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2017 IL App (3d) 150107-U

Order filed February 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0107 Circuit No. 13-CM-801
ANITA BLASINGAME,	)	Honorable John P. Vespa,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to find the defendant guilty of battery.

¶ 2 The defendant, Anita Blasingame, appeals her conviction for battery, arguing that the State failed to prove her guilty beyond a reasonable doubt.

¶ 3 FACTS

¶ 4 The defendant was charged by information with battery (720 ILCS 5/12-3(a)(2) (West 2012)). The matter proceeded to a bench trial. The victim, Amber Benson, and the defendant offered conflicting testimony regarding the incident.

¶ 5 Benson testified that on April 18, 2013, she went to work and returned to her apartment on her lunch break. After she ate her lunch, she went down the stairs into the foyer of the apartment complex to return to work when she heard someone yell. Benson turned around and saw the defendant coming up the stairs from the laundry room. Upon turning, Benson stated:

> "Initially she hit me in the face. I had keys in my hand with pepper spray that I had bought because of a previous incident with [the defendant], and I was scared of her and I tried to spray her. I don't think that I got her. I couldn't really see because I was being punched in the face. I tried to get out the door into the foyer. She threw me to the ground, was hitting the back of my head, I'm not sure, with her fists or kicking or what exactly. I just felt a lot of force at the back of my head.
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> She ripped the pepper spray out of my hand and sprayed me in the face. I tried to get up, and there was [*sic*] buzzers that buzz the apartments, and I was hitting them trying to buzz somebody to get help. And she grabbed me by the back of the head and dragged me up the stairs by my hair. And I was screaming at the top of my lungs, help me, trying to see if somebody would help me, that would be able to get her away from me. And then she just took off running and I grabbed my keys and ran up to my apartment upstairs and I called 911."

Benson knew she had been pepper sprayed because she "couldn't feel [her] face. [Her] nose started gushing. [Her] eyes started gushing. [She] couldn't see anything. [She] had a hard time

breathing." When the police arrived, Benson did not want to go downstairs because she did not know if the defendant would still be in the foyer. She called her boyfriend who came over and let the police into the building. She spoke to the police and then was taken in an ambulance to the emergency room. Prior to this incident, the defendant had verbally assaulted Benson, and Benson had called the police. Benson did not know the defendant. She only knew that the defendant lived downstairs. Benson did not know the defendant's name until she received the police report for this incident.

¶ 6 The defendant provided a different account, stating:

> "I was walking up the stairs this way, she was coming down the stairs this way. She said—leaned over, said, get a job. I looked upstairs, you talking to me? I was shocked that she even said something. And then by the time I got up, she grabbed the door, blocked me, put her foot on it and sprayed mace. I could not believe my eyes. She hit me here. And I'm like, oh, my God.
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> So I reached out in the event to defend myself. I reached out toward her. We ended up inside the foyer. We struggled. She sprayed the pepper spray everywhere. It went over the glass. It went on the floor. I was struggling trying to get the pepper spray. And then I became disoriented. I was coming—I was fighting. I was fighting the symptoms. I couldn't even defend myself. She attacked me. I was not expecting it. It was no reason. She attacked me so viciously. That woman tried to kill me with pepper spray. ***
>
> And the symptoms, I couldn't fight back, I couldn't even defend myself because I was so busy trying to keep my eyes open, trying to tell myself, you're going to have a heart attack, calm down. But at the same time while we was

struggling for the pepper spray, I was trying to get away, the symptoms was so bad, my face was burning.

So I said, oh, my God. I reached and I was trying to get the pepper spray. And I finally got the pepper spray and I sprayed it toward her so that I could get some help. I was in bad shape. My face was burning, my heart was racing, I couldn't see. She attacked me so viciously. I opened up the door. I ran. I couldn't even see. Please, Lord, don't let me get hit by a car.

I rang, and I rang the first one I came to, and I rang, pushed bells. Then I heard a click. I pulled the door and Mr. Bennie and his family was standing up there. And I was trying to—look, sir, please help me, I just been maced. I just been attacked with mace. He let me in. He filled his sink with water. I put my face, my whole face down in there. I was in excruciating pain. He gave me a towel. I asked him did he have a fan. He put the fan on. I put my face in the fan, wasn't nothing helping me. I was going back and forth with the fan and the sink. He gave me a big towel. I washed my face.

Then he went outside and he saw the female officer. She came inside the apartment."

¶ 7 The defendant offered conflicting testimony about whether she struck Benson. The defendant first said that she did not hit Benson. Later, she testified that she hit Benson after Benson sprayed her with pepper spray. Yet a third time, the defendant stated that "maybe" she hit Benson. The defendant further stated that the police told her to come outside in order to relieve the symptoms of the pepper spray, yet also said the police would not help her. She said

she saw Bennie Ratliff talk to the officers because she "couldn't really talk because [her] face was immersed in water."

¶ 8 The defendant's testimony showed that she was not fond of Benson. She said for the five months prior to the altercation Benson was "[v]ery un-neighborly, rude, disruptive, inconsiderate" and "invested and creating trouble." The defendant further stated:

> "Now, Ms. Benson lived upstairs over me and she claims that we had a prior incident, and we've never had a prior incident before. Ms. Benson lived upstairs and she was not very friendly. ***
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> * * *
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> *** It was two people in the apartment that lived over us that was very hostile, slamming doors, dropping things. I don't know if they was moving, building something, I don't know, but this happened every day throughout the day the whole entire five months that we lived under them."

However, the defendant stated that this behavior did not make her mad and that she "turned the other cheek."

¶ 9 The State further called two police officers to testify. Patricia Taylor testified that she had been a police officer for the City of Peoria for 23 years. On the date in question she was dispatched to an apartment complex. When she arrived, no one was outside. She walked up to the door of the building, and noticed that it smelled like pepper spray. As no one was outside, Taylor had dispatch contact Benson and have her come outside the building. Benson was "deathly afraid" and would not come outside. Taylor then received another call to meet with the defendant. The defendant "told [Taylor] that she had been maced by some lady that lived out there." Taylor had observed people who had been maced before, and determined that the

defendant did not look like she had been maced as "[s]he didn't have the typical redness to her eyes, runny nose, no tears, no signs of it." Taylor stated: "[The defendant] just kept saying that some lady maced her outside of her door. I tried to elaborate what was going on, and she said that she was in her laundry room, which is down a flight of steps, a lady walked in the door that lived upstairs from her, told her to—excuse me, said to her to get a fucking job, and then [Benson] started beating her up and maced her." The defendant told Taylor that Benson had hit her in the face, but Taylor did not notice any injuries on the defendant's face.

¶ 10 Taylor stated that she talked to Benson once Benson's boyfriend arrived. Taylor noticed that Benson had a cut under one of her eyes and was hysterical. Taylor agreed that the condition of the individuals is not indicative of who started the fight. She did not speak to anyone other than Benson and the defendant.

¶ 11 Winfred Fallert testified that he had been a police officer for the City of Peoria for 19.5 years. He was also dispatched to the apartment building on the day of the incident. Once he arrived, he made contact with Taylor who was still outside the building waiting to speak with Benson. Fallert spoke with Benson first, who chronicled the events as she had at trial. Fallert noticed that Benson had broken skin under her right eye, a large mark on her cheek, her eyes were "extremely watery," and her face was red. Based on Fallert's training and experience, Benson's symptoms were consistent with someone who had been sprayed with pepper spray. Fallert photographed Benson's injuries, though he admitted that, while the pictures showed Benson was injured, they did not show who started the fight.

¶ 12 Fallert also spoke with the defendant, who also chronicled the events as she had at trial. The defendant had Benson's keys and pepper spray in her hand when Fallert spoke with her. He did not notice any injuries on the defendant or any symptoms consistent with being sprayed with

pepper spray, though he admitted that the reddening of the skin would be harder to determine on an African American. Fallert was not advised of any other witnesses and did not speak to anyone else.

¶ 13 The defense called two other witnesses. Bennie Ratliff stated that he lived in the same apartment complex as the defendant and Benson. He did not witness the altercation, but saw the defendant immediately after. Ratliff said:

> "Well, I was at home and I got a buzz in my apartment, and I buzzed the person in because they were just buzzing. And [the defendant] came in, she was crying, wiping, you know, she couldn't hardly see, you know, a lot of mucus and stuff. And so I let her in, you know, not knowing what happened. ***
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> * * *
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> *** [S]he told me what had happened to her. So I told her just to wash her face, you know, let her use my faucet, and she washed her face and I gave her a towel. And I asked her did she want me to call the police. And I called the police and they came over. They began to talk to her. And the police officer told her that it'd probably be a better idea to go outside because there's more air, you know, and they left my apartment."

Ratliff said he spoke to the police, but he did not remember what questions the officer asked him.

¶ 14 Eddie Miller testified that he was the defendant's husband. Miller saw the defendant 10 to 15 minutes after the incident and said she looked dazed, was crying, had a wet towel for her face, and was having difficulty breathing. Her nose was also running.

¶ 15 In making its decision, the court stated:

"Well, I think there were a couple other impartial witnesses in addition to Mr. Ratliff; that would be the police officers. To a certain extent, this is a he-said-she-said thing. It went down that path for a little way to where the conclusion of the old baseball analogy tie goes to the runner would have applied. However, it then veered off into more than a he-said-she-said thing. By going to the runner means defense wins, if I would have concluded that. That's where it was going for a little while.

For a lot of this trial, I was wondering, and it was eventually asked, why did [the defendant] not retreat? She had steps to go down or whatever. Oh, it would have been up, okay. She could have retreated. But you know what, if someone walked up here right now and pepper sprayed me, I would try to get out. I would try to get away from that pepper spray. I'd do other things, too, afterwards, but while I'm being pepper sprayed my move is get the heck away from that pepper spray. Or I go down these steps, that sounds like a good idea to me.

The defendant testified that the female officer told defendant to come outside to relieve the mace symptoms, and defendant also testified that that same officer disregarded defendant's pleas for help, which are polar opposites for the way the defendant described Officer Taylor, the female officer's treatment of her.

Why would defendant do these things? Didn't have a motive until defendant testified and provided it, with exceptionally rude treatment she claims to have received from Amber Benson and whoever else up in that apartment right above her. The defendant is demonstrative, to say the least, and went to a great

extent to convince me of how annoying, how poorly behaved her neighbors upstairs, which would be Amber Benson, were.

*** [A]fter great labor, great many attempts, [we] found out that Mr. Ratliff talked to the police. And there is no testimony of the police substantiating this, which either the police or maybe newbies on the job and didn't know that, you know, Judge, there's another witness, another guy who saw it. By 'it' I mean the effects of the alleged pepper spray in the defendant's face. Ben Ratliff, you might want to talk with him. I got none of that from the police officers.

And I happen to like my point during defense counsel's closing argument, how afraid can Amber Benson be of [the defendant] when Amber Benson sees [the defendant], say, hey get a job, an angry, hostile comment like that. That is so contradictory to what I've learned in my umpteen years on the planet that I do not believe it. I do not believe that Amber Benson said that to [the defendant].

As I look at the State's exhibits, I see Amber Benson's face with a cut under the right eye. If this isn't flipped around because it's a picture anyway, under one of the eyes, that eye looks to me to be slightly swollen, too.

And I agree with [defense counsel's] point, if I carry it to its logical conclusion, we might stipulate Amber Benson lost the fight. That doesn't mean [the defendant] started it. Amber Benson could have started it and been the loser of the fight, too. Good, accurate in the generic way of looking at it point by [defense counsel].

The question, though, is, did the State meet their burden of proof? The answer's yes. So I am finding [the defendant] guilty of battery."

¶ 16 The defendant filed a motion to reconsider, arguing that she acted in self-defense. The court denied the motion, stating that it believed the story of Benson and the two police officers and finding the defendant's story hard to believe. The court stated that it believed that someone who was pepper sprayed would move away from the attacker as opposed to towards them. The defendant was sentenced to 12 months' conditional discharge.

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant argues that the evidence was insufficient to convict her of battery. Specifically, the defendant argues that (1) the State failed to disprove the defendant's affirmative defense of self-defense, and (2) "[t]he trial court's findings of fact did not logically support a guilty verdict."

¶ 19 When reviewing a challenge to the sufficiency of the evidence, we consider whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Is it not the function of the appellate court to retry the defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). We will not overturn a conviction unless it is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt of the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 20 Here, to convict the defendant of battery, the State had to prove beyond a reasonable doubt that the defendant knowingly made physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a)(2) (West 2012). The defendant does not challenge that she committed a battery. Instead, she argues that she committed the battery in self-defense and the State failed to disprove self-defense beyond a reasonable doubt. See *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004) (once a defendant raises the affirmative defense of self-defense, the burden

shifts to the State to disprove self-defense beyond a reasonable doubt); see also *People v. Kyles*, 91 Ill. App. 3d 1019, 1022 (1980) (where defendant raises the affirmative defense of self-defense, the State "must prove beyond a reasonable doubt that defendant did not act in self-defense"). The elements of self-defense are: "(1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *Lee*, 213 Ill. 2d at 225. If any one of the elements is disproven, the defendant's claim of self-defense fails. *Id.* The only element implicated both in the circuit court and here on appeal was whether the defendant was the initial aggressor. Therefore, if the State negated that element, the defendant's claim of self-defense would fail. See *Kyles*, 91 Ill. App. 3d at 1022. Stated another way, in order to prove the defendant guilty beyond a reasonable doubt of battery, the State needed to prove that the defendant was the initial aggressor. See *People v. Belpedio*, 212 Ill. App. 3d 155, 163 (1991) ("The totality of the evidence does not support [the aggressor] element of defendant's claim of self-defense, and the State's evidence was sufficient to show beyond a reasonable doubt that it was defendant who was the aggressor.").

¶ 21 Here, the circuit court found Benson's story credible and the defendant's story not credible. In doing so, the court noted the defendant had a motive for beginning the battery as she spoke at length about how "rude, disruptive, [and] inconsiderate" she found Benson to be. The court found the defendant's testimony to be contradictory as she both stated that the officer brought her outside to relieve the symptoms from the pepper spray and said the same officer refused to help her. Further, the court did not believe Ratliff, who testified on the defendant's

behalf. Ratliff stated that he had talked to the police, but neither of the two officers mentioned speaking to him. The court believed that, had the officers questioned Ratliff, they would have mentioned it during their testimony and included it in the police report. The finder of fact is responsible for determining the weight to be given to the evidence, the credibility of the witnesses, and the reasonable inferences to be drawn from the evidence. *Milka*, 211 Ill. 2d at 178. We give great deference to the circuit court's factual and credibility determinations. *People v. McDonough*, 239 Ill. 2d 260, 266 (2010). We will not disturb the circuit court's findings on credibility with regard to Benson and the defendant. Taking the evidence in the light most favorable to the State, the court could have reasonably concluded that the defendant was the initial aggressor.

¶ 22 In coming to this conclusion, we reject the defendant's argument that "[t]he court's factual findings *** did not logically support its decision." Specifically, the defendant points to two "problem[s]" with the court's decision. First, the defendant states that the court incorrectly placed upon the defendant a "duty to retreat." We disagree. During the oral pronouncement of its decision, the court did wonder why the defendant did not retreat. However, in ruling on the motion to reconsider, the court further explained that it had a hard time believing that someone would move towards an attacker while being pepper sprayed as opposed to drawing away from the attacker. Such comments were, therefore, directed at the defendant's credibility as opposed to placing on her a duty to retreat.

¶ 23 Second, the defendant states: "The *** much more significant[] problem with the court's decision was its observation that it was not clear who started this altercation. *** With all due respect to the court, it is simply illogical to agree with defense counsel that it was not clear who started this altercation, and then find [the defendant] guilty of battery where the defense had

presented the defense of self defense." In support of this point, the defendant cites *In re Vuk R.*, 2013 IL App (1st) 132506, and quotes the portion of the court's ruling in which the court states:

> "And I agree with [defense counsel's] point, if I carry it to its logical conclusion, we might stipulate Amber Benson lost the flight. That doesn't mean [the defendant] started it. Amber Benson could have started it and been the loser of the fight, too. Good, accurate in the generic way of looking at it point by [defense counsel].
>
> The question, though, is did the State meet their burden of proof? The answer's yes. So I am finding [the defendant] guilty of battery."

The defendant is parsing the record. Taking the court's comments in totality, it is clear that the court found that the evidence pointed to the defendant as the initial aggressor. See *infra* ¶ 21. The court noted defense counsel's closing statements in which counsel made the point that though Benson had the injuries, she still could have been the aggressor. The court agreed with this, in a "generic way," but ultimately found that the rest of the evidence pointed to the defendant as the initial aggressor.

¶ 24 We further find *Vuk R.*, 2013 IL App (1st) 132506, factually distinguishable. In *Vuk R.*, the circuit court made no findings of fact and determined that all of the witnesses lied, from both the prosecution and the defense. *Id.* ¶ 6. The court in *Vuk R.* specifically said, "Were this just a case involving the trial court's assessment of the credibility of witnesses with differing versions of events, we would affirm under the well-settled standard of review that accords great deference to a trial judge's resolution of factual disputes." *Id.* ¶ 5. As the instant case does provide "a case involving the trial court's assessment of the credibility of witnesses with differing versions of events," *Vuk R.*, is inapposite. *Id.*

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Peoria County is affirmed.

¶ 27 Affirmed.