2015 IL App (2d) 130794-U
No. 2-13-0794
Order filed May 18, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARCUS BROWN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 04-CF-3987 Honorable James K. Booras, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of the first-degree murder of a victim who died of pneumonia several years after defendant shot her, as the jury was entitled to credit the opinion of the only expert witness, who testified that the shooting, not the victim's multiple sclerosis, was the root cause; that defendant could not have predicted the precise way the victim died was irrelevant; (2) as defendant killed only two victims, we vacated his additional convictions of murder.

¶ 2 Following a jury trial, defendant, Marcus Brown, was convicted of the first-degree murders of Remorrian Gordon and Shabrina Gully (see 720 ILCS 5/9-1(a)(1) (West 2004)). The trial court imposed a mandatory sentence of natural life in prison. Defendant appeals,

contending that he was not proved guilty beyond a reasonable doubt of the murder of Gully, who died of pneumonia nearly four years after defendant shot her. Defendant contends that her preexisting multiple sclerosis (MS) was the intervening cause of her death. We disagree and affirm that conviction.

¶ 3 Evidence at trial showed that, on October 26, 2004, Gordon and Gully were driving in a car in North Chicago. Gordon tried to run defendant over with the car and threatened to kill him if he saw him again. Defendant went to his girlfriend's house and called his mother for a ride away from North Chicago.

¶ 4 After he left his girlfriend's house, he met a friend who gave him a gun, telling him that Gordon was looking for him and " 'they going to try taking you down once they see you.' " About five minutes later, Gordon drove by in his car. He got out and again threatened defendant. Gordon reached toward his waistband as if reaching for a gun. Defendant pulled his own gun and shot Gordon three or four times. Defendant testified that out of the corner of his eye he saw someone move in the car. Other witnesses testified that they heard a woman screaming in the car. Defendant shot toward the car, thinking that the person was one of Gordon's confederates. Gully, the person in the car, was shot in the face.

¶ 5 Gordon died at the scene. Gully was taken to St. Therese Hospital and later transferred to Froedtert Hospital in Milwaukee. Gully spent about six weeks in the hospital before being released to home and physical therapy. She was paralyzed for a time but, according to her mother, eventually was able to walk using a walker. She could not use her arms the same way as before. Gully was hospitalized "a lot," became bedridden, and was placed on a breathing tube and feeding tube. She died on July 25, 2009.

¶ 6 Dr. Eupil Choi, qualified as an expert in forensic pathology, conducted an autopsy on Gully. He testified that he discovered a bullet in the muscle tissue around Gully's neck, with some fragments lodged near the C-1 and C-2 vertebrae.

¶ 7 He concluded that Gully had bronchial pneumonia. She was paraplegic and confined to bed. She could move only with assistance. She could not feed herself and had difficulty breathing. Her lower legs had atrophied. She had multiple bed sores. These were caused by poor circulation as a result of inactivity and were very susceptible to infections.

¶ 8 Gully also had MS that predated the shooting. Choi concluded that the MS was not severe. He found a single plaque nodule in Gully's brain; in a severe case there would be multiple nodules.

¶ 9 Choi's ultimate conclusion was that Gully died of bronchial pneumonia due to paraplegia, which in turn was due to a gunshot wound to the head. MS was a "significant condition," meaning that it was an additional contributing factor.

¶ 10 Defense counsel extensively cross-examined Choi about alleged shortcomings in his experience and methodology. He acknowledged that he did not review Gully's medical history but received information from police officers who attended the autopsy. He did not speak with any of her treating physicians. He admitted that he was not very familiar with MS.

¶ 11 The jury found defendant guilty of both murders. It also found that defendant personally discharged the firearm that caused the two deaths. The trial court imposed a mandatory life sentence. Defendant timely appeals.

¶ 12 Defendant contends that the State failed to prove beyond a reasonable doubt that he caused Gully's death. He contends that Choi reached the bare, unsupported conclusion that

Gully's pneumonia resulted from the gunshot wound and that medical literature suggests that her MS was a more likely cause.

¶ 13 Where a defendant challenges on appeal the sufficiency of the evidence, the relevant question is whether, after viewing all the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). We may not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 14 Where the State proves the existence, through acts of the defendant, of a sufficient cause of death, the death is presumed to have resulted from those acts, unless it can be shown that the death was caused by a supervening act disconnected from the defendant's acts. *People v. Mars*, 2012 IL App (2d) 110695, ¶ 16. Where a victim dies from an intervening cause completely unrelated to the defendant's acts, the defendant is relieved of criminal liability. *People v. Brackett*, 117 Ill. 2d 170, 176 (1987). The converse is also true: when the defendant's criminal acts contribute to a person's death, the defendant may be found guilty of murder. *Id.* The defendant's acts need not be the sole and immediate cause of death. *People v. Reader*, 26 Ill. 2d 210, 213 (1962). Causal relationship is a question of fact for the jury. *Brackett*, 117 Ill. 2d at 177.

¶ 15 Defendant notes that medical opinion testimony must have "foundations of fact and reasons upon which the opinion could stand." *People v. Brown*, 57 Ill. App. 3d 528, 532 (1978). After cataloging the alleged infirmities in Choi's testimony, he then cites several Internet articles suggesting that MS alone could have caused the conditions that led to Gully's death. The State

responds that an appellate court must limit its review to the record as it existed in the trial court and that defendant's citation of Internet articles is an improper attempt to introduce evidence that was not presented to the jury. See *Pyle v. City of Granite City*, 2012 IL App (5th) 110472, ¶ 12 (disregarding newspaper articles and other documents attached to defendant's brief that were not before the trial court).

¶ 16 We agree with the State that the Internet articles are an improper attempt to supplement the record with evidence that was not before the jury. However, even if we considered the substance of the articles, our opinion would not change. The articles merely deal in general terms with the effects of MS and of spinal-cord injuries. The authors of those articles did not examine Gully's body, learn anything about her medical history, or attempt to relate the general information to the facts of this case. To do so properly would require a medical expert. The articles merely offer a possible alternative cause for Gully's pneumonia, one that Choi, the only medical expert to testify, considered and rejected.

¶ 17 The cases defendant cites are similarly unavailing. In *Brown*, on which defendant chiefly relies, the defendant stabbed the victim several times. The victim later developed blood clots and died. The State's medical expert " 'surmised that the blood clots' " had originated from one of the victim's injuries. *Brown*, 57 Ill. App. 3d at 532. The appellate court noted that there was "no evidence of an autopsy, no descriptions detailing the physical condition found at death relating it to the defendant's act, no explanations of the reasons underlying the cause of death." *Id.* at 532-33. Here, Choi did conduct an autopsy and he explained the basis for his opinion, which the jury was free to accept or reject.

¶ 18 In the other cases defendant cites, reviewing courts upheld convictions despite the presence of intervening causes of death. In *Brackett*, the defendant beat the 85-year-old victim,

who five weeks later choked on food and died. The medical examiner opined that a broken rib suffered in the attack made it difficult for the victim to expel air, which in turn made it difficult to swallow. The victim's treating physician opined that her advanced age affected her recuperative powers. The supreme court affirmed the defendant's murder conviction, finding the medical testimony sufficient to establish causation. *Brackett*, 117 Ill. 2d at 178-79.

¶ 19 In *People v. Gulliford*, 86 Ill. App. 3d 237 (1980), the defendant, in the course of a robbery, struck the victim in the head with a metal pipe. The victim fell into a coma, contracted pneumonia, and died. The pathologist opined that the pneumonia was probably caused by the victim's comatose state. *Id.* at 240. The appellate court affirmed the defendant's murder conviction, finding the evidence sufficient to establish that the defendant was the direct and proximate cause of the victim's death. *Id.* at 241-42.

¶ 20 Very similar to this case is *People v. Amigon*, 388 Ill. App. 3d 26 (2009), *aff'd*, 239 Ill. 2d 71 (2010). There, the defendant shot the victim, resulting in his being paralyzed. Five years later, the victim contracted pneumonia and died. The medical examiner opined that the victim died from pneumonia due to quadriplegia due to a gunshot wound to the neck. *Id.* at 34. The reviewing court rejected the defendant's contention that the State had failed to prove that he proximately caused the victim's death. *Id.* at 35-36.

¶ 21 Despite the similarities between *Amigon* and this case, defendant insists that *Amigon* is distinguishable because here, unlike in *Amigon*, the victim was eventually able to walk again, and because in *Amigon* there was no evidence that the victim had a preexisting condition such as MS. However, Choi's testimony accounted for both of these factors. He opined that, despite some limited mobility, the victim was essentially bedridden, which caused her to develop bed sores. Choi further testified that the victim's MS was neither very advanced nor particularly

serious. While he labeled it a contributing factor, he opined that it was not the sole cause of the victim's contracting pneumonia.

¶ 22 Defendant also suggests that the victim's death was not foreseeable. The courts in the cases mentioned above rejected similar arguments. So long as death was a foreseeable consequence of the defendant's acts, it is not necessary that the precise manner of the victim's death be foreseeable. *Brackett*, 117 Ill. 2d at 180-81. Here, it was foreseeable that shooting the victim in the face could lead to her death. That defendant could not have predicted the precise way she died is irrelevant.

¶ 23 Defendant alternatively contends that the judgment must be amended to reflect only two first-degree-murder convictions and concurrent life sentences. The State confesses error. Where a defendant is convicted of multiple counts for the same offense, judgment should be entered only on the most serious count and the lesser convictions vacated. *People v. Smith*, 233 Ill. 2d 1, 20-21 (2009). Here, defendant was convicted of killing two people, so he could be convicted and sentenced for only two counts of murder. Thus, we vacate all but the two most serious counts, counts IX and XXIV, alleging intentional murder.

¶ 24 The judgment of the circuit court of Lake County is affirmed in part and vacated in part. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nichols*, 71 Ill. 2d 166, 179 (1978).

¶ 25 Affirmed in part and vacated in part.