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2016 IL App (3d) 140380-U

Order filed November 2, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0380
CORTEZ D. WILLIAMS,)	Circuit No. 13-CF-896
Defendant-Appellant.)	Honorable Kevin Lyons, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by granting the State's motion *in limine* to prevent the defense from introducing evidence that the police discovered a fully concealed handgun on the murder victim's body. The trial court's ruling was not erroneous because the defendant did not testify that he saw the fully concealed weapon before opening fire and shooting the victim multiple times on the night of the murder. The trial court did not err when it refused to instruct the jury on self-defense because the record did not contain any evidence defendant believed his use of deadly force was necessary.

¶ 2 Following a jury trial, defendant was convicted of first-degree murder and sentenced to a term of 60 years in the Illinois Department of Corrections. In response to a pretrial amended

motion *in limine*, the court ruled the defense would not be allowed to introduce testimony that the police discovered a fully concealed handgun on the victim's body as the officers searched the body for identification at the crime scene. Further, the trial court also properly refused defendant's request for a self-defense jury instruction due to the absence of any evidence supporting defendant's theory of self-defense. Following his conviction for first-degree murder, defendant appeals these rulings.

¶ 3

FACTS

¶ 4

On September 24, 2013, a Peoria County grand jury returned an indictment charging Cortez D. Williams (defendant) with two counts of the first-degree murder of Melvin Sanders (victim) in violation of 720 ILCS 5/9-1(a)(1) and (a)(2). Before trial, the State filed a motion *in limine* requesting the court to exclude testimony of the victim's prior criminal record and the fact that the police discovered a fully concealed handgun on the deceased victim's body on the night of the murder. One day later, the State filed an amended motion *in limine*, requesting the court to further exclude testimony about the victim's tattoos.

¶ 5

Following the pretrial hearing on the State's amended motion *in limine*, the court determined the jury would not receive information concerning the victim's tattoos or that the victim possessed a concealed handgun on his body on the night of the fatal shooting. The court indicated these evidentiary rulings could be revisited if, during the evidentiary portion of the trial, it became "evident and clear that the defendant himself knew of those things and acted or reacted because of it."

¶ 6

The jury trial began on March 11, 2014. The State first called Sanashai Dillard. Dillard testified that on September 13, 2013, defendant approached her and four of her female friends inside the Griswold Liquor Store in Peoria. The women walked to Dillard's "aunty's" house

located on Stanley Street. As the women walked to the home on Stanley Street, defendant followed in a red or maroon car.

¶ 7 About 30 minutes later, Dillard and another friend were standing outside of her “aunty’s” house. At this time, defendant arrived at the home and began acting rude by announcing he was “obsolete.” According to Dillard, she interpreted defendant’s statement to mean that no one could touch him. In addition, defendant insinuated that he had a gun and stated he was able to carry it on him without anyone seeing the gun. Then, the victim approached defendant and asked him if there was a problem. In response, defendant told the victim to mind his own business. Shortly thereafter, the victim then asked Dillard if she “knew” defendant and asked whether she was “good.”

¶ 8 Dillard told the victim that she did not know defendant. The victim then swung a punch at defendant but missed. According to Dillard, defendant immediately reacted by pulling out a handgun and pointing the gun at the victim. Defendant asked, “[w]hat you want fam?” KeiAmber Beard and Dillard’s cousin broke up the confrontation between defendant and victim and defendant drove away in a car.

¶ 9 Keenan Hardy (Keenan) testified that eight days after the victim and defendant exchanged words, Keenan was present at a similar gathering of people at a home on Stanley Street at approximately 7:00 p.m. on September 21, 2013. According to Keenan, at that time, a guy walked up behind him. Keenan heard some gunshots and realized he had been shot in the back of the head. Keenan stated that he did not see any shots being fired.

¶ 10 In addition, the State called Arnita Smith, the victim’s aunt, who described the events that took place on September 21, 2013, the night of the murder. Smith stated that she felt something

brush past her nose and heard gunshots. After the gunfire stopped, Smith found the victim lying on the sidewalk. Smith testified that she didn't see anyone fire a weapon.

¶ 11 Antonio Hardy (Antonio) testified that he was also present at the gathering on September 21, 2013, the night of the murder. Antonio was in his truck playing music for the gathering when he saw a man shooting while standing over a body. Antonio testified that the shooter shot the person on the ground twice while his gun was pointed down. Antonio drove his truck towards the shooter and the shooter aimed his weapon at Antonio's truck. The gunman did not fire his weapon at the truck before running away on foot. Antonio chased the shooter and eventually ran the shooter over with his vehicle. Thereafter, Antonio watched the shooter enter a grey Monte Carlo. Antonio followed the Monte Carlo for several miles before the police intervened.

¶ 12 The State called numerous Peoria police officers. Officer Melton testified that when he arrested defendant, defendant had an injured leg, which defendant attributed to a basketball injury. Officer Williams testified to searching the Monte Carlo and finding a .40 caliber semiautomatic handgun under the driver's seat. No fingerprints were found on the gun. Williams also found four .40 caliber and two 9mm caliber shell casings at the crime scene.

¶ 13 Next, the State called Dr. Amanda Youmans, a physician specializing in forensic pathology. During the victim's autopsy, Dr. Youmans found nine gunshot wounds on the victim's body. Dr. Youmans also testified about the trajectory of the bullets and the nature of the injuries sustained.

¶ 14 The State also called Dustin Johnson, a forensic scientist with the Illinois State Police. Johnson stated that he conducted ballistics testing and concluded the four .40 caliber shell casings recovered from the scene of the murder had been fired from the same gun discovered

under the driver's seat of the Monte Carlo. According to Johnson, the two additional 9mm caliber shell casings found at the scene of the murder were fired from another gun.

¶ 15 Jason Leigh, a detective with the Peoria Police Department, described how he and Detective Steven Garner interviewed defendant on videotape at the police station. The State played the taped interview for the jurors.

¶ 16 Defendant began the videotaped interview by stating he injured his leg playing basketball. Next, defendant told the detectives that he injured his leg when he was struck by a white SUV while talking to an unidentified female, trying to get her telephone number. Later, defendant explained that he injured his leg as he walked in an area near Stanley Street on September 21, 2013. Defendant was walking by when he heard the victim say "what's up." Defendant said at this point he pulled his gun out and shot the victim several times. Defendant said "I wasn't out to get nobody but the dude that was f*** with me." Defendant explained he used .40 caliber rounds in the shooting and believed the two 9mm caliber shell casings could be attributed to someone firing at him as he ran away.

¶ 17 After the State rested, defendant testified in his own defense. Defendant told the jury that he first encountered the victim on September 13, 2013. On that date, he saw seven or eight females at the Griswold Liquor Store and spoke with the women a few minutes later at a nearby home on Stanley Street. After speaking with the women for 15 or 20 minutes, defendant left the area for the purpose of changing his clothing and taking a shower. When he returned to Stanley Street about 45 minutes to an hour later, he was armed with a gun for his own protection. Defendant again approached and spoke to the females. Defendant claimed one of the females asked him "why you talking s*** for," and then defendant heard a male say "who over here talking s***?" Defendant did not know this person, but later learned he was the victim. The

victim asked one of the women if they knew defendant. When she responded “no,” the victim punched defendant in the left jaw.

¶ 18 According to defendant’s testimony, once he was punched in the face, the victim and another unidentified male approached him. These actions caused defendant to fear he was going to be jumped by the men, so defendant pulled out a firearm and held it down at his side. When the victim saw defendant’s gun he moved his jacket out of the way and said “oh, we got those too.” Defendant said that at the time he thought he saw the butt of a gun because something black was sticking up on the victim’s hip. Then, everyone scattered. The defendant explained that he walked back to his car and returned home. When asked during direct examination how the situation made him feel, defendant said he felt scared on September 13, 2013, because the victim was bigger than him.

¶ 19 According to defendant, eight days later, on September 21, 2013, he drove his girlfriend’s new Monte Carlo into the same area near Stanley Street for the purpose of meeting women. According to defendant, he was armed for self-defense. Defendant parked the Monte Carlo and hopped out to walk and talk with a female. After she left, defendant began walking back to the Monte Carlo down Stanley Street. Defendant testified he saw a group of people outside of a home on Stanley Street and hesitated before deciding it was safe to walk by the house. While walking by the group gathered at this house, he heard a familiar voice, the victim, say “what’s up.” The victim was bent at the shoulders holding a bottle, and had his other hand in his jacket pocket. Defendant then saw the victim make a “pulling out motion” like the victim’s hand was coming out of his jacket pocket. Defendant thought the victim was going for a gun “because I pulled a gun out on him, so I thought he was going to pull a gun out on me.” Consequently,

defendant pulled his gun out and began shooting while moving backwards. Defendant denied he stood over the victim while shooting.

¶ 20 As defendant ran away to avoid the returning gunfire, a “white truck” struck him on the left side of his body. Defendant then stood up, entered the Monte Carlo, and took off with the white truck in pursuit until the police stopped the Monte Carlo approximately 15 minutes later. After receiving medical care at the hospital, defendant was transported to the police station for an interview.

¶ 21 At the police station, defendant felt sleepy and had trouble concentrating during the interview due to the pain medication he received at the hospital. During the interview, defendant stated he discharged his weapon on the night in question because he was scared.

¶ 22 At the conclusion of defendant’s testimony, before resting the defense evidence, defense counsel requested the court to revisit the prior ruling on the State’s amended motion *in limine*. Defense counsel requested permission to recall Officer Williams, whose testimony would indicate that while searching the victim’s body for identification he felt an object. Consequently, Officer Williams unzipped the victim’s pants and pulled down the defendant’s clothing in order to reveal a concealed handgun.

¶ 23 The State argued defendant’s testimony did not establish defendant observed a gun in the victim’s possession on the night of the shooting. Since defendant did not see the concealed weapon before using lethal force, the State opposed the defense request on grounds of relevancy.

¶ 24 The court upheld its pretrial ruling, finding the evidence was not relevant. The trial judge noted:

“police only found after they were doing what amounts to a dead man’s pat down and undoes his pants before he can even find it.

When the defendant's full testimony had nothing to do with reaching in his pants, but that it was in his pocket."

¶ 25 The trial judge went on to say:

"I don't think that the--I don't think that the evidence that the victim-- under this set of facts calls for any revelation to the jury that the victim had a gun on him."

¶ 26 After the defense rested, the State presented two rebuttal witnesses to impeach defendant's trial testimony. Both Detective Leigh and Detective Garner advised the jury that during the videotaped interview defendant did not report to the detectives that the victim displayed a weapon on September 13 or that the victim was pulling his hand out of his jacket pocket on September 21, just before defendant opened fire.

¶ 27 When discussing the proposed jury instructions with the court, defense counsel stated the jury should receive an instruction on the law pertaining to self-defense. During the conference on jury instructions, the court refused to instruct the jury on self-defense, but allowed a second-degree murder instruction. However, the court reasoned that a second-degree murder instruction was warranted because the evidence was such that it could support the theory that defendant had an unreasonable belief that lethal force was necessary.

¶ 28 At the conclusion of their deliberations, the jury found defendant guilty of first-degree murder. On April 10, 2014, defendant filed a motion for judgment notwithstanding the verdict or, alternatively, for a new trial, which was denied on May 2, 2014. On May 2, 2014, defendant filed a motion to reconsider sentence, which was denied three days later. On May 7, 2014, defendant filed a timely notice of appeal.

¶ 29

ANALYSIS

¶ 30

Defendant raises two issues on appeal. First, defendant contends reversible error resulted from the trial court's pretrial ruling to prohibit the jury from receiving undisputed evidence that the police found a totally concealed handgun on the victim's body. Second, defendant contends the trial court committed reversible error when it refused to instruct the jury on self-defense because defendant's trial testimony was credible and supported his claim that he acted in self-defense and was not guilty of first-degree murder.

¶ 31

The State argues the discovery of the concealed handgun on the victim's deceased body was not relevant evidence because the defense did not offer any evidence at trial establishing the defendant saw this concealed weapon before shooting the victim without justification. Similarly, the State contends the self-defense instruction defendant requested was not warranted by the evidence in the case at bar.

¶ 32

I. Evidence of Handgun on the Victim's Body

¶ 33

First, we address defendant's argument that a new trial is in order because the trial court committed reversible error by refusing to allow defendant to present undisputed evidence that the victim was armed on the night of his death. Both sides appear to agree the officer processing the victim's body at the crime scene could not see the handgun when looking at the exterior of the deceased victim's clothing and had to manipulate the clothing on the body to reveal the weapon.

¶ 34

According to the Illinois Rules of Evidence, evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). The case law provides, "[a] trial court's decision regarding the presentation of evidence to a jury is reviewed under an abuse of discretion standard." *Troyan v. Reyes*, 367 Ill.

App. 3d 729, 732 (2006). Trial courts abuse their discretion only when their “ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *People v. Hall*, 195 Ill. 2d 1, 20 (2000). If a trial court is found to have abused its discretion, a new trial will only be ordered if the exclusion of evidence seems to have affected the outcome of the trial. *Reyes*, 367 Ill. App. 3d at 732.

¶ 35 First, we consider the record to determine if the trial court abused its discretion when it upheld its prior ruling on the pretrial motion *in limine* following defendant’s trial testimony. Defendant’s testimony during the trial established that eight days prior to the shooting defendant was the first to draw a weapon after the victim punched him in the face. According to defendant, once defendant displayed his gun, the victim showed defendant something black protruding from the clothing near the victim’s hip. Defendant testified that he thought this object was the butt of a gun. However, according to defendant’s testimony, the victim did not pull out the weapon or discharge the weapon on September 13, 2013. In fact, according to defendant’s testimony before the jury, on September 13 he simply walked away from the victim, without incident, and entered his vehicle before driving out of the area.

¶ 36 Defendant’s trial testimony indicated he voluntarily returned to the same area eight days later for the purpose of meeting women. Defendant testified that he unexpectedly encountered the victim for a second time as he walked down Stanley Street. According to defendant, the victim said “what’s up,” and appeared to pull his hand out of his jacket pocket. After seeing this gesture, defendant feared for his own safety and reacted with lethal force.

¶ 37 Overall, the trial judge noted that defendant’s trial testimony failed to establish that defendant actually saw the victim with a gun on the night of the shooting. The court stated:

“police only found after they were doing what amounts to a dead man’s pat down and undoes his pants before he can even find it.”

When the defendant’s full testimony had nothing to do with reaching in his pants, but that it was in his pocket.”

¶ 38 The trial judge went on to say:

“I don’t think that the--I don’t think that the evidence that the victim-- under this set of facts calls for any revelation to the jury that the victim had a gun on him.”

¶ 39 Nothing about the trial court’s ruling strikes this court as arbitrary, fanciful, or unreasonable under the facts presented in this case. Viewing defendant’s trial testimony as entirely true, defendant was not certain he saw a gun on the victim eight days earlier and it is clear defendant walked away eight days earlier without resorting to gun violence for his safe departure. Eight days later, the chance meeting between defendant and the victim was less confrontational. Moreover, defendant did not see a weapon before repeatedly shooting the victim.

¶ 40 Based on these facts, we conclude the trial court did not abuse its discretion by disallowing evidence of the concealed handgun because the evidence was irrelevant.

¶ 41 II. Jury Instruction

¶ 42 Next, we consider whether the trial court committed reversible error when it refused to instruct the jury on self-defense as requested by defendant. The State submits the evidence this jury received was insufficient to support a request to provide the jury with a self-defense instruction. Alternatively, the State contends the error, if any, was harmless.

¶ 43 Jury instructions serve to provide the jury with accurate legal principles that apply to the evidence. *People v. Pierce*, 226 Ill. 2d 470, 475 (2007). Instructions not supported by the evidence or the law should not be given. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). Whether the record contains sufficient evidence to warrant providing the jury with a particular instruction is a question of law and will be reviewed *de novo*. *People v. Washington*, 2012 IL 110283, ¶ 19.

¶ 44 A self-defense instruction should be given when “any” evidence is presented showing the defendant’s belief that use of force was necessary. *People v. Lockett*, 82 Ill 2d. 546, 552 (1980). It is not the trial court’s duty to decide whether a defendant’s subjective or objective belief is reasonable or unreasonable. *Id.* at 553. The trial court’s duty is to decide if “any” evidence is presented from which the jury could conclude that defendant had a subjective belief that the use of force was necessary. *Id.* Then, the jury’s job is to decide whether this belief was reasonable or unreasonable. *Id.*

¶ 45 Before resolving this issue, we consider the affirmative defense of self-defense as codified in the Criminal Code of 1961 (720 ILCS 5/7-1(a) (West 2010)) as relevant and instructive. The elements of self-defense are as follows:

“(1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable.”

People v. Guja, 2016 IL App (1st) 140046 ¶52; See also *People v. Everette*, 141 Ill. 2d 147, 158 (1990).

¶ 46 Defendant contends that the trial court disallowed the self-defense instruction simply because the judge did not believe defendant’s version of events and took the factual

determination regarding self-defense out of the jury's hands. We disagree. The record reveals the trial judge gave careful consideration to defendant's version of events by assuming defendant's version to be true.

¶ 47 Defendant's testimony regarding the night of the shooting did not come close to establishing the affirmative defense of self-defense. First, defendant's version of events does not support the view that the victim threatened to use force against defendant by saying, "what's up" and moving his hand. Second, defendant's testimony does not reveal defendant was subject to the threat of imminent force since defendant agrees he did not see the victim pull out a handgun or threaten defendant with violence at all. Further, by all accounts, defendant entered the victim's area on both occasions, separated by eight days, and was the first to pull out a weapon each time. Finally, the victim did not threaten to use any force on the night of his death such that defendant could subjectively believe he was in such danger that use of unlawful force was reasonably necessary.

¶ 48 We are very mindful that the jury concluded these events did not rise to the level of allowing defendant to successfully claim he formed an "unreasonable" belief that lethal force was necessary. Therefore, we conclude as a matter of law that defendant did not introduce any evidence supporting self-defense and the court correctly refused to tender an instruction on the affirmative defense of self-defense.

¶ 49 Even assuming, for the sake of argument, that the trial court erred, the jury's verdict in this case clearly indicates the jury did not think defendant reasonably believed he was in danger, which is evidenced by their rejection of the notion that defendant unreasonably believed he was in danger. In other words, because the jury did not believe defendant's beliefs even rose to the level of being unreasonable, there is no way a jury could then conclude defendant's beliefs were

