

2014 IL App (1st) 122568-U

No. 1-12-2568

June 18, 2014

THIRD DIVISION

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 Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 11 CR 6063
)	
DEMONJA MOORE,)	
)	The Honorable
Defendant-Appellant.)	Joseph Kazmierski,
)	Judge presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant initiated aggression by bumping the victim with a car, and then the defendant shot the unarmed victim four seconds after the victim approached the window of the defendant's car and punched the defendant, the evidence supported the verdict finding the defendant guilty of first degree murder. Remarks on the evidence and permissible inferences from the evidence do not require reversal of the conviction. The trial court did not abuse its discretion when it imposed a sentence in the middle of the available range for first degree murder committed by a defendant personally discharging a firearm.

¶ 2 Demonja Moore shot Brandon Williams to death. The State charged Moore with murder. A jury found Moore guilty of first degree murder and it rejected Moore's arguments that he acted in self-defense, or that the jury should find him guilty of second degree murder. The trial court sentenced Moore to 65 years in prison. On appeal, Moore contends that the evidence does not support the conviction, and the jury should have either acquitted him or found him guilty of second degree murder. Moore also contends that the prosecutor's improper comments require reversal of the conviction, and the trial court imposed an excessive sentence. We find that the State's evidence sufficiently supports the jury's verdict, the prosecutor properly limited his remarks to inferences from the evidence, and the trial court did not abuse its broad discretion in sentencing. Therefore, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 On February 14, 2011, Brandon Williams walked to school with his girlfriend, Ziann Crump. Because snow covered the sidewalks, Williams and Crump walked in the street, northbound on Sacramento, as they approached Harrison. Demonja Moore, driving his friend Jeremy Head to school, picked up Kevin Walton in a parking area on Sacramento near Harrison. Moore carried a gun, partly hidden under his shirt. Moore pulled his car out of the parking area and into the left lane headed north on Sacramento, where traffic had stopped for the light. As Moore passed Crump he spoke to her, and then he exchanged some words with Williams. Williams and Crump walked ahead.

¶ 5 Moore pulled his car into the right lane and bumped Williams. Williams came to the driver's side of Moore's car and punched Moore with both fists. Moore shot Williams in the

chest. The bullet tore through Williams's lung and heart. Williams ran a few steps before collapsing in the parking area. Moore drove off. Crump called 911. A security camera from a store near the intersection recorded the scene. Police later arrested Moore, and a grand jury indicted him for first degree murder.

¶ 6 At the trial, the jury watched the video recording of the encounter. Head testified that after Moore tried to talk to Crump, he asked Williams whether Crump was his girl. Williams said, "[D]on't the f*** you see I'm walking with her. Yeah, that's my girl." The video showed Moore's car bumping Williams and Williams approaching the side of the car. Four seconds after he reached the window, Williams ran off, dying. Both Head and Walton testified that they feared Williams might have a gun, although neither saw him with a weapon. Head demonstrated in court the way Moore held the gun and fired it.

¶ 7 The prosecutor argued to the jury:

"[Moore] was going to provoke a confrontation with Brandon Williams, and he was going to end it with his gun ***.

* * *

*** Brandon Williams had no duty to escape that situation. He had the right, the absolute right, to defend himself. *** He defended himself and Ziann from this guy who just wouldn't let it alone. He had every right to do that under the law ***. *** He had the absolute right to punch Demonja Moore. *** That is what the law provides. ***

*** The Defendant is the initial aggressor. He is not entitled to the use of force. *** There is no evidence that he reasonably believe[d] that he was

subject to imminent death or great bodily harm. *** He is not entitled to claim self-defense ***. The Defendant can't provoke the use of force against himself and then claim, 'Oh, now I can shoot him because he is hitting me because I just hit him with my car.' ***

*** It is ludicrous to argue that the Defendant was provoked. It was the Defendant that was doing the provoking of Brandon Williams. *** It is ludicrous to claim that the Defendant was acting under a sudden and intense passion with all of those deliberate acts done by himself."

¶ 8 Defense counsel did not object to the arguments. Defense counsel argued that the evidence showed that Moore acted in self-defense, or that he had an unreasonable belief that he needed to shoot Williams in self-defense, or that Williams provoked a sudden and intense passion in Moore by punching him.

¶ 9 In rebuttal, the prosecutor again argued that "Williams responded in a way the law allows him to respond. He *** hit the Defendant." This time defense counsel objected that the prosecutor misstated the law. The court overruled the objection. The prosecutor continued, "Is the Defense trying to expect you, Ladies and Gentlemen of the Jury, to believe that if somebody on the street swears at you, you can gun them down? That is ridiculous." The court again overruled defense counsel's objection. The prosecutor continued, "[I]s the Defendant really trying to say saying the 'F' word to him on the street provoked him to ram him with a car and shoot him? That is ludicrous."

¶ 10 Defense counsel did not object to the prosecutor's summary of the argument:

"This started when the Defendant put that gun in his car loaded and took off that day. *** The Defendant wasn't afraid. The Defendant was prepared ***. *** Is he afraid when he pulls up and makes more comments or when he is chasing Brandon Williams with his car or when he rams him with the car? No. Is he even really afraid when Brandon Williams comes over to the car? Absolutely not. That is what he has been waiting for. *** He doesn't take off with the traffic. He has that window rolled down, he has that gun in his hand, and he is ready to use it, and he finally got what he wanted when Brandon finally, after being antagonized and tormented and yelled at and hit with a car, finally goes over to the car, and that is when the Defendant got exactly what he wanted, and that is what he did, he shot him dead."

¶ 11 The court instructed the jury on first and second degree murder and self-defense. The jury found Moore guilty of first degree murder. The trial court sentenced Moore to 40 years in prison for murder, with an added term of 25 years because Moore personally discharged a firearm to cause the death, for a total of 65 years. The trial court denied Moore's motions for a new trial and a reduced sentence. Moore now appeals.

¶ 12 ANALYSIS

¶ 13 Moore raises four arguments on appeal. He contends, first, that the evidence does not support his murder conviction because he acted in self-defense. Second, he argues that if the court rejects the self-defense argument, the court should find that Moore had an unreasonable belief he needed to shoot Williams in self-defense, or that he acted under a sudden and

intense passion, so that we should reduce his conviction to second degree murder. Third, he maintains that we should reverse the conviction due to prosecutorial misconduct in closing argument. Finally, he contends that the trial court abused its discretion when it sentenced him to 65 years in prison. Different standards of review apply to the different arguments.

¶ 14 Sufficiency of the Evidence

¶ 15 When we review the sufficiency of the evidence, we must decide “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), quoted in *People v. Davison*, 233 Ill. 2d 30, 43 (2009).

¶ 16 The parties agree on the principles applicable when the defendant argues that he acted in self-defense:

“To establish self-defense, the defendant must show some evidence that unlawful force was threatened against him; the danger of harm was imminent; he was not the aggressor; that he actually believed that a danger existed, force was necessary to avert the danger, and the type and amount of force was necessary; and that his beliefs were reasonable. [Citations.] While the law does not require the aggressor to be armed for self-defense to be justified, it must appear that the aggressor is capable of inflicting serious bodily harm without the use of a deadly weapon, and is intending to do so. [Citations.]

Once the defendant has met his burden, the burden of proof shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. [Citations]. The State carries its burden if it negates any one of the elements beyond a reasonable doubt." *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1998).

¶ 17 Williams punched Moore repeatedly as Moore sat in the driver's seat of his car and Williams stood outside the car. But Moore initiated the aggression by hitting Williams with his car. The jurors watched the video and could assess whether Moore accidentally bumped Williams after changing lanes. In addition, Moore could have driven off to avoid any further damage from Williams. Thus, the evidence showed both that Moore was the initial aggressor in that he hit Williams with his car, and, because Moore could have driven off, he did not reasonably believe he needed to shoot Williams to end the danger of harm. We find the evidence sufficient to prove that Moore murdered Williams.

¶ 18 **Second Degree Murder**

¶ 19 Next, Moore claims that he proved that he had an unreasonable belief that he needed to shoot Williams in self-defense. "In the context of a challenge to the sufficiency of the evidence to prove a mitigating factor, the test is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were *not* present." (Emphasis in original.) *People v. Thompson*, 354 Ill. App. 3d 579, 587 (2004).

¶ 20 Moore fired the shot three or four seconds after Williams approached the car window. The trier of fact could conclude, from the fact that Moore had a gun in his lap, under a shirt,

and from the rapidity of the response, that Moore prepared himself to shoot before he initiated the aggression by bumping Williams with his car. See *People v. Blackwell*, 171 Ill. 2d 338, 359 (1996) (shooting that took place 15 seconds after fist fight started was first degree murder). A reasonable trier of fact could find that Moore did not prove he believed he needed to shoot Williams in self-defense.

¶ 21 Moore also argues that he showed that the punches provoked him into shooting Williams. Illinois courts have addressed the issue of provocation in murder cases as follow:

"The question to be asked is whether there existed such provocation as would have caused the state of mind claimed in an ordinary person under the same circumstances. 'A mere attempt of the deceased to strike defendant with his fist would not justify the latter in meeting the assault with a deadly weapon or reduce the grade of the homicide to manslaughter.'

* * *

A slight provocation will not be adequate since the provocation must be proportionate to the manner in which the accused retaliated and therefore if accused on a slight provocation attacked deceased with violence out of all proportion to the provocation and killed him, the crime is murder. This is especially true if the homicide was committed with a deadly weapon." *People v. Matthews*, 21 Ill. App. 3d 249, 252-53 (1974), quoting *People v. Pursley*, 302 Ill. 62, 73 (1922).

¶ 22 After Moore hit Williams with his car, a deadly weapon, Williams punched Moore in the face. Moore retaliated with a bullet shot through Williams's chest. The jury found that the provocation did not reduce the crime to second degree murder. A rational trier of fact could find that Moore did not act under a sudden and intense passion, and that the disproportionate retaliation, when Moore responded by firing a gun at an unarmed victim who was fighting with his fists, did not provide the mitigation needed to reduce the grade of the crime. We find the evidence sufficient to support the verdict of guilty on the charge of first degree murder.

¶ 23 Closing Argument

¶ 24 Moore contends that the prosecutor's closing argument requires reversal. We apply *de novo* review, in line with *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), because we find that the standard applied makes no difference to the result. See *People v. Land*, 2011 IL App (1st) 101048, ¶ 151. Courts afford prosecutors wide latitude in closing argument. *People v. Caffey*, 205 Ill. 2d 52, 131 (2001). Prosecutors may properly remind the jury of the evidence and draw reasonable inferences from that evidence. *People v. Pasch*, 152 Ill. 2d 133, 184 (1992).

¶ 25 The prosecutor argued that Moore armed himself to prepare for a violent encounter, and then he provoked just such an encounter when he hit Williams with his car. The prosecutor argued that Moore had the gun ready and the window down in preparation for shooting. If Moore wanted to avoid a confrontation he could have driven off before Williams could cause any significant damage. Instead Moore shot Williams through the heart less than four seconds after Williams reached the window. We find that the prosecutor's closing argument

relied on the evidence and drew reasonable inferences about Moore's state of mind. Notably, defense counsel did not object to the remarks at trial.

¶ 26 Defense counsel objected at trial to the prosecutor's argument that Williams had a right to punch Moore after Moore hit him with the car. "[I]t has long been the law in Illinois that a person who is not the initial aggressor has no duty to retreat." *People v. White*, 265 Ill. App. 3d 642, 651 (1994). Because the evidence supports the inference that Moore initiated the aggression, Illinois law allows Williams to defend himself. *White*, 265 Ill. App. 3d at 651. We find that the trier of fact could infer from the evidence that when Williams punched Moore he did so to defend himself against further aggressive acts by Moore. Again, we cannot say that the prosecutor's argument was not based on reasonable inferences from the evidence or that it falls outside the wide latitude courts may afford parties for closing argument. Therefore, we hold that the prosecutor's closing argument includes no impropriety that would require reversal of the conviction.

¶ 27 Sentence

¶ 28 Finally, Moore argues that the court imposed an excessive sentence. The sentence of 40 years falls in the middle of the available range for murder. See 730 ILCS 5/5-4.5-20(a) (West 2010) (sentencing range for first degree murder is 20 to 60 years). Moore had prior convictions for two felonies, aggravated unlawful use of a weapon and aggravated battery to a police officer. We cannot say that the trial court abused its discretion when it sentenced Moore for a senseless murder to a term in the middle of the available sentencing range. See *People v. Hood*, 191 Ill. App. 3d 129, 136 (1989) (mid-range sentence for murder not an abuse of discretion despite remorse, rehabilitation, and minor provocation); *People v. Cox*,

377 Ill. App. 3d 690, 709 (2007) (40 year sentence for murder, imposed on a defendant with little criminal history, not an abuse of discretion, even though the use of a firearm extended the sentence to 65 years). Moore points out that the 65 year sentence effectively ends any chance that Moore will achieve release from prison. However, we cannot rewrite or ignore the statutes that make this lengthy sentence fall in the middle of the available range for murders committed by a defendant who personally discharged a firearm to kill the victim.

¶ 29

CONCLUSION

¶ 30

The evidence does not require reversal of the conviction for first degree murder. Neither does the evidence require reduction of the offense to second degree murder. The prosecutor's remarks did not exceed the bounds of permissible comment on the inferences jurors could draw from the evidence. The trial court did not abuse its discretion by imposing a sentence in the middle of the available range for first degree murder committed by personally discharging a firearm. Accordingly, we affirm the trial court's judgment.

¶ 31

Affirmed.