FIRST DIVISION
March 14, 2011

No. 1-09-2794

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. THADDEUS JONES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County No. 99 CR 23699 Honorable Stanley J. Sacks, Judge Presiding.

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

O R D E R

HELD: (1) Defendant's statements to the police about his prior bad acts were admissible to impeach his trial testimony that he was afraid to tell the police he had killed the victim in self-defense, and any erroneous admission of a prejudicial statement was harmless; (2) trial counsel was not ineffective for declining a limiting instruction about other crimes evidence; (3) the State proved beyond a reasonable doubt that defendant was guilty of first degree murder and the

mitigating factor of imperfect self-defense was not present at the time of the murder; and (4) the trial court did not abuse its discretion in sentencing defendant.

After a jury trial, defendant Thaddeus Jones was convicted of first degree murder and sentenced to 35 years in prison. On appeal, he contends that: (1) the trial court erred in allowing evidence of defendant's statements to the police about prior bad acts; (2) the trial court failed to give the jury a limiting instruction concerning other crimes evidence; (3) defendant's sentence should be reduced to second degree murder because he established that he acted under an actual belief that he needed to use deadly force; and (4) his prison sentence is excessive.

We affirm defendant's conviction and sentence.

I. BACKGROUND

On the afternoon of September 17, 1999, defendant shot and killed 19-year-old Leandre Aldrich with a gun on a street corner. Defendant was charged with first degree murder, and argued at his jury trial that he had acted in self-defense or, alternatively, under an actual but unreasonable belief that he needed to use deadly force to defend himself. The jury found him guilty of first degree murder, and the trial court sentenced him to 35 years in prison. Defendant's initial appeals were dismissed for want of prosecution. Following a hearing on his second postconviction petition, the circuit court allowed him to file a late notice of appeal. This is defendant's first direct appeal from the judgment of conviction in the circuit court.

At trial, the victim's father, Lyonel Herard, testified that defendant lived in a house behind Herard's house. Herard awoke at 3:30 a.m. on September 17, 1999, because defendant was ringing his front doorbell. The victim was asleep in his room at the time. When Herard

answered the door, defendant was agitated, said he suspected the victim had firebombed a neighbor's car, and said he was going to kill the victim. When Herard went to put on a robe, defendant left. Herard went to defendant's house to speak with him. Defendant was pacing, accused the victim of setting the neighbor's car on fire, and said he was "going to put a hurt on [the victim]." Herard did not believe defendant's threat and went home.

Ronald Randolph testified that at 2:50 p.m. on September 17, 1999, he was near the corner of 80th Street and Colfax Avenue helping a friend repair his car. Because he was facing east, he could see the corner of 80th Street and Saginaw Avenue, which was about one hundred feet away. He saw defendant drive his car south on Saginaw Avenue, turn left onto 80th Street, and park at the corner. Then, defendant got out of his car and confronted the victim, who was walking southbound and "talking words" at defendant. Defendant and the victim stood about two feet apart in the intersection and argued with each other for a few minutes. The victim was facing Randolph, and defendant had his back to Randolph. Then, the victim made a sort of waving motion with his right arm extended and took two or three steps in a southbound direction. Defendant reached into his pocket, pulled out a gun and shot the victim in the right side of his head. The victim never struck defendant or made any movement indicating that he was going to attack defendant. Defendant returned to his car and drove away. The next day, Randolph identified defendant in a police lineup as the shooter.

Junella Jackson testified that she and her daughter, Laquese Murphy, were walking home from the child's school. They walked west on 80th Street. When they got to the intersection at Saginaw Avenue, they heard defendant and the victim arguing. The two men were standing a

couple of feet from each other. Jackson glanced at them but did not pay much attention to them. She proceeded to cross the street but heard one gunshot and got down on the ground. She looked back toward the men and saw defendant, the shooter, drive away in his car.

Laquese Murphy, who was in third grade at the time of the shooting, testified that she kept watching defendant and the victim as they argued in the middle of the street, standing about 7 to 10 feet away. The victim did not have anything in his hands when defendant shot him in the head. Just prior to the shooting, the victim was "figuring to walk away." He never touched or tried to punch defendant. She identified defendant as the shooter during a lineup at the police station.

Chicago police detective David Fidyk testified about his investigation of the shooting. He spoke with Randolph and Herard, and then looked for defendant at his home.

The parities stipulated to forensic testimony that the victim had a gunshot wound to the right side of his head slightly above and in front of his ear. The absence of soot or stippling indicated that the gunshot wound occurred not less than 24 inches away from the gun. Furthermore, the recovered bullet and fragment did not have any evidence of a close-range firing of less than 24 inches. The victim was six feet tall and weighed 177 pounds. He was wearing a short-sleeved shirt, a long-sleeved hooded sweatshirt and jeans at the time he was shot.

Prior to defendant's testimony, the trial court ruled on defendant's motion to exclude statements he made to the police. The controversial statements were that (1) in the 1960's, defendant was involved with a paramilitary organization for the advancement of black people; (2) members of that organization would face opponents on the street and not gun them down like

the cowards involved in drive-by shootings; (3) the Black Panthers were a weak extension of defendant's organization; (4) defendant was tired of reading about the young punks always getting over on the old timers, and it was time for the old timers to teach the young dudes a lesson; and (5) defendant shot his nephew in 1994 for stealing money from his parents and would have no problem taking out one of those young punks.

The defense argued the statements had no probative value, were merely evidence of defendant's propensity for violence and, thus, severely prejudicial. The State argued defendant's full statement was probative of whether he reasonably believed that he needed to use deadly force because his actions could be viewed as vigilantism rather than defense.

The trial court ruled that, with the exception of defendant's statement that the Black Panthers were a weak extension of his group, the balance of his statements were admissible for impeachment purposes. The trial court concluded the statements were relevant to show defendant's intent and motive to shoot the victim because defendant blamed him for arson. Defense counsel declined the court's offer to instruct the jury that the statements were admitted for the limited purpose of showing defendant's intent and motive.

Defendant testified that he was 59 years old and had lived in his home for 20 years. At the time of the incident, his elderly parents lived in the apartment below his, and he provided them with assistance. In the mid-1980's the neighborhood began to change and experience gang problems. Defendant always carried a .38 snub-nosed gun to protect himself. He had known the victim for at least 10 years as a friend of defendant's daughter. On the morning of September 17, 1999, defendant went to the victim's home to tell Herard that the victim and two other boys

threw a Molotov cocktail at a neighbor's car. Later that afternoon, defendant was doing yard work and had his gun in his possession.

Defendant testified that at about 2 p.m., he drove to a shop on 79th Street to buy a present for his daughter. He parked his car a block away because the shopping center did not have any parking. As he walked North to the shop, he saw the victim. Defendant was in the street when the victim called him. Defendant turned around and noticed that the victim wore a hooded sweatshirt despite the warm weather that day. They stood about three feet apart and yelled at each other about the firebombed-car incident. Defendant felt scared because the victim threatened to kill him if he ever tried to tell Herard again about what the victim and his friends were doing. The victim threatened to harm defendant's family and then made a "sucker move," meaning he twisted his body away from defendant without moving his legs and then twisted back toward defendant. Defendant demonstrated that move for the jury. Defendant thought the victim had a weapon, so defendant pulled his gun out of his pocket and shot the victim once. Defendant acknowledged that he never saw the victim with a weapon.

Defendant testified that he felt really bad about firing the gun, did not know what to do, and went home. The police came to his home investigating the shooting of the victim, and defendant went with them to the station. He did not admit that he shot the victim because defendant was scared, upset, and nervous. When the police told him this matter would go to court, defendant responded that he would wait until he got to court on it, meaning that it would "turn out" in court.

On cross-examination, defendant was questioned about his statements to Detective Fidyk

and Assistant State's Attorney (ASA) Thomas Key during the murder investigation. Defendant acknowledged telling Detective Fidyk that after defendant left the army, where he was a sharpshooter, he belonged to the O.B.A., which was not a paramilitary organization but, rather, a military defense organization for the advancement of colored people. He told Detective Fidyk that O.B.A. members would face the opposition on the street, and not gun them down like cowards involved in drive-by shootings. Defendant denied telling Detective Fidyk that he was tired of reading about young punks always getting over on old timers and that it was time for the old timers to teach these young dudes a lesson. Defendant denied telling Detective Fidyk that defendant shot his nephew for stealing money from his parents, but did tell Detective Fidyk that defendant would have no problem taking out one of these young punks.

Defendant acknowledged telling Detective Fidyk and ASA Key that he was at home cutting his lawn at the time of the shooting and never left during that time period. He told ASA Key that he would never confess to this crime because he would never see his mother again. He denied, however, telling ASA Key that he would be able to beat this case in court. Defendant acknowledged that he never told any detective or ASA that he shot the victim because the victim "made a move on" defendant.

In the State's rebuttal case, Randolph testified that he could see defendant and the victim and was watching their argument at the time of the shooting. The victim never made any sort of sucker move.

Lance Randle testified that he observed the argument between defendant and the victim. The victim said he could take care of himself and, as he was walking off, defendant responded

that he was going to "air [the victim] out." However, when Randle spoke to the police after the shooting, he never told them he heard what either defendant or the victim had said.

Detective Fidyk testified about statements defendant made during the murder investigation. According to Detective Fidyk, defendant believed a neighbor's car was firebombed and defendant saw three people leave the scene in a van but defendant could not identify those subjects. Defendant also said he became involved in a paramilitary organization, was tired of reading about young punks taking advantage of old timers, and felt that it was time for the old timers to teach these young dudes a lesson. Further, defendant said he shot his nephew for stealing money from his parents and would have no problem taking out one of these young punks. In addition, when ASA Key interviewed defendant, he claimed he was at home cutting the lawn at the time of the shooting, never left his house, and would be able to beat this case in court.

ASA Key testified consistently with Detective Fidyk about defendant's statements during Key's interview with defendant. ASA Key added that after making those statements, defendant refused to answer any further questions.

The trial court allowed defendant's request to instruct the jury on self-defense and second degree murder. After deliberations, the jury found defendant guilty of first degree murder.

II. ANALYSIS

A. Admissibility of Defendant's Statements to the Police

Defendant argues that the evidence concerning his statements to Detective Fidyk and ASA Key was improperly admitted because it had no probative value and was used to support the

State's theory that defendant had a propensity for vigilantism. Specifically, defendant objects to the State being allowed to cross-examine him about his statements that he shot his nephew in 1994; joined a paramilitary organization; and had no problem taking out young punks. Defendant complains that the State used those statements to embark on a mini-trial, distract the jury from the charged crime, and wrongly characterize defendant as a vigilante.

In response, the State argues, *inter alia*, that the trial court properly allowed the State to use defendant's statements to the police to impeach his trial testimony that he was too scared, nervous, and upset to admit to the investigating officers that he shot the victim or acted in self-defense. We agree.

Under the common law, other-crimes evidence normally is inadmissible if offered only to demonstrate the defendant's propensity to commit the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 169 (2003). Evidence regarding other crimes or bad acts generally is admissible if offered to prove intent, *modus operandi*, identity, motive, absence of mistake, or if it is relevant for any purpose other than to show the defendant's propensity to commit crimes. *Donoho*, 204 Ill. 2d at 170; *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). However, even where relevant for a proper purpose, evidence of other crimes or bad acts should be excluded if the prejudicial effect of the evidence substantially outweighs its probative value. *People v. Placek*, 184 Ill. 2d 370, 385 (1998). A trial court's decision to admit other-crimes evidence will not be reversed absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 182. We will find an abuse of discretion if the trial court's evaluation is unreasonable, arbitrary, or fanciful, or where no reasonable person would adopt the trial court's view. *Donoho*, 204 Ill. 2d at 182.

Here, defendant testified that he shot the victim in self-defense. The State then properly impeached him with his inconsistent statements to Detective Fidyk and ASA Key wherein defendant claimed that he never left his home on the date of the shooting. Furthermore, defendant's attempt to minimize that discrepancy–by telling the jury that he was too scared, nervous and upset to admit to the investigating officers that he shot the victim and acted in self-defense–permitted the State to show the jury that defendant was by no means too afraid to talk to the investigators. The State cross-examined defendant with relevant evidence that he readily spoke with Detective Fidyk about his forthright approach to confront opponents, face them on the street, and teach young dudes a lesson. Even though defendant might have been considered an old timer, he told Detective Fidyk that he would have no problem taking out one of those young punks. Clearly, defendant opened the door to this line of impeachment by the State when he told the jury he was too afraid to tell the police that he had acted in self-defense. "[W]here evidence is relevant and otherwise admissible, it is not to be excluded because it may have a tendency to prejudice the accused." *People v. Patterson*, 154 Ill. 2d 414, 458 (1992).

However, a portion of defendant's statement–that he shot his nephew in 1994 for stealing from his parents–presents a close question on whether its prejudicial nature outweighed its probative value. According to Detective Fidyk, when defendant bragged that he would have no problem taking out young punks, he supported that boast with the example that he shot his own nephew a few years ago for stealing. Here, where defendant was charged with shooting the victim, whom he suspected of firebombing a car, the prejudicial nature of that statement likely outweighed its probative value. Like the trial court's earlier decision to redact the portion of

defendant's statement that referred to the Black Panthers, the better course here would have been to redact the specific portion of defendant's statement about shooting his nephew.

The improper introduction of other crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission. *People v. Nieves*, 193 Ill. 2d 513, 530 (2000); *People v. Kliner*, 185 Ill. 2d 81, 147 (1998). Here, any error concerning the admission of defendant's nephew-shooting statement was harmless because the evidence overwhelmingly established that defendant neither acted in self-defense nor believed that he needed to use deadly force when he shot Leandre Aldrich. Occurrence witnesses Randolph, Murphy and Randle all testified that the victim was walking away from defendant when defendant shot him. Their testimony was corroborated by forensic evidence that this was not a close-range shooting. Moreover, Randolph and Murphy specifically stated that they were watching the argument when the shooting occurred. Randolph testified that the victim never made any sort of sucker move, and Murphy testified that the victim never touched or tried to punch defendant. The credibility of these unbiased occurrence witnesses was not significantly impeached. Only Randle's testimony was somewhat impeached where he did not tell the investigating officers about the specific statements he heard the victim and defendant exchange during their argument.

In addition, defendant's assertion that he happened to be shopping in the area when the victim confronted him was discredited by Randolph's testimony. Specifically, defendant claimed that he had parked his car and was walking North to a store when the victim called to defendant and caused him to turn around. Randolph, however, testified that the victim was walking south

and defendant drove his car south on Saginaw Avenue and then turned onto 80th Street, parked at the corner, and walked into the intersection to confront the victim. Moreover, Herard's testimony that defendant blamed the victim for the firebombing and threatened to harm and kill him was evidence of defendant's motive and intent to confront and shoot the victim later that same day.

Therefore, any prejudicial effect from defendant's nephew-shooting statement was harmless because of the overwhelming evidence of defendant's guilt. Accordingly, defendant was not prejudiced by evidence that he boasted to the police about shooting his nephew in 1994, and any error in admitting that evidence did not influence the outcome of defendant's trial.

Furthermore, the record refutes defendant's contention that the State injected a vigilante theory into this case, grossly exaggerated it, and then argued that theme to the point of overkill to show defendant's propensity to shoot young punks. Specifically, defendant complains that the State, in its rebuttal argument, heavily relied on the themes that defendant was a paramilitary and a vigilante who had no problem taking out young punks. The record, however, indicates that the State merely responded to the defense's heavy reliance on the theme of an old timer merely attempting to defend himself against an alleged "young ruffian."

According to the record, the defense introduced this theme in its opening statement, telling the jury that defendant was a "grandfatherly type," living in a deteriorating neighborhood where kids who do not work or attend school got involved with guns and drugs and terrorized the senior citizens. According to the defense, defendant was "an elderly fellow, frustrated, threatened, [and] fearing for his life" simply because he had tried to warn the victim's family that

the victim, a "young ruffian" who did not attend school and had fathered a couple of children, was going down the wrong path in life.

During closing argument, the State initially stressed the eyewitness testimony of Randolph and Murphy and defendant's failure to mention self-defense when he spoke to the police investigating the shooting. The State characterized defendant's conduct on September 17, 1999, as that of someone who decided to be a "one man vigilante, a one man A team," and went out on the street, took his gun, conducted a little trial, and decided that someone was a bad person and needed to die because defendant thought he did not have to account to anybody.

Thereafter, the defense revisited its old timer versus the young ruffian theme, stating that this case was an argument for gun control where old timers saw changes in their communities, lived in fear and carried guns for their protection. The defense argued that defendant made no effort to hide after the shooting but, rather, went home and waited for the police. Defense counsel referred to the testimony "about paramilitary organizations, stuff from the '60s," and said it had no bearing on the case, and was thrown in by the State to try to dirty defendant up and make him look like some kind of crazed psychopath.

In rebuttal, the State responded that, notwithstanding defendant's unsupported accusation that the victim was bad in some way, the evidence showed that the victim was just a young man wrongly accused of misconduct by defendant. The State also addressed whether the jury should believe defendant's testimony that he did not talk to the police because he was afraid and thought they would only blame him if he tried to explain that he shot the victim out of fear. Specifically,

the State argued defendant's testimony was not believable because he made statements to the police before he elected to remain silent.

The State argued defendant lied on the stand about being afraid to talk to the police, who would not have made up his involvement with a paramilitary organization. Moreover, the State argued a scared person would not have told the police how members of his organization would face opponents on the streets and not gun them down like the cowards who committed drive-by shootings. Furthermore, defendant's statements–about old timers teaching young dudes a lesson and shooting a nephew as proof that defendant would have no problem taking out a young punk–were not the words of a scared person. According to the State, defendant's statements to the police indicated that he was willing to go out into the street and take justice into his own hands, but now he wanted the jury to believe he was afraid. The State concluded that defendant's words about his fear were refuted by the evidence that he had threatened to kill the victim and the unimpeached testimony of unbiased occurrence witnesses.

Reviewed in context, the State's rebuttal argument did not inject a vigilante theory into the case, exaggerate it, or argue that defendant had a propensity for vigilantism. Rather, the State's rebuttal argument clarified that defendant's statements to the police refuted the defense's argument that defendant was too afraid to tell investigators that he acted in self-defense. The State is permitted wide latitude in closing argument and may argue to the jury facts and legitimate inferences drawn from the evidence. *People v. Turner*, 128 Ill. 2d 540, 560 (1989). Contrary to defendant's assertion that the State improperly argued that defendant's statements to

the police showed his propensity for vigilantism, the State properly argued to the jury that it should not believe defendant's testimony about being too afraid to talk to the police based on his braggart statements.

B. Jury Instruction Regarding Other Crimes Evidence

Defendant argues the trial court committed reversible error because it failed to *sua sponte* instruct the jury regarding the limited purpose of the prior bad acts evidence. We do not agree.

When the trial court denied defendant's motion to exclude his statement to the police, the trial court offered to give the jury a limiting instruction concerning the proper use of that evidence at the time of its admission. Defense counsel, however, informed the trial court that he would not request a limiting instruction. Consequently, the trial court did not provide the jury with the pattern jury instruction on other-crimes evidence. See Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000).

The trial court does not have a duty to submit a jury instruction over defense counsel's specific objection (*People v. Douglas*, 362 Ill. App. 3d 65, 76 (2005)), and defendant fails to cite any relevant authority to the contrary. Furthermore, defendant's acquiescence to the trial court's handling of the limiting jury instruction forfeits this argument on appeal. *People v. Johnson*, 368 Ill. App. 3d 1146, 1160 (2006).

In the alternative, defendant asks us to review this issue as a claim of ineffective assistance of counsel. Specifically, defendant argues that counsel's performance was deficient, where he initially declined the limiting instruction upon the admission of the evidence and later

failed to tender the jury instruction, and resulted in prejudice.

To obtain relief, defendant must show not only that his lawyer's performance fell below an objective standard of reasonableness, but also that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-89, 80 L. Ed. 2d 674, 693-94, 104 S. Ct. 2052, 2064-65 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525-27 (1984). The prejudice prong of the *Strickland* test may be satisfied if defendant can show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). The failure to satisfy either Strickland prong will preclude a finding of ineffective assistance of counsel. *Johnson*, 368 Ill. App. 3d at 1161.

Defendant has failed to meet his burden under *Strickland*. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance (*Strickland*, 466 U.S. at 689, 80 L. Ed. 2d at 694-95, 104 S. Ct. at 2065), and counsel's decision as to what jury instructions to tender is one of several determinations widely recognized as matters of trial strategy (*People v. Lowry*, 354 Ill. App. 3d 760, 766 (2004)). Here, counsel made a reasonable tactical decision by forgoing the limiting instructions to direct as little attention as possible to the inconsistencies between defendant's trial testimony and his prior statement to the police. See *People v. Fields*, 202 Ill. App. 3d 910, 915 (1990). Furthermore, in light of the overwhelming evidence of defendant's guilt, as discussed above, defendant cannot establish a reasonable probability that the result of the trial would have been different if the jury had received the limiting instruction.

C. Second Degree Murder

Defendant asks this court to reduce his conviction to second degree murder and remand this case for re-sentencing, arguing that he proved by a preponderance of the evidence that he had an actual belief that his actions were justified. We do not agree.

"A first degree murder charge will be reduced to second degree murder *only* where the State has proven the elements of first degree murder *and* the defendant has established a mitigating factor by a preponderance of the evidence." *People v. Jeffries*, 164 Ill. 2d 104, 118 (1995). In order to prove defendant guilty of first degree murder, the State had to prove beyond a reasonable doubt that (1) defendant performed the acts that caused the victim's death; (2) that when defendant did so, he either intended to kill or do great bodily harm, or knew his acts would cause the victim's death, or knew his acts created a strong probability of death or great bodily harm to the victim; and (3) defendant was not justified in using the force he used. 720 ILCS 5/9-1(a)(1), (2) (West 1998).

Because defendant raised the affirmative defense of self-defense, he had to establish some evidence that: (1) force was threatened against someone; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) defendant actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable. *Jeffries*, 164 Ill. 2d 127-28. When the State negates any one of the self-defense elements, the defendant's self-defense claim fails and the trier of fact must find him guilty of either first or second degree murder. *Jeffries*, 164 Ill. 2d at 128.

The State had the burden to prove beyond a reasonable doubt not only the elements of first degree murder, but also the absence of circumstances at the time the killing that would justify or exonerate the murder. *Jeffries*, 164 Ill. 2d at 114; *People v. Romero*, 387 Ill. App. 3d 954, 966-67 (2008). In order to reduce the offense to second degree murder, defendant had the burden to prove, by a preponderance of the evidence, that he believed he was acting in self-defense, but that belief was objectively unreasonable. *Jeffries*, 164 Ill. 2d at 113-14. In our review of defendant's argument that he presented sufficient evidence to prove the mitigating factor of unreasonable belief in justification, we consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factor was not present. *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996).

Here, the record refutes defendant's claim that he was afraid of the victim and believed, unreasonably, that the circumstances justified defendant's shooting of the victim. On the morning of the offense, defendant had threatened to kill the victim and then was carrying a loaded gun when he encountered the victim later that afternoon. Moreover, the unbiased testimony of Randolph indicated that defendant walked into the intersection to confront the victim. In addition, three unbiased occurrence witnesses all testified that the victim was walking away from defendant when defendant intentionally shot him in the head. Specifically, Randolph said the victim never made any sort of sucker move, and Murphy said the victim never touched or tried to punch defendant. The victim was not armed, and defendant acknowledged that he did not see the victim with any weapon during their encounter. Aside from defendant's self-serving testimony that he was afraid of the victim, there was no evidence presented at trial that the victim

had a propensity for violence or that he was responsible for fire-bombing the neighbor's car. Finally, when the police questioned defendant after the shooting, he never mentioned any fear of the victim or self-defense. Rather, defendant simply denied being at the scene.

It was the responsibility of the jury to determine the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Brisbon*, 106 Ill. 2d 342, 360 (1985). The jury considered all the evidence and properly rejected defendant's argument that he acted under the unreasonable belief that he was justified in using deadly force when he shot the victim.

D. Sentence

Defendant contends the trial court abused its discretion in sentencing him by considering inappropriate and unsubstantiated matters in aggravation, such as vigilantism. Defendant also contends the trial court failed to adequately consider his service to this country, continuous employment history and remorse. We do not agree.

A trial court's broad discretion in sentencing is reversed only when it is an abuse of discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A reviewing court must not substitute its judgment for that of the trial judge merely because the reviewing court would have balanced the mitigating and aggravating factors differently. *People v. James*, 118 Ill. 2d 214, 228 (1987). The nature of the particular crime and the role played by the defendant are some of the factors that are paramount in a judge's sentencing decision. *People v. Klimawicze*, 352 Ill. App. 3d 13, 31 (2004).

Contrary to defendant's claims, the trial court did not rely on any improper factors in imposing his sentence. Defendant's sentence of 35 years of imprisonment is within the lawful statutory range for a conviction of first degree murder, which typically carries a sentence of 20 to 60 years. 730 ILCS 5/5-8-1(a)(1)(a) (West 1998). Moreover, the trial court, which had heard testimony regarding defendant's military service, work history, and care of his parents, specifically stated that it had considered the factors in aggravation and mitigation, which included defendant's age and lack of any significant criminal history. Absent some indication to the contrary other than the sentence, it is presumed that the trial court considered all of the mitigating evidence before it. *People v. Thompson*, 222 Ill. 2d 1, 37 (2007). An examination of the record establishes that the trial court did not abuse its discretion in sentencing defendant.

III. CONCLUSION

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

Affirmed.