

NOTICE  
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2013 IL App (4th) 111014-U  
NOS. 4-11-1014, 4-11-1122 cons.

FILED  
March 27, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
LATOYA J. BROWN,	)	No. 10CF2138
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Pope and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion in refusing defendant's self-defense instruction, and (2) defendant is entitled to \$10 incarceration credit toward an anti-crime fee.

¶ 2 On December 21, 2010, the State charged defendant, Latoya J. Brown, by information with one count of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)). The case proceeded to jury trial on August 10, 2011. During the jury instruction conference, defendant tendered Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 24-25.06) regarding the use of force in defense of a person (self-defense). The trial court refused the instruction. On August 11, 2011, the jury convicted defendant of aggravated battery. Defendant filed a timely posttrial motion, asserting, in part, the

court erred in refusing to give defendant's IPI Criminal 4th No. 24-25.06. Following a hearing on September 23, 2011, the court denied the posttrial motion.

¶ 3 After a sentencing hearing on September 23, 2011, the court sentenced defendant to 24 months of probation, requiring defendant to pay various assessments, including a \$10 anti-crime fee. Defendant filed a premature *pro se* notice of appeal on October 21, 2011, which was later stricken. *People v. Brown*, No. 4-11-0921 (Jan. 12, 2012) (dismissed on defendant's motion).

¶ 4 On November 10, 2011, the trial court denied defendant's timely motion for reconsideration of sentence. On November 14, 2011, defendant filed a second notice of appeal, No. 4-11-1014. On December 9, 2011, defendant filed a motion to strike the notice of appeal filed November 14, 2011. On December 9, 2011, appointed counsel filed another appeal, No. 4-11-1122 on defendant's behalf. We consolidate the appeals for review.

¶ 5 On appeal, defendant contends (1) the trial court erred when it refused defendant's self-defense instruction, IPI Criminal 4th No. 24-25.06, and (2) defendant is entitled to a \$10 incarceration credit toward the anti-crime fee. We affirm as modified and remand with directions.

¶ 6 I. BACKGROUND

¶ 7 On December 21, 2010, the State charged defendant by information with one count of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)). Defendant posted bond the next day. Defendant filed an answer to discovery on January 10, 2011, which disclosed the affirmative defense of self-defense. On August 10, 2011, the case proceeded to trial.

¶ 8 A. Evidence Presented at Trial

¶ 9

1. *Testimony of Wyatt Bunn*

¶ 10 The State first called Wyatt Bunn, who testified he was an employee of Strawberry Fields, a health food and grocery store, on December 20, 2010. At approximately 9:40 in the morning, he was stocking product when he noticed defendant unloading boxes and dumping the store products on the floor. He stated he told her to stop unloading boxes and that she could find empty boxes out in the Dumpster. Bunn testified defendant continued unloading a box the size of a two-foot cube; moreover, she was damaging products as she unloaded the box. In response, Bunn said he walked forward and closed the flap on the box. He stated he did not touch defendant at that point, but he acknowledged defendant had her hands on the box at the time he pushed down the flap. At that time, defendant hit Bunn in the forehead "with an overhand blow with her keys in her hand," causing his forehead to bleed.

¶ 11 Bunn testified, after defendant struck him, he grabbed her by the biceps and started walking her backward out of the aisle. Another employee, Bobby Fisher, then intervened by placing an arm between Bunn and defendant, at which time Bunn released his hold on defendant. Bunn denied using profanity, but he admitted he raised his voice as he told defendant to leave. He said that no other employees were present in the aisle when defendant struck him, though employee Bobby Fisher was nearby.

¶ 12 According to Bunn, immediately after the altercation, several employees gathered around, telling defendant to leave the store. Bunn said defendant was "raising a fair bit of a fuss" and insulting the other employees, but a couple of minutes later she complied with the employees' demands to leave the store.

¶ 13 During cross-examination, Bunn denied holding any items in his hands when he

approached defendant in the store, but acknowledged she did become upset. He described himself as six-foot, three-inches tall, weighing approximately 300 pounds. Further, he stated he had been employed at Strawberry Fields for approximately one year and received no training regarding loss prevention. The only procedure Bunn knew was to call the police, but he acknowledged another employee called police.

¶ 14 *2. Testimony of Other Employees*

¶ 15 Kalli Clayton testified she was the office manager at Strawberry Fields and was working on the morning of December 20, 2010. She said she heard a noise that sounded like heavy products falling off the shelves. As she approached the front of the store, she observed defendant yelling as people asked her to leave the store.

¶ 16 Adam Wright testified he was employed at Strawberry Fields on December 20, 2010, when he heard a commotion on the sales floor. The commotion consisted of both a female and male yelling. He observed defendant yelling at Bobby Fisher and Wyatt Bunn about boxes. Wright asked defendant to leave the store, but she ignored him, pushing past several employees repeatedly as she retrieved boxes. At the time, several employees formed a "wall" on one side of the store and asked defendant repeatedly to leave the store. Defendant continuously yelled at Bobby Fisher to keep his hands off her and to stop touching her, but Wright never observed Fisher touch defendant. Wright said defendant eventually left the store after gathering several boxes.

¶ 17 Gregory Pino also testified he was employed at Strawberry Fields on December 20, 2010. His primary duties on that date were unloading and organizing a shipment of products. That morning, he made contact with defendant, who indicated she was looking for boxes. He

stated he told defendant to pick out boxes and he would unload them for her. Defendant then walked away and, a few minutes later, Pino heard a disturbance across the store. Pino testified he saw defendant "moving rapidly" and acting "defensively." Wyatt Bunn was holding his head. Pino remembered defendant was yelling, "don't touch me," although no one was touching her, and Pino described her as upset "to an irrational degree." Defendant ignored repeated commands to leave the store and shouted profanity at the employees before eventually leaving the premises.

¶ 18 *3. Testimony of Officer Roesch*

¶ 19 Officer Roesch testified he was dispatched to Strawberry Fields on December 20, 2010, in reference to a fight. On arrival, he witnessed defendant trying to load boxes in her car while another officer, Officer Rolando, spoke with her. He did not observe any injuries to defendant, but noted her to be "upset, irate, [and] yelling" at Officer Rolando. When Roesch inquired further, defendant demanded to speak with a supervisor because, according to defendant, Officer Rolando touched her "for no reason."

¶ 20 Defendant told Roesch she was given permission to take any box she wanted from the store. She explained to Roesch that an employee approached her, began yelling, and eventually pushed her for no reason. Defendant stated she then struck the employee in the face.

¶ 21 Officer Roesch then spoke with Wyatt Bunn. Roesch testified that Bunn said he directed defendant to a Dumpster for boxes. Bunn told him defendant left the store and returned a few minutes later, at which time she started unloading boxes. Bunn said he told defendant to stop unloading boxes, but defendant refused to comply and began yelling. Bunn also acknowledged to Roesch that he grabbed the box away from defendant. Additionally, Bunn indicated he pushed defendant to keep her away from him once she got within six inches of his

face. Bunn told Roesch that, after he pushed her, defendant struck Bunn with her keys. Roesch observed injuries to Bunn consistent with being struck with keys.

¶ 22 *4. Testimony of Defendant*

¶ 23 Defendant testified she entered Strawberry Fields on December 20, 2010, in search of boxes. She stated she asked employees about obtaining boxes, at which time Gregory Pino told her he would open any boxes she chose. Defendant testified when she did find a box, Wyatt Bunn cut it open with a box cutter, then told her she could unload the box. He also told her more boxes were located outside in the Dumpster. After finding no suitable boxes outside, defendant returned to the store to finish unloading boxes, at which time Bunn yelled that she could not have the box and then tried to take it from her. She testified that she was confused and in shock because he had already given her permission to take the box. He then "snatched the box so hard that the box tore," and defendant was afraid he was going to attack her. Defendant further stated Bunn bumped against her with his body and she stumbled backward. When he continued to pursue her, defendant struck him with her keys. She stated she did not intend to strike him, but wanted him to stop pursuing her. Defendant testified she yelled "don't touch me" in an attempt to startle him.

¶ 24 Additionally, defendant testified several employees began to gather around and yell profanities at her. She did not leave immediately when employees told her to leave. Eventually, however, she left the store and called police.

¶ 25 On cross-examination, defendant acknowledged Bunn told her not to unload the box, but she continued to unload the box because Pino told her she could. She also agreed the box belonged to Strawberry Fields at the time she began unloading it.

¶ 26

#### B. Jury Instruction Conference

¶ 27

At the conclusion of evidence, the trial court held a jury instruction conference outside the presence of the jury. Defendant tendered an instruction for self-defense, IPI Criminal 4th No. 24-25.06. Defendant argued enough evidence of unlawful force existed to warrant a self-defense instruction, specifically noting the undisputed testimony that Bunn grabbed the box out of defendant's hands. Further, according to defendant's testimony, Bunn was the initial aggressor when he pushed her. At that point, defendant argued, she was in fear for her safety and justified in using force in self-defense. Defendant also asserted defendant's keys were not an unjustified "weapon" given the size discrepancy between Bunn and defendant.

¶ 28

The trial court refused the instruction, finding the relevant factor to be whether striking Bunn was "necessary to defend herself against the imminent use of unlawful force." The court noted Bunn told defendant not to unload the box before taking it from her. Even relying upon defendant's testimony that Bunn bumped her first, the court did not find self-defense to be an appropriate instruction.

¶ 29

#### C. Posttrial Proceedings

¶ 30

On August 11, 2011, the jury returned a guilty verdict. Defendant filed a timely posttrial motion alleging, in part, the trial court erred in refusing defendant's self-defense instruction, IPI Criminal 4th No. 24-25.06. The court denied the posttrial motion on September 23, 2011, and sentenced defendant to 24 months' probation. Part of defendant's sentence included the payment of standard fees, which in this case included a \$10 anti-crime fee. Defendant then filed a motion to reconsider sentence, which the court denied following a hearing on November 10, 2011. This appeal followed.

¶ 31

## II. ANALYSIS

¶ 32 On appeal, defendant contends (1) the trial court erred when it refused defendant's self-defense instruction, IPI Criminal 4th No. 24-25.06, and (2) defendant is entitled to a \$10 incarceration credit toward an assessed anti-crime fee. We address defendant's arguments in turn.

¶ 33 A. Defendant Was Not Entitled to a Self-Defense Jury Instruction

¶ 34 Defendant first argues the trial court erred by refusing to tender the self-defense jury instruction, IPI Criminal 4th No. 24-25.06. We disagree.

¶ 35 A criminal defendant is entitled to a jury instruction on self-defense if "very slight" or "some" evidence exists to support the theory of self-defense. *People v. Everett*, 141 Ill. 2d 147, 156-57, 565 N.E.2d 1295, 1298-99 (1990). If such evidence exists, it is an abuse of discretion if the trial court fails to give the instruction. *People v. Jones*, 175 Ill. 2d 126, 131-32, 676 N.E.2d 646, 649 (1997); see also *People v. Crane*, 145 Ill. 2d 520, 526, 585 N.E.2d 99, 102 (1991). It is the court's role to determine whether sufficient evidence exists to support a self-defense instruction, but it is not the court's role to evaluate the credibility of the evidence. *Jones*, 175 Ill. 2d at 132, 676 N.E.2d at 649.

¶ 36 "In order to instruct the jury on self-defense, the defendant must establish some evidence of each of the following elements: (1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable." *People v. Jeffries*, 164 Ill. 2d 104,128, 646 N.E.2d 587, 598 (1995). "If the State negates *any one* of the self-defense

elements, the defendant's claim of self-defense must fail." (Emphasis in original.). *Jeffries*, 164 Ill. 2d at 128, 646 N.E.2d at 598.

¶ 37 Defendant argues there was enough evidence to support a self-defense instruction to the jury. Though witness testimony conflicted throughout the trial, we will look to whether "some" evidence existed to satisfy each component of self-defense, as outlined by *Jeffries*, 164 Ill. 2d at 128, 646 N.E.2d at 598.

¶ 38 First, we agree "some" evidence supported a threat of force against defendant. Both defendant and Bunn acknowledged Bunn grabbed a box out of defendant's hands. Additionally, defendant testified Bunn pushed her with his chest with enough force to momentarily jeopardize her balance, which is supported by testimony from Officer Roesch that Bunn admitted pushing defendant. Second, we agree "some" evidence existed to support defendant's contention that she was not the aggressor. Defendant testified Bunn initiated contact with her by grabbing the box and shoving her, which is consistent with the statement Bunn initially gave Officer Roesch.

¶ 39 Third, we agree "some" evidence showed danger of imminent harm. Defendant testified Bunn "snatched the box so hard that the box tore," pushed her, and then "pursued" her, leading her to believe Bunn intended imminent harm. She acknowledged yelling, "don't touch me," in an attempt to "startle" Bunn, and swinging her arm to stop Bunn's pursuit. Pino testified defendant was standing in a defensive position, which would potentially support defendant's argument that she believed a danger existed. This evidence also supports defendant's contentions (1) she actually and subjectively believed a danger existed which required the use of force applied and (2) her beliefs were objectively reasonable under the circumstances.

¶ 40 Our inquiry turns to whether "some" evidence showed the threatened force was unlawful. Once a customer becomes a trespasser on the premises, the owner has the "right to use reasonable force to terminate the trespass." *People v. Bradshaw*, 100 Ill. App. 3d 45, 47, 426 N.E.2d 345, 346 (1981); 720 ILCS 5/7-3 (West 2010). Additionally, "no amount of force by a trespasser can be justified unless the trespasser reasonably believes that force is necessary to alleviate the imminent danger posed by the landowner." *People v. Connelly*, 57 Ill. App. 3d 955, 957, 373 N.E.2d 823, 825 (1978). The right to use reasonable force to terminate a trespass also extends to employees as representatives of the owner. *People v. Dillard*, 5 Ill. App. 3d 896, 901, 284 N.E.2d 490, 494 (1972).

¶ 41 The following undisputed facts were ascertained at trial. Bunn was employed by Strawberry Fields on December 20, 2010. Regardless of facts preceding the encounter, defendant inevitably began unloading store products from a box. At that point, Bunn approached defendant and told her to stop unloading the box. Defendant acknowledged the box belonged to the store and she recognized Bunn as a store employee. Defendant also admitted she ignored Bunn's command to stop unloading the box.

¶ 42 Once Bunn commanded defendant to stop unloading the box, she no longer had permission to proceed. Her continued action of unloading the box constituted a trespass and, based on Bunn's undisputed testimony, destruction of store property. Defendant argues Bunn exercised unlawful force in taking the box from defendant and subsequently pushing her. We disagree. Even if Bunn grabbed the box from defendant's person, we cannot find an employee taking possession of store merchandise to be exercising unlawful force in this situation.

Moreover, even if Bunn pushed the defendant or bumped her with his chest, we do not find the

force to be unlawful because an employee has the right to use reasonable force to terminate the trespass. Based on defendant's refusal to comply with Bunn's commands, we conclude this minimal force was reasonable under the circumstances.

¶ 43 We agree with the trial court's finding that there was no evidence presented to support the contention that defendant's use of force was "necessary to defend herself against the imminent use of unlawful force." Therefore, we hold the trial court did not abuse its discretion in refusing defendant's self-defense instruction, IPI Criminal 4th No. 24-25.06.

¶ 44 B. Defendant is Entitled to Incarceration Credit Toward the Anti-Crime Fee

¶ 45 Defendant argues she is entitled to \$10 incarceration credit toward the anti-crime fee. The State concedes the issue, and we accept the State's concession.

¶ 46 Any person incarcerated on a bailable offense and against whom a fine is levied upon conviction is entitled to a \$5 per day credit toward any assessed fines. 725 ILCS 5/110-14(a) (West 2010). Issues regarding the imposition of fines are reviewed *de novo*. *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 282, 856 N.E.2d 422, 427 (2006).

¶ 47 Defendant spent two days in jail prior to posting bond, which entitled her to an incarceration credit of \$10 toward any fines assessed at sentencing.

¶ 48 At sentencing, the trial court may order a defendant to "contribute a reasonable sum of money" to a local anti-crime program. 730 ILCS ILCS 5/5-6-3(b)(13)(West 2010). That contribution is not a cost or restitution, but resembles a financial punishment; therefore, the charge is considered a fine for purposes of assessing incarceration credit. *People v. Littlejohn*, 338 Ill. App. 3d 281, 283-84, 788 N.E.2d 339, 341 (2003). Because the anti-crime assessment is a fine, defendant is entitled to a \$10 incarceration credit against the assessment.

¶ 49 We therefore affirm as modified and remand the case for the trial court to credit defendant \$10 toward the anti-crime fee.

¶ 50 III. CONCLUSION

¶ 51 For the foregoing reasons, we affirm the trial court's judgment as modified and remand for the trial court to credit defendant \$10 toward her anti-crime fee. As part of our judgment, because the State successfully defended a portion of this appeal, we award the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 52 Affirmed as modified and cause remanded with directions.