2012 IL App (1st) 092921-U

FIRST DIVISION
June 25, 2012

No. 1-09-2921

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 4000
	)	
NICHOLAS IZGUERRA,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of second degree murder and his seven-year sentence was affirmed where the State proved him guilty beyond a reasonable doubt, he was not denied a fair trial where the State allegedly failed to disclose two prior convictions of its witnesses, defense counsel provided effective assistance, and the trial court committed no abuse of discretion during sentencing.

¶ 2 Following a bench trial, the trial court convicted defendant, Nicholas Izguerra, of second degree murder based on an unreasonable belief in self-defense and sentenced him to seven years in prison. On appeal, defendant contends: (1) the State failed to prove beyond a reasonable doubt that he did not act in self-defense; (2) he was denied a fair trial where the State failed to disclose two

prior convictions of its witnesses; (3) defense counsel provided ineffective assistance by failing to introduce evidence at trial of defendant's reputation for peacefulness; and (4) the trial court abused its discretion by sentencing him to seven years' imprisonment. We affirm.

¶ 3 At trial, Trauman Allen testified on direct examination that at about 10:45 p.m. on January 27, 2006, he was in the back seat of a car driven by Simon Childs. The victim, Damien Day, was in the front passenger seat. At 35th Street and Western Avenue, Mr. Allen heard some beer cans hit the door of the car. Mr. Allen looked out and saw defendant, who was wearing a black hoody and jeans, running to the passenger side of the car and he noticed an African-American man and two Hispanic men on the corner, "throwing" hand signs. The victim pushed the door open and began exiting the car. As the victim was exiting out of the car, defendant stabbed him in the chest with a knife. Mr. Allen then threw a beer can at defendant's head, exited the car and chased after defendant. Meanwhile, Mr. Childs went in the direction of the men on the corner. Mr. Allen focused his attention on defendant, who now showed his knife and made a stabbing gesture at Mr. Allen. Defendant then ran away and Mr. Allen went back to the victim. Almost one year later, on January 14, 2007, Mr. Allen identified defendant in a photo array. Three days later, on January 17, 2007, Mr. Allen identified defendant in a lineup conducted at the police station. Mr. Allen further testified he has a felony conviction in Illinois for burglary, and was on probation in Iowa for a drug charge.

¶ 4 On cross examination, Mr. Allen testified he was formerly a member of the Four Corner Hustlers street gang and that he had once hit one of his girlfriends. Mr. Allen testified the victim was out of the car when defendant stabbed him with an "object." Mr. Allen admitted he could not tell what the object was, because it all "happened so fast." After defendant stabbed the victim, the victim

hit defendant. Defendant "flew backwards" onto the sidewalk and hit the ground. Mr. Allen stated defendant was a "little guy" who was smaller than both the victim and Mr. Allen.

¶ 5 Mr. Allen testified that after defendant fell to the ground, the victim got on top of him and they began fighting. Defendant got away from the victim and began running. Mr. Allen chased after him, and defendant then turned around and showed the knife. Mr. Allen testified that while all this was going on, Mr. Childs was holding onto two of the other men on the corner.

¶ 6 On redirect examination, Mr. Allen testified that after chasing defendant, he came back and saw blood on the victim's shirt. Mr. Allen wanted to take the victim to the hospital, but the victim just said no, that he believed he was going to die. The victim subsequently died.

¶ 7 Mr. Allen also testified on redirect examination that after the victim punched defendant, defendant fell on top of the knife.

¶ 8 On recross examination, Mr. Allen testified, contrary to his testimony on cross examination, that he never saw the victim on top of defendant.

¶ 9 Simon Childs testified that at approximately 10:45 p.m. on January 27, 2006, he was driving his car at 35th Street and Western Avenue. The victim was in the front passenger seat, and Mr. Allen was in the back passenger seat. While driving to a liquor store, Mr. Childs saw three men, one African-American and two Hispanics, "come in from our right, gangbanging, throwing up signs." Mr. Childs turned right onto 35th Street and heard something hit the car. The victim said that one of the three men on the right had thrown a can at the car. Mr. Childs pulled over, exited the car, and walked toward the three men. Mr. Childs saw that one of the men, defendant, had come over to the passenger side of the car.

¶ 10 Mr. Childs testified he saw defendant make a move like he had punched or stabbed the victim. The victim fell back in the car, then got out and started swinging at defendant. Meanwhile, Mr. Childs had grabbed the African-American man and was asking why they had been throwing cans at his car. Mr. Childs heard Mr. Allen say that the victim had been stabbed, so he let the African-American man go and went toward defendant. Mr. Childs saw what he thought was an ice pick in defendant's hand. Mr. Childs and defendant circled each other, then defendant "took off." Mr. Childs testified he never struck defendant.

¶ 11 Mr. Childs testified he viewed a lineup that night, but did not identify anyone. Almost one year later, on January 17, 2007, Mr. Childs viewed a second lineup and identified defendant as the stabber.

¶ 12 On cross examination, Mr. Childs testified he was not a member of a gang and never had been a member of the Four Corner Hustlers. He admitted he had previously been arrested for beating his wife, Tenetta Ferguson, but he denied ever hitting her. Mr. Childs testified he stopped his car on January 27, 2006, when it was struck by the can. He never saw defendant throw the can. Mr. Childs gave conflicting testimony on cross examination as to whether he ever saw the victim hit the defendant; initially, Mr. Childs testified he saw the victim hit defendant after defendant stabbed him, but Mr. Childs later testified he never saw the victim hitting defendant. Mr. Childs testified defendant was smaller than the victim and that he was wearing a black hoody and blue jeans.

¶ 13 Detective Andrew Burns testified that neither Mr. Childs nor Mr. Allen positively identified the attacker on the night of the stabbing. About one year later, he received information from the Illinois State Police forensic laboratory that a fingerprint on one of the beer cans removed from the

scene matched that of a man named Angel Padilla. After speaking with Mr. Padilla, Detective Burns began looking for defendant. Later, both Mr. Childs and Mr. Allen positively identified defendant in a lineup as the person who stabbed the victim.

¶ 14 Both parties stipulated that the deputy medical examiner, Doctor Clara Cunliffe, would testify the victim was "5 feet 5 inches in length," weighed 176 pounds, and that his death was a homicide caused by one stab wound to his right chest. Dr. Cunliffe would testify the stab wound is elliptical, measures 1.3 by 0.5 inches, and is "16.5 inches beneath the top of the head, and 2 inches to the right of midline. *** It is horizontally oriented, with a blunt edge on the left-hand side, and a sharp edge on the right-hand side. The wound course involves the skin and subcutaneous tissues in the area, the musculature of the right chest wall, the cartilaginous portion of the right fifth and sixth ribs anteriorly, and the ascending aorta. The stab wound in the aorta measures 0.3 inches. The wound has caused massive hemorrhage into the right chest cavity. The wound coursed from front to back."

¶ 15 A certified copy of the autopsy report, containing the deputy medical examiner's findings, was admitted into evidence.

¶ 16 The parties also stipulated that Cook County State's Attorney Investigator Michael Paoletti would testify he collected a buccal sample from defendant, while Illinois State Police forensic scientist Gitana Wallace obtained DNA samples from beer cans recovered from the scene of the stabbing. If called to testify, forensic scientist Pauline Gordan would state she was able to collect DNA samples from the beer cans that matched the DNA profiles of three different males. The parties stipulated that forensic scientist Heather Ralph would testify that one of these DNA profiles matched defendant's DNA profile.

¶ 17 After the State rested, defendant presented the testimony of several police officers and investigators in an attempt to impeach the State's witnesses. Officer Anderson testified that on the night of the stabbing, he was provided a description of the attacker as an Hispanic male who was approximately five feet nine inches tall, weighing about 160 pounds, and wearing a black hoody, blue jeans and black shoes. Officer Michael Putrow testified that on the night of the stabbing, Mr. Allen identified a man named Louis Jimenez, who was wearing the same clothes as the stabber, in a show-up. John Kiernan, Jr., an investigator from the office of the medical examiner, testified the report he gave to the medical examiner contained information from Officer Anderson denoting that the victim was attacked from the driver side.

¶ 18 Three other witnesses testified on behalf of defendant in an attempt to impeach the State's witnesses with prior bad acts. Iesha McClain, Mr. Allen's former girlfriend, testified that Mr. Allen hit her more than five times with a closed fist, sometimes in front of other people. She testified Mr. Allen once hit her while she was pregnant, and she miscarried one or two weeks later. Tenetta Ferguson testified that Mr. Childs was her husband and that he previously hit her. She stated she twice called police and lodged battery complaints against Mr. Childs, but those cases later were dismissed. Officer Kevin Leahy testified that while once arresting the victim for burglary, the victim struck and kicked him to defeat the arrest.

¶ 19 Before resting, defendant took the stand in his own defense. Defendant testified on direct examination that he was 23 years old and lived with his mother, sister, and niece. He had been enrolled at the American Academy of Art for three years, majoring in illustration. In January 2006, his art supplies included a "little knife" to sharpen his pencils in his life drawing class.

¶ 20 Defendant testified that on the day of the stabbing, January 27, 2006, he had classes at the American Academy of Art for which he used his pencils and knife. At about 6 or 7 p.m., he went to his friend Omar Torres's house, which was right off Western Avenue and 36th Street. At about 10 p.m., defendant left Mr. Torres's house with two friends, Angel Padilla and Eddie. They walked down Western Avenue and then west on 35th Street to the corner store to get some potato chips.

¶ 21 Defendant testified that as they were walking, he noticed Mr. Padilla exchanging words with three men in a car in back of them. He heard Mr. Padilla utter an expletive at them and saw the persons waving their hands and "maybe throwing gang signs." Mr. Padilla threw a beer can at the car, after which the car stopped in the middle of the street, and all three men jumped out and reached for their waistbands as if they had guns. Defendant became afraid and ran west on 35th Street toward a liquor store. One of the men from the car, who defendant identified as the victim, ran toward him, cut him off, and began hitting him with a closed fist on his face and head. Defendant put his hands over his head to protect himself, but the victim's punches landed on him and hurt him. Defendant testified that prior to the victim hitting him, defendant did not approach the car, open the car door, or stab the victim.

¶ 22 Defendant testified that another man from the car, who he identified as Mr. Allen, also came over and hit him with a closed fist. Mr. Allen's punches also landed on him and hurt him. Defendant testified he was in fear of his safety and concerned for his life as he was being punched by the victim and by Mr. Allen, both of whom were bigger than him, so he reached in his pocket and pulled out the knife he had used in his art class. The knife is a folding knife which is about four-inches long when it is unopened; when opened, the blade is another four-inches long. Defendant testified he

waved the knife back and forth in an effort to get the victim and Mr. Allen off him. Defendant denied stabbing at either of them and was not positive if he made contact with anyone with the knife.

¶ 23 At some point, the beating stopped, and defendant ran behind a large man who had come out of the corner store. Defendant then saw the driver of the car coming toward him with his hand underneath his shirt, saying, "Come to me, come to me." Defendant ran away to Mr. Torres's house, where defendant noticed he had cut his finger. His head also hurt. Defendant did not go to the hospital or call the police and tell them he had been jumped. When asked why not, defendant explained that he was unaware anyone had been seriously injured and he was just glad to be safe and alive at home. Defendant further testified that at some point, the Chicago Police Department contacted him about the case, and he turned himself in.

¶ 24 On cross examination, defendant testified he usually leaves his knife at home when he is not in class, but on the day of the stabbing he forgot to take the knife out of his pocket after leaving class. Defendant explained that when he was confronted by the victim and Mr. Allen, the knife was in the outside pocket of his jacket, which was unzipped. It takes two hands to open the knife. Defendant had none of his art supplies, other than the knife, on him at the time of the attack. Defendant does not know where the knife currently is; he testified he must have dropped it after he ran from the scene.

¶ 25 Defendant testified he is five feet seven inches tall, and that the victim was a couple of inches taller and was, also, heavier than him. Defendant testified the victim hit him first, and then Mr. Allen began hitting him "right after that." When asked how many times the victim hit him, defendant answered, "a few." Both the victim and Mr. Allen punched him on the head and hit him

fairly hard. Defendant testified he did not get a black eye or fat lip because they hit him on his head and forehead instead of his face. Defendant further testified that the punches had hurt and cut him, but he did not go to the hospital for treatment. Defendant also testified he did not contact the police because he was unaware of anyone having been injured and because he himself "wasn't seriously injured."

¶ 26 The trial court found defendant guilty of second degree murder based on an unreasonable belief in self-defense. The trial court began its analysis by noting it was not "dealing with model citizens or angels here" and that the victim and his two companions "were not going to shy away from [trouble] if it found them." The trial court found that the incident began when Mr. Padilla threw a beer can at the car in which the victim was riding, causing Mr. Childs to stop the car, "and that's what kicked everything off."

¶ 27 The trial court then noted that the victim was killed by a stab wound to the chest by the defendant, and that the issue for the court to decide was, whether defendant was the aggressor or, whether he was acting in self-defense at the time of the stabbing. The court looked at the physical evidence and found it "curious" defendant kept the knife on his person, but none of his other art supplies. The trial court also found it curious defendant kept his knife not in an inside pocket but rather in an unzipped front pocket of his jacket. The trial court then stated:

> "Now, whether or not [the victim] and his companions attacked *** the defendant or whether or not he was the aggressor and charged [the victim], that is a matter of what you believe. What I can gleen from the physical evidence is that [the victim] suffered a stab wound, and that was stipulated to from the testimony of the medical examiner, a stab wound

> on the right chest, 16 ½ inches beneath the top of the head, 2 ½ inches to the right of the midline ***. [Defendant] said that he took the knife out of his pocket, *** opened the knife while he was being beaten about the head and flailed it from side to side as he demonstrated in this court. That flatly is contradicted by the physical evidence and by the medical examiner's report and opinion in this case. There is no way that the injuries suffered by [the victim] could have occurred in the manner in which the defendant describes. This was a stab wound, a thrusting wound. The medical examiner found that not only was it horizontally sustained with a blunt edge on the left-hand side, sharp end on the other side, but it punctured the skin, subcutaneous tissues, [musculature and cartilage] and fifth rib and entered the aorta. This was a stab wound done by the defendant. In that aspect I flatly do not believe the testimony of [defendant]. I do not believe that is what occurred."

¶ 28 The trial court noted defendant was justified in using deadly force in self-defense if he reasonably believed such force was necessary to prevent imminent death or great bodily harm to himself or another. The court stated defendant "was not struck with any weapon other than the beer can. He was being pummeled with fists about the head, and in this court's view that does not constitute the force necessary to prevent imminent death or great bodily harm."

¶ 29 Having found that the State proved the elements of first degree murder and disproved self-defense, the trial court next considered whether defendant's conviction should be reduced to second degree murder. The trial court concluded that although defendant subjectively believed he needed to use deadly force to defend himself, such a belief was unreasonable and, therefore, "because of the testimony, because of the physical evidence, it is the court's opinion that *** he is in fact guilty of

[second degree] murder under the law, and I so find."

¶ 30 The trial court subsequently sentenced defendant to seven years' imprisonment. Defendant appeals.

¶ 31 First, defendant contends we should reverse his conviction of second degree murder because the State failed to prove beyond a reasonable doubt that he did not act in self-defense. We begin our analysis by discussing the interplay between first degree murder, second degree murder, and self-defense.

¶ 32 To convict defendant of first degree murder, the State must prove beyond a reasonable doubt, that he killed an individual without lawful justification, and in performing the acts that caused the death, he: (1) intends to kill or do great bodily harm to that individual or another or knows such acts will cause death to that individual or another; or (2) knows such acts create a strong probability of death or great bodily harm to that individual or another; or (3) is attempting or committing a forcible felony other than second degree murder. 720 ILCS 5/9-1(a) (West 2006). The relevant standard of review is "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 the original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under this standard, the trier of fact remains responsible for determining the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

¶ 33 Self-defense is an affirmative defense to first degree murder, and once raised by defendant, "the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-

defense, in addition to proving the elements of the charged offense." *People v. Lee*, 213 Ill. 2d 218, 224 (2004). Section 7-1 of Article 7 of the Criminal Code of 1961 (the Code) sets forth the elements of self-defense:

> "(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2006).

Defendant's claim of self-defense fails if the State negates any one of the elements thereof. *Lee*, 213 Ill. 2d at 225. "The relevant standard of review is whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that defendant did not act in self-defense." *Id.*

¶ 34 If the State successfully negates defendant's claim of self-defense and has proven each of the other elements of first degree murder, the trier of fact then may proceed to a determination of the issue of second degree murder. *People v. Truss*, 254 Ill. App. 3d 767, 780 (1993). The second degree murder statute in effect at the time of the victim's death provides:

> "(a) A person commits the offense of second degree murder when he commits the offense of first degree murder as defined in paragraphs (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:
>
> (1) At the time of the killing he is acting under a sudden and intense

> passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or
>
> (2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code [*i.e.*, self-defense], but his belief is unreasonable.
>
> ***
>
> (c) When a defendant is on trial for first degree murder and evidence of either of the mitigating factors defined in subsection (a) of this Section has been presented, the burden of proof is on the defendant to prove either mitigating factor by a preponderance of the evidence before the defendant can be found guilty of second degree murder. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of first degree murder and, when appropriately raised, the absence of circumstances at the time of the killing that would justify or exonerate the killing under the principles stated in Article 7 of this Code. " 720 ILCS 5/9-2 (West 2006).

¶ 35 To summarize, in reviewing defendant's conviction of second degree murder, we first consider whether the State proved him guilty of first degree murder and disproved his claim of self-defense beyond a reasonable doubt. If we find that the State proved defendant guilty of first degree murder and negated his claim of self-defense, we then proceed to analyze whether the preponderance of the evidence established a mitigating factor sufficient to reduce defendant's conviction to second

degree murder.

I. Did the State First Prove Defendant Guilty of First Degree Murder and Disprove His Claim of Self-Defense Beyond a Reasonable Doubt?

¶ 36 In the present case, defendant argues the trial court should have found the killing was justified in self-defense under Article 7 of the Code, acquitted him of first degree murder, and never even reached the issue of second degree murder. Specifically, defendant contends the trial court should have found his belief in the need to use deadly force in self-defense was reasonable and, thus, justifiable under Article 7 where: (1) he testified the victim and Mr. Allen started the physical confrontation by running at him and throwing a beer can at his head; (2) the victim and Mr. Allen had a history of violence, they were bigger than defendant, and they were repeatedly striking him in the head with closed fists after having reached toward their waistbands as if reaching for weapons; and (3) defendant believed they were going to kill him. Defendant further points to his testimony that he swung his knife back and forth only to get the victim and Mr. Allen to back off, and that he was unaware, at that time, that he had stabbed the victim.

¶ 37 Viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that defendant's belief in the need to use deadly force was unreasonable and, thus, that the State negated his claim of self-defense and established that the stabbing constituted first degree murder. Specifically, the certified copy of the autopsy report admitted into evidence, as well as the stipulation regarding the deputy medical examiner's testimony, each state that the victim was "5 feet 5 inches in length," which is two inches shorter than defendant's stated height of five feet seven inches tall, and is contrary to the testimony that the victim was a couple of inches taller than him. Contrary to defendant's testimony that he swung the knife from side

to side to get the victim and Mr. Allen to back off, the autopsy report indicated that the wound was a thrusting wound that punctured the skin and subcutaneous tissue, the musculature of the right chest wall, the cartilaginous portion of the right fifth and sixth ribs anteriorly, and the ascending aorta. Such a deep wound belies defendant's testimony that he was unaware he had injured the victim, and indicates a knowing and/or intentional act beyond the self-defense act described by defendant. Further, defendant's testimony that his attackers were hitting him fairly hard on the head at the time of the stabbing, is belied by the evidence that during the attack, he managed to pull the knife out of his coat pocket and use both hands to open it to its full length of eight inches. Any rational trier of fact could have found such a maneuver to be difficult, if not impossible, while warding off continuous hard blows to the head from two attackers, and that he could have reached for and opened the knife with both hands, only if the attack was less severe than testified to by defendant. Defendant's testimony as to the severity of the attack is further belied by the lack of any physical evidence in support thereof; defendant admitted he never sought any medical treatment for the punches to his head and, further admitted, he did not contact the police to report the attack because he "wasn't seriously injured." In sum, any rational trier of fact could have found from the physical evidence and from defendant's own testimony that contrary to the defense theory, he was not cowering under a rain of continuous heavy blows from two larger attackers at the time of the stabbing and blindly waving his knife back and forth to ward off the attack. Rather, any rational trier of fact could have found that one of the attackers was shorter than defendant, that the blows were not harmful, and that defendant knowingly and intentionally thrust forward with the knife and stabbed the victim in the chest.

¶ 38 The certified copy of the autopsy report, the stipulated testimony of the deputy medical examiner, and defendant's own testimony, viewed in the light most favorable to the prosecution, rebutted defendant's claim that his use of deadly force in self-defense was reasonable and proved that he intentionally or knowingly stabbed and killed the victim without lawful justification or, that he stabbed the victim without lawful justification knowing such an act created a strong probability of death or great bodily harm. Any rational trier of fact could have found, beyond a reasonable doubt, that the State had proved first degree murder and disproved defendant's self-defense claim.

II. Did the Evidence Establish a Mitigating Factor Sufficient to Reduce Defendant's Conviction to Second Degree Murder?

¶ 39 Having correctly found that the State proved first degree murder and disproved self-defense beyond a reasonable doubt, the trial court next considered whether the preponderance of the evidence established a mitigating factor that would reduce defendant's conviction from first degree murder to second degree murder. The first mitigating factor set forth in the second degree murder statute, sudden and intense passion resulting from serious provocation, was not applicable here, and is not an issue on appeal. However, the trial court found that the second mitigating factor, an unreasonable belief in the need to use deadly force in self-defense, was established by a preponderance of the evidence. Specifically, the trial court determined from defendant's testimony that he had a subjective belief that deadly force in self-defense was required due to the blows administered to him during the attack by the victim and Mr. Allen, but that such a belief was unreasonable given the evidence (described above) indicating that the attack was not as severe as testified to by defendant. The trial court made this finding after seeing the witnesses, hearing their testimony, and making credibility determinations for which we will not substitute our judgment. *People v. Vannote*, 2012 WL

1981796, ¶ 49. The trial court found defendant's testimony regarding the timing of the stabbing to be more credible than Mr. Allen's and Mr. Childs's testimony, but it found defendant's testimony regarding the manner and force of the stabbing to be incredible and belied by the physical evidence. Based on its credibility determinations and the physical evidence as recounted in the certified copy of the autopsy report, and the stipulated testimony of the deputy medical examiner, the trial court found defendant guilty of second degree murder. Our standard of review is limited, and we cannot reverse defendant's conviction unless the evidence, when viewed in the light most favorable to the prosecution, would allow no rational trier of fact to convict him of second degree murder beyond a reasonable doubt. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). Based on the trial court's credibility determinations and its construction of the physical evidence, any rational trier of fact could have found beyond a reasonable doubt that the attack by the victim and Mr. Allen upon defendant was not so severe as to warrant deadly force in self-defense, that defendant's belief in the need to use said force was unreasonable, and convicted him of second degree murder. Accordingly, we affirm his conviction.

¶ 40 Next, defendant argues the State violated Illinois Supreme Court Rule 412 (Ill. S. Ct. R. 412 (eff. March 1, 2001)) and *Brady v. Maryland*, 373 U.S. 83 (1963), when it failed to disclose Mr. Allen's conviction of burglary in 2001 and Mr. Childs's conviction of aggravated assault in 2008.

¶ 41 Rule 412 codifies the due process requirements espoused in the United States Supreme Court case of *Brady v. Maryland*, 373 U.S. 83 (1963). *People v. Simon*, 2011 IL App (1st) 091197, ¶ 99. Rule 412(a)(vi) provides that on written motion of defense counsel, the State must disclose "any record of prior criminal convictions, which may be used for impeachment, of persons whom the

State intends to call as witnesses at the hearing or trial." Ill. S. Ct. R. 412(a)(vi) (eff. March 1, 2001). Rule 412(c) requires the State to "disclose to defense counsel any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor." Ill. S. Ct. R. 412(c) (eff. March 1, 2001). "'Among the information which the State must disclose is evidence with potential impeachment value such as prior convictions, probationary status, pending criminal charges, and juvenile adjudications.' " *Simon*, 2011 IL App (1st) 091197, ¶ 99 (quoting *People v. Sharrod*, 271 Ill. App. 3d 684, 688 (1995)).

¶ 42 "To establish a *Brady* violation, the undisclosed evidence must be both favorable to the accused and material." *Id*. at ¶ 100. Evidence is material where "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). A reasonable probability is one sufficient to undermine confidence in the outcome. *Simon*, 2011 IL App (1st) 091197, ¶ 100.

¶ 43 Defendant argues that the evidence of Mr. Allen's burglary conviction in 2001 and Mr. Childs's aggravated assault conviction in 2008 was material because said convictions cast doubt on the credibility of their testimony that defendant stabbed the victim "before anyone laid a hand" on defendant. However, notwithstanding the failure to hear evidence of Mr. Allen's burglary conviction in 2001 and Mr. Childs's aggravated assault conviction in 2008, the trial court found defendant did not stab the victim prior to anyone laying a hand on him but, rather, the stabbing occurred as he was being punched in the head. Thus, notwithstanding the State's alleged failure to apprise the defense of Mr. Allen's and Mr. Childs's convictions, the trial court believed defendant's version of the timing

of the stabbing and disbelieved Mr. Allen's and Mr. Childs's version. The trial court further found defendant's belief in the need to use deadly force in self-defense was unreasonable, and it convicted him of second degree murder. Defendant has not shown a reasonable probability that the trial court's finding as to the unreasonableness of defendant's belief in the need to use deadly force in self-defense would have been different, and defendant would have been acquitted had the evidence of Mr. Allen's and Mr. Childs's convictions been disclosed to the defense and admitted at trial. Therefore, defendant's claim of a *Brady* violation fails.

¶ 44 Next, defendant argues his trial counsel committed ineffective assistance by failing to introduce evidence at trial as to his reputation for peacefulness. To determine whether defendant was denied his right to effective assistance of counsel, we apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). First, defendant must show "counsel's representation fell below an objective standard of reasonableness" (*id.* at 688), and second, that he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

¶ 45 To prevail on his claim of ineffective assistance, defendant must satisfy both prongs of the *Strickland* test. If we can dispose of defendant's ineffective assistance claim because he suffered no prejudice, we need not address whether his counsel's performance was objectively reasonable. *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011).

¶ 46 A defendant in a criminal case may offer proof of his good character to establish that his character traits are inconsistent with the commission of the crime charged. *City of Champaign v. Sides*, 349 Ill. App. 3d 293, 305 (2004). "Proof of the relevant character trait involved is made by

showing the defendant's general reputation in the community based on the witnesses' affiliation with the defendant's neighbors and friends." *People v. Petitt*, 245 Ill. App. 3d 132, 148 (1993). Evidence of a defendant's reputation for peacefulness is relevant where he was charged with a crime of violence. *People v. Wolski,* 83 Ill. App. 3d 17, 29 (1980).

¶ 47 Defense counsel, here, waited until sentencing before presenting evidence of defendant's reputation for peacefulness. Specifically, at the sentencing hearing, defendant's college professor and college registrar, his pastor, a local business owner, and two members of the community testified to defendant's good character. In addition, defense counsel submitted letters from those who testified and the letters of 11 other neighbors and members of the community, and 25 letters from family and extended family members, attesting to defendant's reputation for peacefulness. Defendant argues that instead of simply presenting such evidence during sentencing, defense counsel should have presented the character evidence during trial, where it could have affected the verdict by showing his character traits were inconsistent with Mr. Allen's and Mr. Childs's testimony that defendant stabbed the victim prior to any punches being thrown at him. However, as discussed above, the trial court found at the conclusion of the trial, that defendant only stabbed the victim as he was being punched in the head; thus, even without the character evidence regarding defendant's reputation for peacefulness, the trial court found defendant's version of the timing of the stabbing to be more credible than Mr. Allen's and Mr. Childs's version. The trial court further found defendant's belief in the need to use deadly force in self-defense was unreasonable, and convicted him of second degree murder. Defendant makes no argument as to how the character evidence regarding his reputation for peacefulness would have had any relevance to the issue of whether his belief in the need to use

deadly force in self-defense was reasonable or unreasonable. Accordingly, defendant has failed to show a reasonable probability that the result of the trial would have been different had such character evidence been admitted. In the absence of any such evidence of prejudice, defendant's claim of ineffective assistance fails.

¶ 48 Finally, defendant contends the trial court erred in sentencing him to seven years' imprisonment in light of his young age, his lack of prior felony convictions, his educational record, his devotion to his family and community, and his ability to become a useful citizen. The trial court's sentence may not be disturbed absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The sentence must be determined according to the seriousness of the offense and with the objective of restoring defendant to useful citizenship. Ill. Const. 1970, art. 1, § 11. The trial court must base its sentencing determination on the particular circumstances of each case, considering such factors as defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court's sentence is entitled to great deference and weight because it is in a superior position, having observed defendant and the proceedings, to consider these factors. *Id*. A sentence within the statutory limits will not be considered excessive unless it greatly varies with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 49 During the sentencing hearing, the State called the victim's aunt, Theresa Misher, who testified to her memories of the victim as a father, son, brother, nephew and friend, and to the senselessness and sadness of his murder. The State read into the record the victim impact statement of the victim's fiancé, Miracle Jackson. Ms. Jackson stated that the victim was the father of her four

children and that he loved them very much. Both she and the children have been adversely affected by his death, and the oldest child is having trouble in school as a result. The State also read into the record the victim-impact statement of another aunt, Mabel Lattimore. Ms. Lattimore testified to the victim being a good person and family man whose death has left his four children without a father. The State asked the court to take note of defendant's criminal history, consisting of a juvenile adjudication of vandalism and an adult conviction of criminal defacement of property. The State then rested in aggravation.

¶ 50 In mitigation, defense counsel presented the character and reputation evidence discussed above, and argued for probation. The State responded that "to give defendant probation after stabbing somebody to death on a city street, not that far from this courthouse, would not be a deterrent to others, and it would not be justice for [the victim]." Defendant then addressed the court and apologized to the victim's family for the stabbing.

¶ 51 The trial court then stated it had considered all the evidence in aggravation and mitigation, the presentence investigation report, the arguments of the attorneys, the victim impact statements, and defendant's remarks to the court. The court concluded:

> "Originally I was of the belief that somewhere along the line of 10 to 12 years would be appropriate. However, considering the defendant's lack of criminal background, the enormous support that was shown on his behalf here this morning through the testimony, through the people that are present, and through the letters that were written, and I also considered the facts of the case. Because I think that had there been more than one injury, this was just a single blow, unfortunate to everyone that blow hit the aorta of the [victim].

I don't believe there were repeated acts on the part of the defendant, and so I've taken that into consideration as well.

I believe, considering everything that I've heard this morning for both sides, together with the case and the arguments, the appropriate sentence in this case would be to sentence the defendant, Mr. Izguerra, you are hereby sentenced to a term of seven years in the Illinois Department of Corrections."

¶ 52 The sentence of imprisonment for second degree murder shall be a determinate sentence of not less than 4 years and not more than 20 years. 730 ILCS 5/5-8-1(a) (1.5) (West 2008) (now codified at 730 ILCS 5/5-4.5-30(a) (West 2010)). The trial court, here, considered the appropriate sentencing factors and sentenced defendant to seven years' imprisonment, a term well within the second degree murder sentencing range and, also, toward the low end of possible sentences. Defendant's seven-year sentence did not constitute an abuse of discretion.

¶ 53 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 54 Affirmed.