

No. 1-10-2406

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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. 08 CR 2753
)	
DAVID TURNER,)	Honorable
)	John P. Kirby,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was properly convicted of second degree murder where the evidence showed he knew his actions created a strong probability of death or great bodily harm; defendant was properly subject to a three-year term of MSR; judgment affirmed.
- ¶ 2 Following a bench trial, defendant David Turner was convicted of second degree murder and sentenced as a Class X offender to 22 years' imprisonment. On appeal, defendant contends that his second degree murder conviction should be reduced to involuntary manslaughter because the evidence failed to show that he had the requisite intent or knowledge in causing the victim's

death, but instead showed that he acted recklessly. He also contends that the three-year term of mandatory supervised release (MSR) that attached to his Class X sentence is void and should be reduced to two years because he was convicted of a Class 1 offense. We affirm.

¶ 3 Defendant was charged with first degree murder in that he killed the victim, Edward Williams, knowing that he acted in such a way as to create a strong probability of death or great bodily harm to the victim. The evidence at trial established that during the late evening hours of December 14, and into the early morning hours of December 15, 2007, a large street fight involving about 100 people occurred at 2526 West Monroe Street in Chicago. At about 2 a.m. on December 15, defendant struck the victim with a screwdriver and the victim died. Several of the State's witnesses were at the scene of the fight, including Natika Collins, Louis McAfee, Tiffany Chambers, and Deon Johnson. In essence, the testimony from the State's witnesses revealed that on the night in question, both defendant and the victim, who were friends, were engaged in the street fight. During the melee, defendant struck the victim, who subsequently died.

¶ 4 Natika Collins testified that after leaving a party at 2526 West Monroe Street, crowds of people began fighting in front of that address. Collins observed defendant approach the victim from across the street and strike him in the forehead. After being struck by defendant, the victim fell to the ground. Collins observed a mark on the victim's forehead following the incident. Tiffany Chambers testified similarly to Collins and further testified that she observed an unidentified man approach the victim and punch him in the face. After the man punched the victim, the man ran into the crowd.

¶ 5 Deon Johnson testified that he was involved in the fight and saw defendant run in the direction of the victim and stab him. Defendant's fist was "balled up" and it appeared that he was holding a screwdriver or an ice pick in his hand. As the victim fell, defendant turned around and began chasing another man in an effort to stab him. Johnson stated that before defendant stabbed

the victim he stated, "You bitches want to keep fighting, I ain't got nothing to lose, my momma dead, my daddy dead." Louis McAfee testified similarly to Johnson and also testified that he saw defendant holding a skinny metal piece in one of his hands. McAfee observed defendant raise his right hand and hit the victim on the top of his head. As a result of the strike, the victim began falling to the ground, but someone held his body up to prevent him from falling.

¶ 6 Sergeant Daniel Gallagher testified that after defendant was placed into custody, an assistant State's Attorney interviewed him. Gallagher was present for the interview and identified the video recording and the transcript of the interview as accurately containing the conversation. The video recording and transcript were admitted into evidence at trial. According to the transcript, defendant stated that as he and a few other individuals, including the victim, were attempting break up a fight, he was hit on the head with a bottle and then punched by several people. While he was being hit, defendant picked up a screwdriver and started swinging it in order to ward off the men striking him. The victim then grabbed defendant from behind, and, in response, defendant hit him. At the time of the incident, defendant did not know that he struck the victim, Edward Williams.

¶ 7 Dr. Tera Jones, an assistant medical examiner, testified that when she examined the victim, she observed a diagonal crusted red abrasion on the left eyebrow, an irregular red abrasion on the left side of his head, and an irregular jagged abrasion and two incised wounds on the right side of the neck. Jones testified that it was possible the mark she observed on the victim's left eyebrow could have been from the tip of a screwdriver or anything else that is small and has that shape. Jones further explained that the victim's brain was very swollen and that the cause of his death was a "subdural hematoma due to blunt trauma due to an assault" and that the manner of death was homicide. Jones indicated that it was possible the victim's internal head injuries could be consistent with someone being punched one time or falling to the ground.

¶ 8 After the State rested, defendant presented his case-in-chief. Davida Wright, Robert Rocquemore, Will Wallace, Jeffrey Williams, David Scott, and Officer Robert Murphy all testified on defendant's behalf. As relevant to this appeal, Davida Wright testified that she saw defendant make contact with the victim above his left eyebrow on his forehead. Robert Rocquemore testified at trial that he saw defendant holding a small metal object, but did not see defendant strike the victim. However, during his grand jury testimony, Rocquemore stated that he "saw [defendant's] hand as it came back from [the victim's] face/neck area. [The victim] fell immediately and [the victim's] body went limp."

¶ 9 Following closing arguments, the trial court found defendant guilty of second degree murder. In doing so, the court found that defendant had the requisite intent to commit first degree murder because he meant to do great bodily harm when he hit the victim with a screwdriver, and that blow to the head was the cause of the victim's death. The court further stated that it believed defendant was struck by a bottle during the incident and when he swung at the first person near him, *i.e.*, the victim, he did so with an objectively unreasonable belief that he was acting in self-defense. The court specifically stated that, "[defendant] did not have to come up swinging. He could have done many other things. He did not have to swing at the individual standing next to him." The trial court thus found that defendant's unreasonable belief that he was acting in self-defense was a mitigating factor, and convicted him of second degree murder.

¶ 10 On appeal, defendant contends that his second degree murder conviction should be reduced to involuntary manslaughter because the evidence failed to show that he had the requisite intent or knowledge in causing the victim's death, but instead showed that he acted recklessly.

¶ 11 The standard of review on a challenge to the sufficiency of the evidence 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. *People v.*

Siguenza-Brito, 235 Ill. 2d 213, 224 (2009). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 12 As relevant to this case, to support a second degree murder conviction, the State was required to prove beyond a reasonable doubt all the elements of first degree murder, *i.e.*, that defendant performed the acts that caused the death of the victim, and, when defendant did so, he knew that such an act created a strong probability of death or great bodily harm to the victim. *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998); 720 ILCS 5/9-1(a)(2) (West 2006); 720 ILCS 5/9-2 (West 2006). Once the State proved first degree murder beyond a reasonable doubt, defendant had to prove by a preponderance of the evidence that he was either acting under a sudden and intense passion resulting from serious provocation by the victim, or believed that the circumstances justified using self-defense but his belief was unreasonable. *Hawkins*, 296 Ill. App. 3d at 836; 720 ILCS 5/9-2 (West 2006). A defendant is guilty of involuntary manslaughter if the evidence shows that he recklessly performed an action likely to cause death or great bodily harm. 720 ILCS 5/9-3(a) (West 2006).

¶ 13 The chief element distinguishing involuntary manslaughter from murder is the defendant's mental state. *People v. DiVincenzo*, 183 Ill. 2d 239, 249 (1998). In regard to second degree murder, a defendant acts knowingly when he is consciously aware that such result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2006). Concerning involuntary manslaughter, a person acts recklessly if he consciously disregards a substantial and unjustifiable risk that death or great bodily harm will occur. 720 ILCS 5/4-6 (West 2006). We also note that this court has held that when determining whether a defendant acted recklessly and

whether an involuntary manslaughter instruction is appropriate, a court may consider "whether a defendant used his bare fists or a weapon, such as a gun or a knife." *DiVincenzo*, 183 Ill. 2d at 251. Whether a defendant acted with intent, knowledge, or merely recklessly is generally a question of fact to be resolved by the trier of fact. *People v. Jones*, 404 Ill. App. 3d 734, 744 (2010).

¶ 14 Here, the State's evidence established that, during the course of a melee, defendant stabbed the victim in the head with a screwdriver. Medical evidence showed that the victim died of blunt force trauma due to an assault. Defendant gave a statement saying that he picked up the screwdriver and started swinging it to ward off people who were attacking him and did not know that the person he had struck was his friend, Edward Williams. Based on the evidence summarized at length above, the trial court found defendant guilty of second degree murder based on an unreasonable belief in the need for self-defense.

¶ 15 On appeal, defendant makes several arguments to support his contention that the evidence supports no more than a finding of recklessness and asks this court to reduce his conviction to involuntary manslaughter. First, he argues that he did not act intentionally or knowingly where he swung "randomly" into the crowd, the contact with the victim happened in a moment, and he did not know that the person he hit was the victim, who was his friend. None of these factors call into question the trial court's finding that defendant acted knowingly. Several witnesses testified that defendant stabbed the victim in the head, which belies his claim that he swung randomly. Also, the fact that defendant turned around and struck the first person near him, not realizing it was his friend, does not establish that defendant was not consciously aware that his actions created a strong probability of death or great bodily harm to the person he struck.

¶ 16 Defendant then argues that the medical evidence was insufficient to establish knowledge of a strong probability of death or great bodily harm where there was no evidence that the single

stab with the screwdriver was forceful or deliberate, it could not be shown whether the strike occurred with the tip or the blunt end of the screwdriver, and the victim's death could have resulted from a punch or a fall to the ground. We are not persuaded by this argument. The evidence showed defendant struck the victim in the head with a screwdriver, and the medical testimony established that the victim died from a blow to the head that caused a subdural hematoma. As the trier of fact, the trial court could conclude from this evidence that defendant's actions caused the death. There is nothing so unreasonable or improbable about this finding that would warrant us setting it aside on appeal. See *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010) (stating that a criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt).

¶ 17 Finally, defendant argues that the trial court incorrectly concluded that involuntary manslaughter may not be found when a defendant uses a weapon. He supports this argument by referring to the court's comments responding to caselaw cited by defense counsel during closing argument. The court acknowledged that where people are involved in a fistfight and only fists are involved, there "is no intent to do great bodily harm or death." The court then stated that in this case, "[D]efendant hit an individual with a weapon or an item used as a weapon. So involuntary manslaughter would not be found here." Given the context of the court's statement, we are not persuaded that the court made a ruling that involuntary manslaughter could never be established where a weapon was involved. Therefore, the cases defendant cites which show that offenders can act recklessly despite possessing a weapon are irrelevant where the trial court here never made a finding to the contrary. See *e.g.*, *People v. Whitters*, 146 Ill. 2d 437, 441 (1992); *People v. Chew*, 45 Ill. App. 3d 1024, 1027-28 (1977); *People v. Bembroy*, 4 Ill. App. 3d 522, 526 (1972) (finding evidence of recklessness to convict the defendants of involuntary manslaughter where they possessed a weapon).

¶ 18 Defendant finally contends that the three-year term of MSR that attached to his Class X sentence is void and should be reduced to two years because he was convicted of a Class 1 offense. We note that defendant does not dispute his status as a Class X offender (730 ILCS 5/5-5-3 (West 2006)), because he was previously convicted of five felonies, including two Class 2 or greater Class felonies. Although a void sentence can be challenged at any time, we review the sentence to assess whether it is actually void. *People v. Balle*, 379 Ill. App. 3d 146, 151 (2008). For the reasons that follow, we find that it is not.

¶ 19 Section 5-8-1(d) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(d) (West 2006)), provides that the MSR term is three years for a Class X felony and two years for a Class 1 felony. Since defendant was convicted of a Class 1 felony, he maintains that he is only subject to a two-year term of MSR, relying on *People v. Pullen*, 192 Ill. 2d 36 (2000). *Pullen*, however, has been fully addressed by this court and found not to change the conclusion that a defendant sentenced as a Class X offender shall receive the same three-year MSR term imposed on defendants convicted of Class X felonies. See *People v. Brisco*, 2012 IL App (1st) 101612, ¶62; *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); and *People v. McKinney*, 399 Ill. App. 3d 77, 83 (2010). We agree with these decisions, and likewise conclude that the three-year MSR term was correctly applied here. In so finding, we further note that defendant's argument that the doctrine of lenity requires that he be sentenced to the two-year MSR term has been rejected by this court. See *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011).

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.