

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE**

MILLENNIA HOUSING MANAGEMENT LTD
Plaintiff (s)

Date: November 5, 2013

-VS-

2013 CVG 008410

MORRIS MITCHELL
Defendant (s)

MAGISTRATE'S DECISION

The Court set this case for trial October 24, 2013 on Plaintiff's first (and only) cause of action. Plaintiff appeared through counsel and Defendant with counsel before Magistrate David D. Roberts, Judge Raymond L. Pianka having referred the case to Magistrate Roberts under Civil Rule 53.

The Court grants judgment to Defendant, concluding that the conduct Plaintiff alleges to have been illegal was not illegal because it was made in self-defense.

Findings of Fact

1. The parties are landlord and tenant under a written lease, a true and accurate copy submitted into evidence as Plaintiff's Exhibit 3 of Plaintiff's Complaint.
2. The tenancy is federally subsidized as part of a project based subsidy.
3. Plaintiff served Defendant with a notice of termination and a notice to vacate (or "3-day notice") under O.R.C. §1923.04, true and accurate copies submitted into evidence as Plaintiff's Exhibit 4 and 5 of Plaintiff's Complaint.
4. On April 4, 2013, Defendant invited an acquaintance to come into his apartment.
5. After a time, Defendant told the acquaintance to leave the apartment.
6. After repeatedly telling the acquaintance to leave without the acquaintance leaving, Defendant took a bag the acquaintance brought with him and put it into the hallway.
7. When the acquaintance did not leave the apartment to get the bag, Defendant used force to make him leave; he grabbed him and wrestled him into the hallway.

8. Defendant locked the entry door of the apartment to keep the acquaintance out.
9. The acquaintance responded by repeatedly slamming his body into the door to force it open.
10. When the door gave way, either Defendant or a friend who was visiting him, struck the acquaintance in the head with a 35 pound barbell.
11. The blow caused the acquaintance to bleed freely but did not stop him from continuing to fight.
12. Defendant again wrestled the acquaintance into the hallway, telling him to stay there while he called for an ambulance.
13. The acquaintance decided to leave instead of waiting for the ambulance.
14. The acquaintance was later discovered on the street and since he was obviously injured, was taken to the hospital and treated.

Conclusions of Law

The Court concludes that Plaintiff is not entitled to judgment on its first cause of action.

Plaintiff seeks to evict Defendant Morris Mitchell for engaging in illegal activity because, on April 4, 2013, Mitchell and a friend attacked an acquaintance who was forcing entry into Mitchell's apartment by battering himself against the apartment's entry door. When the door gave way, and the acquaintance entered, one of the men—either Mitchell or his friend—hit him in the head with a 35 pound barbell. The blow caused the acquaintance to fall. It broke the skin and caused him to bleed freely. But it did not cause him to retreat or stop fighting. Mitchell then forced the acquaintance into the hall where he urged him to stay while Mitchell called an ambulance. The acquaintance, who was not too injured to walk away, chose to leave rather than wait for the ambulance. He was later discovered outside of the building and taken to the hospital for treatment. Plaintiff did not offer any evidence as to the severity of the injury.

The Court concludes that Mitchell's conduct was not in violation of the law because he had the right to act in self-defense once the acquaintance began to batter down the door to his apartment. Plaintiff called as a witness one of the officers who arrested Mitchell for assault, the officer concluding, based on the evidence he observed, that Mitchell and his friend had not been acting in self-defense when they attacked the acquaintance. The officer testified that the nature of the injury, a blow that hit the back of the victim's head with a large quantity of blood spattered at the scene, coupled with

the fact that Mitchell had invited the acquaintance into his apartment, were inconsistent with Mitchell and his friend having acted in self-defense. But the Court found Mitchell's full account of the incident to be credible and it provided details that the officer was not present to observe.

Mitchell testified that he did invite the acquaintance into this apartment but only to allow him to use a cell phone charger, not to stay for a longer visit. Mitchell had a friend visiting but was also caring for his 2 year old son and a nephew. When the acquaintance asked to spend the night, Mitchell told him no. The acquaintance offered to share marijuana with Mitchell if Mitchell would let him stay the night but Mitchell said no to this suggestion. He then repeatedly asked the acquaintance to leave. When words failed, he tried twice to get the acquaintance to leave by taking a bag that he had brought with him and putting it into the hallway. When this did not work, Mitchell used enough force to wrestle the acquaintance through the door and into the hallway. (Plaintiff did not argue that this use of force was illegal). Mitchell then shut the door and locked it. But the acquaintance responded by battering himself against the door over and over with enough force to break through the lock that was holding the door shut. It was only at this point that either Mitchell or his friend struck the acquaintance with the barbell. The blow itself was not enough to cause the acquaintance to retreat; it knocked him down but did not cause him to stop fighting. Yet Mitchell and his friend did not continue to attack with the barbell. Instead, Mitchell was able to get the acquaintance once again into the hallway. The acquaintance finally gave up trying to enter the apartment and left on his own.

Mitchell's credible testimony about the acquaintance's behavior supports his claim of self defense.

In Ohio, the affirmative defense of self-defense has three elements: (1) the defendant was not at fault in creating the violent situation, (2) the defendant had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape was the use of force, and (3) that the defendant did not violate any duty to retreat or avoid the danger. *State v. Williford* (1990), 49 Ohio St.3d 247, 249, 551 N.E.2d 1279, 1281, citing *State v. Robbins* (1979), 58 Ohio St.2d 74, 12 O.O.3d 84, 388 N.E.2d 755, paragraph two of the syllabus.

State v. Thomas, 77 Ohio St.3d 323, 326-27, 673 N.E.2d 1339, 1342-43 (1997). The Court heard no evidence suggesting that Mitchell was at fault for creating the violent situation. He tried to resolve it without violence, first with words and then by putting the acquaintance's bag into the hallway. When he first used force, he used only enough to wrestle the acquaintance into the hallway. At that point, even if Mitchell had wronged the acquaintance, it was entirely the fault of the acquaintance that he responded by battering down the door.

That the acquaintance was battering down the door also demonstrates that Mitchell could have a reasonable belief that he, and his friend and his son and nephew,

were in danger of harm. He had no reason to trust that the acquaintance would stop being violent once he broke the door down.

A person defending himself or herself is privileged only to use that force which is reasonably necessary to repel the attack. *State v. Hendrickson*, 4th Dist. No. 08CA12, 2009-Ohio-4416. Plaintiff argued that the blow from the barbell was in excess of the force needed under the circumstances. The Court would agree with that conclusion if the acquaintance had merely been refusing to leave and Mitchell or his friend had hit him in the head with a barbell to make him leave. But the acquaintance used sufficient force to break down a door and so Mitchell and his friend could honestly and reasonably conclude that he would continue to use that level of violence and attack them once he had forced the door open. They were, therefore, entitled to respond with similar force. Mitchell was not required to try to see if using the same amount of force as before--grabbing the acquaintance to force him into the hall--would be enough, since the acquaintance had responded to that level of force by becoming more violent. Because the door had given way, Mitchell could not use equal force to get the door to close.

Choosing to strike a blow with a heavy barbell made the force potentially lethal. Mitchell's demeanor on the stand when testifying about the barbell persuaded the Court that he did not take lightly that it was the weapon used. But it was reasonable for Mitchell and his friend to conclude that they had to use more force than just their bodies or fists to stop a man intent on battering down a door and the barbell was a weapon ready at hand. Whoever struck the blow--Mitchell or his friend--did not continue to strike with the barbell even though the blow did not stop the acquaintance from continuing to fight. The force used was therefore not more than the force reasonably necessary to repel the attack.

Plaintiff argued that, since Mitchell and his friend had been able to force the acquaintance out of the apartment when he refused to leave, without seriously injuring him, they could, as he was trying to force his way back in, have tried to force him out again without injuring him. And it is plain that they could have taken this approach. But the law of self-defense did not require them to. It gave them the privilege to use more force than that. The Court also concludes that Mitchell's belief that he needed to use force was honest. When testifying, he did not waver in his conviction that he and his friend attacked only because they believed they needed to do so to defend against that attack they were facing.

Mitchell did not fail in any duty to retreat. He met his duty to retreat when he stopped using force and went inside his apartment to shut and lock the door.

Because of the third element, in most cases, "a person may not kill in self-defense if he has available a reasonable means of retreat from the confrontation."

Williford, 49 Ohio St.3d at 250, 551 N.E.2d at 1282, citing *Robbins*, 58 Ohio St.2d at 79-81, 12 O.O.3d at 87-88, 388 N.E.2d at 758-759; *Marts v. State* (1875), 26 Ohio St. 162, 167-168. This requirement derives from the common-

law rule that the right to kill in self-defense may be exercised only if the person assaulted attempted to "retreat to the wall" whenever possible. Annotation, *327

State v. Thomas, 326-27. Even if he had not been in his own home, Mitchell had retreated to the wall. If the acquaintance was intent on battering his way in, retreating to another room would not have had any effect.

Because Mitchell was in his own home and the acquaintance was seeking to force entry, Mitchell had the additional right under the castle doctrine to use force to defend against the assault.

[T]here is no duty to retreat when one is assaulted in one's own home. *Williford*, paragraph two of the syllabus. This exception to the duty to retreat derives from the doctrine that one's home is one's castle and one has a right to protect it and those within it from intrusion or attack. Annotation, **1343 Homicide: Duty to Retreat Where Assailant is Social Guest on Premises (1980), 100 A.L.R.3d 532, 533. The rationale is that a person in her own home has already retreated "to the wall," as there is no place to which she can further flee in safety. *Cannon v. State* (Fla.App.1985), 464 So.2d 149.

Thus, a person who, through no fault of her own, is assaulted in her home may stand her ground, meet force with force, and if necessary, kill her assailant, without any duty to retreat. Annotation, Duty to Retreat, 26 A.L.R.3d at 1299.

Id. at 328. The castle doctrine does not allow the defending party to use any amount of force in response. "Under a self-defense claim, a person is privileged to use only that force that is reasonably necessary to repel the attack." *State v. Hendrickson*, 4th Dist. No. 08CA12, 2009-Ohio-4416. But, for the reasons stated above, the Court concludes that the force used was reasonably necessary.

Plaintiff argued that the Court should doubt Mitchell's credibility concerning all the details of the altercation. It is true that, on cross-examination, Mitchell admitted that he lied to the police when they first arrived, stating that he hit the acquaintance with the barbell when it was his friend who had done it. Later, he told the police that his friend delivered the blow. Mitchell's admission did establish, then, that he might not be completely truthful in all situations. But Mitchell adequately explained his motives in telling the first lie and then in recanting it. At first, he wanted his story to be consistent with what his friend had told the police and he had heard his friend deny hitting the acquaintance with the barbell. But Mitchell soon decided to tell the truth even if it exposed his friend's lie. The Court found this explanation convincing. After all, it would have been in Mitchell's interest to have from the first denied that he struck the acquaintance. He did not stand to gain from the lie; the lie only made it more likely that Mitchell would be arrested. Moreover, even if it was Mitchell who struck the blow—the lies reversed—the Court concludes that Mitchell was entitled to have used force in self-defense. The act was therefore not illegal and not a lease violation. According to

Mitchell's testimony, the police detective who investigated the incident reached the same conclusion, telling Mitchell that the castle doctrine entitled him to use force to defend his home.

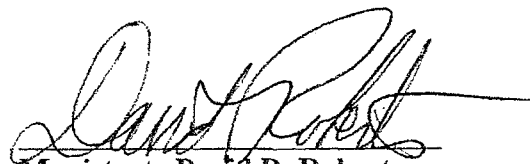
Plaintiff alleged as an alternate ground that Mitchell allowed his guest to bring marijuana into his apartment. But Plaintiff did not offer any evidence showing that the possible marijuana the police found and took with them was ever tested to prove that it was, in fact, marijuana. Plaintiff therefore failed to meet its burden of proof on this issue, making it unnecessary for the Court to consider whether Defendant would be entitled to equitable protection from foreclosure under the circumstances.

The Court grants judgment to Defendant on Plaintiff's first cause of action.

Recommendation

The Court grants judgment for Defendant on Plaintiff's first cause of action.

☒ Judgment for Defendant. (HJEFD1)


Magistrate David D. Roberts

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this *Magistrate's Decision* was sent via regular U.S. Mail to the parties on 11/21/13 ppv.

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
RAYMOND L. PIANKA, JUDGE

MILLENNIA HOUSING MANAGEMENT LTD
Plaintiff (s)

Date: November 5, 2013

-VS-

2013 CVG 008410

MORRIS MITCHELL
Defendant (s)

JUDGMENT ENTRY

The Court, having reviewed the *Magistrate's Decision* of November 5, 2013 under Ohio Rule Of Civil Procedure 53(E)(4), adopts that decision.

The Court grants judgment to Defendant on Plaintiff's first cause of action.



JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this *Judgment Entry* was sent via regular U.S. Mail to the parties on

11/7/13. JPL