

No. 1-13-3819

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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 11207
	)	
MALCOLM QUALLS,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Delort concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's conviction for aggravated battery with a firearm affirmed over his contention that he acted reasonably in self-defense.

¶ 2 Following a bench trial, defendant Malcolm Qualls was convicted of aggravated battery with a firearm and sentenced as a Class X offender to 7 years' imprisonment. On appeal, defendant argues that his conviction should be reversed because the State failed to prove beyond a reasonable doubt that he did not act reasonably in self-defense. We affirm.

¶ 3 Defendant was charged with six counts of attempted first degree murder, one count of aggravated battery with a firearm, five counts of armed robbery, one count of aggravated

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discharge of a firearm, and four counts of aggravated battery stemming from the May 19, 2010, shooting of Terry Collins.

¶ 4 Defendant filed a motion under *People v. Lynch*, 104 Ill. 2d 194 (1984), which sought to admit at trial the testimony of three witnesses—Kimberlee Bateast, Will Ray Weekly, and Delshaun McKinley—as to Mr. Collins' reputation for violence. The circuit court granted the motion following a hearing.

¶ 5 At trial, Mr. Collins testified that, at 11:30 a.m. on May 19, 2010, he was walking to his friend's house on a path through the Woodrow Wilson Woods (forest preserve) in Chicago Heights. He had no plans to meet anyone in the forest preserve. While he was walking, Mr. Collins felt a ringing in his ear and felt as if he had just been struck there. He was about to turn around when he felt another strike to his back. Out of the corner of his eye, Mr. Collins saw a person wearing a hood. Mr. Collins tried to flee, but fell to the ground landing on his side. Mr. Collins testified that the person wearing the hood stood over him, shot him in the buttocks, and then aimed the gun at his face. Mr. Collins identified defendant in court as the person who shot him.

¶ 6 Mr. Collins further testified that, when defendant attempted to fire the gun in his face, there were no bullets. Defendant said to him: "Oooh, b\*\*\*h, you are lucky." Mr. Collins pretended that he was dead while defendant went through his pockets and took his phone and \$127. Defendant then stepped on Mr. Collins' finger, and walked away toward nearby residences. When defendant was some distance away, Mr. Collins stood up and ran toward Lincoln Highway and screamed for help. The mother of one of Mr. Collins' friends was driving in that area and

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took him to the hospital. At the hospital, Mr. Collins met with the police and identified defendant as the person who shot him from defendant's photograph in a photographic array.

¶ 7 On cross-examination, Mr. Collins testified that he had attended Bloom High School (Bloom) in Chicago Heights with defendant, they were acquaintances and, until the day of the shooting, he had not had any problems or altercations with defendant. Mr. Collins admitted to having had altercations with people in his neighborhood and with the students and teachers at Bloom. Mr. Collins explained, however, that although there had been no prior physical altercations or threatening behavior, he was suspended from school on several occasions for "mouthing off." Mr. Collins also acknowledged that he was called into the dean's office on several occasions for talking back to a teacher, and was eventually expelled from school during his senior year. Mr. Collins had several disputes with Mr. Weekly, the school security guard, which led to him being suspended from school.

¶ 8 Mr. Collins denied that he had attempted to rob Delshawn McKinley, defendant's "right hand man," or lure Mr. McKinley to a dice game. Mr. Collins further denied that he spoke with defendant on May 19, 2010, prior to walking through the forest preserve; that he wished to purchase a gun from defendant; and that he had a conversation with defendant in the forest preserve which escalated into a physical altercation. Instead, Mr. Collins asserted that defendant "just gunned me down." Mr. Collins stated that he did not have a gun that day.

¶ 9 Mr. Collins acknowledged that he had prior convictions for attempted residential burglary and aggravated robbery, but claimed that he had pled guilty to those charges because he wished to be released from custody and go home.

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¶ 10 Dr. Elien Omi, a trauma surgeon at Advocate Christ Hospital testified that she treated Mr. Collins in the emergency room on May 19, 2010. Mr. Collins sustained gunshot wounds under his left earlobe; on his back just to the right of his spine; and his left buttock. Mr. Collins had two non-gunshot related wounds to his left index finger. The gunshot wound under the left earlobe caused a fracture to Mr. Collins' jaw bone which had to be surgically wired closed. The bullets were not removed from his body.

¶ 11 Donna Jones testified that at 11:45 a.m. on May 19, 2010, she and her two grandchildren were outside her residence at 170 Country Club Road in Chicago Heights, which is one block west of the forest preserve. At that time, Ms. Jones noticed an African-American male walking alongside the fence of a residence located diagonally from her residence. He then ran across Schilling Avenue. Ms. Jones noticed this person because he continuously looked over his shoulder and was removing and discarding his clothing: a dark hooded sweatshirt and dark plaid pants which he wore over what appeared to be a royal blue Bloom gym suit. Sometime thereafter, the police arrived, and she told them what she had observed.

¶ 12 Cook County Sheriff evidence technician Patrick Julian testified that he investigated the area near Country Club Road and Schilling Avenue. There, he discovered a black, hooded sweatshirt and plaid pajama pants. Mr. Julian recovered from the pajama pants a six-shot, .22 caliber revolver, with five spent casings and one empty round in the cylinder which he subsequently inventoried. Mr. Julian then proceeded to the forest preserve where he found blood stains at the top of the stairs of a walking path and the impression of a footprint in the blood.

¶ 13 Palos Park police detective Barry Churin, a member of the South Suburban Major Crimes Task Force, testified that he investigated this incident with Palos Heights police detective Gerard

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Wodka. After speaking with Ms. Jones, they identified defendant as a person of interest, proceeded to his residence located at 1125 Schilling Avenue, and arrested him.

¶ 14 Detective Gerard Wodka testified that he and Detective Churin searched defendant's residence and found two pairs of blue mesh gym shorts, ten .22-caliber rounds, and a pair of black gym shoes. One pair of the shorts bore the logo "Bloom Phys. Ed." One of the black gym shoes had a red stain on it, which was swabbed by the detective.

¶ 15 Illinois State Police Crime Lab forensic scientist Ryan Paulsen testified that he performed a DNA analysis of the blood swabs taken from the black gym shoe and a buccal swab taken from Mr. Collins, and had concluded that the "DNA profile identified from the blood swabs match[] the DNA profile of [Mr. Collins]".

¶ 16 Defense witness Willie Ray Weekly, a security guard at Bloom, testified to knowing Mr. Collins from his freshman year through the time of his expulsion in his senior year. During Mr. Collins' freshman year, a teacher notified Mr. Weekly that Mr. Collins had struck another student. Mr. Weekly told Mr. Collins to report to the dean's office, but he refused to go until Mr. Weekly called for a police officer. In another instance, at a Bloom football game, a student informed Mr. Weekly that Mr. Collins had "stuck him up," and took his phone. When Mr. Weekly and police officers approached Mr. Collins, he dropped the cell phone. In December 2010, Mr. Weekly attended a Christmas party held at the Bethel Facility which is connected with Bloom. After the party, Mr. Weekly went upstairs to make sure that everyone had left and to clean up. The following day, he learned that Mr. Collins had planned to "jump" him outside if he had left the party immediately.

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¶ 17 In April 2011, after Mr. Collins had been expelled from school, Mr. Weekly went to an apartment building to deliver a letter to a parent of another student who attended Bloom. Mr. Collins was outside of the apartment building and he cursed at Mr. Weekly. Mr. Weekly was not frightened by Mr. Collins and ignored him. Mr. Weekly testified that, based on his experiences with Mr. Collins, he believed Mr. Collins had a reputation for violence at the school and in the community surrounding the school.

¶ 18 Kimberlee Bateast, the discipline dean at Bloom, testified that teachers had made 25 disciplinary reports of Mr. Collins' aggressive behavior. In December 2009, she had met with Mr. Collins to discuss the consequences of a complaint. Mr. Collins became upset, yelled, slammed the door, and left the school grounds. Ms. Bateast suspended Mr. Collins for the incident. Ms. Bateast opined that, based on Mr. Collins' disciplinary record at Bloom, he had a reputation for violence and aggression.

¶ 19 Delshawn McKinley, a friend of defendant, testified that he knew Mr. Collins at Bloom from 2009 to 2010. Mr. McKinley further testified that he has played dice with Mr. Collins and Mr. Collins is known to carry his winnings on his person. In late 2009, Mr. McKinley met with Mr. Collins to go to a dice game. When they arrived at their destination and no one was there, Mr. Collins hit Mr. McKinley and a physical altercation ensued. Mr. Collins managed to reach into Mr. McKinley's pocket and steal his money. Mr. McKinley admitted that he never filed a police report against Mr. Collins for stealing his money and explained that he wanted to "take it [into his] own hands."

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¶ 20 Defendant testified that he went to Bloom with Mr. Collins and had observed him fighting there on one occasion. During the time he attended Bloom, defendant knew Mr. Collins had a reputation for violence, but he was never actually afraid of him.

¶ 21 In 2010, defendant possessed a gun because his house had been broken into. However, defendant's guardian did not approve of him possessing a gun and defendant attempted to sell it. Mr. Collins wished to test the gun in the forest preserve before purchasing it. On May 19, 2010, defendant carried the gun in his pocket while the two walked to the forest preserve. When they arrived, defendant asked Mr. Collins for the money. Mr. Collins walked toward him and attempted to punch him several times, but never made contact. Defendant feared for his life because he knew of Mr. Collins' reputation for violence. Defendant did not try to fight back, but believed Mr. Collins was going to take his gun and shoot him. Defendant began to shoot "wild[ly]." While he was shooting at Mr. Collins, Mr. Collins kept coming toward him, throwing punches "as if he want[ed] to get a shot." Defendant did not take any money from Mr. Collins. Defendant fled and, when he looked back, he observed Mr. Collins lying on the ground. Mr. Collins then got up and ran. On his way home, defendant removed his sweatshirt and pants because he was hot and panicked and discarded the gun.

¶ 22 Defendant further testified that, at the time of the incident, he was afraid of Mr. Collins and felt that he needed to defend himself. He did not intend to kill Mr. Collins, and his purpose for shooting Mr. Collins was to escape from him.

¶ 23 At the close of evidence, the trial court found defendant guilty of aggravated battery with a firearm. Defendant then filed a motion for a new trial, which was denied. This appeal followed.

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¶ 24 On appeal, defendant argues that his conviction should be reversed because the State failed to prove, beyond a reasonable doubt, that he did not act reasonably in self-defense.

¶ 25 When a defendant challenges the sufficiency of the evidence to sustain a conviction, the standard of review is whether, after viewing 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. Cunningham*, 212 Ill. 2d 274, 279 (2004). This standard recognizes " 'the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences' " therefrom. *People v. Campbell*, 146 Ill. 2d. 363, 375 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). 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).

¶ 26 Here, defendant maintains that he was acting in self-defense when he fired his gun multiple times at the unarmed Terry Collins. Self-defense is an affirmative defense (*People v. Lee*, 213 Ill. 2d 218, 224 (2004)) and, once raised, the State must prove, beyond a reasonable doubt, the elements of the charged offense and that the defendant did not act in self-defense. *Id.* To raise an affirmative defense, the defendant must provide some evidence of each of the following elements of self-defense: (1) unlawful force was threatened against the defendant; (2) the danger of harm was imminent; (3) the defendant was not the aggressor; (4) the defendant actively and subjectively believed that a danger existed which required the use of force; and (5) that the defendant's belief was objectively reasonable. *Id.* at 225; see also *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). If the State negates any one of these elements, defendant's claim of self-defense fails. *Id.* Additionally, "a person is justified in using force likely to cause death or



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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.' " *People v. Montes*, 263 Ill. App. 3d 680, 691 (1994) (quoting Ill. Rev. Stat.1991, ch. 38, par. 7-1).

¶ 27 Defendant maintains that he acted reasonably in the face of the threat of physical violence posed by Mr. Collins. Specifically, at trial, defendant testified that Mr. Collins threw punches at him which missed. However, based on Mr. Collins' history of violence and defendant's fear that Mr. Collins was going to knock him out, take his gun, and shoot him, he shot at Mr. Collins multiple times.

¶ 28 The State responds the evidence presented at trial showed that no reasonable person in defendant's situation would believe they were in danger of great bodily harm or death from Mr. Collins' actions. The State further responds that, in this case, defendant's beliefs were objectively unreasonable because someone similarly situated and carrying a loaded gun would not reasonably have feared for his life. We agree with the State.

¶ 29 Defendant admitted that, although he knew of Mr. Collins' reputation, he was never afraid of Mr. Collins at Bloom. On the date of the incident, he also willingly met Mr. Collins at the forest preserve. Defendant was armed with a gun; Mr. Collins was unarmed. Mr. Collins never physically touched defendant prior to the shooting or during the shooting. Defendant was physically unharmed. Mr. Collins, however, suffered multiple gunshot wounds and other injuries. The evidence supports the conclusions that if defendant indeed was actually in fear of Mr. Collins, defendant was unreasonable in his belief that Mr. Collins posed an imminent threat of great bodily harm to him, and the use of deadly force was justified. *In re Jessica M.*, 399 Ill. App. 3d 730, 737 (2010). Furthermore, the medical evidence presented at trial showed that Mr.

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Collins was struck in the back of his body multiple times leading to the natural inference that he was not the aggressor and also negates defendant's claim of being in fear for his life. *People v. Easter*, 102 Ill. App. 3d 974, 980 (1981).

¶ 30 Defendant argues that he presented evidence under *Lynch*, which supports his version of the incident. In *Lynch*, our supreme court recognized that evidence of a victim's reputation for violence may be used to support a defendant's version of the facts where there are conflicting accounts of what occurred. *Lynch*, 104 Ill. 2d at 200. However, even accepting defendant's claim that Mr. Collins attacked defendant first by throwing punches, his belief that deadly force was required was unreasonable where Mr. Collins: (1) was unarmed; and (2) threw punches at defendant, but never made contact. *In re Jessica M.*, 399 Ill. App. 3d at 737-38.

¶ 31 Defendant, nonetheless, claims that *People v. Estes*, 127 Ill. App. 3d 642 (1984), supports his contention that, where it is clear the aggressor is capable of inflicting serious bodily harm on a defendant without the use of a deadly weapon, and it appears that he intends to do so, then it is unnecessary for the aggressor to be armed for a defendant to employ deadly force in self-defense. *Id.* at 652. We find *Estes* factually distinguishable from the case at bar.

¶ 32 In *Estes*, the defendant's husband, Floyd Estes, was six feet tall, weighed 200 pounds, and had previously knocked her down breaking her tailbone. On the way to the hospital for that prior injury, Mr. Estes pulled a gun and then placed it in his pocket threatening to kill the defendant if she told anyone how the injury occurred. *Id.* at 645. On date of the assault at issue, Mr. Estes accused the defendant of having an affair, knocked her to the floor, pulled her hair and twisted her neck with his hands. *Id.* at 647. The defendant escaped and attempted to drive away, but Mr. Estes blocked her path. *Id.* The defendant returned to the house but was afraid that Mr. Estes

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was armed, so she retrieved a gun from under a mattress, which she kept for protection. *Id.* In the house, during a struggle, Mr. Estes slapped the defendant's face and knocked her glasses off. *Id.* at 647-48. The defendant got away, sat down and begged Mr. Estes to leave her alone. Mr. Estes, however, came after the defendant and she pulled out the gun and shot him. *Id.* at 648.

¶ 33 Here, unlike *Estes*, Mr. Collins never attacked defendant before the incident in question. Although he had a reputation for violence, there was no evidence that Mr. Collins had a gun, ever pulled a gun on anyone at school or in the neighborhood, or had ever shot anyone. Moreover, defendant testified that he was not afraid of Mr. Collins prior to the incident. Also, there was no evidence that Mr. Collins ever made physical contact with defendant (*People v. Everette*, 141 Ill. 2d 147, 159-60 (1990)) while in the forest preserve. As stated, the medical evidence demonstrated that Mr. Collins was shot multiple times in the back of his body thereby lending credence to the natural inference that Mr. Collins was retreating at the time he was shot. *Easter*, 102 Ill. App. 3d at 980-81.

¶ 34 Under the evidence, defendant's belief that his life was in danger, which required the use of the force employed, was unreasonable and negates his claim of self-defense.

¶ 35 We, therefore, affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.