2018 IL App (1st) 161770-U

No. 1-16-1770

Order filed October 24, 2018

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No.15 MC1 216759
	)	
MECHELLE SPEARS,	)	Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for battery affirmed over her contention that the fact that one person involved in a street fight did not see her kick the victim rendered the victim's testimony improbable. Defendant's failure to raise an affirmative defense at trial results in forfeiture of that claim on appeal.

¶ 2 Following a bench trial, defendant Mechelle Spears was found guilty of battery and sentenced to six months of supervision. On appeal, she contends that she was not proven guilty, beyond a reasonable doubt, because the State's witnesses gave "conflicting and improbable"

testimony. Defendant further contends that even if the evidence established that she struck the victim, the State did not disprove beyond a reasonable doubt that her actions were justified in the defense of others. We affirm.

¶ 3 Following a June 23, 2015, street fight involving, *inter alia,* defendant's daughter Tyesha Earl, Tatiyana Purnell, Neveah Washington, and defendant, defendant was charged with two counts of battery in that she struck Washington and kicked Purnell. See 720 ILCS 5/12-3(a)(1) (West 2014). The matter proceeded to a bench trial.

¶ 4 Tatiyana Purnell testified that she was 16 years old at the time of trial in 2016 and was "at one time" friends with defendant's daughter Tyesha Earl. Purnell acknowledged that she previously had a "feud" with Earl on Facebook. On June 23, 2015, Purnell was walking to a park with a group of four or five others, including Washington when Earl yelled from a window and asked if Purnell wanted to fight. Purnell said yes and waited for Earl to come outside. When Earl came outside, she hit Purnell. Purnell hit Earl back and they began to fight in the street. Purnell grabbed Earl by the hair and punched her several times in the face. When Earl fell to the ground, Purnell continued to hit her. Purnell testified that she was winning the fight.

¶ 5 At some point, defendant separated the two girls and "jumped" in the fight. As soon as defendant got between Purnell and Earl, defendant's niece "Lovely" jumped on Purnell. Defendant then "broke it up." Purnell testified that she was hit by defendant, as well as by Earl's nine-year-old brother Zandrell and Lovely. When Purnell fell to the ground, defendant kicked her "constantly" in the back of the neck. Purnell felt pain when defendant kicked her and suffered bruises and "stuff" on her back. When defendant, Earl, and Lovely walked away,

Purnell followed because she wanted to fight Lovely. At one point when Purnell was on the ground fighting Lovely, she saw defendant hit Washington.

¶ 6 During cross-examination, Purnell testified that when defendant kicked her in the back of the neck, defendant was behind her and Purnell was being attacked by multiple people. The following exchange then took place:

> "Q: And you were not able to see [defendant] actually kick you because you were fighting other people, right"
>
> A: Yes. I saw it though. Before—
>
> Q: You saw being kicked from behind?
>
> A: Yes."

¶ 7 Neveah Washington, who was 14 years old at the time of trial, testified that she and Purnell were walking when Earl yelled out a window about wanting to fight Purnell. Defendant was present during the fight and was yelling, hitting people, and trying to break it up. Washington testified that after she shoved defendant's son Zandrell, defendant hit her in the jaw. Washington shoved Zandrell because he was kicking Purnell in the face. She did not see defendant hit anyone else.

¶ 8 After the State rested, the defense made a motion for a directed verdict. After hearing argument, the trial court denied the motion.

¶ 9 Defendant then testified that in June 2015, she had two children, 14-year-old Earl and 9-year-old Zandrell. After she learned that people were outside wanting to fight Earl, she called the police. Defendant looked out the window and saw Purnell, Washington and other girls. When she heard the door to the house close, she immediately went outside. Earl was already outside,

and Earl and Purnell began to fight. Defendant broke up the fight by pulling the girls apart. Defendant denied that she kicked Purnell. As she tried to get Earl and Lovely back to the house, Purnell chased them and another fight broke out. At this point, the "focus" of the fight was on Lovely. Defendant was standing next to Zandrell when she observed Washington punch him in the jaw. She explained that her son had been kicking Purnell. Defendant's "reflex" was to hit Washington. She was afraid that the girls were going to "start jumping" on Zandrell and he could not "handle" it. Defendant was furious and scared that she had put her "hands" on someone else's child, so she "aggressively" grabbed her children and got them inside.

¶ 10 During cross-examination, defendant testified that, although she called the police, she did not have "time to wait" for them to arrive because Earl was already outside. When defendant arrived outside, the fight had not started. Defendant did not take her daughter inside; instead she acted as a "peer mediator." The only way she was involved in the fight was to break it up.

¶ 11 In finding defendant not guilty of the battery of Washington, the court stated that it appreciated defendant's honesty and found her credible when she testified that she reacted with a "reflex action" when she saw Washington hit her son Zandrell. However, with regard to the battery of Purnell, the trial court found "the other witnesses to be more credible" than defendant. The trial court sentenced defendant to six months of supervision.

¶ 12 On appeal, defendant contends that she was not proven guilty beyond a reasonable doubt when the witnesses at trial gave conflicting and improbable stories about her actions. She further argues that even if the evidence established that she kicked Purnell, her actions were justified in defense of her daughter.

¶ 13 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 State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. Where a guilty finding depends on eyewitness testimony, a reviewing court must decide whether any fact finder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt, keeping in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*id.*), nor simply because a defendant claims that a witness was not credible or that the evidence was contradictory (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)).

¶ 14 Here, Purnell testified that, when she was on the ground during the fight with Earl, defendant kicked her in the neck multiple times. Her testimony, standing alone, is sufficient to sustain defendant's conviction. See *Id.* ("It remains the firm holding of this court that the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant.") Viewing the evidence in the light most favorable to the State, we cannot say that no rational tier of fact could have found that defendant kicked Purnell.

¶ 15 Defendant, however, contends that the testimony at trial was too inconsistent and unbelievable to find her guilty beyond a reasonable doubt. She notes that Purnell and Washington gave conflicting testimony regarding whether she struck Purnell and no one

corroborated Purnell's testimony, and asserts that it makes "no sense" that she would both strike Purnell and try to break up the fight.

¶ 16 To the extent that defendant contends that Purnell's testimony is incredible because Washington testified that she did not see defendant kick Purnell, we disagree. The evidence at trial established that multiple people were involved in the brawl, and it was not fatal to the State's case that Washington did not see everything that happened. Moreover, there is no requirement that Purnell's testimony that defendant kicked her in the neck be corroborated by another witness. See *People v. Slim*, 127 Ill. 2d 302, 307 (1989) (a positive identification of the defendant by a single witness is sufficient to sustain a conviction).

¶ 17 Defendant similarly has not persuaded us that it is inconceivable that defendant both tried to break up the fight and kicked Purnell. It is the function of the trier of fact to assess the credibility of witnesses, resolve conflicts in the testimony and draw reasonable inferences from the facts. See *Bradford*, 2016 IL 118674, ¶ 12. "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court * * * that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). Here, the trial court heard the testimony of Purnell, Washington, and defendant, and was aware of the conflicts and inconsistencies between and among the various versions of the fight as detailed by their testimony. The trial court found Purnell to be credible as evidenced by its verdict. *Id.*

¶ 18 Despite the inconsistencies that defendant has identified, we find that Purnell's testimony that defendant kicked her in the neck could reasonably be accepted by the fact finder who saw and heard the witnesses testify. See *Cunningham*, 212 Ill. 2d at 279-80. The trial court was not required to disregard the inferences that flow from the evidence or search out all possible

explanations consistent with defendant's innocence and raise them to a level of reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to her guilt (*Bradford*, 2016 IL 118674, ¶ 12), and this is not one of those cases. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 19 Defendant further contends that, even if the evidence at trial established that she kicked Purnell, the evidence at trial also established that her actions were justified. She therefore argues that the burden shifted to the State to prove beyond a reasonable doubt that the use of force was not legally justified, and that the State has failed to meet this burden.

¶ 20 However, defendant did not raise this argument at trial; rather, she raises the issue of defense of others for the first time on appeal. The State contends that defendant's failure to raise this claim before the trial court has resulted in its forfeiture on appeal. We agree. Even if, as defendant claims, the State's evidence set forth every element of the affirmative defense, this is not sufficient to trigger the requirement that the State disprove the defense. *People v. Bardsley*, 2017 IL App (2d) 150209, ¶ 17 ("the mere presence in the State's evidence of facts sufficient to permit a defendant to raise a defense is not by itself sufficient to trigger the requirement that the State disprove the defense").

¶ 21 *People v. Bardsley*, 2017 IL App (2d) 150209, is instructive. In that case, the defendant did not raise the affirmative defense of self defense in the trial court, but raised it for the first time on appeal. On appeal, the court held that the defense was subject to forfeiture. The court noted that it expected the trial court to know the law and consider any defense properly before it. *Id.* ¶ 22. "However, '[o]nce an affirmative defense is raised, the State has the burden of proving

the defendant guilty beyond a reasonable doubt as to that issue.' " *Id.* (quoting *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995)). The court concluded that, if it were to accept the defendant's argument, then "the State would have to disprove *every* affirmative defense of which even 'slight evidence' exists or risk a *post hoc* reexamination of the evidence for new potential defenses on appeal." (Emphasis in original.) *Id.* ¶ 22.

¶ 22 Similarly, here, defendant did not raise the affirmative defense of defense of others at trial and, therefore, has forfeited this argument on appeal. See *Id.* ¶ 17 (the fact that the State's evidence contains enough facts to permit the defendant "to raise a defense is not by itself sufficient to trigger the requirement that the State disprove the defense").

¶ 23 Defendant, however, relies on section 3-2(a) of the Criminal Code of 2012 to argue that *Bardsley* was wrongly decided because the evidence of an affirmative defense can come solely from the State's evidence at trial. See 720 ILCS 5/3-2(a) (West 2014) ("unless the State's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, must present some evidence thereon"). We disagree. *Bardsley* does not stand for the proposition that the facts supporting an affirmative defense cannot come solely from the State's case; rather, it stands for the proposition that the "mere presence" in the State's evidence of facts that could support an affirmative defense is not sufficient to trigger the requirement that the State must disprove that defense. *Bardsley*, 2017 IL App (2d) 150209, ¶ 17. In other words, absent some indication that a defendant is going to actually raise an affirmative defense, the mere fact that such an affirmative defense could be raised based upon the State's evidence does not require the State to disprove it.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.