

2018 IL App (1st) 160156-U
No. 1-16-0156
Order filed September 25, 2018

Second Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 18420
)	
CHRISTOPHER LOVE,)	Honorable
)	Arthur F. Hill Jr.,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's conviction for first-degree murder is affirmed because he did not show that a mitigating factor existed to reduce his conviction to second-degree murder. The trial court did not abuse its discretion in denying the defendant's request that the jury be instructed on involuntary manslaughter.
- ¶ 2 Following a jury trial, defendant Christopher Love was convicted of first-degree murder and sentenced to 26 years in prison. On appeal, Love contends his conviction should be reduced to second-degree murder because the evidence supported a finding that he either: (1) had a belief,

though unreasonable, in the need for self-defense; or (2) acted under a sudden and intense passion resulting from serious provocation. Love also argues that because some evidence was presented to support a jury instruction on involuntary manslaughter, the trial court erred in denying his request for that instruction. Finding no error, we affirm.

¶ 3 Love's conviction arose from the stabbing death of Sarai Michaels in a hotel room where she was sent by an escort service to have sex with Love. The only description of the fatal encounter heard by the jury was Love's videotaped statement to police in which he said Michaels held a knife to his neck and demanded money after their encounter.

¶ 4 Love was charged with first-degree murder on two theories: (1) intentional or knowing; and (2) knowing his acts created a strong probability of death or great bodily harm. Before trial, the court granted Love's motion seeking to offer testimony of Michaels' prior acts to demonstrate her propensity for violence and aggressiveness pursuant to *People v. Lynch*, 104 Ill. 2d 194, 199-201 (1984).

¶ 5 In 2011, Tramaine Craig and her husband, Marcus Moore, operated an escort service in Chicago for which Michaels worked. Craig answered phone calls from clients, who saw advertisements on various websites. Craig would then contact the escort and arrange the hotel room. Craig directed the client to call back when he arrived at the designated hotel, and Craig would then provide the client with a room number. Craig made those arrangements using a Google Voice phone number so her actual phone number was not visible to the client.

¶ 6 Around 3 p.m. on October 10, 2011, Craig received a call from Love and arranged for Love to meet Michaels at the Hotel Felix in Chicago. Craig told him the price would be \$150 for an hour. When Love arrived at the hotel, he called Craig, who told him what room to go to.

¶ 7 A few hours later, Love called Craig and asked to see Michaels again at around 9 p.m. They again discussed a price of \$150 per hour. Craig told Love to call when he arrived at the hotel because she did not know what other appointments Michaels had. While Craig was speaking with Love and before she could give him further details on the appointment, her cell phone became inoperable for about an hour. During that time, Love repeatedly called back, trying to reach Craig, who eventually forwarded the Google Voice phone calls to Moore's phone. Craig testified she did not direct Love to a hotel room because she was still trying to contact Michaels.

¶ 8 Moore drove Michaels to the Hotel Felix around 9 p.m., went to a room with her briefly and then left. That room was the same room where Michaels and Love met earlier. Moore later tried to call Michaels and went to her room when she did not answer. Moore opened the hotel room door and found Michaels dead on the floor.

¶ 9 Denise Bunch worked at the front desk of the Hotel Felix and was on duty from 3 p.m. to 11 p.m. on October 10, 2011. At 3:15 or 3:30 p.m., Bunch saw Michaels come into the hotel and also saw Love in the lobby.

¶ 10 Around 7 p.m., Bunch saw Love in the lobby again, pacing, looking at his phone and talking on the phone. Love had changed clothing since Bunch saw him earlier and was wearing a gray sweatshirt with the hood up. Near the end of her shift that evening, Bunch saw Love leave the lobby wearing the same sweatshirt with the hood down. When Bunch saw him leaving the hotel, Love had a white towel around his shoulders. Bunch identified Love in a police photo array and in a lineup over the next two days. Security camera video confirmed Bunch's observations and also showed Love and Michaels entering the elevator shortly before the murder.

¶ 11 After the murder was reported, Chicago police detective Edward Heerdt went to the hotel room at about 1 a.m. on October 11. Inside the room, a desk chair was overturned and a long knife blade with dried blood on it was on the floor next to Michaels's body. The blade was 5 ¼ inches long and 1 ¼ inches wide. Several towels with red stains were in the bathroom. Police found a cell phone that had been broken into pieces behind a vending machine down the hall from the hotel room and it was determined that between 3:03 p.m. and 10:49 p.m. on October 10, 52 calls had been made from that phone to the escort service.

¶ 12 Love was arrested at his home on October 11. At the time of his arrest, Love was 6 feet 4 inches tall and weighed 205 pounds. According to the autopsy, Michaels was 5 feet 3 inches tall and weighed 191 pounds.

¶ 13 Love's videotaped statement to police on October 11 was admitted into evidence and published to the jury. Love stated he had called the escort service on October 10 after seeing an ad on the internet and was told the price was \$150. He had sex with Michaels at the hotel that afternoon, and she told him afterward the \$140 that he gave her was "fine."

¶ 14 Later that day, Love called the service again and was told to arrive at the hotel at 9 or 10 p.m. At the hotel, Love called the service about 20 times but did not receive an answer. Love received a text message from a different number asking him to "give me 10 minutes" and then got a call from Michaels, who told him to go to the room. Love then realized Michaels was outside the hotel. When she came inside, they went upstairs together to the same room they had been in a few hours earlier.

¶ 15 In the room, Michaels asked Love what he wanted and he told her he just wanted “a quickie.” Michaels said a half-hour would be \$150 and an hour would be \$200, and she said she was in a hurry to meet a friend.

¶ 16 Love initially told police he only had \$80; later in the interview, he told police he had \$120 with him. After Michaels performed oral sex, she asked him for payment. Love told her he could give her \$80, and Michaels said she did not do anything “for less than a hundred.” Love told police he was going to “see if I can pull out another \$20 or something” and that he turned away from Michaels. When Love turned back toward Michaels, “all I see is her holding the knife and she just pushes me up against the wall.” Michaels held the knife against his neck. Love said he “just kind of reacted” and saw Michaels “kind of falter and I tried to take the knife.” He stated: “I grabbed her arm and I tried to like just maneuver it out of her hands and in the process, my fingers got cut. *** After that it was pretty much a struggle. I tried to push her away.”

¶ 17 According to Love, during the struggle, Michaels pushed Love into the desk and leaned toward him but Love turned the knife away and was able to angle it toward her neck. Love “blacked out for a second” and was “just trying to defend myself at that point.” He pushed the knife into her neck as she tried to wrestle it from him and regain control. Love said after he first stabbed Michaels in the neck, she “stopped for a second, and didn’t like let it up, but then she came back at me, at which point I just kind of forced it [the knife] through.” Love said he was in fear for his life. Michaels continued to push him against the desk, and he said once he regained his balance and was able to get some “power behind myself,” the knife “just went like through her neck.” Love “poked” her in the neck two more times but could not recall stabbing her

anywhere else. The knife blade broke away from the handle while in Michaels's neck. Michaels fell to the floor on her stomach.

¶ 18 Love panicked and washed his hands in the bathroom sink. He put his sweatshirt, which had blood on it, and the knife handle in a black bag that was in the room, took the stairs to the hotel's first floor and left through the front door. Love rode a train to Armitage and threw the bag into a dumpster. Later that night or the next day before he was arrested, Love discarded the shoes and pants he wore that night in a restaurant dumpster behind his apartment.

¶ 19 According to Dr. Latanja Watkins, an assistant Cook County medical examiner who performed Michaels' autopsy, Michaels sustained seven stab wounds and six incised wounds that caused her death. Dr. Watkins explained that a stab wound is "deeper than it is long," and an incised wound is more shallow and is "longer than it is deep." Of Michaels's stab wounds, 12 of the wounds were to her neck, with some in the front and some in the back of the neck. One stab wound fractured Michaels' fifth and sixth vertebrae, and another stab wound cut her voice box. It was not possible to determine which wounds occurred first. Michaels also had several superficial puncture wounds, as well as a bruise on her right upper leg and a scrape on her right lower leg.

¶ 20 Love presented four witnesses, who testified to prior incidents of aggressive behavior by Michaels. Tremain Holling was Michaels's former boyfriend. On July 31, 2011, Michaels came to Holling's house in LaCrosse, Wisconsin at 3:30 a.m., intoxicated. She threw rocks at Holling's window and they argued. Holling called police.

¶ 21 The two police officers who responded to Holling's call related that Michaels was "verbally belligerent" and tried to pull away from one of the officers as he held her. Michaels

was charged with misdemeanor disorderly conduct and resisting arrest. Holling did not inform the officers that Michaels had a weapon or that she had threatened his life.

¶ 22 Another LaCrosse, Wisconsin police officer testified regarding an earlier incident on April 16, 2010, when he responded to a call at a gas station where Michaels appeared intoxicated. The officer later went to Michaels' residence and found her there even though the officer had told her not to go home to her children in her condition. When Michaels saw the officer outside her house, she asked if he was ready to take her to jail and shouted obscenities. When the officer placed Michaels in a hold, he could "feel resistive tension in her arm" before he handcuffed her but she was neither armed nor combative.

¶ 23 At the close of evidence, the trial court denied the defense request for a jury instruction on involuntary manslaughter. The jury was instructed on first-degree murder, second-degree murder and self-defense.

¶ 24 The jury found Love guilty on both charged counts of first-degree murder. Following a sentencing hearing, the trial court merged the two counts and entered judgment on the intentional/knowing count and sentenced Love to 26 years in prison.

¶ 25 For a person to be guilty of first-degree murder, the State must prove the defendant killed an individual by performing acts that were intended to kill, do great bodily harm, or create the strong possibility of death or great bodily harm and that the defendant committed those acts without lawful justification. 720 ILCS 5/9-1(a) (West 2012).

¶ 26 Second-degree murder is a lesser-mitigated offense of first-degree murder. *People v. Wilmington*, 2013 IL 112938, ¶ 48. A defendant commits second-degree murder when he commits first-degree murder and, at the time of the killing, one of the following mitigating

factors is present: (1) the defendant was acting under an unreasonable belief that the killing was justified; or (2) the defendant was acting under a sudden and intense passion resulting from serious provocation by the individual killed but the defendant negligently or accidentally caused the death of the individual. 720 ILCS 5/9-2(a) (West 2010). To reduce first-degree murder to second-degree murder, the defendant must prove the existence of one of those mitigating factors by a preponderance of the evidence. *People v. Manning*, 2018 IL 112081, ¶ 18 (citing *People v. Jeffries*, 164 Ill. 2d 104, 114 (1995)). Love’s jury was instructed on second-degree murder on both of these theories and was also instructed on self-defense, which was Love’s theory at trial. *People v. Washington*, 2012 IL 110283, ¶ 56; *People v. Lockett*, 82 Ill. 2d 546, 553 (1980) (when the evidence supports the giving of a jury instruction on self-defense, an instruction on second-degree murder must also be given). Given its verdict, the jury necessarily rejected the existence of either mitigating factor and Love’s claim of self-defense.

¶ 27 Love contends we should reduce his first-degree murder conviction to second-degree murder because a rational trier of fact should have found that he either: (1) had an actual, though unreasonable, belief in the need to defend himself from Michaels; or (2) acted as a result of serious provocation after Michaels placed a knife at his throat.

¶ 28 Whether a defendant is guilty of first-degree murder or second-degree murder is a question for the finder of fact. *People v. Simon*, 2011 IL App (1st) 091197, ¶ 52. The finder of fact has the responsibility to determine the credibility and weight of witness testimony, to resolve conflicts and inconsistencies in that testimony and to draw reasonable inferences from the evidence. *Id.* When reviewing a defendant’s argument that he presented evidence to prove the existence of a mitigating factor, the reviewing court must consider “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.” *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996); *People v. Bennett*, 2017 IL App (1st) 151619, ¶ 43.

¶ 29 Love first argues his conviction should be reduced to second-degree murder because the evidence showed he acted under an unreasonable belief in the need to defend himself against Michaels and no rational jury could have found otherwise. Emphasizing that his statement to police was the only account of the events leading to Michaels’s death, Love contends he believed he needed to defend himself when Michaels placed the knife to his neck and demanded money.

¶ 30 After viewing the facts in the light most favorable to the State, we find that a rational trier of fact could have concluded that Love did not believe he needed to defend himself. “The 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). Just as the jury did, we have reviewed the videotape of Love’s statement to police and find Love’s account of events readily worthy of disbelief.

¶ 31 Wholly apart from Love’s disjointed narrative to police, his claim that he acted in self-defense is flatly contradicted by the medical evidence. Love told police he “poked” Michaels in the neck two or three times as they struggled over the knife, but the record shows that Michaels sustained more than a dozen wounds, including two stab wounds deep enough to puncture her vertebrae and her voice box. Love stabbed Michaels with enough force to push the knife far enough into her body that the knife handle broke away from the blade. In addition, some of the wounds inflicted by Love were to the back of Michaels’ neck, which belies his claim that he

injured her only as she was facing him and they were struggling over the knife. Moreover, in assessing Love's claim of self-defense, the jury could consider his admissions to police that he fled from the hotel without reporting the incident and that he disposed of the weapon and his bloody clothing. See *People v. Turcios*, 228 Ill. App. 3d 583, 597 (1992) (a defendant's flight from the scene can negate a self-defense claim). Finally, the fact that Michaels made Love wait for hours before she returned the second time and the sheer number of calls he placed attempting to contact her supports the reasonable inference that Love was both agitated and angry by the time they went to Michaels's hotel room. When the evidence is considered as a whole, the jury could have found Love did not show that he acted with an unreasonable belief in the need to defend himself against Michaels.

¶ 32 Alternatively, Love contends his conviction should be reduced to second-degree murder because he acted under serious provocation inciting a sudden and intense passion. Serious provocation is "conduct sufficient to excite an intense passion in a reasonable person." 720 ILCS 5/9-2(b) (West 2010). Four categories of serious provocation have been recognized: (1) mutual combat; (2) substantial physical injury or assault; (3) illegal arrest; and (4) adultery involving a spouse. *People v. Garcia*, 165 Ill. 2d 409, 429 (1995).

¶ 33 Love invokes the second category, arguing that no rational jury could have rejected his claim that Michaels's act of placing the knife at his throat constituted serious provocation based on a substantial physical assault. But, as noted, the jury did not hear Love testify under oath; rather, they viewed his videotaped statement in which he variously claimed he "poked" Michaels, "blacked out" during the struggle, and "didn't think" he stabbed a woman—who was

more than a foot shorter than him—more than two or three times. Any rational finder of fact could reject Love’s claim on the basis that his story was simply preposterous.

¶ 34 Further, to establish serious provocation based on a substantial physical injury or assault, the defendant must act from a violent passion incited by the assailant’s attempt to inflict a serious personal injury. *People v. Pierce*, 52 Ill. 2d 7, 11 (1972). However, a passion on the defendant’s part “ ‘will not relieve [him] from liability for murder unless it is engendered by a provocation which the law recognizes as being reasonable and adequate.’ ” *People v. Randall*, 2016 IL App (1st) 143371, ¶ 45 (quoting *People v. Austin*, 133 Ill. 2d 118, 125 (1989)).

¶ 35 Even accepting Love’s claim that Michaels initially held a knife to his neck, a rational trier of fact could have concluded that at the time Love stabbed Michaels more than a dozen times, he was not acting under serious provocation inciting a sudden and intense passion. Love described his acts of stabbing Michaels as occurring while they struggled over the knife. By that point, however, Michaels was no longer holding the knife to Love’s throat, and Love had gained control of the knife. Even by Love’s account, which was contradicted by the physical evidence, Love stabbed Michaels three times. A claim of serious provocation will be rejected where the defendant attacks the victim with violence that is out of proportion to the provocation. *People v. Presley*, 230 Ill. App. 3d 77, 89-90 (1992).

¶ 36 Moreover, Love told police he was “just trying to defend myself” before he pushed the knife into Michaels’s neck. As a legal proposition, defendant’s claim that he acted in self-defense negates an inference that he acted under a sudden and intense passion. *Bennett*, 2017 IL App (1st) 151619, ¶ 47 (citing *People v. Clark*, 15 Ill. App. 3d 756, 759 (1973)); *People v. Yates*, 65 Ill. App. 3d 319, 324-25 (1978). Although the defense may raise alternate theories at trial, and

the jury in this case was permissibly instructed on both the mitigating factors—an unreasonable belief in the need for self-defense and provocation—Love’s contention that the jury should have found his acts were provoked is contrary to the theory he offered at trial that he deliberately stabbed Michaels in an act of self-defense. Thus, the jury was free to reject provocation as a mitigating factor.

¶ 37 In sum, the evidence did not establish either that Love acted under either an unreasonable belief in the need for self-defense or a sudden and intense passion resulting from serious provocation. Therefore, there is no basis to reduce Love’s conviction from first-degree murder to second-degree murder.

¶ 38 Love’s remaining argument is that the jury should have been instructed on involuntary manslaughter because he and Michaels fought over the knife and the jury could have found his act of stabbing her was a reckless act performed during their struggle.

¶ 39 First-degree murder occurs when the defendant performs the act that kills the victim knowing the act creates a strong possibility of death or great bodily harm; a person commits involuntary manslaughter when he performs the same act or acts but he does so with a reckless mental state. 720 ILCS 5/9-3(a) (West 2010); *Johnson*, 2018 IL App (1st) 140275, ¶ 84. A defendant commits involuntary manslaughter, which “requires a less culpable mental state than first degree murder” (*People v. Jones*, 219 Ill. 2d 1, 31 (2006)), when he unintentionally causes the victim’s death by acts that are performed recklessly and are likely to cause death or great bodily harm. *People v. Stolberg*, 2014 IL App (2d) 130963, ¶ 18.

¶ 40 An involuntary manslaughter instruction should be given if there is some evidence in the record that, if believed by the jury, would reduce the crime of first-degree murder to involuntary

manslaughter. *People v. Johnson*, 2018 IL App (1st) 140275, ¶ 85; see also *People v. McDonald*, 2016 IL 118882, ¶ 25 (clarifying the standard to be the existence of “some evidence,” not “some credible evidence,” which invades the purview of the jury). However, an instruction on a lesser-included offense is not required where the evidence rationally precludes such an instruction. *People v. Perry*, 2011 IL App (1st) 081228, ¶ 28.

¶ 41 Whether an instruction on a lesser included offense is warranted depends on the facts and circumstances of a particular case. *Id.* Factors relevant to whether a defendant acted recklessly, warranting an involuntary manslaughter instruction, include: (1) the disparity in size and strength between the defendant and the victim; (2) the duration of the altercation and the severity of the victim’s injuries; (3) whether the defendant used a weapon; (4) whether the defendant inflicted multiple wounds; and (5) whether or not the victim was defenseless. *McDonald*, 2016 IL 118882, ¶ 52. The trial court’s decision to deny a defendant’s request for a certain jury instruction is reviewed for an abuse of discretion. *Id.* ¶ 42.

¶ 42 Here, the trial court properly refused Love’s request for a jury instruction on involuntary manslaughter. Love stood roughly a foot taller than Michaels and outweighed her. Love gained control of the knife long enough to inflict more than a dozen wounds that severed parts of Michaels’s body. In his statement to police, Love recounted how, after he first stabbed Michaels in the neck, she “stopped for a second, and didn’t let it up, but then she came back at [him], at which point [he] just kind of forced it through.” Love also stated that he “poked” her in the neck two more times. Given that there was no evidence of a weapon other than the knife, it was reasonable to infer that, after Love gained control of the knife, Michaels was defenseless. Finally and, as mentioned, Love proceeded at trial under a theory of self-defense, which is based on the

knowing and intentional use of force in defense of one's person, and which precludes a finding that the defendant's acts were reckless. See *People v. Chatman*, 381 Ill. App. 3d 890, 897-98 (2008). Under these circumstances, the trial court's denial of Love's request that the jury be instructed on involuntary manslaughter did not constitute an abuse of discretion.

¶ 43 Accordingly, the judgment of the trial court is affirmed.

¶ 44 Affirmed.