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2016 IL App (4th) 140033-U

NO. 4-14-0033

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 1, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RONALD BRAMLEY,	)	No. 13CF788
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Where the record is devoid of any evidence indicating defendant used necessary force to defend himself from an initial aggressor, the appellate court found the trial court did not err in refusing to give the jury defendant's tendered self-defense instruction.

¶ 2 A jury found defendant, Ronald Bramley, guilty of aggravated battery for striking a transit passenger in the face. He appeals his conviction, claiming the trial court erred by refusing to allow him to tender a jury instruction on self-defense. Upon a review of the record, we find no evidence to support such instruction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2013, the State charged defendant with aggravated battery, a Class 3 felony (720 ILCS 5/12-3.05)(d)(7), (h) (West 2012)) (count I), alleging defendant struck Melinda Rogers-Linck, a transit passenger, in the face. The State also charged defendant with domestic

battery with a prior domestic-battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(2), (b) (West 2012)) (count II), alleging defendant knowingly made physical contact of an insulting or provoking nature with his wife, Valerie Lee, when he grabbed her by the torso and dragged her.

¶ 5 At defendant's August 2013 jury trial, the State first called Melinda Rogers-Linck as a witness. She testified she was 24 years old and was employed at Fannie May, working the 11 a.m. to 3 p.m. shift. She said she usually takes the Champaign-Urbana Mass Transit District bus to work. On May 17, 2013, at approximately 10:40 a.m., she was on the bus on her way to work. As the bus pulled up to a regular stop, Rogers-Linck could see from her window defendant and Valerie Lee arguing. Defendant had his hand on Lee's arm, "pushing her around." They were yelling at each other in what appeared to be an angry manner. Another man at the same bus stop got on the bus and the bus driver began to pull away. Rogers-Linck said she stood up and told the bus driver he could not leave Lee with defendant. Rogers-Linck said Lee "ran on the bus" and sat down "all the way in the back." Defendant ran onto the bus after her and headed toward the back as well.

¶ 6 Rogers-Linck said she stood up in front of defendant because "he still looked pretty mad" and she "didn't want him to hit [Lee]." She told defendant she did not think he should go back to where Lee was seated. Defendant said: " 'That's my f*** wife, bitch.' " Defendant hit Rogers-Linck in the face. She said she was scared because she thought defendant was going to hurt her further and no one would be able to stop him. Several male passengers on the bus subdued defendant until the bus driver stopped and let defendant off the bus. She said she had never met Lee or defendant before. Rogers-Linck said when she got off the bus, she called the police. The police arrived and took photographs of the injuries to her face. The

photographs, grouped as People's exhibit No. 2, depicted her face with redness and bruising. The photos were published to the jury.

¶ 7 Rogers-Linck also testified there were multiple cameras placed throughout the bus, which captured the events as they transpired. A recording of the various angles from the different cameras on the bus was published to the jury as People's exhibit No. 1 and authenticated by Rogers-Linck.

¶ 8 On cross-examination, defendant's counsel questioned Rogers-Linck regarding her conduct on the bus. She admitted she was upset and agitated from watching defendant prevent Lee from getting on the bus. She also admitted she was upset because "the bus driver was going to leave [Lee]." The following exchange occurred:

> "Q. Could you see the woman get on the bus and she ran to the back like you had said?
>
> A. Yes.
>
> Q. And then the man got on the bus, and he was also running down the aisle toward the back?
>
> A. Yes.
>
> Q. You then stood up in front of him?
>
> A. Yeah.
>
> Q. You did a little bit more than just stand up in the front of him, didn't you?
>
> A. No.
>
> Q. You don't recall your arm coming out, your right arm coming out in front of his chest?

A. I was just trying to keep him from getting to her. I didn't want him to hurt her.

Q. Did your arm make contact with his chest?

A. Maybe slightly.

Q. It prevented him—

A. It wasn't forceful.

Q. He was running down the aisle and once you made contact with his chest he stopped running, didn't he?

A. Yeah.

Q. At that point in time you and he had words?

A. Yeah. Yes.

Q. And then, after that, you said that he went like this to the side of your face? I believe that was the way you—

A. Yes.

Q. So you were like a pushing motion towards your face with his hand?

A. Yes.

Q. Is that accurate?

A. I would say strike, but yes.

Q. But he made this kind of action towards your face?

A. Yes.

Q. With his hand?

A. He hit my face with his hand.

Q. Did you recall telling Officer Bednarz, when you spoke with him, that he punched you in the right side of your face?

A. Yes.

Q. Is this the same as what you would say a punch would be?

A. It's all a strike. I think it's pretty much the same thing. It's all a hit."

¶ 9 Rogers-Linck explained she had a full cup of coffee and her cellular telephone in her hand when she confronted defendant. She said some of her coffee may have spilled onto defendant, but she was not certain.

¶ 10 Valerie Lee testified she married defendant on March 18, 2007. She explained that on May 17, 2013, she left their home on Prospect Avenue to take a bus to the emergency room because her "right hand was bothering [her]." She said the "knuckles part were swollen" from what she believed was arthritis. She said, before she left for the bus, she and defendant were "having a disagreement" about something she had said to him, but she could not recall what it was. She said she was angry, while defendant was trying to calm her down. She said, at the bus stop, defendant was trying to tell her not to get on the bus, but she did not want to listen. He put his arms out, trying to prevent her from getting on the bus. She ran back and forth trying to get around him. She eventually ran around him and got on the bus. She went to the back of the bus and sat down. Defendant followed her on the bus. She said "[h]e had some words with a lady," but she could not hear what was said. She sat with her head down. She heard a "smack," looked up, and "the lady that was talking to him was sitting down." She said: "Then two guys

got up and said something to him, and then the bus driver pulled over and made him get off." Lee said she stayed on the bus.

¶ 11 On cross-examination, Lee testified she and defendant were arguing about her niece and her boyfriend, who were living with them at the time. Defendant was not trying to prevent Lee from getting medical care. She said defendant did not hurt her or strike her, and she did not feel threatened by him. However, on redirect, she admitted she ran all the way to the back of the bus to get away from him.

¶ 12 Champaign police officer Jim Bednarz testified he responded to the bus terminal to meet Rogers-Linck. He took a statement from her and took photos of her injuries, which he described as redness on her right cheek with a small welt. As she was relaying the incident to the officer, Rogers-Linck began hyperventilating. Bednarz called for paramedics, who took her to the hospital. The State rested.

¶ 13 Defendant testified on his own behalf. He stated he was 50 years old and resided with Lee. He testified he had two prior convictions for possession of controlled substances, in 2007 and 2012. Defendant explained that on the day of the incident, he and Lee were arguing about "several things," one of which was the fact their niece and her boyfriend were not contributing to the household expenses. Defendant agreed their argument was "very heated." The argument started at their house. Defendant tried to leave the house on his bicycle, but Lee blocked the door to prevent him from leaving. He went to the kitchen "to do something," and Lee said she was leaving to go to the hospital. According to defendant, he then did the same thing to her, in terms of preventing her from avoiding the argument. He said he did not harm Lee, as he would "never harm [his] wife." He denied hitting or striking her, but admitted there was "mutual shoving." He admitted using his arms to prevent her from boarding the bus. He

said he was not preventing her from going to the hospital, he was trying to finish "discussing what [they were] discussing." Defendant said Lee "went around [him] and got on the bus anyway, so [he] just followed her on the bus."

¶ 14 Defendant said he "was moving kind of fast because [his] wife had ran all the way to the back of the bus." Rogers-Linck "grabbed" him, stopping his momentum, and stood in front of him. Her elbow hit him in the chest. He said he told her: " 'Lady, I don't even know you. You don't even got nothing to do with this. This is my wife.' " He denied calling her any profane name. The following exchange occurred:

> "Q. Why did you react the way you did by pushing her in her face after she had touched you?
>
> A. Because I couldn't—she would not take her hands off of me. I asked her to take her hands off of me. And I told her, I don't even know you. You know, and with the force that she had put her arm up there with, you know what I'm saying, it was the only way for me to get her up off of me was to push her.
>
> And I didn't mean to hurt her when I pushed. I was not trying. I was just trying to move her. That is all.
>
> Q. Had she not grabbed you and held you in the fashion that she did, would you have ever laid hands on her?
>
> A. No, I wouldn't."

¶ 15 Counsel played the recorded video from the surveillance cameras on the bus and asked defendant whether he heard himself call Rogers-Linck a derogatory name. He said he did not.

¶ 16 On cross-examination, defendant said he thought, "in a sense," it was okay to keep Lee from getting on the bus. He said it was important that she not get on the bus because they "were in the midst of [their] argument, a disagreement, and [they] hadn't came to a—[they] hadn't settled the disagreement yet." With regard to Rogers-Linck blocking defendant's way on the bus, the following exchange occurred:

> "Q. Are you claiming that she body blocked you?
>
> A. No. I testified to the fact that I feel as though she had grabbed me first and then she put her arm up in a fashion like this and her elbow hit me in the chest, right here. Her arm was across my chest. That is when she had stood up in front of me and blocked my way.
>
> Q. When you use the term grab, what do you mean when you say grab?
>
> A. What do I mean? I mean I felt like she had to have reached around like this and grabbed me like this before she put her arm out there.
>
> Q. With what hand?
>
> A. What hand?
>
> Q. With what hand did she grab you?
>
> A. I guess it would have been the same one that she put across my chest which would have probably most likely have been her right arm, if I am not mistaken.
>
> Q. The hand holding the big Polar Pop cup?

A. I never seen a big Polar Pop on the video. When I seen her hand across my chest in this way, I didn't see a Polar Pop.

Q. Why didn't you just walk away from her?

A. I mean I was in the midst of trying to get to my wife, you know. And that is why I didn't see her because the only thing I was concentrating on was the conversation that me and my wife was having because it was about our home, you know. And that is what was important to me, is finishing the conversation and getting things straight about our home.

Q. So you weren't going to let this random bus passenger stop you from talking further with your wife?

A. I mean you say that in the sense like as if I should have let her, you know, come between me and my wife. I mean I wasn't trying to hurt my wife. My mind state was not on trying to hurt my wife. My mind state was on finishing the conversation, you know, and, amongst other things, going to the hospital with my wife.

Because when I passed her, when I did get past her, I was going to sit down in the seat beside my wife. I didn't try to do anything to my wife. I never said anything. I never said a cuss word or any word."

¶ 17 Defendant testified his intent when he made contact with Rogers-Linck in the aisle of the bus was "to push her away from [him]." Counsel noted defendant hit Rogers-Linck

"with such force" that one could "hear the slapping sound" on the recording. Defendant said: "[Y]ou know it might have sounded like that ***, but that was not [his] intention."

¶ 18 On redirect examination, defendant said he believed he had the right to make contact with Rogers-Linck since she had made contact with him first. Defendant rested.

¶ 19 During the jury instruction conference, defendant's counsel tendered the self-defense jury instructions. The State objected, claiming there were "no reasonable kernels of evidence within the facts before the court and the finder of fact, that being the jury, by which any reasonable jury could conclude that self-defense is an appropriate defense or element herein." The trial court sustained the State's objection, stating as follows:

> "Well, I have carefully considered the issue of self-defense here in the context of the evidence that has been introduced at trial. The evidence that obviously would be pointed and reviewed with regard to whether or not it was sufficient to elicit self-defense would be the testimony of the defendant, Mr. Bramley. And while there only needs to be slight evidence there does have to be some evidence that would comply with the use of 720 ILCS 5/7-1 [(West 2012)], the use of force and defense of person and the statutory requirements as interpreted by case law in order to give or raise a defense of self-defense. There has to be evidence that force is threatened against the person, that the person threatened is not the aggressor, that the danger of harm is imminent, the force threatened is unlawful, and that the person threatened actually

believed that danger existed, force was necessary to avert that danger, and that those beliefs were reasonable.

I don't believe that has been met here under the evidence. Carefully reviewing [defendant]'s testimony and the case in chief, he simply described that his path was blocked and that he felt he was being stopped because she had her elbow in his chest. He never described that he in any way felt that he was in danger or that danger existed or that he believed he was being attacked or that force was necessary to avert the danger or there was any reasonable grounds to believe so. He simply was upset because his path to his wife was being obstructed and that emerged from all of his testimony, even the leading redirect examination by his counsel, and it was apparent that what was happening was that he could not go where he wanted to go. And he testified she had the right to put her hands on me. He wanted to get back to the back of the bus to get to his wife. He felt he had the right to make contact back. He didn't say he felt he was even in danger or that he felt that he was somehow put in jeopardy or that the risk—or felt threatened by this person or simply she was blocking his path.

There was also argument that she was intervening because he was being the aggressor toward someone else, which would be a third-party intervener, and that would be arguably he was the beginning of the aggression.

But with regard to Ms. Melinda Rogers-Linck, there is simply insufficient evidence to even support the giving of a self-defense instruction.

With regard to Valerie Lee, there is not argument that self-defense could be tendered.

So, under even the most favorable analysis to the defendant, looking for even the slightest evidence, there simply isn't enough to justify the giving of a self-defense objection here."

¶ 20 After considering the evidence, arguments of counsel, and instructions from the trial court, the jury found defendant guilty of aggravated battery and not guilty of domestic battery. Defendant filed a posttrial motion, raising the issue he raises in this appeal, namely, that the trial court erred in not presenting the jury with an instruction on self-defense. The court found as follows:

"There's no suggestion here that [defendant] was defending himself. He was angry. And the physical evidence bears that out. The jury had the chance to be aware of both counts. They were aware of the totality of the evidence.

With respect to the legality of giving the self-defense issue, which is directed towards the court's determination, I don't believe that the defendant was defending himself at all.

With regard to the factors that the defendant must establish to put on a preliminary showing, and while it is a low threshold, there still is a preliminary requirement here. There's absolutely no

> evidence that would justify that [defendant] believed he was in danger, or that his beliefs were reasonable. And nothing that would justify the extent of the force he used in response to her simply trying to stop him from proceeding down the bus, by standing in front of him and putting an arm on him.
>
> So there's nothing here that would justify the giving of self-defense in any manner. And the court's determination was correct."

The court denied defendant's posttrial motion and sentenced him to eight years in prison. Thereafter, the court denied defendant's motion to reconsider his sentence.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant contends the trial court erred when it refused his tendered jury instruction on self-defense after finding defendant had presented no evidence to support his theory of self-defense. Instructing the jury is generally a matter within the sound discretion of the trial court. *People v. Castillo*, 188 Ill. 2d 536, 540 (1999). However, "[t]he question of whether sufficient evidence exists in the record to support the giving of a jury instruction is a question of law subject to *de novo* review." *People v. Washington*, 2012 IL 110283, ¶ 19.

¶ 24 Defendant's tendered instruction read as follows:

> "A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force."

Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000).

¶ 25 To establish the theory of self-defense, the defendant must present at least some evidence of the following elements: (1) unlawful force was threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) he actually and subjectively believed a danger existed that required the use of the amount of force applied; and (6) his beliefs in that regard were objectively reasonable. *People v. Holman*, 2014 IL App (3d) 120905, ¶ 57. The jury instruction was originally derived from what is now section 7-1(a) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/7-1(a) (West 2012)), which defines the justifiable use of force in defense of a person. The Committee Comments to section 7-1(a) of the Criminal Code state "[t]he person must actually believe that the danger exists, that his use of force is necessary to avert the danger, and that the kind and amount of force which he uses is necessary." 720 ILCS Ann. 5/7-1, Committee Comments-1961, at 413 (Smith-Hurd 2002).

¶ 26 "A defendant is entitled to the benefit of any defense shown by the entire evidence, even if the facts on which such defense is based are inconsistent with the defendant's own testimony. [Citations.] Even very slight evidence on a given theory of a case will justify giving an instruction. [Citations.]" *People v. Whitelow*, 162 Ill. App. 3d 626, 629 (1987).

¶ 27 The court must determine whether the record contains at least some evidence of the defendant's subjective belief in the need to use force in self-defense. *Washington*, 2012 IL 110283, ¶ 36. If it does, the court should appropriately instruct the jury on self-defense. *Washington*, 2012 IL 110283, ¶ 36. "This is so because *** it is the function of the jury to determine whether the subjective belief existed and whether it was objectively reasonable or

unreasonable." *Washington*, 2012 IL 110283, ¶ 36. The evidence this court may consider in determining whether the defendant has successfully raised the issue of self-defense by satisfying the elements listed above is relatively broad. *People v. Everette*, 141 Ill. 2d 147, 158 (1990). The defendant's testimony, motive, or intent, whether there was physical contact between the defendant and the victim, the type of wound suffered, and the surrounding circumstances are a few of the factors properly considered. *Everette*, 141 Ill. 2d at 158. "Once a slight amount of evidence has been produced, it is a decision for the jury as to the justification of defendant's behavior." *Whitelow*, 162 Ill. App. 3d at 630.

¶ 28 With regard to the first element, defendant testified Rogers-Linck stood up and blocked his path as he headed toward the back of the bus to sit next to his wife. Defendant testified Rogers-Linck initiated the physicality by blocking him with her elbow in his chest. He insists her conduct satisfied the first two elements of threatened force and that he was not the aggressor.

¶ 29 The State's evidence negates defendant's claims. First, the video recording of the encounter on the bus clearly shows defendant was moving quickly and in an aggressive manner toward the back of the bus. After Lee ran past her, Rogers-Linck stood up to block defendant's path. She stood for a second in front of defendant, then put her right arm up to block the aisle. Defendant was holding on to the safety pole with his left hand. Defendant then aggressively, and with force, used both hands and pushed Rogers-Linck's arm down. In the same motion, defendant struck Rogers-Linck on the right side of her face with his left hand. The recording does not indicate Rogers-Linck threatened force or acted aggressively toward defendant.

¶ 30 Second, Rogers-Linck testified she stood in front of defendant because "he still looked pretty mad" and she "didn't want him to hit [Lee]." She could tell from defendant's "body

language, he just looked really mad." She said she was "very scared" and she "didn't know if he was going to hurt [her] more or if anyone was going to be able to stop him." When asked by the prosecutor to describe the nature of the contact of her right arm with defendant, Rogers-Linck said: "I just didn't want him to go to the back, so I just kind of wanted to—I didn't want him to go back there. I didn't mean anything by it." She did not want defendant to hurt Lee. She said there was no amount of force in her physical motion of stopping defendant.

¶ 31 "[I]t is well settled that a defendant is only entitled to a jury instruction on an affirmative defense if there is some evidence, however slight, in the record to support that defense." *Washington*, 2012 IL 110283, ¶ 43. In this case, we find no evidence in the record to support the defense. According to the State's evidence, Rogers-Linck (1) did not use force against defendant, (2) was not the aggressor in the situation, and (3) did not threaten the use of force. If the State's evidence negates any of the elements, defendant's claim of self-defense must be rejected. *People v. Lee*, 213 Ill. 2d 218, 225 (2004).

¶ 32 Further, we find the evidence presented by defendant does not support a reasonable finding that he actually believed he was in danger, or that he had to use necessary force against Rogers-Linck to avert any danger. Instead, the evidence demonstrated defendant, as the aggressor, used unnecessary force against Rogers-Linck.

¶ 33 In sum, reviewing the evidence in accordance with the standard expressed above, we hold that no reasonable jury could have found defendant acted in self-defense. Defendant was not entitled to an instruction (1) portraying Rogers-Linck as the initial aggressor, and (2) indicating she used force or threatened force against him, because the record is totally devoid of any such evidence. Thus, the trial court did not err in refusing to give the jury defendant's tendered self-defense instruction.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 36 Affirmed.