

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0823

STATE OF LOUISIANA

VERSUS

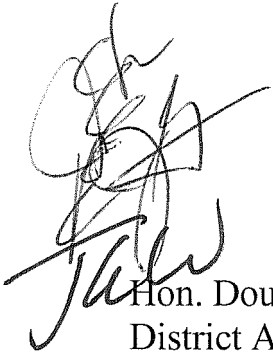
REGGIE HARRIS

DATE OF JUDGMENT: November 3, 2006

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 02-04-0569), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE RICHARD D. ANDERSON, JUDGE

* * * * *



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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

**Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION AND SENTENCE
AFFIRMED.**

KUHN, J.

Defendant, Reggie Harris, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1. He pled not guilty, was tried before a jury and convicted as charged. The trial court sentenced defendant to imprisonment at hard labor for fifty years. The state filed an habitual offender bill of information seeking to have defendant adjudicated and sentenced as a fourth felony habitual offender. Following a hearing, the trial court adjudicated defendant a fourth felony habitual offender. The trial court vacated the previous sentence and re-sentenced defendant to imprisonment at hard labor for sixty years without benefit of probation, parole, or suspension of sentence. Defendant now appeals, urging in a single assignment of error that the evidence was insufficient to support the conviction. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On November 7, 2003, Alvin Richardson was shot and stabbed multiple times by the defendant at his residence on North 44th Street in Baton Rouge, Louisiana. Following the incident, Richardson was transported to Baton Rouge General Mid-City for treatment. None of the injuries were fatal. Richardson was discharged from the hospital on November 13, 2003.

Richardson and his stepdaughter, Alanna Caston, identified defendant, Alanna's biological father, as the perpetrator. A warrant was issued for defendant's arrest. Defendant's photograph was subsequently featured on Crimestoppers, a local crime-detection program. Eventually, defendant surrendered to the police, was arrested, and was taken into custody.

ASSIGNMENT OF ERROR

Defendant contends the evidence presented at trial was insufficient to support the attempted second degree murder conviction. Specifically, the defendant urges that he acted in self-defense after Richardson attacked him with a broken glass bottle.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the state proved the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). *See also* La. C.Cr.P. art. 821(B); *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. The reviewing court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. *State v. Corkern*, 2003-1393, pp. 2-3 (La. App. 1st Cir. 9/17/04), 897 So.2d 57, 59-60, *writ denied*, 2004-2627 (La. 2/18/05), 896 So.2d 29.

La. R.S. 14:30.1(A)(1) defines second degree murder as the killing of a human being when the offender has the specific intent to kill or to inflict great bodily harm. La. R.S. 14:27(A) provides that any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit

the offense intended. It is immaterial whether, under the circumstances, he would have actually accomplished his purpose.

Although the statute for the completed crime of second degree murder allows for a conviction based on specific intent to kill or to inflict great bodily harm, attempted second degree murder requires specific intent to kill. *State v. Bishop*, 2001-2548, p. 4 (La. 1/14/03), 835 So.2d 434, 437. Specific intent is the state of mind that exists when the circumstances indicate the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent need not be proven as a fact but may be inferred from the circumstances and actions of the accused. *State v. Graham*, 420 So.2d 1126, 1127 (La. 1982).

In this case, defendant does not deny that he shot and stabbed Richardson. Instead, he claims his actions were justified and that he acted in self-defense in response to Richardson's actions of attacking him with a broken glass bottle. The fact that an offender's conduct is justifiable, although otherwise criminal, constitutes a defense to prosecution for any crime based on that conduct. La. R.S. 14:18. Louisiana Revised Statute 14:19 provides, in pertinent part:

The use of force or violence upon the person of another is justifiable, when committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession; provided that the force or violence used must be reasonable and apparently necessary to prevent such offense....

In a non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances, and, second, a subjective inquiry into whether the force used was

apparently necessary. *State v. Navarre*, 498 So.2d 249, 252-53 (La. App. 1st Cir. 1986). For a defendant's actions to be justified, the force used must be reasonable under the circumstances and apparently necessary to prevent an imminent assault. *State v. Nelson*, 34,077, p. 6 (La. App. 2d Cir. 12/6/00), 775 So.2d 579, 584. Although there is no unqualified duty to retreat, the possibility of escape is a factor in determining whether a defendant had a reasonable belief that the use of deadly force was necessary to avoid the danger. *State v. Ventry*, 99-0302, p. 3 (La. App. 4th Cir. 6/14/00), 765 So.2d 1129, 1131, *writ denied*, 2000-2113 (La. 9/28/01), 797 So.2d 683. A person who is the aggressor or who brings on the difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. La. R.S. 14:21.

In a homicide case, the state must prove, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. *State v. Bates*, 95-1513, p. 9 (La. App. 1st Cir. 11/8/96), 683 So.2d 1370, 1375. However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case. *See State v. Freeman*, 427 So.2d 1161, 1163 (La. 1983). In previous cases dealing with this issue, we have analyzed the evidence under both standards of review; namely, whether a defendant proved self-defense by a preponderance of the evidence or whether the state proved beyond a reasonable doubt that a defendant did not act in self-defense. *See State v. Willis*, 591 So.2d 365, 370-71 (La. App. 1st Cir. 1991), *writ denied*, 594 So.2d 1316 (La. 1992); *State v. Aldridge*, 450 So.2d 1057, 1059-60 (La. App. 1st Cir. 1984). However, we need not reach the issue of who has the burden of proving or disproving self-defense because

regardless of who has the burden of persuasion, and even assuming that the state must disprove self-defense beyond a reasonable doubt, it is clear defendant in this case did not act in self-defense.

Richardson testified that on the date of the incident in question, defendant telephoned his thirteen-year-old daughter, Alanna Caston, at Richardson's home. Alanna lived with her mother, Brenda, and her stepfather, Richardson. At some point thereafter, defendant and Richardson engaged in a verbal exchange over the telephone during which Richardson told defendant he was no longer welcomed at Richardson's residence. According to Richardson, he did not want defendant at his residence anymore because earlier that same day, defendant had called the residence harassing his wife, Brenda.¹ The verbal exchange ended with defendant telling Richardson, "Wait a minute. Hold on for a moment. I will be there." Approximately three to four minutes later, defendant arrived at Richardson's residence. Richardson testified he was outside at his car when defendant arrived.

According to Richardson, defendant arrived "obviously intoxicated." Richardson asked him to leave the premises. In response, defendant told Richardson "F" him and attempted to strike him. Richardson stated he then picked up a piece of glass from the ground and swung it at defendant. Richardson testified he was unsure whether he cut defendant with the glass. Immediately thereafter, defendant angrily left Richardson's residence. Although defendant was gone, Richardson testified he knew the encounter was far from over. Richardson stated he felt like his life was in danger. Consequently, Richardson contacted 911

¹ In his trial testimony, Richardson explained that although he refers to Brenda as his "wife," they are not legally married.

to report the incident. Richardson advised the operator that he and defendant were involved in a physical altercation and he “did not know how much further it was going to go on.” While Richardson was still on the telephone, defendant returned with a firearm and started shooting. Richardson sustained multiple gunshot wounds to his buttocks, thighs, and sacrum.

Richardson testified that after being hit with the bullets, he went into a state of “emotional shock.” He ran into the house and hid inside the bathroom. From inside the bathroom, Richardson could hear defendant’s voice inside his home. Richardson further testified when he emerged from the bathroom, defendant jumped on him and began stabbing him. Richardson sustained multiple stab wounds throughout his trunk, chest, and back. Defendant fled before the police arrived at the residence.

Detective Mark Beck of the Baton Rouge Police Department testified that he was dispatched to Richardson’s residence to investigate a reported disturbance. Upon arrival, Detective Beck made contact with Richardson who indicated that he had been shot several times. Based upon Richardson’s physical condition, Detective Beck did not attempt to interview him at the scene. Richardson was immediately transported to the hospital for treatment. Detective Beck did, however, speak with Alanna who informed him that “her daddy shot her step daddy.”

Defendant did not testify or present any witnesses at trial.

Upon our review of the record before us, viewing the evidence in the light most favorable to the prosecution, we find that any rational trier of fact could have concluded that the state presented sufficient evidence to prove each element of the

offense of attempted second degree murder beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence. Moreover, when all of the evidence is viewed in the light most favorable to the state, any rational trier of fact could have concluded that defendant did not act in self-defense in repeatedly shooting and stabbing the unarmed victim. According to Richardson's uncontradicted version of the events, defendant returned to the residence armed with a loaded weapon a short time after the initial confrontation between him and Richardson. Under such circumstances, the jury could have clearly applied the aggressor doctrine and rejected any claim that the defendant acted in self-defense. Even if Richardson initially attacked defendant with the broken glass bottle, the defendant's actions of leaving the scene, returning with a loaded weapon, and encountering Richardson, whom he claimed to fear, clearly placed defendant in the role of the aggressor. As the aggressor, defendant is not entitled to a claim of self-defense.

Furthermore, the jury could have reasonably concluded from this evidence that defendant's actions of repeatedly shooting and stabbing Richardson, who was then unarmed, were not reasonable under the circumstances or apparently necessary. Even if Richardson initially struck defendant with the broken glass bottle, it was not a reasonable response for defendant to leave the scene and return later with a firearm, thus escalating the nature of the confrontation. If defendant truly feared for his life, he could have simply withdrawn from the altercation and stayed away.

Therefore, we find that the evidence is sufficient to support defendant's conviction of attempted second degree murder under either the preponderance of

the evidence standard or the beyond a reasonable doubt standard. This assignment of error is without merit.

For the foregoing reasons, defendant's conviction, habitual offender adjudication and sentence are affirmed.

CONVICTION, HABITUAL OFFENDER ADJUDICATION AND SENTENCE AFFIRMED.