2014 IL App (1st) 112600-U

FIRST DIVISION
March 3, 2014

No. 1-11-2600

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALVIN ROSS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 10 CR 06549 Honorable James B. Linn, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** The evidence was sufficient to support defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm despite defendant's claim of defense of others. The evidence was also sufficient to support defendant's conviction for aggravated battery with a firearm because defendant's reliance upon the defense-of-others justification defense necessarily admitted that his acts were intentional or knowing. We vacate two of defendant's convictions for aggravated discharge of a firearm under the one-act, one-crime rule because they were predicated upon the same physical act against the same victim as defendant's conviction for aggravated battery, but his remaining conviction for aggravated discharge of a firearm stands where it was based upon a different victim. Accordingly, the judgment of the trial court is affirmed in part and vacated in part.

¶ 2 Following a bench trial, defendant Alvin Ross was convicted of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)), and sentenced to concurrent terms of six years' imprisonment. On appeal, defendant contends that (i) the State failed to disprove beyond a reasonable doubt his justification theory of defense of others; (ii) the evidence was insufficient to support his conviction for aggravated battery with a firearm because the State failed to prove that he caused the victim's injury either intentionally or knowingly; and (iii) in the alternative, his convictions for aggravated discharge of a firearm should be vacated under the one-act, one-crime rule. For the following reasons, we affirm in part and vacate in part the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Defendant Alvin Ross was charged by indictment with four counts of attempted murder against Cynthia Enriquez and Tommy Harrison (counts I through IV), one count of aggravated battery with a firearm against Enriquez (count V), and three counts of aggravated discharge of a firearm. The aggravated discharge of a firearm counts alleged that defendant knowingly or intentionally discharged a firearm in the direction of: (i) an occupied vehicle (count VI); (ii) Enriquez (count VII); and (iii) Harrison (count VIII).

¶ 5 Before trial, defendant notified the State that he might assert the affirmative defense of "self-defense and/or defense of others." Defendant waived his right to a jury trial, and during his opening argument, defense counsel commented that defendant had acted "in defense of others," namely, his sister, Angelina ("Angie") Ross.

¶ 6 The facts relevant to the defense asserted here involve numerous witnesses who have some connection to defendant, and many of whom testified at trial. While their various versions of what occurred do not precisely parallel each other, they do weave together to create a set of

essentially uncontested basic facts upon which we base our analysis of defendant's "defense of others." For this reason, we must set forth the testimony in unusual detail.

¶ 7 Cynthia Enriquez testified that, at around 12:15 a.m. on July 7, 2009, she was nine months pregnant and was returning home from Mt. Sinai Hospital, where she was having her blood pressure monitored. She was riding in a blue Chevrolet van with the father of her child, Tommy Harrison, who was driving. They drove south on South Albany Avenue, eventually stopping near the corner of Albany and West Polk Street. Harrison started talking to two friends, who were parked in a gray car facing north. After about 10 to 15 minutes, a blue car, driving northbound, approached and stopped. Enriquez said that that there were three women in the car, two in front and one in back. Enriquez did not know any of the women but said that she later learned that the woman in the back of the car was Angie Ross. Enriquez said that Ross started "verbally abusing" Harrison, "calling him a bitch, a deadbeat father, a motherfucker." According to Enriquez, Harrison had finished speaking to his friends, and when Ross continued swearing at him, Harrison said, "I'm not on that right now." Ross continued swearing at Harrison, and Harrison again said, "I'm not on that right now," and that "[his] girl is with me."

¶ 8 At that point, Enriquez said that Ross began swearing at her, eventually getting out of the blue car and swearing at Harrison and Enriquez. Enriquez said she got out of the car to get Harrison to get back into the car, and Ross swung her hand at Enriquez, trying to hit her. Enriquez stated that she then defended herself by swinging her hand at Ross, and Enriquez hit her. At that point, Harrison and two other people, "Natasha [Lake] and Ladonna [Bell]," broke up the fight between Enriquez and Ross. Enriquez then got back into the van.

¶ 9 About a minute afterward, Enriquez said that Ross walked up to their van with a bat and started hitting the front driver's side. While Harrison was trying to leave, Ross hit the front of

the van and then walked around to Enriquez's (the front passenger's) side. Enriquez locked her door as she saw Ross walking around to Enriquez's side. According to Enriquez, Ross tried to open the door and hit Enriquez with the bat. Enriquez said she told Harrison to get the bat from Ross and drive away. When Harrison got out, Ross hit Harrison on his arm with the bat.

¶ 10 As Ross was trying to hit Harrison with the bat, Enriquez stated that Ladonna and Natasha came over, and Ladonna tried to get the bat from Ross. Enriquez described Ladonna and Ross as "tussling over the bat," and when Ladonna took the bat from Ross, they both fell to the ground. Enriquez did not see where Ross went after she and Ladonna fell. Enriquez stated that Harrison did not have a gun, and she had never seen him with a gun.

¶ 11 At some point, Enriquez testified, they eventually drove away, heading south toward West Arthington Street. Enriquez then saw a white Chevrolet Malibu pull up alongside the driver's side of their van, which Enriquez said "tried to cut us off." Harrison, however, drove around it. As they continued driving south toward West Taylor Street, Enriquez noticed the same white car approaching them, and when they were near the intersection of Albany and West Roosevelt Road, Enriquez felt that her arm was stinging and numb, and she could not move it. Harrison looked at her arm and informed her that she had been shot. Harrison then took Enriquez to the hospital. Enriquez did not see who was in the white car.

¶ 12 On cross-examination, Enriquez conceded that she went on the "Judge Pirro" television show because she was suing Harrison for cutting up her clothes and Harrison was countersuing Enriquez for "flushing his weed down the toilet." Enriquez admitted that, when she appeared on that show, she stated that she was hit by a stray bullet when she and Harrison went to a "bad neighborhood" so that Harrison could purchase some marijuana. Enriquez, however, stated that she did not see Harrison actually purchase or use any type of drugs when they were there.

Enriquez further admitted that Harrison physically assaulted her about a week before the incident and that she had filed a domestic battery complaint against him about six months prior to the incident. Finally, Enriquez stated that Harrison did not own any firearms.

¶ 13 Ladonna Bell then testified that, at around 12:15 a.m. on July 7, 2009, she and her friend, Natasha Lake, were parked in a gray Chevrolet Malibu facing south on Albany near West Polk Street. Bell saw Harrison and Enriquez drive up and park in front of them. Harrison got out of his car and started talking to two of his friends. At some point, a blue Chevrolet Malibu arrived. Ross was sitting in the back, a woman named "Shavon" was driving and there was another woman in front. Bell said that Ross lowered the window and starting telling Harrison that he was a "no-good baby daddy." Harrison told Ross to "slow down," and commented that he had his "baby mama" in the car with him.

¶ 14 According to Bell, Ross responded, "[F]uck that bitch, I don't give a fuck about that bitch." Ross then got out of the car, and tried to open the door where Enriquez was seated, while Harrison rushed over to try to prevent Enriquez from fighting with Ross. Bell, however, saw Ross swing at Enriquez, but Ross missed. Enriquez then swung at Ross, and Bell noted that Enriquez "hit her [Ross] pretty good." Bell then heard Ross say, "I can't believe this bitch hit me." Bell and Shavon were holding Ross back, and Ross was saying, "Let me go."

¶ 15 Bell eventually got Ross back to the blue Malibu (Ross's car). Bell testified, however, that Ross took a bat from the trunk of car, went to Harrison's and Enriquez's van, and began hitting it on the front driver's side. Harrison got out of the van, and Bell said she "grabbed" Ross to prevent Harrison from hitting her and "threw" her into the blue Malibu. Ross and the other women then left in the direction of where Ross and defendant lived. Bell said she did not see Harrison brandish a gun at any time, and Harrison never hit Ross.

¶ 16 After two or three minutes, Harrison and Enriquez began to leave, and Bell saw defendant drive up in a white Malibu with Ross in the passenger seat. Defendant stopped his car, blocking Harrison and Enriquez. Defendant got out of the car, pulled out a gun, and said, "[W]ho wants it with my sister, who trying to f*** with my sister, who wants with my sister." Bell said that Harrison then drove around defendant's car. Defendant got back into his car, drove after Harrison, and started shooting. Bell heard three or four gunshots. Bell said that Harrison kept going, and she followed Harrison, whereas defendant and Ross turned on Roosevelt and drove west toward Kedzie. Bell kept following Harrison, who drove to the hospital emergency room. When they arrived, Harrison parked outside the emergency room entrance, and a police officer immediately began speaking to him.

¶ 17 On cross-examination, Bell explained that the fight began because Shavon and Ross were "a little tipsy," and Bell saw both of them with cups in their hands. Bell also stated that she never saw Enriquez with a bottle; rather, Bell said Enriquez hit Ross with Enriquez's hand. Bell added that she was trying to break up the fight in which Ross was involved because she was also trying to protect Ross from Harrison. Bell agreed that Harrison was a violent person, and Bell knew what Harrison could have done if Harrison had had a gun. Finally, Bell conceded that she had a prior conviction for delivery of a controlled substance.

¶ 18 Natasha Lake then testified that, at the time of the incident, she was with Bell parked at the corner of Polk and Albany on the right side of the street. Harrison and Enriquez drove up, and Harrison got out and started speaking with some friends. After a while, she saw a blue Malibu drive up and park nearby. Lake recognized Ross in the backseat and noticed that Ross began talking with Harrison, but Lake did not hear anything that was said. Ross then got out of the car, and Enriquez got out of the van. According to Lake, Ross and Enriquez started fighting

when Ross hit Enriquez. After about two minutes, Lake and Bell broke up the fight, while Harrison got Enriquez back into their van. Lake said that Bell got Ross back into the blue Malibu, but then Ross got back out, took a bat from the trunk, and tried to hit the front and passenger sides of Harrison's van. Lake said that Ross tried to open the door where Enriquez was sitting, but the door was locked, so Ross went back around the van to try and hit Harrison with the bat. Bell tried to take hold of Ross, but the two fell to the ground. Lake said that the two got back up and Bell got Ross back into the blue Malibu, which then sped off.

¶ 19 About two minutes later, Ross returned in a white car driven by her brother, defendant. Defendant got out of the car and was cursing, asking who was "messing with his sister, who want[s] it." Harrison then left, with Bell and Lake following in their car, but defendant tried to block Harrison's van when they reached the intersection of Arthington and Albany. Harrison, however, drove around defendant. Lake then saw defendant shoot from the driver's side to the passenger's side of the van, and she heard two to four gunshots. Lake did not see Harrison with a gun that night, nor did she see Enriquez with a bottle in her hand.

¶ 20 Lake testified that defendant then sped off. She and Bell pulled alongside Harrison's van, and when Harrison told them that Enriquez had been shot, they followed Harrison to the hospital. Lake said that Harrison parked in front of the hospital "in the emergency park." The police immediately walked over to Harrison, and Harrison never left.

¶ 21 On cross-examination, Lake denied that Enriquez started beating up Ross and pulling Ross's hair. Lake reiterated that Ross hit Enriquez first. Lake also stated that defendant exited his car when they initially arrived, but she did not see defendant get out of his car when he blocked Harrison's van.

¶ 22 The parties stipulated that one officer would testify that he inspected the van at the hospital but found no weapons inside, and that another officer would testify that he looked inside the van but did not see any weapons. The State rested, and defendant lodged a motion for a directed verdict as to all counts but argued in particular that the State's evidence did not establish attempted murder. The trial court granted defendant's motion in part, finding no evidence to support a charge of attempted murder. The trial court, however, denied defendant's motion in all other respects. Defendant then began his case-in-chief by calling his sister, Ross, to testify.

¶ 23 Ross stated that, on the evening of July 6, 2011, she was at a restaurant called "Hawkeye's" with defendant, Shavon Robinson (her friend), Crystal Ross (defendant's wife), Deidra Alexander (Crystal Ross's daughter), Arshay Cooper (a friend of the family), and another friend of Ross named "Crystal." Ross agreed that she had been drinking "a few" alcoholic drinks that evening. Defendant's wife and Cooper left about 30 to 45 minutes before Ross and the rest of the party. Ross said she and the others stayed "for a while drinking." Ross said that she left at around 11 or 11:30 p.m. with Robinson (who drove), Alexander, and her friend Crystal. They dropped Ross's friend Crystal off at home and then drove for a while, eventually stopping in the area of Albany and Polk, which Ross said was near where Ross lived.

¶ 24 When they arrived at Albany and Polk, Ross saw Harrison, whom she knew as "Big Daddy," and whom she had known for over 20 years. Ross said that Harrison and her sister, Diana Goodman, had a child together. Ross said that Harrison and Goodman used to fight, Harrison was abusive toward Goodman, and that Harrison would hit Goodman. Ross had seen Goodman with a black eye. Ross also recalled that Goodman had spoken of Harrison threatening to shoot Goodman. In addition, Ross had seen Harrison and his cousin shooting at each other in front of her house. Ross added that she later saw Harrison get out of a van with a gun in his hand

while defendant and defendant's wife were driving with other people in the car after leaving a pretrial court hearing in this case. Defendant and Ross (who was following defendant) turned around, and Ross heard gunfire. Ross described Harrison's reputation in the community as "crazy," "being ignorant," and "shooting at people."

¶ 25 After they arrived at Albany and Polk, Ross testified that she started yelling and cursing at Harrison because she did not believe Harrison was taking care of his child by Goodman. Ross admitted that she was "very angry" and was using profanity. Ross said that Harrison denied paternity of the child, which Ross said "flew [*sic*] me into a rage." According to Ross, Harrison said that he only had one "baby mama," who was sitting in his car, and pointed to Enriquez. Ross responded that Ross did not care about Enriquez and that Enriquez had nothing to do with their disagreement. Ross did not see anyone in the van before that and did not know Enriquez.

¶ 26 At that point, Ross said that Enriquez said to Ross, "I don't give an 'f' [*sic*] about you, 'b.' [*sic*] " According to Ross, Harrison told Enriquez to get out of the van, which she did, and Ross noticed that Enriquez was pregnant. Enriquez walked over to the car in which Ross was seated, and then grabbed Ross's hair and started hitting Ross. Ross eventually got out of the car, and she and Enriquez began arguing. Ross said that Harrison then picked up a liquor bottle from the ground and told Enriquez to hit Ross with it. Ross asked Shavon to take her home, and they left. Ross admitted that she was "crazy, like enraged," because Ross felt that she had been "violated" and when she tried to fight back, Harrison threatened to hit Ross.

¶ 27 When Ross got home, she took a baseball bat, got into her car, and drove back alone to the scene. When she arrived at the scene, she got out of her car and began striking Harrison's and Enriquez's blue van with the bat. Ross admitted that she went around to the passenger side to fight Enriquez. Harrison, however, got out of the van, walked up to Ross, and told her he

would shoot her if Ross hit Enriquez. Ross said that Harrison pulled up the front of his shirt, revealing a handgun. Ross then got back into her car and began driving to the police station. According to Ross, Harrison began following her, waving a gun outside of the vehicle. Ross, however, did not hear any gunshots and did not see defendant shoot at Harrison's van.

¶ 28 On cross-examination, Ross reiterated that she was angry and also conceded that she was out of harm's way after the initial confrontation but returned to the area to fight Enriquez, who was pregnant, and Harrison, whom Ross considered to be violent. Ross further agreed that, despite Harrison's alleged violent reputation, Ross nonetheless wanted Harrison to be a part of Goodman's (her sister's) life. Finally, Ross admitted that she failed to tell the police that she had a baseball bat in her hands and was going to fight a pregnant woman; Ross simply said, "I was in a rage" and that she wanted to fight both of them.

¶ 29 Deidra Alexander then testified that she was the daughter of defendant's wife, Crystal Ross. Alexander said that she was at Hawkeye's on the night of July 6, 2009, with her mom, defendant, Ross, Cooper, and two of Ross's friends. At around 11 p.m., Alexander left with Ross and Ross's two friends, "Shavon" and "Crystal." After dropping off Crystal at home, Shavon drove Ross and Alexander back to their neighborhood, around Polk and Albany. They stopped, and after Shavon and Harrison began talking, Ross started arguing with Harrison, accusing Harrison of not supporting the son he had with Ross's sister.

¶ 30 Enriquez got out of the van, walked over to the car Alexander was in, and started arguing with Ross. According to Alexander, Enriquez then started hitting Ross and pulling Ross's hair. When Ross got out of the car, Harrison picked up a bottle, gave it to Enriquez, and told Enriquez to his Ross with it. Ross then got back into the car, and they went to Ross's house. Alexander described Ross as "very upset," "frantic," and "raging [*sic*]."

¶ 31 Ross went into the house, and Alexander followed her in. As Alexander was about to walk in, she saw Ross leave with a baseball bat. Alexander briefly spoke to her mother, and then returned to Shavon's car so they could follow Ross back to the scene. Once there, Alexander saw Ross, with bat in hand, about a block away. Defendant then drove up near them, and when Bell told defendant where Ross was, defendant drove to her location. Alexander saw Ross driving away with Harrison's van following her. Alexander said she saw defendant drive up next to Harrison, but she did not hear any gunshots.

¶ 32 On cross-examination, Alexander agreed that she never saw Harrison pull out a gun either during his argument with Ross or when he was following her in the van. Alexander further agreed that Harrison "never laid a hand on [Ross]." Alexander, however, said that Ross "never touched" Enriquez; they only argued after Enriquez pulled Ross's hair and hit her.

¶ 33 Arshay Cooper and Crystal Ross (defendant's wife) both testified that, after returning to defendant's and his wife's home from Hawkeye's, they were later awakened by Ross, who began yelling that Ross had gotten into a fight with Harrison. At that point, defendant got up, reached into a gun safe under his mattress, removed a gun, and left the house. Cooper added that defendant was "mad." Finally, both Cooper and defendant's wife stated that they saw Harrison shoot at defendant's car after a prior court appearance in this case.

¶ 34 Finally, defendant testified on his own behalf. Defendant stated that, at around 10:30 p.m. on July 6, 2009, he, his wife, and Cooper returned home from Hawkeye's and the three of them went to bed. Cooper later knocked on defendant's and his wife's bedroom door, which awakened defendant. Cooper said that Harrison had "jumped on" Ross, and that Ross "ran back out with a bat." Defendant noted that he and Harrison had "popp[ed] firecrackers together" on the prior Fourth of July, but also recalled that Harrison had given his sister Diana a black eye

because Harrison suspected Diana had been unfaithful. Defendant also commented that Harrison "always" had a gun and used to "brag about beating" a charge of attempted murder. Defendant also recounted seeing Harrison chasing and shooting a gun at another individual outside of his house. Defendant said Harrison was a "known shooter" in their neighborhood.

¶ 35 Defendant then testified that, after Cooper woke him up and told him about Ross, he was worried that Harrison might do something to her. Defendant also admitted that Ross, "like the rest of my people, when they get angry they get crazy." Defendant put on boots, and took a gun out of a safe under his bed. Defendant said he did so because he assumed Harrison had a gun on him. Defendant then left in his wife's white Malibu and drove to the intersection of Albany and Polk, an area where defendant said Harrison was known to frequent.

¶ 36 Defendant arrived at the scene, and saw Bell, Alexander, and "Shavon." When defendant lowered his window, Bell told him that "they" were further down the street, near Roosevelt. Defendant said he sped in that direction, and when he approached a viaduct, he saw Harrison following Ross with his hand out of the window holding a gun. Defendant said Ross was about two car lengths ahead of Harrison. Defendant said he then tried to drive around Harrison and get in front of him, but at that point the lanes on Albany were narrowing, so defendant tried to shoot Harrison's tire out. Defendant admitted, however, that he shot through a side window. Defendant confirmed that he did not know there was anyone else in the van, and he only shot because he saw Harrison with his hand out of the window and his sister in front of Harrison. Defendant said he only shot once, and when he saw Ross turn at Roosevelt but Harrison continue on Albany, defendant also turned at Roosevelt and went home. Defendant said he first heard of Enriquez being injured when Harrison called defendant and screamed at him, "[M]an, you shot

my 'b'. " Defendant denied ever getting out of the white Malibu, and confirmed that Ross drove to the scene separately in her white Saturn.

¶ 37 On cross-examination, however, defendant agreed that he had never before had a problem with Harrison, and despite Harrison's alleged violent reputation, Harrison had never been violent to defendant or Ross. Defendant further stated that, when he turned on Roosevelt (after seeing Ross do so), he no longer saw Ross anywhere. Defendant also conceded that, although his sister had reported this incident to the police, he did not, despite being told that he had shot Enriquez. At the conclusion of defendant's testimony, defense counsel offered into evidence a certified copy of Harrison's 2006 conviction for felony possession of a weapon. The defense then rested.

¶ 38 During closing arguments, defense counsel argued that defendant was acting in defense of his sister, Ross, and reasonably believed that Harrison was armed and threatening to shoot Ross at the time that defendant fired at Harrison's van. The trial court rejected defendant's defense-of-others claim, however, and found defendant guilty of the aggravated battery with a firearm count (count V) and the three aggravated discharge of a firearm counts (counts VI, VII, and VIII). Defendant filed a motion for a new trial that reiterated that defendant was acting in defense of his sister, but the trial court denied the motion. The trial court sentenced defendant to concurrent terms of six years' imprisonment.

¶ 39 This appeal follows.

¶ 40 ANALYSIS

¶ 41 Defendant's Defense-of-Others Claim

¶ 42 Defendant first contends that the State failed to prove beyond a reasonable doubt that defendant did not act in defense of his sister. Defendant claims that there was "overwhelming evidence" that he reasonably acted in defense of his sister, and that the trial court's rejection of

his defense-of-others claim was "palpably contrary" to this evidence. As such, defendant asks that we reverse his convictions outright.

¶ 43 As a preliminary matter, the State complains—in a footnote in its brief—that defendant has improperly apprised this court of the fact that Henderson, the intended victim in this case, was later indicted for shooting at defendant following a court appearance in this case, and that Harrison pleaded guilty to charges stemming from that incident. The State asks in that same footnote that we strike or disregard those allegations because they are outside the record. Setting aside whether this was a proper method to ask this court to strike or disregard allegedly improper facts (see *e.g.*, *Borsellino v. Putnam*, 2011 IL App (1st) 102242, ¶ 87; *John Crane Inc. v. Admiral Insurance Co.*, 391 Ill. App. 3d 693, 698 (2009)), we agree in part with the State. Harrison's indictment and subsequent guilty plea were not before the trial court and are not properly before this court, so we will not consider them. The testimony regarding Harrison's alleged *act* of shooting at defendant during later court hearings was elicited at trial, however, and we must therefore consider that evidence in disposing of this claim. We now turn to the substance of defendant's claim.

¶ 44 The defense theory at trial was justification based upon defense of others under section 7-1 of the Criminal Code of 1961 (720 ILCS 5/7-1 (West 2010)), which is an affirmative defense. 720 ILCS 5/7-14 (West 2010); *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004); *People v. Ellis*, 269 Ill. App. 3d 784, 789-90 (1995). When a defendant raises an affirmative defense under section 7-1, the State then has the burden of proving beyond a reasonable doubt not only the elements of the charged offense, but also that the defendant did not act in self-defense. *Lee*, 213 Ill. 2d at 224. The elements of a claim of self-defense or defense of others are as follows: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor;

(3) the danger of harm was imminent; (4) the use of force was necessary; (5) 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. 720 ILCS 5/7-1 (West 1998); *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). If the State negates only one of these elements, the defendant's claim fails. *Jeffries*, 164 Ill. 2d at 127-28. Although it has long been the law in Illinois that a person who is not the initial aggressor has no duty to retreat (*People v. White*, 265 Ill. App. 3d 642, 651 (1994)), a defendant may not claim justification when the perilous situation he encountered arose from his own aggressive conduct (*People v. White*, 293 Ill. App. 3d 335, 338 (1997)). In other words, the justification defense under section 7-1 does not justify retaliation or revenge; rather, it protects "person, not pride." *People v. De Oca*, 238 Ill. App. 3d 362, 368 (1992); *People v. Woods*, 81 Ill. 2d 537, 543 (1980).

¶ 45 Although defendant does not challenge the evidence supporting the charged offenses, the State was also required to prove beyond reasonable doubt that defendant was not acting in defense of another. Defendant's claim is thus a challenge to the sufficiency of the State's evidence as to this issue. When presented with a challenge to the sufficiency of the evidence, this court must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the function of this court to retry the defendant. *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 113 (citing *People v. Evans*, 209 Ill. 2d 194, 209 (2004)). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *Id.* (citing *Evans*, 209 Ill. 2d at 211). The fact-finder

is not obligated to accept the defendant's version of events as among competing versions, but may reject it. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). In essence, this court will not reverse a conviction unless the evidence is "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 46 Viewing the evidence in the light most favorable to the State, as we must (*De Filippo*, 235 Ill. 2d at 384-85), we find the State's evidence negated at least one of the elements of defense of others. Specifically, the evidence at trial was that, while Harrison was speaking to two friends, Ross arrived (after having been drinking "for a while") and began berating Harrison with profanity for his failure to support a child Harrison had with Ross's sister. Ross then began arguing with Harrison's girlfriend, Enriquez, who was nine months pregnant and had been returning home from the hospital where she was being monitored for high blood pressure. Ross's verbal argument with Enriquez devolved into a physical altercation that Harrison and others at the scene broke up. Ross then retrieved a baseball bat and began striking Harrison's van with it—even approaching the passenger side where Enriquez was seated. The State's witnesses testified that Bell struggled with Ross but eventually got Ross back into her car. Ross then returned with defendant, who got out of his car and belligerently and profanely demanded to know who was "messing" with his sister. When he was informed that it was Harrison and that Harrison was about a block away, defendant got into his car, drove after Harrison, and fired his gun through the window of Harrison's van, wounding Enriquez. Harrison then drove Enriquez directly to the hospital, where he was immediately met by police officers. No one saw Harrison with a weapon at the scene (except for Ross), and no weapon was found in Harrison's van.

¶ 47 On these facts, defendant failed to establish his defense-of-others defense. The evidence, viewed in the light most favorable to the State, reveals that the initial altercation, which Ross

started with her profanity-laced tirade, ended after Ross left the scene after being persuaded to stop battering Harrison's van and threatening the nine-month-pregnant Enriquez with a baseball bat. At that point, Ross was no longer in imminent danger of harm. Ross, however, later returned to the scene either (in her version of events) armed with a baseball bat or (in the State's version) with defendant, who was challenging the person who was "messing" with his sister. In either version, Ross's return to the scene transformed her into the initial aggressor. Returning to the scene with a baseball bat—after the initial altercation had ended—cannot reasonably be considered the actions of a nonaggressor. Although the State only needed to negate one element of defendant's justification defense to prevail (*Jeffries*, 164 Ill. 2d at 127-28), the State negated at least two of those elements: that Ross was not the aggressor, and that the danger of harm was imminent. The fact-finder was free to reject defendant's version of events (*Villarreal*, 198 Ill. 2d at 231) and his claim of justification. Since the State's evidence contradicting defendant's defense-of-others defense is not "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt," we may not reverse his conviction. *Evans*, 209 Ill. 2d at 209. We must therefore reject defendant's claim.

¶ 48 Nonetheless, defendant maintains that the State failed to disprove his defense-of-others justification defense. In support of his contention, defendant relies upon *People v. White*, 87 Ill. App. 3d 321 (1980). Defendant's reliance is misplaced.

¶ 49 In *White*, there was testimony that, *immediately* prior to his death, the victim was brandishing a knife and threatening the defendant's life. *Id.* at 323. Here, by contrast, Ross had left the scene of the first altercation, which she initiated and where she claimed the victim had brandished a firearm, and went home. She then, however, retrieved a baseball bat and returned to the scene with her brother (*i.e.*, defendant). Unlike the defendant in *White*, Ross was no

longer in immediate danger; instead, she returned to the scene with her brother while she was admittedly "very angry," "crazy," and "in a rage." Therefore, the State negated any claim that Ross (the person threatened) was not the aggressor or that the danger of harm to Ross was imminent, vitiating defendant's claim of justification. See *Jeffries*, 164 Ill. 2d at 127-28. Consequently, defendant's reliance upon *White* is misplaced.

¶ 50 Defendant's Aggravated Battery with a Firearm Conviction

¶ 51 Defendant next claims that the evidence was insufficient to support his conviction for aggravated battery with a firearm. Specifically, defendant claims that the State failed to prove beyond a reasonable doubt that defendant either intended or knowingly caused the victim's injury. As such, defendant asks that we reverse this conviction.

¶ 52 Defendant's claim is meritless. As noted above, the record clearly establishes that the defense theory at trial centered on defense of others. It is axiomatic that a defense-of-others justification defense necessarily admits either intentional or knowing actions. See, *e.g.*, *People v. Lahori*, 13 Ill. App. 3d 572, 577 (1973) ("Raising the issue of [justification under section 7-1] requires as its *sine qua non* that defendant had admitted the killing as the basis for a reasonable belief that the exertion of such force was necessary."); *People v. DeMumbree*, 98 Ill. App. 3d 22, 25 (1981) ("Because the theories of self-defense or defense of a third party presuppose an intention to kill or cause great bodily harm, these theories are inconsistent with the crime of involuntary manslaughter which, by definition, is evidenced by the mental state of recklessness, not intent."). Therefore, since defendant's decision to rely upon a justification defense under section 7-1 established the *mens rea* for aggravated battery, defendant's contention is fails.

¶ 53 The One-Act, One-Crime Rule

¶ 54 Finally, defendant contends in the alternative that, should this court affirm his conviction for aggravated battery with a firearm, we should vacate his convictions for aggravated discharge of a firearm because those convictions are predicated upon the same physical act: defendant's intentional or knowing discharge of a firearm "in the direction of Enriquez." We reject this claim of error in part.

¶ 55 The State responds initially that defendant has forfeited this claim but also concedes that one-act, one-crime violations are subject to plain error review. We agree: violations of the one-act, one-crime are reviewed under the second prong of the plain error doctrine. See, *e.g.*, *People v. Nunez*, 236 Ill. 2d 488, 493 (2010); *People v. Artis*, 232 Ill. 2d 156, 168 (2009). Under that prong, we may bypass normal forfeiture principles and consider an otherwise unpreserved error when "the error is serious, regardless of the closeness of the evidence," *i.e.*, where the error was so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). The threshold step in any plain error analysis, however, is to determine whether an error occurred in the first place. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 56 Under the one-act, one-crime rule, a defendant may not be convicted of crimes involving the same physical act. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). However, the one-act, one-crime rule only applies to multiple convictions for acts against a single victim. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 30 (citing *People v. Grover*, 93 Ill. App. 3d 877, 881 (1981)). "In Illinois it is well settled that separate victims require separate convictions and sentences." *People v. Shum*, 117 Ill. 2d 317, 363 (1987) (citing *People v. Butler*, 64 Ill. 2d 485, 488-89 (1976)). We review *de novo* whether a conviction should be vacated under the one-act, one-crime rule. *Johnson*, 237 Ill. 2d at 97.

¶ 57 In this case, we agree with the State that defendant's convictions under count VI (regarding firing into an occupied vehicle) and count VII (regarding firing in the direction of Enriquez) must be vacated because they are predicated upon the same physical act as his conviction for aggravated battery with a firearm against Enriquez. Defendant's conviction under count VIII, however, concerned the aggravated discharge of a firearm for firing in the direction of Harrison. This conviction relates to a separate victim, and therefore the trial court did not err in imposing a conviction and sentence on this conviction. *Shum*, 117 Ill. 2d at 363. Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we vacate defendant's convictions for aggravated discharge of a firearm under counts VI and VII.

¶ 58 CONCLUSION

¶ 59 The evidence was sufficient to support defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm despite defendant's claim of defense of others where the evidence at trial negated defendant's defense-of-others claim by establishing that defendant's sister was the aggressor and no longer in danger of imminent harm. In addition, the evidence was sufficient to support defendant's conviction for aggravated battery with a firearm, specifically, that defendant intended or knowingly caused the victim's injury because defendant's reliance upon the defense-of-others justification defense necessarily admitted that his acts were intentional or knowing. We vacate two of defendant's convictions for aggravated discharge of a firearm (counts VI and VII) under the one-act, one-crime rule because they were predicated upon the same physical act against the same victim as defendant's conviction for aggravated battery with a firearm. His remaining conviction for aggravated discharge of a firearm (count VIII) stands where it was based upon a different victim.

¶ 60 Affirmed in part; vacated in part.