said to the officer that anyone grabbed him.

Certainly if this incident had occurred in the manner in which the defendant testified it had occurred, the first thing he would have done would [be to] tell the police that he was fearful of his life, that he had been choked, grabbed around the throat. He had no choice.

He was, you know, escaping to get away. Yet he didn't do this. He never said a word about it to the police.

[DEFENSE COUNSEL]: Objection, Judge.

THE COURT: Well, according to the testimony—

[DEFENSE COUNSEL]: Judge, you let me get that evidence in, that he told them that he was in fear and he left. That's on the record.

THE COURT: The fear, yes. Yes, the fear, yes. What I am referring to is he never told the police that he had been grabbed, never told the police that he had been choked, never said that he had made contact with anyone. He didn't tell that to the police. And the defendant told Officer Murphy that between eight to ten people approached him.

The Court finds that the credibility in this case, that [Wright] was a very credible and believable witness. The victim the Court found to be very credible and very believable, and Officer Murphy's testimony was very credible in this regard.

On [the] other hand, I cannot say that the Court found the defendant's witness [Giandonato] to be credible and nor the defendant in this regard; and I find that the State has met its burden and find the defendant guilty of this charge.”

¶ 18 Defense counsel asked the trial court to rule on “the issue of the hand crossing in the vehicle.” Counsel stated: “I'm arguing that if someone sticks their hand in, has no right to come through that space of the car, that someone could pull away if they see the hand coming.” After allowing the State to respond, the following occurred:

“THE COURT: I will make the finding that the Court does not believe that the victim in this case was in any way, manner, shape or form trying to choke the defendant or had his arm around the defendant’s throat and neck. I will make that finding.

[DEFENSE COUNSEL]: But you are not ruling at this time whether or not you believe the victim’s statement when he told the police that ‘I entered through the window’? That you are not making a finding that he physically crossed that window with his head and his body in there like he told the officer?

THE COURT: I don’t know that I’m required to make that finding. I certainly—certainly the victim’s arm was caught in the vehicle. I think he himself testified to that as he was dragged along.

So I believe that testimony to be credible, and I don’t dispute that. I don’t think it’s been impeached what he told the police. I will make that finding. Because I didn’t hear any impeaching testimony with regard to that.”

¶ 19 The trial court sentenced defendant to three years in prison. The trial court granted defendant’s motion to reconsider his sentence and reduced the sentence to two years. We granted defendant leave to file a late notice of appeal. Defendant argues on appeal that the State failed to prove beyond a reasonable doubt that he did not act in self-defense.

¶ 20 II. ANALYSIS

¶ 21 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). Once a defendant raises the affirmative defense of use of force in defense of person (720 ILCS 5/7-1 (West 2010)), the State has the burden of disproving it beyond a reasonable doubt, in addition to proving the elements of the charged offense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). The pertinent statute provides:

“A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other’s imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” 720 ILCS 5/7-1(a) (West 2010).

The elements of self-defense are that (1) unlawful force was threatened against a 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 believed that a danger existed requiring the use of the force applied; and (6) this belief was objectively reasonable. *Lee*, 213 Ill. 2d at 225. If the State negates any one of these elements, the defense must fail. *Id.*

¶22 Defendant argues that the circumstances facing him satisfied the criteria for self-defense. He maintains that Casey’s intrusion into the car’s interior amounted to unlawful force; defendant was

not a threat to Casey; the danger of Casey causing harm to defendant was imminent; defendant's act of driving away was necessary; and, under the circumstances, defendant's beliefs in his need for self-defense were objectively reasonable. The State argues that it negated beyond a reasonable doubt five of the six elements of self-defense; more specifically, it argues that it proved beyond a reasonable doubt that unlawful force was not threatened against defendant. We agree with the State.

¶ 23 Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that no unlawful force was threatened against defendant. While defendant and Giandonato testified that Casey threatened defendant and grabbed defendant's neck, this version of events was directly refuted by Casey and Wright. Casey testified that he approached the car and calmly asked defendant if he had insurance. Wright corroborated this testimony. The trial court specifically found the State's witnesses to be more credible than defendant's, and it rejected defendant's version of the events. It is for the trial court to evaluate the credibility of the witnesses and decide the weight to give to their testimony, and we may not substitute our judgment for that of the trial court in this regard. *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011).

¶ 24 Nevertheless, defendant argues that the trial court, in finding the State's witnesses to be more credible, "ignored some significant features from the witnesses' testimonies that actually supported a finding of self-defense." Specifically, defendant argues that the court failed to consider that "Casey told an officer that he was 'leaning through' [defendant's] window." According to defendant, "Casey's intrusion into the car's interior amounted to a threat of unlawful force." We disagree with defendant's characterization of the testimony. Casey testified that he leaned over and put his arm on the open window frame of the door. He testified that he did not stick his head through the

window. Wright testified that Casey placed his hand on the window frame and that he did not put his head through the window. Contrary to defendant's argument, Murphy's testimony does not establish that Casey did anything more than place his arm on the window frame as described. While Murphy indicated in his written report that Casey told him that he was partially leaning through the driver's side window, this does not establish that Casey's head was in the vehicle. When Murphy was asked whether Casey's head was in the vehicle, Murphy explained that Casey told him that "he had one arm partially leaning in while speaking with him." Murphy's testimony in no way negates the express testimony from Casey and Wright that Casey did not put his head in the car.

¶ 25 Defendant seems to suggest that, because defendant subjectively believed that force was necessary, the court should have found him not guilty. He argues, "[e]ven a mistaken belief by [defendant] was enough to support a claim for self-defense." However, a mistaken belief in the need for self-defense does not change the outcome here, because the belief must still be reasonable. See *People v. Keefe*, 209 Ill. App. 3d 744, 751 (1991) ("The privilege of using deadly force to protect oneself from another, if one reasonably believes he is in imminent danger of death or great bodily harm, exists even where one is mistaken or the danger is only apparent."). Although a defendant's unreasonable belief in the need for self-defense may be relevant in determining whether a defendant committed first- or second-degree murder, it is not relevant here. *People v. Young*, 316 Ill. App. 3d 963, 967 (2000) ("[T]he determination of whether a defendant was either acting under a sudden or intense passion or possessed an actual, although unreasonable, belief in the need for self-defense is irrelevant for purposes of determining whether an aggravated battery has occurred."). Given the version of the facts found to be credible by the trial court, it cannot be said that defendant's alleged subjective belief in the need for self-defense was objectively reasonable. Casey approached

defendant's vehicle, placed his arm on the open window frame of the door, and spoke to defendant calmly. Indeed, the court could have concluded that defendant's dislike of "motorcycle people" prompted the entire incident.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm defendant's conviction of aggravated battery.

¶ 28 Affirmed.