2017 IL App (1st) 150483-U
No. 1-15-0483
May 9, 2017

SECOND DIVISION

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,	)	
	)	No. 10 CR 7625
v.	)	
	)	
RONALD JOHNSON,	)	The Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 ***Held***: The jury could reject the defendant's unsworn statements to police that when he beat, stabbed, and strangled the victim, he believed that he needed to protect himself from the victim. Evidence that the defendant suffered only a superficial cut, while the victim suffered extensive injuries, supported the jury's finding that the defendant did not act from even an unreasonable belief that he needed to defend himself. The trial court did not abuse its discretion when it sentenced the defendant to a term near the middle of the available range for first degree murder.

¶ 2 The trial court sentenced Ronald Johnson to 35 years in prison based on a jury verdict finding Ronald guilty of first degree murder. In this appeal, we hold that a rational trier of

fact could find that Ronald failed to prove second degree murder, the trial court's incorrect admonishments to the jury and the prosecutor's misstatements in closing argument do not require a new trial, and we cannot say that the trial court abused its discretion in sentencing Ronald. Accordingly, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 In January 2010, Ronald found housing through a charitable organization that helps veterans in need. Ronald qualified for assistance because he served as a cook in the United States Navy from 1997 to 1999. He moved into a house where Henry Jackson, Wayne Johnson, and some other men lived.

¶ 5 On February 6, 2010, Jackson and Ronald went to a meeting together and returned home together around 4 p.m. Jackson left the house around 5:30 p.m., while Wayne was getting ready to go out to work at his new job.

¶ 6 Another resident of the house called police that night around 10 p.m. The officers first on the scene found Wayne dead on the living room floor. Police found several knives on the floor, some bloody, and a bloody unwound wire hanger. An officer took the caller to the police station for questioning, and other officers took many photographs of the scene.

¶ 7 Jackson returned after 10 p.m., and Ronald walked back to the house around 11:30 p.m. Police took them to the police station for questioning. Jackson told police about the meeting and that when he left the house, Wayne and Ronald were both at home.

¶ 8 Detective Albert Perez interviewed Ronald that night. Ronald told Perez that he went to the meeting with Jackson, and that from the meeting he went directly to visit his father at a specific address on Lawrence. Ronald said he had not been in the house between 1 p.m. and

11:30 p.m. Perez noticed a dark stain on Ronald's black pants. Perez asked Ronald to unzip his jacket. When Ronald did so, Perez saw red stains on the inside of the jacket. Perez asked Ronald to remove the jacket and pants. Each layer underneath showed more dark or red stains. Perez sent all the clothing to a lab for testing, and gave Ronald a paper jumpsuit. An officer took photographs which showed that Ronald had a wound about 4 inches long on his side and a shallow cut across a fingertip. Other photographs showed no bruises or other injuries.

¶ 9 Based on the conflict between Ronald's statements and Jackson's statement, and the possible blood stains on Ronald's clothes, Perez suspected Ronald may have committed a crime. Perez decided to record the rest of his interview with Ronald. Ronald said his clothes got bloody that night when he had sex with a girl who was "on her period." Police released Ronald from custody.

¶ 10 On February 7, 2010, police went to the address where Ronald said he had visited with his father. Ronald's father did not live at the address, and a security guard at the building told police that no relative of Ronald lived at that address. The police lab determined that Ronald's clothing had many bloodstains with Wayne's DNA. Police arrested Ronald on March 25, 2010, and videorecorded another interview with him.

¶ 11 Ronald said he stayed at the meeting on February 6, 2010, until 6:30 p.m., and from there he went to the El station without stopping in the house. He went to visit his father at an address on Madison, staying until 10 p.m., and then he came home. The interviewer reminded Ronald that he said his father lived on Lawrence. Ronald said he met his father at his father's residence on Madison, then went with his father to his father's second residence

on Lawrence. They both had sex with the girl who was on her period, and they paid her $20. The interviewer stopped the interview.

¶ 12 When the interview resumed some hours later, the interviewer said that the tests showed that Wayne's blood covered the clothes Ronald wore on February 6, 2010. Ronald changed his account of the day completely. He admitted that he came home from the meeting with Jackson and stayed there after Jackson left. Ronald said that on some occasions he had heard Wayne talking on the phone, saying that if people wanted to better themselves, they had to work for it. Unlike the other residents of the house, Ronald had no job. Ronald said that he felt Wayne commented on work to taunt him. After Jackson left the house on February 6, 2010, Ronald went to Wayne's room to confront him about the taunts. Ronald told police Wayne asked Ronald what he was doing, and Ronald grabbed Wayne. They started fighting and went into the kitchen, next to Wayne's room. Ronald said Wayne grabbed a knife and tried to stab Ronald. Ronald got the knife out of Wayne's hand and stabbed Wayne. Wayne grabbed another knife and cut Ronald's side. Ronald stabbed Wayne repeatedly. While Wayne lay on the kitchen floor, Ronald got a wire hanger from the bathroom. He tried to use the hanger to choke Wayne, but he found he could not get a good grip.

¶ 13 Ronald told police that Wayne got up again and kept struggling. Several times during the interview, Ronald said he struck, stabbed and choked Wayne to protect himself. Ronald hit Wayne's head with a wooden stool, breaking the stool. Ronald said he "had to finish it" because "if it wasn't him then it was gonna be [Ronald]." Ronald sat on top of Wayne and choked him until Wayne stopped moving. Ronald said he did not know whether Wayne was dead, but he panicked and left.

¶ 14 Prosecutors charged Ronald with first degree murder. Ronald requested trial by jury.

¶ 15 Trial

¶ 16 The trial court informed the venire members of the fundamental legal principles for criminal trials. The court said:

> "[T]he presumption of innocence *** cloaks the defendant. Do you understand and accept this means the defendant need not prove his innocence. Does anyone have any difficulty with that? (No response.) That he need not call any witnesses or present any evidence on his behalf. Does anyone have any difficulty with that? (No response.)
>
> That he need not testify or if he chooses not to testify, you must not consider that in any way in arriving at your verdict. Does anybody have any difficulty with that? (No response.)"

¶ 17 Defense counsel did not object. The court did not repeat the questions with individual jurors.

¶ 18 The State presented a medical examiner, who testified that Wayne died of strangulation. The examiner found signs of severe blunt force trauma to Wayne's head, numerous abrasions to his head, hemorrhaging of the eyes and neck, and a broken bone in his neck. The examiner found 13 stab wounds (knife wounds deeper than their length) to Wayne's lower back, two to his mid back, one to the back of his neck, and seven more to the front of his torso. Wayne also suffered several incised wounds (knife wounds longer than their depth), including some on his hands, which the examiner considered defensive wounds.

¶ 19 Police officers identified photographs of the scene. The photographs showed several knives on the floor of the kitchen and the dining room of the house. The wire hanger, put in somewhat of a circular shape with its ends untwisted, appeared on the kitchen floor.

¶ 20 Jackson identified several pictures of the house, including a phone jack pulled off the wall and a phone cord trailing across the dining room, still attached to the phone, left on the floor. Jackson said that when he left for the evening on February 6, 2010, the phone jack was affixed to the wall and the phone and cord were not on the floor.

¶ 21 Before prosecutors finished presenting the State's case, a juror sent the judge a note in which she said:

> "I would like answers to the following questions. Perhaps they could be posed to both sides.
>
> ***
>
> *** How did the defendant have time to straighten out the hanger in order to strangle the victim?"

¶ 22 The court brought the juror into chambers, with defense counsel and a prosecutor. She assured the court that she could debate the facts with the other jurors in accord with the judge's instructions based on the evidence presented at trial, even if the parties failed to answer her questions. The court left her on the jury.

¶ 23 The prosecutor then showed the jury excerpts from the police interviews with Ronald. The excerpts showed Ronald lying about visiting his father and about having sex with a girl before returning to the shared house. The video also showed Ronald giving his account of

the fight with Wayne, including Ronald's repeated assertions that he beat, stabbed and choked Wayne to protect himself.

¶ 24 In closing arguments, the prosecutor said:

"[Wayne] tried to run away from [Ronald]. ***

What about that phone cord that's pulled out from the wall? You think Wayne Johnson tried to get help? Yeah. Because Wayne Johnson was the person who was being hunted that night. And he wasn't going to let him get away. He wasn't going to let him call for help."

¶ 25 The court overruled defense counsel's objection. The prosecutor said:

"This is the verdict form for first degree murder, and when you Ladies and Gentlemen sign your name to this, you should be proud. This is the last salute that we can give to Wayne Johnson."

¶ 26 The court again overruled defense counsel's objection. Later, the prosecutor argued:

"I want to talk a little about the defendant's injuries.

***

*** Look at that cut. Can you see?

*** Look at that picture real closely. Is that a justified killing? With this scrape?

***

And if Wayne Johnson was the cause of those injuries, if Wayne Johnson caused that cut or that scrape on his side, good Lord, he was fighting for his life.

* * *

> Even when the defendant chased him down, the hunter, the hunted, Wayne still had no chance.
>
> * * *
>
> *** It was a jab and a slice, a jab and a slice, a jab and a slice. Over and over and over again. Turning Wayne into less than a man, urinating himself on that carpeted floor.
>
> [Defense counsel]: Objection.
>
> THE COURT: Sustained.
>
> [Prosecutor]: Look at the pictures, Ladies and Gentlemen. You judge for yourself."

¶ 27 The prosecutor also addressed defense counsel's argument that Wayne's acts seriously provoked Ronald to such an extent that the jurors should find second degree murder. The prosecutor said, "Serious provocation. *** That is a circumstance[] when your child is murdered or raped." The court sustained defense counsel's objection.

¶ 28 The jury found Ronald guilty of first degree murder. The trial court denied Ronald's motion for a new trial. The presentence investigation report indicated that Ronald graduated from high school in 1994, and he completed a culinary arts program at Robert Morris College in 2007. He had a spotty employment history. He took care of his mother during her last years. After she died in 2009, he lived at various shelters in Chicago. A court found him guilty of marijuana possession in 2001, and he served 3 month of court supervision. He also

had a conviction for criminal trespass to a vehicle in 2010, for which he served 12 months of court supervision. He had no other offenses on his record.

¶ 29 Ronald's sister, aunt and cousin testified at the sentencing hearing. All attested to Ronald's good character. Wayne's son also sent a victim impact statement to the court. The court sentenced Ronald to 35 years in prison. The court denied Ronald's motion to reconsider the sentence. Ronald now appeals.

¶ 30 ANALYSIS

¶ 31 In this appeal, Ronald argues (1) the jury should have found him guilty of second degree murder; (2) prosecutorial misconduct in closing argument denied him a fair trial; (3) this court must reverse the judgment because the trial court failed to admonish the jury in accord with Supreme Court rules; and (4) the court imposed an excessive sentence.

¶ 32 Second Degree Murder

¶ 33 The second degree murder statute provides:

> "(a) A person commits the offense of second degree murder when he or she commits the offense of first degree murder * * * [and a]t the time of the killing he or she believes the circumstances to be such that, if they existed, would justify or exonerate the killing ***, but his or her belief is unreasonable." 720 ILCS 5/9-2(a) (West 2010).

¶ 34 Ronald concedes that the prosecution presented sufficient evidence to prove him guilty of first degree murder. In this context, where the defendant bears the burden of proving mitigation, we will not reverse the judgment if "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." *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996).

¶ 35 Ronald relies on the statements he made to police as uncontradicted evidence that he believed he needed to defend himself when he stabbed, beat and strangled Wayne. "Where the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury." *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981). However, "[t]he trier of fact is not obligated to accept a defendant's claim of self-defense; rather, in weighing the evidence, the trier of fact must consider the probability or improbability of the testimony, the circumstances surrounding the killing and the testimony of other witnesses." *People v. Rodriguez*, 336 Ill. App. 3d 1, 15 (2002).

¶ 36 Here, Ronald's lies to the police thoroughly impeach him. The jurors had little reason to believe any of Ronald's unsworn statements to police. Ronald bore no visible bruises, one long but superficial cut to his side and one cut to his fingers. Ronald's bludgeoning and stabbing apparently left Wayne sufficiently incapacitated that Ronald had time to go to another room, find a wire hanger, untwist the wire to separate the ends, and use the hanger to try to choke Wayne.

¶ 37 Even if jurors chose to believe some part of Ronald's statements, the evidence supported the verdict. We find this case similar to *People v. Ingram*, 114 Ill. App. 3d 740 (1983). Ingram testified that the victim had a knife and swung it at Ingram, cutting his hand. Ingram then knocked the knife out of the victim's hand, picked it up and stabbed and slashed the victim, leaving 25 separate knife wounds. The trial court found Ingram guilty of first degree

murder. On appeal, Ingram argued that if the appellate court rejected his argument that he acted in self-defense, it should find that he committed voluntary manslaughter, because he had an unreasonable belief that he needed to defend himself from the knife attack. The appellate court said:

> "We heretofore concluded defendant was not acting in self-defense when he inflicted the knife wounds upon decedent and reject his argument that the degree of the offense should be reduced because he reasonably believed his conduct was justified. In our view of the evidence, as also determined by the trial court, any necessary self-defense considerations ceased after defendant disarmed the decedent. There is no evidence of conduct thereafter on the part of decedent which could either reasonably or unreasonably give rise to a belief on the part of defendant that deadly force was necessary to prevent injury to himself." *Ingram*, 114 Ill. App. 3d at 744.

¶ 38 By the time Ronald had taken the knife from Wayne and left him on the floor, bleeding from numerous stab wounds to his back, Ronald faced no danger from Wayne. Ronald had time to find and untwist a wire hanger. A reasonable trier of fact could conclude that Ronald, at that point, did not have even an unreasonable belief that he needed to choke Wayne in self-defense. See *Blackwell*, 171 Ill. 2d at 358-59. Accordingly, we will not reduce the conviction to second degree murder.

¶ 39 Closing Argument

¶ 40 Our supreme court has clarified standards for reviewing closing arguments. "Statements of counsel and argument based upon facts and circumstances proved, or upon legitimate

inference drawn from them, do not exceed the bounds of proper debate." *People v. Shum*, 117 Ill. 2d 317, 347 (1987) "Prosecutors are afforded wide latitude in closing argument. *** Misconduct in closing argument is substantial and warrants reversal and a new trial if the improper remarks constituted a material factor in a defendant's conviction. [Citation.] If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Our supreme court has used both de novo review and abuse of discretion as standards for reviewing the trial court's rulings on closing arguments. *Wheeler*, 226 Ill. 2d at 121; *People v. Blue*, 189 Ill. 2d 99, 128 (2000). We need not resolve the apparent conflict, because we reach the same result under either standard. See *People v. Land*, 2011 IL App (1st) 101048, ¶¶ 148-151.

¶ 41 Ronald objects to four of the prosecutor's remarks. We will consider the cumulative effect of the remarks. *People v. Beltran*, 2011 IL App (2d) 090856, ¶ 61. First, the prosecutor said, "This is the last salute that we can give to Wayne Johnson." Ronald argues that the remark unfairly highlights Wayne's military service and encourages an "us versus them" mindset. *People v. DeSantiago*, 365 Ill. App. 3d 855, 865 (2006). We agree that Wayne's service had no evidentiary value, and the prosecutor used Wayne's service to arouse the passions of the jury. See *People v. Donahue*, 2014 IL App (1st) 120163, ¶ 117. We also agree that the prosecutor's reference to the jurors plus the prosecutors as "we," in a context that excluded the defendant and defense counsel from the group, improperly encouraged an

"us versus them" mindset. See *DeSantiago*, 365 Ill. App. 3d at 865. We find that the trial court erred when it overruled the objection to the remark.

¶ 42 Next, the prosecutor told the jurors that "[s]erious provocation" referred to "a circumstance[] when your child is murdered or raped." The trial court sustained Ronald's objection to the improper remark. Illinois courts usually presume that a sustained objection to an improper remark suffices to cure error in the argument to the jury. *People v. Gonzalez*, 142 Ill. 2d 481, 491 (1991). We see no reason not to apply the usual presumption here.

¶ 43 Ronald also objected to some comments as misstatements of the evidence. The prosecutor said, "Wayne Johnson was the person who was being hunted that night. And he wasn't going to let him get away. He wasn't going to let him call for help." Later, the prosecutor added, "the defendant chased him down, the hunter, the hunted." We find that the comments reflect reasonable inferences from the evidence. Wayne suffered a horrific beating and stabbing. At some point between the time Jackson left and the time he came home, the phone jack detached from the wall and the phone and cord fell to the floor. A trier of fact could infer that Wayne tried to call for help during the beating. The stabbing began in the kitchen and ended in the dining room. One could infer, from the relative injuries, that Wayne tried to get away and Ronald pursued him. The trial court did not err by overruling defense counsel's objection to the comment. See *Shum*, 117 Ill. 2d at 347-48.

¶ 44 The prosecutor also said that Wayne "urinat[ed] himself on that carpeted floor." No evidence supported the assertion that Wayne urinated during the beating and stabbing. The medical report showed that Wayne did not urinate during the beating. The trial court correctly sustained Ronald's objection to the remark. Ronald contends that the prosecutor

undercut the beneficial effect of the trial court's ruling by arguing, "Look at the pictures, Ladies and Gentlemen. You judge for yourself." See *People v. Jones*, 2016 IL App (1st) 141008, ¶ 25.

¶ 45 We find one error in the trial court's rulings during closing argument. The court should have sustained Ronald's objection to the prosecutor's comment that a verdict of guilty "is the last salute that we can give to Wayne." We also find some possible impropriety in the prosecutor's remark, following a sustained objection, that jurors could decide for themselves whether pictures showed Wayne's urine, when no evidence supported the assertion. We find that the remarks, considered cumulatively, did not significantly affect the trial. The prosecution presented a convincing case that Ronald committed first degree murder and not second degree murder. The case depended upon (1) Ronald's lies told to the police during the investigation; (2) the pictures showing Ronald virtually unharmed a few hours after the fight, contrasted with the medical report indicating Wayne's very extensive injuries including more than a dozen stab wounds to his back; and (3) the untwisted wire hanger, showing that Ronald had time, after he had mostly incapacitated Wayne, to go to another room, find a wire hanger, untwist the hanger and use it as a wire with which he tried to choke Wayne. In view of the evidence supporting the verdict, we find that the improper comments of the prosecutor did not contribute to the conviction. See *People v. Runge*, 234 Ill. 2d 68, 142-43 (2009).

¶ 46 *Voir Dire*

¶ 47 The State admits that the trial court failed to ask the venire the questions required by Supreme Court Rule 431(b). Ill. S. Ct. R. 431(b) (eff. July 1, 2012); *People v. Wilmington*, 2013 IL 112938 ¶ 32. Ronald admits that his counsel failed to object to the error. We review

the issue only for plain error, or as an indication of ineffective assistance of counsel. See *People v. Mueller*, 2015 IL App (5th) 130013, ¶ 41; *People v. Manning*, 241 Ill. 2d 319, 333 (2011).

¶ 48 When a defendant forfeits an issue by failing to object at trial, this court may review the issue where "either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Our supreme court has held that violations of Rule 431(b) do not require reversal as serious error under the second prong of the plain error rule. *People v. Thompson*, 238 Ill. 2d 598, 610-11 (2010). We have already held that the evidence here is not closely balanced, and therefore we find no plain error. See *Wilmington*, 2013 IL 112938, ¶ 34.

¶ 49 Similarly, because the evidence convincingly proves that Ronald committed first degree murder and not second degree murder, we find no reasonable probability that Ronald would have achieved a better result if his attorney had objected to the violation of Rule 431(b). See *People v. White*, 2011 IL 109689, ¶ 133. Therefore, we find that the failure to object to the violation of Rule 431(b) does not prove ineffective assistance of counsel. *White*, 2011 IL 109689, ¶ 134.

¶ 50 Sentence

¶ 51 Finally, Ronald contends that the trial court imposed an excessively harsh sentence. He asks this court to exercise its power under Supreme Court Rule 615(b)(4) (Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967) to reduce his sentence.

¶ 52 Our supreme court has instructed the appellate court that it should exercise the power to reduce sentences "cautiously and sparingly." *People v. O'Neal*, 125 Ill. 2d 291, 300 (1988).

"A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. [Citation.] A sentence will be deemed an abuse of discretion where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212 (2010), quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000), "A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). "[I]f mitigating evidence is presented at the sentencing hearing, this court presumes that the trial court took that evidence into consideration, absent some contrary evidence." *People v. Shaw*, 351 Ill. App. 3d 1087, 1093, (2004). "The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently." *Stacey*, 193 Ill. 2d at 209.

¶ 53 Ronald stresses that he had no prior convictions for violent offenses, and only two prior convictions of any sort, both for relatively minor offenses. He served in the navy. He earned a high school diploma and a degree in culinary arts. He had some work history, a supportive family, and several of the family members testified to his good character. He also had a difficult childhood in foster care. He took care of his biological mother for some years towards the end of her life. After she died, he lived in homeless shelters.

¶ 54 Wayne's body bears evidence of an exceptionally brutal beating, with numerous stab wounds, a broken bone in the neck, and many abrasions and bruises. The trial court sentenced Ronald to a term somewhat less than the middle of the available range for first degree murder. See 730 ILCS 5/5-8-1(a)(1)(a) (West 2010). Although we agree that the trial court imposed a harsh sentence, we cannot say that the court ignored evidence in mitigation, and we cannot say that the sentence "is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, because we find that the trial court did not abuse its broad discretion for sentencing, we affirm the sentence.

¶ 55 CONCLUSION

¶ 56 The evidence supports the jury's finding that Ronald committed first degree murder and not second degree murder. The court ruled correctly on all but one of Ronald's objections to the prosecutor's closing arguments, and the prosecutor's misstatements did not constitute a material factor leading to the conviction. The trial court's violation of Rule 431(b) did not amount to plain error, and counsel's failure to object does not prove ineffective assistance of counsel. We cannot say that the trial court abused its discretion when it imposed a sentence near the middle of the available range for first degree murder. Accordingly, we affirm the trial court's judgment.

¶ 57 Affirmed.