Cite as 2012 Ark. App. 624

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR12-237

EARNEST LARRY STOCKER APPELLANT	**OPINION DELIVERED** NOVEMBER 7, 2012 APPEAL FROM THE CLEVELAND COUNTY CIRCUIT COURT, [NO. CR-10-24-5]
V.	HONORABLE LARRY W. CHANDLER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Earnest Larry Stocker was convicted in Cleveland County Circuit Court on December 13, 2011, of first-degree battery, with the jury also finding that appellant used a firearm during the commission of a crime. He was sentenced to five years' imprisonment on the battery conviction and given a consecutive five-year term for the firearm enhancement. His sole contention on appeal is that there was insufficient evidence to support his conviction. We affirm.

The evidence presented at appellant's trial was that on Sunday, August 15, 2010, appellant met Ashleia McCraney in Rison, Arkansas. The two had known each other at least eight to ten years, were friends, and had never fought. After some drinking that afternoon, they left Rison and went to Pine Bluff, Arkansas, to meet Ashleia's cousin, Laquetta McCraney. They also met Laquetta's friends, Bryant Jordan and Malcolm Jones. Eventually,

the whole group went to appellant's house, located just outside of Rison, where they continued to party and drink.

According to Laquetta and Bryant, appellant showed his .40-caliber pistol to Bryant and Malcolm before putting it back in his bed where he kept it. Later, Ashleia decided to sleep in another room. While Ashleia was asleep, appellant became enraged and accused Bryant and Malcolm of stealing his pistol. Laquetta and Bryant testified that Bryant and Malcolm responded to appellant's accusations by turning out their pockets and pulling up their shirts to show appellant that they did not have his gun. However, appellant did not calm down.

Appellant picked up the .22 rifle he had next to his bed and went from his bedroom to the area where Ashleia had been sleeping before walking out of his house. Laquetta and Bryant testified that nobody reached for appellant's .22 rifle or struggled with him for control of it, although appellant testified that he had taken the gun from Laquetta.

Laquetta woke Ashleia to help her calm appellant. Ashleia testified that appellant was drunk, upset, and not making any sense. She asked the others what they had done to upset appellant. Laquetta explained that appellant had accused them of trying to steal his pistol, but he did not calm down even after they showed him that they did not have the gun.

After appellant left the house, Ashleia and Laquetta followed, trying to calm him, while Bryant and Malcolm stayed inside. Ashleia and Laquetta testified that they did not have any weapons on them and did not threaten or move quickly toward appellant. Appellant admitted that he did not see either of them with a gun or any other weapon.

Ashleia and Laquetta pled with appellant to put down his gun, and when they were ten to fifteen feet from him, appellant told them to stop or he would shoot.

Appellant shot Ashleia, and she ran back toward the house for help. Laquetta, unaware that Ashleia had been shot, stayed and continued trying to calm appellant. Appellant retreated into the woods, and he came out unarmed after the police arrived.

On cross-examination, appellant admitted that he intended to shoot Ashleia, stating, "Yes. I intended to. That's correct." After appellant was arrested and taken into custody, a Breathalyzer test showed that he had a blood-alcohol level of .175.

Ashleia suffered liver and lung damage as a result of the gunshot wound, had multiple surgeries, and spent over two weeks in the hospital. When appellant's house was searched the day after the shooting, his .40-caliber pistol was found in his bedroom between the mattresses. Appellant testified that he checked and felt for the pistol in his bed when he arrived home on the night in question, but that he never actually touched it or took it out from under his covers where he kept it. On cross-examination, appellant stated that Ashleia and Laquetta were not really his good friends as he had indicated earlier; rather, they were just "associates" and they had "ganged up" on him in the past and tried to beat him up. Appellant indicated that he believed they tried to steal his gun in order to sell it on the illegal-gun market.

The trial court denied appellant's motion for directed verdict made at the close of the State's case, wherein appellant argued that the State failed to prove that he had the purpose of causing physical injury to Ashleia. In his directed-verdict motion made at the close of all

evidence, appellant argued that his intent was not to cause physical injury to Ashleia, but to protect himself. The trial court also denied this motion, and the jury returned a guilty verdict. Appellant was sentenced to a term of five years in the Arkansas Department of Correction and a $15,000 fine on the battery charge, and he received a consecutive five-year term on the enhancement charge of committing a felony with a firearm. Appellant filed a timely notice of appeal, and this appeal followed.

On appeal, we treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Johnson v. State*, 375 Ark. 462, 291 S.W.3d 581 (2009). We will affirm the circuit court's denial of a motion for directed verdict if there is substantial evidence, either direct or circumstantial, to support the jury's verdict. *Id.* This court has repeatedly defined substantial evidence as evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Lacy v. State*, 2010 Ark. 388, ___ S.W.3d ___. Furthermore, this court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Id.* We do not, however, weigh the evidence presented at trial, as that is a matter for the fact-finder; nor will we weigh the credibility of the witnesses. *Bush v. State*, 90 Ark. App. 373, 206 S.W.3d 268 (2005).

Appellant was charged pursuant to Arkansas Code Annotated section 5-13-201(a)(1) (Repl. 2006), which provides that a person commits battery in the first degree if, with the purpose of causing serious physical injury to another person, he or she causes serious physical injury to another person by means of a deadly weapon. Appellant reiterates his argument before the trial court in his first motion for directed verdict by claiming that the State failed

to prove that he had acted with the purpose of causing physical injury to Ashleia. The State responded at trial that the legal implication when someone pulls the trigger is that they intend to shoot. Appellant argues that intending to shoot and intending to cause serious physical injury are two different things. He maintains that his primary intent was to protect himself, not inflict serious physical injury on Ashleia.

Pursuant to Arkansas Code Annotated section 5-2-607(a)(1)–(2) (Repl. 2006), a person is justified in using deadly physical force if he or she reasonably believes that the other person is "[c]ommitting or about to commit a felony involving force or violence," or "[u]sing or about to use unlawful deadly physical force." A person is not justified in using deadly physical force if it could have been avoided by retreating to complete safety. Ark. Code Ann. § 5-2-607(b)(1)(A) (Repl. 2006). However a person is not required to retreat when he is in his own dwelling or curtilage surrounding his dwelling and the other person was the original aggressor. Ark. Code Ann. § 5-2-607(b)(1)(B)(i) (Repl. 2006).

Appellant argues that the State had the burden of proving, as an element of its case, the negation of his self-defense claim. *See* Ark. Code Ann. § 5-1-102(5)(c) (Supp. 2011); *Anderson v. State*, 353 Ark. 384, 108 S.W.3d 592 (2003). The defense of justification is a matter of intent and a question of fact for the jury. *Humphrey v. State*, 332 Ark. 398, 966 S.W.2d 213 (1998). Appellant points to his testimony that he realized his gun was missing while he was in his home with several strangers who denied taking it. He retreated outside for his own safety. He claims that, by doing so, he fulfilled his duty of attempting to retreat to safety under Arkansas law. *See* Ark. Code Ann. § 5-2-607(b)(1)(B)(i). Appellant testified

that he fled as far as he could due to his disabilities of diabetes and heart disease. He contends that Ashleia and Laquetta followed him outside and kept advancing, even though he told them to stop or he would shoot. He testified that as they approached they told him they were going to "F him up." Finally, he testified that Ashleia lunged at him and he fired to protect himself because he felt threatened, even though he had seen no weapon. He maintains that when law enforcement arrived, he came forward. He argues that this evidence supports his contention that he was afraid and fired only in self-defense.

However, substantial evidence supports appellant's conviction for first-degree battery. Despite appellant's arguments, there was evidence that appellant, while in a drunken rage, intentionally shot an unarmed person who was fifteen feet away from him and trying to help calm him. The evidence as recited above was sufficient for the jury to conclude that appellant intended to shoot Ashleia and cause her harm, rather than to defend himself. The natural and probable consequence of his shooting Ashleia from fifteen feet away with a .22 rifle was the infliction of serious physical injury. *See Spight v. State*, 101 Ark. App. 400, 278 S.W.3d 599 (2008) (noting that a person is presumed to intend the natural and probable consequences of their actions). Finally, appellant admitted that he intended to shoot Ashleia, even though he did not see her carrying a gun or weapon. The jury was not required to believe appellant's testimony because he was the person most interested in the outcome of the trial. *E.g.*, *Brown v. State*, 2009 Ark. App. 873.

Affirmed.

GRUBER and GLOVER, JJ., agree.

M. Mark Klappenbach, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.