2012 IL App (5th) 100269-U

NO. 5-10-0269

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 07-CF-1161
	)	
LEWIS RICE,	)	Honorable
	)	Vincent J. Lopinot,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence supported the jury's finding that the defendant committed the offense of first-degree murder.

¶ 2 In November 2009, a St. Clair County jury found the defendant, Lewis Rice, guilty of first-degree murder (720 ILCS 5/9-1(a) (West 2006)), armed violence (720 ILCS 5/33A-2(b) (West 2006)), and aggravated battery with a firearm (720 ILCS 5/12-4.2(a) (West 2006)). The defendant appeals, arguing that his first-degree murder conviction should be reduced to second-degree murder (720 ILCS 5/9-2(a) (West 2006)). For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 It is undisputed that on September 26, 2007, the defendant shot and killed Franklin Jones and shot and injured Grady Appleton. At trial, the reasonableness of the defendant's conduct was the primary inquiry, and the following evidence was presented for the jury's

consideration.

¶ 5 The defendant's nephew, Mikel Chalmers, testified that in the early morning hours of September 26, 2007, he was in East St. Louis "getting high" on crack cocaine at a house on Natalie Street. The defendant, who owned the house, and Alyce Woods, who was also smoking crack, were there as well. At some point, a red Cadillac with three male occupants drove up and pulled in behind the defendant's truck, which was parked in the driveway. The defendant and Woods were in the truck at the time, and both got out and spoke to the men. Chalmers testified that it looked like the driver of the Cadillac "was trying to sell [Woods] some dope or something." Chalmers also indicated that the occupants of the car might have been planning to rob the defendant, explaining that one of the men had passed a gun to another "like he was trying to hide it." The defendant subsequently told Chalmers to lock the house, because it was time to go. Chalmers did so, and he, Woods, and the defendant drove off in the defendant's truck. Chalmers testified that the defendant and the occupants of the Cadillac had exchanged words as they were leaving, and as the defendant drove away, one of the car's passengers fired a shot at the back of the truck.

¶ 6 Chalmers testified that the defendant subsequently drove to a house on 19th Street, where he obtained a silver automatic pistol. Chalmers further testified that when the defendant returned to the truck, he had stated: "I'm going to kill them motherfuckers. They don't know who they're messing with." The defendant then drove back to the house on Natalie Street to make sure that the men in the red Cadillac had not done anything to it. The defendant also called the police, but Chalmers acknowledged that they had not waited around for them to arrive. Intending on dropping Chalmers and Woods off, the defendant subsequently headed towards Chalmers's uncle's house on Goose Hill. Along the way, they saw the red Cadillac at 14th and Lynch Streets. After confirming that it was the same Cadillac from before, the defendant slowed down and the driver of the Cadillac "flashed [his]

lights" at the defendant. Chalmers testified that at that point, the defendant jumped out of his truck, stated, "I'm going to get the motherfuckers," and started shooting at the car. When the defendant returned to the truck, the pistol that he had been firing was empty. He then drove Chalmers and Woods to Chalmers's uncle's house.

¶ 7 When cross-examined, Chalmers testified that the defendant had recently purchased the house on Natalie Street. Explaining that the surrounding neighborhood was riddled with prostitution, violence, and drugs, Chalmers stated that before the defendant bought the home, it had been a "drug house" and people had been squatting there. Indicating that the occupants of the Cadillac seemed like "they were trying to lay claim to [the] house," Chalmers stated that the men in the Cadillac might have previously sold drugs there. Chalmers further stated that the defendant "got pretty nervous" during his encounter with the men in the Cadillac and that when he told Chalmers that it was time to leave, he had "wanted to leave right then." Chalmers testified that the man who had fired a shot at the back of the truck was "right up next to the truck" as it drove away. Chalmers explained that drug dealers commonly flash their cars' headlights at other cars to indicate they have drugs to sell. Chalmers acknowledged that he was in jail on a pending criminal case in St. Clair County and that he was hoping the State was "going to offer [him] probation" given his lack of criminal history and his testimony against the defendant.

¶ 8 Twenty-one-year-old Darius Estes testified that he, Jones, and Appleton were the three occupants of the red Cadillac that the defendant shot at on September 26, 2007. Jones was driving the car, Estes was in the front-passenger seat, and Appleton was in the backseat. Jones also had a handgun in the car. Estes indicated that they had stopped in front of the defendant's house on Natalie Street that morning to sell drugs to Woods, a known user who "was waving [them] down." Estes testified that he and Appleton had gotten out of the car and that he had been standing by the defendant's truck talking to Woods when the defendant

told her that it was time to go. When the defendant drove off, he ran over Estes's foot. In response, Estes took Jones's handgun, which Appleton had been holding, and fired a shot at the defendant's truck as it drove away. Estes testified that he had no intentions of robbing anyone at the defendant's house and that he had stopped wanting only to make a drug deal. Estes further testified that he had never seen the defendant before, and there was no "bad blood" between them.

¶ 9 Estes testified that after leaving the defendant's house in the Cadillac, he, Jones, and Appleton had driven around East St. Louis, "[j]ust riding around." Estes estimated that approximately 30 to 45 minutes later, they saw the defendant's truck at 14th and Lynch. Estes testified that after flashing its lights, the truck slowed to a near stop as it approached the Cadillac, which was "sitting still" near the intersection. The defendant then "opened his door a little bit" and angrily asked, "Where's the short motherfucker with pretty eyes that shot at my truck?" He then started shooting into the Cadillac's driver-side windows. Estes stated that he had ducked down in the front-passenger seat and avoided injury, but Jones and Appleton were both hit. Jones had his gun on his lap at the time, but Estes stated that Jones had done nothing with the gun, and no one had said or done "anything in [the] Cadillac to provoke the defendant."

¶ 10 After shooting into the Cadillac, the defendant sped off in his truck. Upon realizing that Jones had been hit, Estes "threw the [Cadillac] in park" and exited the vehicle. Estes testified that although the defendant's truck was already "like halfway down the street," he grabbed Jones's gun and "shot at the truck like three times." Estes then moved Jones over to the front-passenger seat and drove to St. Mary's Hospital. Estes testified that on the way to the hospital, he had stopped and stashed Jones's gun in some nearby bushes.

¶ 11 Estes testified that he and Jones had been close friends for years and that he, Jones, and Appleton had been "drinking" and "smoking weed" on the morning in question. Estes

admitted that he was in jail on a pending criminal case in St. Clair County and that he also had cases pending in Jackson County.

¶ 12 When cross-examined, Estes acknowledged that when initially interviewed by the police, he had failed to mention anything about what had occurred outside the defendant's house on Natalie Street. Estes further acknowledged that Appleton had "started getting loud" while they were there and that "some other guy," who might have been a "crack head," had been "milling about towards the end of the driveway." Estes testified that he got mad when the defendant had run over his foot, but he did not know if the defendant ran over it on purpose. Estes stated that he had never previously been to the house on Natalie Street and had never sold drugs there. Estes agreed that the house was in a bad neighborhood where drugs, prostitution, and violent crime were commonplace. Estes stated that he, Jones, and Appleton had not gone looking for the defendant after the encounter on Natalie Street.

¶ 13 Appleton testified that on the morning in question, he, Jones, and Estes had been at the defendant's house on Natalie Street for "about eight to ten minutes" before leaving in the Cadillac. Appleton testified that when they later saw the defendant's truck at 14th and Lynch, they had stopped because the defendant had "kind of stopped in the street and got out and walked over to the car." Thereafter, the defendant "[j]ust started shooting." Acknowledging that there had been a gun in the Cadillac, Appleton stated that no one in the car had brandished the weapon or said anything before the defendant had commenced firing. Immediately after the defendant stopped shooting into the Cadillac, Estes "grabbed the gun and got out of the car." Appleton testified that Estes then shot the gun "in the air one time." Estes subsequently pushed Jones over to the front-passenger seat and drove to the hospital. Appleton testified that Estes had not stopped along the way and that he did not know what happened to the gun that Estes had fired into the air. Appleton testified that the defendant had shot him in the leg and that the resulting injury had required extensive medical treatment.

Appleton indicated that Jones had died in the Cadillac shortly after the defendant fired into the car.

¶ 14 When cross-examined, Appleton testified that Jones and Estes had gotten out of the Cadillac when they stopped at the defendant's house on Natalie Street, and he had waited for them in the car. Appleton indicated that Estes and Jones "seemed to be headed there" and that no one had flagged them down from the street. Appleton stated that after Jones and Estes had exited the Cadillac, Estes had knocked on the door of the defendant's house "like they wanted to talk to someone there." Appleton further testified that he had not seen the gun that had been in the Cadillac until Estes "got out with it at 14th and Lynch." Appleton indicated that he had not paid much attention to what had happened at the defendant's house and that he did not know what Jones, Appleton, the defendant, and Woods had been discussing. Appleton "was just ready to go from that neighborhood," which he described as very dangerous.

¶ 15 Additional testimony established that Jones had been shot twice and had "essentially died from [a] gunshot wound to the chest." The number of recovered bullets and identified bullet holes indicated that the defendant had fired at least six rounds into the Cadillac. Jones was pronounced dead at the hospital, and a 9-millimeter pistol was later found in some bushes down the street. Blood testing later revealed that Appleton had cocaine and alcohol in his system, but the presence of marijuana was not indicated. Jones's blood tested positive for cannabis, but "[h]e didn't have any alcohol in him." The defendant did not testify on his own behalf.

¶ 16 During closing arguments to the jury, the State maintained that the present case was about "revenge" and "retaliation" as opposed to self-defense. Arguing that the defendant had unnecessarily taken "the law into his own hands," the State suggested that the defendant had made a conscious decision to get the "motherfuckers" who had previously shot at his truck.

Noting that the undisputed evidence was that the occupants of the Cadillac had merely been sitting in the car when the defendant approached and started shooting into it, the State argued that the defendant's use of force was neither justified nor reasonable under the circumstances.

¶ 17 In response, assailing the credibility of the State's key witnesses, defense counsel argued that the defendant had been the victim under the circumstances. Counsel maintained that the defendant had been "minding his own business" on Natalie Street and had been forced to flee his own home because he was too scared to stay. Counsel suggested that the occupants of the Cadillac might have first fired shots at the defendant at 14th and Lynch and that having earlier been shot at by the same men, the defendant had understandably "defended himself" when he shot into the car. Suggesting that "shaky witnesses" are generally willing to lie about anything, counsel argued that the State had failed to prove the defendant's guilt beyond a reasonable doubt.

¶ 18 In rebuttal, the State emphasized that the evidence established that at 14th and Lynch, no one in the Cadillac had said or done anything to provoke or threaten the defendant. The State theorized that Jones would still be alive if the defendant "would have waited for the police to show up."

¶ 19 After due deliberations, the jury returned a verdict finding the defendant guilty of first-degree murder, armed violence, and aggravated battery with a firearm. Because he had also been convicted of first-degree murder in 1991, the defendant was subsequently sentenced to serve a mandatory term of natural life imprisonment. See 730 ILCS 5/5-8-1(a)(1)(c)(i) (West 2006). In June 2010, the defendant filed a timely notice of appeal.

¶ 20 ANALYSIS

¶ 21 Conceding that the "only question in this case was whether [he] acted on an unreasonable belief in the need for self-defense when he fired into the Cadillac," the defendant argues that we should reduce his first-degree murder conviction to second-degree

murder. The State counters that the jury rightfully rejected the defendant's claim of unreasonable self-defense because the evidence adduced at trial supported a finding that when the defendant opened fire on the occupants of the Cadillac at 14th and Lynch, he "had no basis whatsoever, be it reasonable or unreasonable, to believe that deadly force was necessary."

¶ 22 When reviewing the sufficiency of the evidence supporting a criminal conviction, it is not the function of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Rather, "[t]he relevant inquiry is whether, 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." *Id.* Under this standard, a reviewing court "will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). "The determination of whether a defendant is guilty of first[-]degree murder or guilty of second[-]degree murder or was justified because acting in self-defense is a question for the finder of fact." *People v. Simon*, 2011 IL App (1st) 091197, ¶ 52.

¶ 23 "A defendant commits first[-]degree murder when he kills an individual without lawful justification and, when he performed the acts which resulted in the death, he intended to kill or do great bodily harm to the person, or he knows that such acts create a strong probability of death or great bodily harm to that individual or another." *People v. Perry*, 2011 IL App (1st) 081228, ¶ 29.

> "Self-defense is an affirmative defense [citation] which is raised when (1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm is imminent; (4) the person threatened must actually believe (a) that a danger exists, (b) the use of force is necessary to avert the danger, and (c) the

kind and amount of force which he uses is necessary; and (5) the above beliefs are reasonable [citation]." *People v. Hooker*, 249 Ill. App. 3d 394, 400 (1993).

"A person commits the offense of second[-]degree murder when he commits the offense of first[-]degree murder and at the time of the killing he believes that his use of force is necessary to prevent imminent death or great bodily harm to himself or another, but his belief is unreasonable." *People v. Reid*, 179 Ill. 2d 297, 308 (1997). "To reduce an offense from first[-]degree murder to second[-]degree murder, the burden is on the defendant to prove [by a preponderance of the evidence] that he believed that his use of force was necessary." *Id.* "In other words, '[o]nce the State has proven first[-]degree murder beyond a reasonable doubt, the defendant must prove by a preponderance of the evidence *** that he believed that the circumstances justified using self-defense, but that his belief was unreasonable.' " *People v. Garcia*, 407 Ill. App. 3d 195, 203 (2011) (quoting *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998)). "Whether [the] defendant believed, albeit unreasonably, that his use of force was necessary is a question of fact, the determination of which will not be disturbed on appeal if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have reached that determination." *Reid*, 179 Ill. 2d at 308.

¶ 24 We first note that the defendant did not testify as to what his subjective beliefs regarding his use of deadly force actually were, and obviously, the monologues and verbal exchanges that preceded the shooting at 14th and Lynch occurred without transcription. Nevertheless, viewing the evidence adduced at trial in the light most favorable to the prosecution, we agree with the State's assessment that the jury could have readily concluded that with the intent to kill the occupants therein, the defendant repeatedly fired into the Cadillac in retaliation for the shot that Estes had earlier fired at his truck and that he did not believe, reasonably or unreasonably, that the use of deadly force was necessary under the circumstances. The jury could have specifically concluded that after obtaining a gun,

threatening to kill the Cadillac's occupants, and confirming that the Cadillac was the same one that he had encountered earlier, the defendant emptied his pistol into the car at close range before fleeing the scene in his truck. The State's evidence that the Cadillac's occupants had done nothing at 14th and Lynch to provoke the defendant's attack was uncontroverted, as was the evidence that the defendant had contacted the police about the incident on Natalie Street but had decided not to wait for them.

¶ 25 We recognize that a victim's history of violence towards a defendant may be relevant when determining whether the defendant had "an actual belief in the need to use self-defense," but it is axiomatic that the defendant's conduct must also be considered. *Simon*, 2011 IL App (1st) 091197, ¶ 54. We also recognize the inconsistencies in the testimony of the State's key witnesses, but "[i]t is well established that the trier of fact is in the best position to assess the credibility of witnesses, determine the weight to be accorded their testimony, decide what inferences to draw from the evidence, and resolve any factual disputes arising from conflicting or inconsistent testimony." *People v. Myles*, 257 Ill. App. 3d 872, 884 (1994). In any event, the evidence presented for the jury's consideration in the present case sufficiently supported a finding that the defendant committed first-degree murder and did not act under an unreasonable belief in the need for self-defense. Accordingly, we cannot reduce his conviction to second-degree murder as he suggests we should. See *People v. Garcia*, 407 Ill. App. 3d 195, 203-04 (2011) (refusing to reduce the defendant's first-degree murder conviction to second-degree murder where "there was ample evidence to support the conclusion that [the] defendant did not believe his actions were necessary to protect his life and, therefore, that he was not acting in self-defense"); *People v. Robinson*, 375 Ill. App. 3d 320, 337 (2007) (holding that there was overwhelming evidence that the defendant committed the offense of first-degree murder rather than second-degree murder where the evidence allowed the jury to conclude that the defendant "never feared a

threat from [the victim] but instead deliberately attacked him by surprise"); *People v. Armstrong*, 244 Ill. App. 3d 545, 555 (1993) (holding that the jury's finding that the defendant "did not have the subjective belief that deadly force was necessary" was supported by, *inter alia*, evidence that after fatally stabbing the victim in the chest, the defendant had stated, " '[m]aybe now he'll just leave me alone,' " had "made no attempt to obtain medical help," and had "instead attempted to hide from the authorities"); *People v. Huddleston*, 243 Ill. App. 3d 1012, 1019-21 (1993) (refusing to reduce the defendant's first-degree murder conviction to second-degree murder where although the defendant testified that the victim had "approached him menacingly, told him that he would 'fuck [him] up,' and then swung a pipe or tire iron at him," there was also evidence that the victim "had nothing in his hand at any time during the incident and that he made no move whatsoever toward [the] defendant before he was stabbed"); *People v. Parker*, 194 Ill. App. 3d 1048, 1056 (1990) ("In sum, the evidence, viewed in the light most favorable to the prosecution, does allow a rational trier of fact to find that [the defendant] did not act with a belief, reasonable or unreasonable, in the need for self-defense.").

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 28 Affirmed.