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2023 IL App (3d) 210239-U

Order filed February 9, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-21-0239
)	Circuit No. 19-CM-1185
MIRELLA CARRERA,)	Honorable
Defendant-Appellant.)	John J. Pavich, Judge, Presiding.

JUSTICE HETTEL delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant committed battery.

¶ 2 Defendant, Mirella Carrera, directly appeals her conviction for misdemeanor battery.

Defendant argues that the State presented insufficient evidence to convict her of battery where she acted in objectively reasonable self-defense. We affirm.

¶ 3

I. BACKGROUND

¶ 4

Defendant was charged with battery (720 ILCS 5/12-3(a)(2) (West 2018)). The complaint alleged that “defendant, knowingly without legal justification made physical contact of an insulting or provoking nature with Melissa Overman, in that she struck her about the head.” Defendant retained counsel. Defendant waived her right to a jury trial and proceeded to a bench trial.

¶ 5

At trial, Elizabeth Gerst testified:

“Sure. As I’m driving my children to school, I saw two ladies walking on the sidewalk, and one lady was walking—I don’t know what direction. They were walking opposite directions. One had a stroller. [Overman] had a stroller, and [defendant] had her children with her. They were crossing paths, and I don’t know if the stroller wheel bumped one lady or how it happened, but after that they had [a] verbal altercation, talking back and forth, and then [defendant] put her baby down and went and punched [Overman] in the face.”

Gerst clarified that the stroller “bumped” defendant in passing. She assumed the stroller struck defendant from the side. After the verbal altercation, defendant punched Overman “within seconds.” The State asked Gerst how many times defendant struck Overman. Gerst responded: “I remember once, but also at the same time I don’t recall. I remember once. At least once, yes.”

¶ 6

Gerst testified she rolled down her window and asked Overman if she was okay and needed any help. Defendant then approached Gerst’s vehicle and asked if she saw what happened. Gerst told defendant she did not want to get involved and left.

¶ 7

On cross-examination, Gerst clarified that defendant placed her child down on the ground and then went toward Overman who was standing near her stroller. The incident lasted approximately one minute. Gerst reiterated that she saw defendant hit Overman once. Defendant

asked Gerst to stay and speak to the police. On redirect examination, Gerst stated she did not know defendant or Overman prior to the incident.

¶ 8 Overman testified she was walking home after dropping her children off at school. Overman was pushing her six-month-old daughter in a small stroller made of vinyl and metal. She noticed defendant and her two children walking toward her. Defendant was holding one of her children. Overman moved a majority of the stroller off the sidewalk and onto the grass. Defendant was walking in the middle of the sidewalk and did not move over. When defendant was two to three feet from Overman, defendant told Overman “to move the fuck out of her way.” Overman responded “no.” Then defendant put her child down on the ground and punched Overman in the forehead. Defendant struck Overman in the forehead three times. Overman then went to her neighbor’s house. Once Overman returned to her home, her head started hurting immediately. Overman noticed bruising, swelling, and a scratch on her forehead. Overman took a photograph of her forehead which was admitted into evidence. Overman testified she never bumped defendant with her stroller.

¶ 9 Deputy Donald Kos testified he was dispatched to the scene of an altercation. He spoke with Overman and defendant. Defendant admitted to hitting Overman. The State elicited the following testimony:

“Q. Now, in speaking with the defendant, I apologize, just to clarify, did she discuss an altercation that occurred prior to that day?

A. Yes.

Q. Did she state anything about her making contact with [Overman]?

A. Yes. Something about a baby stroller over her foot or something like that near the bus stop.

Q. Did she say anything about her actions?

A. She said that she set her baby down and proceeded to hit [Overman], strike her.

Q. Can you recall where the defendant told you she struck her?

A. Somewhere in the facial area.”

¶ 10 After the close of the State’s case, defense counsel called defendant to testify. Defendant testified that Overman had insulted her numerous times prior to the incident. Overman insulted defendant for being Mexican, insulted her daughter who has Down syndrome, and referred to defendant as “this fucking bitch.” Additionally, Overman constantly told defendant to move out of the community.

¶ 11 Defendant testified she was walking to school with her children and holding her son as Overman approached. Overman was walking toward defendant with her daughter in a large stroller. When Overman noticed defendant, she began walking faster toward defendant. She stated Overman hit her with the stroller approximately five times while yelling insults at her and stating she wanted to fight. Defendant’s leg was injured from the stroller. Defendant took photographs of her leg. The photographs were admitted into evidence and showed significant bruising to defendant’s leg.

¶ 12 Defendant further testified, Overman yelled at defendant “that’s not a fight, bitch,” and came toward defendant. Defendant placed her son on the ground behind her to protect him. Overman raised her hand to hit defendant. Overman swung at defendant. Defendant reacted and used her left hand to push Overman away. Defendant’s hand was open and connected with a hard part of Overman’s body once. Defendant stated she intended to protect her children, not to harm Overman. After the incident, Overman walked away.

¶ 13 At the scene, defendant noticed Gerst and asked if she witnessed the incident and if she would wait while defendant called the police. Defendant testified Gerst said that “she was not trying to get herself involved in anything.”

¶ 14 On cross-examination, defendant clarified that after Overman hit her numerous times with the stroller, Overman pushed the stroller forward and then came back toward defendant. Defendant then placed her son on the ground behind her because she was concerned for his safety. Overman hit defendant in the arm. Defendant pushed Overman away which was the only time defendant touched Overman. Defendant did not approach Gerst’s vehicle. Defendant was able to walk home with some difficulty. The State asked defendant whether she told Deputy Kos that she had only been hit once with the stroller. Defendant responded, “No. I told him she had hit me a definite number of times.” Defendant testified she asked Deputy Kos to take photographs of her ankle. He told her to take her own photographs because he did not have a camera. Defendant testified that she was not 100% proficient in English, and that she tried her best to explain what happened to the deputy.

¶ 15 In rebuttal, Deputy Kos testified that defendant did not show him either of her ankles. Defendant did not tell him Overman punched her in the arm. He assumed that defendant was only hit once with the stroller, but she did not tell him how many times she was hit. Defendant spoke to Deputy Kos in English, and he was able to understand her. On redirect, he stated that defendant never asked him to take photographs of her ankle.

¶ 16 The court ruled:

“Because of that, I am forced today [to] reconcile those two conflicting accounts, and that’s where the third party witness, Ms. Gerst, becomes an important role.

Ms. Gerst testified that she witnessed the altercation, initially a verbal altercation, which escalated quickly. Her testimony was that she saw [Overman] bump the defendant with the stroller. That she indicated she did not think it was a very hard bump, and she also testified that she saw *** the defendant punch Ms. Overman. That testimony in particular contradicted the defendant's testimony that it was more of a push or a slap or a push away with an open hand.

We also have testimony of [Kos], and [Kos] indicated that the defendant did not tell him initially about certain aspects of the incident. In particular, [Kos] indicated that the defendant never asked him to photograph the injuries to her ankle. Also, [Kos] indicated that the defendant told him that Ms. Overman rolled over her foot with the stroller, which also seems somewhat consistent with the third party witness's testimony that it was more of a bump, and that it was, as far as she could tell, a single bump.

In large part due to the fact that I did find the third party witness to be credible, she was a neutral person who did not know either party, and along with the testimony of the deputy, I find that the State has met its burden in proving the required elements of the battery charge. For that reason, I am forced to enter a finding of guilty on that battery charge.”

¶ 17 The court sentenced defendant to 12 months' court supervision. Defendant filed a motion to reconsider which the court denied. Defendant appeals.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues that the State presented insufficient evidence to convict her of battery where she acted in objectively reasonable self-defense.

¶ 20 “The relevant standard of review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that defendant did not act in self-defense.” *People v. Lee*, 213 Ill. 2d 218, 225 (2004). It is the responsibility of the trier of fact to resolve conflicting testimony. *People v. Gray*, 2017 IL 120958, ¶ 35. A reviewing court will not substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses. *Id.*

¶ 21 The State charged defendant with battery in that she, knowingly without legal justification made physical contact of an insulting or provoking nature with Overman, in that she struck her about the head. See 720 ILCS 5/12-3(a)(2) (West 2018). Self-defense is an affirmative defense, and once it is raised, the State has the burden of proving beyond a reasonable doubt that defendant did not act in self-defense, in addition to proving the elements of the charged offense. *Gray*, 2017 IL 120958, ¶ 50.

“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. [Citations.] If the State negates any one of these elements, the defendant’s claim of self-defense must fail.” *Lee*, 213 Ill. 2d at 225.

¶ 22 Here, Gerst testified that Overman “bumped” defendant with her stroller in passing. They argued; and within seconds defendant placed her child on the ground, turned around, went toward Overman who remained by her stroller, and punched Overman in her face. Accordingly, Gerst’s testimony negates two elements of defendant’s claim of self-defense: (1) the danger of harm was

imminent, and (2) the use of force was necessary. See *id.*; *Gray*, 2017 IL 120958, ¶ 35. Thus, defendant's self-defense claim fails.

¶ 23

III. CONCLUSION

¶ 24

The judgment of the circuit court of Will County is affirmed.

¶ 25

Affirmed.