

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

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. 16 CR 7877
	)	
VONDELL BUSH,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Connors concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant’s conviction for aggravated battery affirmed where the evidence proved beyond a reasonable doubt that defendant was not acting in self-defense.
- ¶ 2 Following a bench trial, defendant Vondell Bush was convicted of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2016)) and sentenced to 15 years’ imprisonment. On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he did not act in self-defense where the evidence showed that he shot the victim after the victim “chased” him with a hammer. We affirm.

¶ 3 Defendant was charged with six counts of attempted murder and one count of aggravated battery, stemming from the shooting of Wayne Battles on February 16, 2016. At trial, Battles, testified that he was working as a janitor in the trash compactor room at the Lake Meadows apartment building in Chicago that morning. At approximately 6:00 a.m., a man, whom he identified at trial as defendant, entered the room. Defendant told the 62-year old Battles “in a hostile voice” that Battles was “in his business,” to which Battles replied that he did not know what defendant was talking about. Battles had previously seen defendant in the building but knew he was not a resident.

¶ 4 After a brief exchange, defendant turned and walked toward the door. Battles followed, as he was done with his task. Defendant suddenly turned around, hit Battles in the jaw with his right fist, and yelled “I’m from the low end.” Battles was stunned and grabbed a nearby hammer as he “chased” defendant toward the loading dock area. Defendant hit a wall, “bounced” off, and kept going. Battles continued “chasing” defendant while holding the hammer, staying three to three-and-a-half strides behind him, until they arrived outside of the building. Battles testified that he never attempted to hit defendant with the hammer, and was never close enough to actually hit him.

¶ 5 Once outside, defendant slipped and fell on the concrete, rolled, rose to his knee with a pistol in his hand, and shot Battles in the left leg. Battles said “man, you shot me?” and defendant responded “you came at me with a hammer.” Battles retreated into the docks and called the police. He was treated at the hospital for a gunshot wound in his calf, and later identified defendant in a photo array. At the time of trial, he still suffered stiffness in his leg as a result of the shot.

¶ 6 Battles testified he and defendant were four or five feet apart when defendant fell. Battles had stopped moving and was not standing over defendant when defendant shot the gun. He had not raised the hammer against defendant at any time, but rather was holding it in his hand with his arm slightly bent toward his shoulder. Battles had not said anything to defendant as he chased him. He had not seen defendant with a gun while he was chasing him.

¶ 7 Detective Angelo Velazquez testified that he was present for Battles' identification of defendant. After obtaining a warrant, Velazquez learned that the 41-year old defendant was in custody in Las Vegas, Nevada, and extradited him to Chicago.

¶ 8 Defendant testified that on February 16, 2016, he had spent the night at the Lake Meadows apartment building, staying with his female friend Charnelle Price. Defendant wanted to talk to Battles because Battles had questioned Price about "inappropriate" topics, and defendant wanted to ask him to stop speaking with her. After asking about the "nosy janitor," defendant was directed toward the trash compactor room. There, he asked Battles why he was so "nosy." Battles became aggressive, poking his finger at defendant; but when defendant "stood still" and "just told" Battles to leave Price alone, Battles "kind of" calmed down. Defendant turned and walked away with Battles behind him. Battles then called defendant a "little b\*\*ch." Defendant turned, Battles said it again, and defendant told him "f\*\*\* you." Battles attempted to grab defendant's hair so defendant pushed him away. Battles then picked up the hammer and "charged" at defendant with the hammer "raised up." Defendant ran out the door of the room because he was "scared" that Battles would hit him with the hammer.

¶ 9 Defendant ran down the hall to go outside "to try to get away." Battles was "right behind" him. As soon as defendant crossed the threshold of the outside door, he fell forward. He

got up and continued to attempt to escape Battles, who was behind him with the hammer still raised to his shoulder. A few steps later, defendant tripped and fell forward again. Battles was “right behind” him with the hammer. The second time defendant fell, he thought Battles would hit him in the head with the hammer while he was on the ground. Defendant tried to get up but could not because Battles was “right on top” of him, still running toward him with the hammer raised.

¶ 10 As a result of defendant’s falls, his bookbag had opened and its contents fell out, including a thermal lunch bag containing his loaded revolver. Defendant took the gun and shot at Battles. Defendant testified that Battles was “three to five feet” away from him at the time he fired the gun, holding the hammer in a “striking position” at shoulder height or a little higher. Defendant thought Battles was going to hit him with it. Battles had chased him the entire time and defendant shot him because he wanted Battles to stop.

¶ 11 After defendant shot Battles, Battles dropped the hammer and ran into the building. Defendant left the premises. He moved to Las Vegas shortly thereafter, as he and his girlfriend had already planned to do. He did not know his shot had hit Battles. Defendant’s intention when he left the trash compactor room was to get out of the building away from Battles, and to stop Battles from hitting him with the hammer. When he got out to the loading dock, defendant intended “still to run.” Defendant had the gun with him that morning because he had moved out of his apartment and could not leave the gun in the apartment where his girlfriend was staying with his stepdaughter. He did not intend to use the gun against Battles.

¶ 12 In closing argument, defense counsel argued defendant shot Battles in self-defense.

¶ 13 The trial court found defendant guilty of aggravated battery and not guilty of attempted murder. Addressing whether defendant was justified in using the force that he did, the court had “no doubt” that defendant was the initial aggressor in this case. It found his testimony that Battles was “the hostile one” and defendant was not, to be “totally incredible,” and did not believe Battles pushed defendant. The court compared Battles and defendant, including their demeanor, size, and age, and noted that defendant was “at least 20 years younger than the victim.” It found Battles “has every right to chase [defendant] out of the building,” and the fact that Battles was holding a hammer, not brandishing it as a weapon, “doesn’t necessarily mean that the defendant had a right to turn around and use the gun.” It noted that as Battles chased defendant, he never said anything indicating defendant was in danger or that Battles intended to inflict harm on him.

¶ 14 The court concluded that neither of the statutory exemptions allowing an initial aggressor to show self defense applied. It found defendant’s testimony to be “very, very incredible” and “insulting to the [c]ourt.” The court “[did not] believe this defendant was in any way, shape, or form ever intimidated by the victim” and did not think defendant “was in any type of danger whatsoever.” It held that defendant’s self defense argument failed and his use of force was excessive.

¶ 15 The court subsequently denied defendant’s motion for a new trial and sentenced him to 15 years’ imprisonment. Defendant timely appealed.

¶ 16 On appeal, defendant argues this court should reverse his conviction for aggravated battery because the State failed to prove beyond a reasonable doubt that he was not acting in self-defense when he shot Battles.

¶ 17 The standard of review in a challenge to the sufficiency of the evidence is “whether, 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. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the evidence or substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *Id.* A reviewing court will not reverse a criminal conviction unless the evidence is “unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 18 In order to prove defendant guilty of aggravated battery as charged, the State had to establish that defendant knowingly, without legal justification, caused bodily harm to Battles, in the course of which defendant knowingly discharged a firearm causing injury. 720 ILCS 5/12-3(a) (West 2016); 720 ILCS 5/12-3.05(e)(1) (West 2016). Defendant does not deny that he caused bodily harm to Battles with a firearm. Indeed, his sole argument on appeal is that he shot Battles in self-defense and the State did not prove beyond a reasonable doubt that he was unjustified in defending himself against Battles.

¶ 19 Self-defense is an affirmative defense and, once raised, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Gray*, 2017 IL 120958, ¶ 50. A self-defense claim is established by the following elements: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor;

(3) the danger of great bodily harm or death 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. *Id.*; 720 ILCS 5/7-1(a) (West 2016). If the State negates any of these elements, the defendant's claim of self-defense fails. *People v. Lee*, 213 Ill. 2d 218, 225 (2004).

¶ 20 The question of whether a defendant acted in self-defense is a question of fact for the fact finder. *People v. Garcia*, 407 Ill. App. 3d 195, 203 (2011) The fact finder need not accept as true the defendant's evidence in support of the defense. *Id.* Instead, it must consider the probability or improbability of the evidence, the circumstances surrounding the incident, and the witnesses' testimony. *Id.*

¶ 21 Here, the trial court found that defendant was the initial aggressor, which alone causes the self-defense claim to fail. See 720 ILCS 5/7-1(a)(2) (West 2016). However, a court may still find that an initial aggressor is entitled to the affirmative defense of self-defense in more limited circumstances, where either (1) the assailant's force is so great that the initial aggressor reasonably believes he is in imminent danger of death or great bodily harm and he has exhausted every reasonable means to escape such danger other than the use of force; or (2) the initial aggressor withdraws from the physical contact in good faith and clearly indicates to the assailant that he desires to withdraw, but the assailant continues or resumes the use of force. 720 ILCS 5/7-4(c) (West 2016).

¶ 22 Neither circumstance exists in this case. The only evidence supporting defendant's self-defense claim is his own testimony that he was trying to run away and shot Battles because he was scared Battles would hit him in the head with a hammer. After hearing testimony from

Battles and defendant, and considering all of the circumstances of the case, the trial court found that while Battles picked up a hammer and chased defendant out of the building, Battles never brandished the hammer or threatened defendant, and defendant was not “in any type of danger whatsoever.” The court did not believe defendant was “in any way, shape or form ever intimidated by the victim,” who was 20 years older than defendant. The court also questioned other aspects of defendant’s testimony, including his immediate move to Las Vegas, his version of the events in the trash compactor room, and his bookbag opening by chance to reveal his gun. The court credited Battles’ version of events over defendant’s, finding defendant’s testimony “very, very incredible.” We will not substitute our judgment for that of the trial court concerning its credibility determination. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 23 Given this credibility determination and viewing the evidence in the light most favorable to the State, the evidence supports a finding that Battles did not use force against defendant, and defendant did not reasonably believe he was in imminent danger of death or great bodily harm when he shot Battles. Accordingly, a rational trier of fact could find the State proved beyond a reasonable doubt that defendant was guilty of aggravated battery and did not act in self-defense. See 720 ILCS 5/7-4(c) (West 2016). Therefore, we affirm defendant’s conviction for aggravated battery.

¶ 24 Affirmed.