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SIXTH DIVISION

April 20, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 08 CR 17838
)	
DEMETRIUS MCCAFFERTY,)	Honorable
)	Joseph G. Kazmierski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.

Presiding Justice Robert E. Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *HELD:* (1) The State proved beyond a reasonable doubt that defendant's belief in the need to defend himself was unreasonable and, thus, he was guilty of second degree murder; and (2) defendant's conviction should not be reduced to involuntary manslaughter because there was substantial evidence that he acted intentionally and not recklessly.

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¶ 2 After a bench trial, defendant Demetrius McCafferty was convicted of second degree murder and sentenced to 10 years in prison. On appeal, he contends that: (1) the State failed to prove that his belief in the need to defend himself was unreasonable; and (2) his conviction should be reduced to involuntary manslaughter because he established that he acted recklessly rather than intentionally.

¶ 3 For the reasons that follow, we affirm defendant's conviction.

¶ 4 I. BACKGROUND

¶ 5 The State arrested and charged defendant with first-degree murder, alleging that, on August 17, 2008, he, without lawful justification, shot and killed Sylvester Porch while armed with a firearm. Defendant shot Porch numerous times in the back and posterior of his body while they were in the home Porch shared with his girlfriend, Lafieta Williams.

¶ 6 At trial, Lafieta Williams testified that she was 19 years old at the time of the shooting and had known Porch since grammar school. Since March 2008, Porch had lived with Williams and her 19-month-old son in their first floor, one-bedroom apartment. By August 2008, they had been dating for about one year but were having relationship problems. They agreed to date other people while they continued to work on their relationship. Williams never saw Porch with a gun during the year they were together, and they did not keep a gun in their apartment. Williams was upset that Porch wanted to sleep with other women, so she packed his things and tried to throw him out of the apartment. Williams met defendant on August 12, 2008, and began seeing him in the days that followed. Williams, who had sex with defendant on two occasions, informed him that she had a boyfriend and they lived in their apartment together.

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¶ 7 Williams invited defendant over to her apartment on August 17, 2008, and he arrived about 10:15 p.m. He wore a white t-shirt and jeans that sagged. They smoked marijuana and then went into the bedroom to watch television with Williams' son. Defendant took off his shoes and lay on his side at the head of the bed facing Williams. Williams sat at the head of the bed on the other side with her son standing between her legs. They watched television, which was at the foot of the bed, and Williams was "taking down" her hair. Williams and defendant did not touch, hug, kiss or engage in any sexual activity.

¶ 8 After 20 minutes, Williams heard the apartment door shut. She got up and opened the bedroom door, and Porch walked in and stood a couple of steps inside the bedroom. He was not carrying a gun or weapon in his hands. He wore a white, sleeveless tank-top and jean shorts. Porch pulled up his shorts and asked who defendant was and what was going on. Porch was calm but he swore and yelled "a little bit." Defendant responded by asking Porch who he was. As defendant got up from the bed, he reached toward his pants and pulled them up. Defendant walked several steps toward Porch and did not seem surprised to see him. Porch moved slightly and repeated his questions to defendant. Other than pulling up his jean shorts once, Porch did not reach toward his pockets, pants or back at any time. Defendant asked Porch who he was, and Porch said that this was his house. Williams' son ran up to the head of the bed, so she turned her back on the men and picked up her son. Then, she walked past defendant and Porch and left the room because she thought there was going to be a physical altercation. Porch never moved toward defendant and did not block the door or prevent him from leaving the room.

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¶ 9 Williams heard defendant say to Porch, "Before I leave, who are you?" About 13 to 18 seconds later, Williams heard more than three gunshots fired in rapid succession. She ran out of her apartment carrying her son but he climbed down from her arms. As she reached for him, she looked back inside her apartment and saw Porch, who was hunched over and coming towards her. Williams did not notice that Porch was shot. He walked past her toward the building's front entrance. Williams picked up her son, and Porch, who was dripping blood, collapsed at the entrance. Williams dropped her son, dropped to her knees, grabbed Porch and held him.

¶ 10 Eventually, paramedics arrived and took Porch to the hospital. Before she left for the hospital, she ran back inside her apartment and grabbed some diapers and other items for her son. No one was in the apartment. She left and did not lock or close the door. Several people were walking around outside the apartment when Williams left for the hospital. Her apartment was in order before defendant came over that night, except for several windows, including her bedroom window, that were broken when she moved in. Williams told the police what happened that night and identified defendant from a photo array as Porch's shooter.

¶ 11 Virginia Martin testified that she was waiting for a bus at the time of the shooting. She heard four or five continuous gunshots and the scream of a woman. A black man dressed in a white t-shirt and jeans ran from the back of William's apartment building to the front and then ran south towards Lowe Street. When the police conducted a photo array that night, Martin was unable to identify the man she saw that night.

¶ 12 Aemia Daniels lived on Lowe Street about one block away from defendant's apartment. At the time of the shooting, she was in her first-floor apartment and heard gunshots from the

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alley. Then, a black man wearing a white t-shirt and jeans ran into her building and upstairs to a vacant apartment. The man returned downstairs, knocked on Aemia's door and asked to use her phone because his car had broken down. After Aemia denied his request, the man began banging on the door, so she called the police. When the police arrived, Aemia and her sister went into the hallway and saw a gun in a baby's car seat. The gun was wrapped inside a jacket. The police took the gun and drove Aemia to a squad car where she identified a man sitting in the backseat as looking like the man she saw in her building. The person in the backseat, however, was not defendant. Five days later, when police showed Aemia a photo array, she identified defendant as the man who ran into her building on the night of the shooting. Later, she identified defendant from a police lineup.

¶ 13 Michelle Daniels was Aemia's mother. She was at work on the night of the shooting and learned from Aemia about the man who ran into their building. The next morning, Michelle drove Aemia downtown. When Michelle returned home about 9 or 10 a.m., a red Jeep was parked in front of her home. Two black men she had never seen before, one younger and one older, were standing on her porch. This was unusual because Michelle had one neighbor and the rest of the block was vacant. The younger man, whom Michelle identified as defendant, said that he left his cell phone in her car seat. Michelle, who remained in her vehicle, responded that whatever was left in the hallway in the car seat had been retrieved by the police. Defendant then ran down the alley. Michelle dialed 911 and followed defendant in her vehicle but lost sight of him.

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¶ 14 Chicago police officer Timothy Poland was an evidence technician and was assigned to process the crime scene at Williams' apartment at 1:02 a.m. on August 18, 2008. At that time, the police had sealed the building, and Officer Poland did not see any officers or civilians go inside or out of the apartment. He took photos of and recovered evidence from the first floor hallway and front and rear of the building. He recovered a deformed .9-millimeter bullet in the hallway near the entrance of the building. He did not enter the apartment yet. After about an hour, he was still processing the hallway of Williams' building but he left to process the scene at the Daniels' building. At that time a police car was present at Williams' building. After about 30 minutes at the Daniels' building, Officer Poland returned to Williams' building and entered her apartment. He did not think the police car was still there when he returned.

¶ 15 At trial, Officer Poland detailed photos of a number of blood stains in the hallway of Williams' building. The photos showed: the area where the bullet was discovered with a long bloodstain leading towards the back of the hallway and containing a handprint; a view toward the rear of the hallway, which showed a longer bloodstain with significant streaking; separate stains on the floor and wall of the hallway well; and the wall directly opposite the doorway to Williams' apartment with a number of blood drops on the lower part of the wall.

¶ 16 At the Daniels' building, Officer Poland recovered a .9 millimeter Beretta handgun containing five live rounds loaded into the magazine of the gun. It was found partially exposed in a baby's car seat in the front hallway.

¶ 17 When Officer Poland returned to Williams' building, he took more photos at the scene and then went inside the apartment. Photos taken inside the apartment showed bloodstains on

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the inside of the apartment door, adjacent wall, door handle, light switch, and in the hallway leading to the bedroom. Other photos showed drops of blood on the wall directly opposite the doorway to the apartment. There was a large bloodstain on the wall near the base of the entrance to the kitchen, some broken glass, and a turned-over stove. Officer Poland recovered two shell casings outside the entrance of the bedroom, one shell casing in front of the bedroom door, and another toward the middle of the hall. Officer Poland found no shell casings or blood in the bedroom.

¶ 18 Chicago police officer Damien Bolden testified that he and his partner responded to the scene of the shooting. Two detectives were already at the scene, and Officer Bolden heard talking and laughing coming from Williams' apartment. Several civilians were inside the apartment. The detectives sent the civilians into the hallway, where Officer Bolden and his partner patted them down and took their contact information. Officer Bolden did not enter the apartment, but when he looked inside, it appeared to have been vandalized.

¶ 19 The parties stipulated that Dr. Michelle Jordon, who performed the postmortem examination, noted five gunshot wounds to the rear side of Porch and there was no evidence of close-range fire. Specifically, one gunshot entered his lateral left arm, moved left to right and downward, and exited the back of his left arm. A second shot entered his lateral left arm, moved left to right and downward, and exited the inner distal left arm. He had a graze wound above his left buttock that moved left to right and downward. A fourth shot entered the lower left buttock, moved left to right and downward, and exited the upper inner left thigh. A fifth shot entered his mid back, moved left to right and upward, lacerated his left lung and the right ventricle of his

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heart, and caused internal bleeding. Porch also sustained abrasions to his forehead, an area above his left eyebrow, his lower left eyelid, lower right lip, distal right thigh, and left knee and leg.

¶ 20 Defendant testified that he shot Porch in self-defense. At the time of the shooting, he was on probation after pleading guilty one month earlier to the felony offense of unlawful use of a weapon. He never knew that Williams had a boyfriend and was living with someone. He came over to her apartment to have sex. They were lying on the bed watching television while Williams' son slept in a crib near the bed. They began touching each other, and Williams unbuttoned defendant's pants, pulled them down and starting performing oral sex on him. Then, the bedroom door flew open, and a man, whom defendant later learned was Porch, yelled and swore and asked defendant who he was. Defendant pulled up his pants and asked Porch who he was. They continued questioning each other as defendant put on his shoes. Williams grabbed her son and walked past Porch, who was standing in front of the door.

¶ 21 Defendant then walked toward the door and asked, "Who the fuck are you before I leave this bedroom, leave the house?" Porch replied, "You not goin' nowhere," and grabbed a gun from his waistband. Porch swung the gun downward and hit defendant in the head, and defendant stepped back. When Porch began to swing the gun again, defendant grabbed Porch's hand and the two men wrestled for the gun. They knocked over the television and bumped into a bedroom window. Defendant gained control of the gun, had his finger on the trigger and fired it. When he began firing, his right side was against a window, and Porch hit the window with his left side and broke it. Porch charged defendant and had his left hand on top of the gun and defendant's wrist and forearm as defendant fired. Defendant was trying to pull the gun up as he

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fired it. It happened so fast, and defendant did not know how many shots he fired. Defendant was sliding down a wall as he fired the gun. Porch walked out of the room. He did not scream or try to steady himself as he left, so defendant did not think that Porch had been shot.

¶ 22 Defendant put the gun in his pocket and exited the back of the building. He was frightened and ran into a building on Lowe Street. He ran upstairs and then back down to the first floor. He tried to find his cell phone and realized that he still had the gun in his pocket. He threw the gun in a baby's car seat in the hallway and ran out of the building. He denied ever speaking with Aemia Daniels. He found a friend and got a ride home. Then, he drove to his mother's home in Indiana and stayed there overnight. He returned to the building on Lowe Street the next morning to find his cell phone. When he arrived, an older man was standing on the porch. The building's front door was locked, so defendant left. He saw a woman in a truck as he was leaving. He denied ever speaking with Michelle Daniels.

¶ 23 Over the next two days, defendant spoke with an assistant state's attorney who was handling another case in which defendant was supposed to testify. He learned from his daughter's mother that detectives were looking for him, so he called the detectives on August 19. He turned himself in to police on August 25, 2008, eight days after the shooting.

¶ 24 The trial court found defendant guilty of second degree murder and that, while defendant raised an affirmative defense of self-defense, his belief that he was acting in self-defense was unreasonable. Defendant was sentenced to a 10-year prison term. Defendant timely appealed.

¶ 25 II. ANALYSIS

¶ 26 When the sufficiency of the evidence is challenged, a criminal conviction will not be set

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aside unless the evidence, when viewed in the light most favorable to the prosecution, is so improbable or unsatisfactory that a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). The reviewing court may not retry the defendant. *People v. Rivera*, 166 Ill. 2d 279, 287 (1995). The trier of fact determines the credibility of the witnesses, the weight given to their testimony, and the reasonable inferences drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994).

¶ 27

A. Second Degree Murder

¶ 28 Defendant asks this court to reverse his conviction of second degree murder because the State failed to prove beyond a reasonable doubt that he did not act reasonably in self-defense. According to defendant, the evidence established that Porch found his girlfriend in bed with defendant, yelled profanities at defendant, pulled out a gun and struck defendant in the head. Defendant contends that he was scared and tried to disarm Porch and they struggled for the gun. After defendant had control of the gun, Porch still tried to grab it, so defendant believed it was necessary to shoot Porch in order to stop his attack.

¶ 29 For a second degree murder conviction, the State must prove beyond a reasonable doubt all the elements of first degree murder, *i.e.*, that defendant performed the acts that caused the victim's death, and 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. *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998); 720 ILCS 5/9-1(a)(1) (West 2008); 720 ILCS 5/9-2 (West 2008). Once the State has proven first

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degree murder beyond a reasonable doubt, the defendant must prove by a preponderance of the evidence that he either was acting under a sudden and intense passion resulting from serious provocation by the victim or believed that the circumstances justified using self-defense but his belief was unreasonable. *Hawkins*, 296 Ill. App. 3d at 836; 720 ILCS 5/9-2 (West 2008). The mitigating factors in the second degree murder statute are not elements of the offense but, rather, lessen the culpability and severity of the punishment for murder. *Hawkins*, 296 Ill. App. 3d at 836.

¶ 30 A defendant's use of force in defense of a person is justified where (1) force was threatened against someone; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent (4) the force threatened was unlawful; (5) the defendant actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995). Because evidence of self-defense was raised, the State had the burden to prove beyond a reasonable doubt that defendant did not have a reasonable belief in the necessity of using deadly force. *Hawkins*, 296 Ill. App. 3d at 836; 720 ILCS 5/7-1 (West 2008).

¶ 31 After carefully considering all the evidence in the light most favorable to the prosecution, we find that the record supports the trial court's determination that defendant had an actual but unreasonable belief that he had the right to use self-defense against Porch. The medical and physical evidence is plainly inconsistent with defendant's account of a face-to-face struggle with Porch over the gun when defendant fired the gun. Contrary to defendant's testimony, the physical evidence establishes that Porch had turned away from defendant when defendant shot Porch five

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times and there was no gunshot residue indicative of a close-range firing. Specifically, Porch sustained two gunshot wounds on his lateral left arm and three gunshot wounds to the back side of his body, and there was no gunshot residue on his bare arms. Furthermore, no blood or gun casings were discovered in the bedroom where defendant claimed the shooting took place.

¶ 32 In addition, Williams had known Porch since grammar school, and they were in a relationship for one year and had lived together for several months. Williams never saw Porch with a gun during their time together, and they did not keep a gun in their apartment. Williams testified that, while she was in the bedroom, Porch did not display or reach for a weapon and did not approach defendant or block him from leaving the bedroom. Williams did not testify that she heard the men engage in any physical struggle in the bedroom, break a window, and knock over a television. To the contrary, after she left the bedroom, she heard only a series of gunshots fired in rapid succession.

¶ 33 Although defendant claimed that Porch swung the gun and hit defendant in the head, there was no evidence that defendant suffered any injury or sought medical treatment from that alleged blow. In addition, defendant's attempts after the shooting to conceal the gun and then retrieve it in order to dispose of it properly detract from his claim that he reasonably believed he acted in self-defense when he shot Porch. Specifically, after the shooting, he fled Williams' apartment, ran into the Daniels' building, wrapped the gun in a jacket and left it in a baby's car seat in the hallway, and fled to another state. Then, he returned to the Daniels' building the next morning and, according to Michelle Daniels, tried to retrieve the gun but fled when Michelle informed him the police had already taken possession of it. Furthermore, defendant waited eight

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days after the shooting before turning himself in to police even though he knew that detectives were trying to find him.

¶ 34 Photographs of the scene showed a large number of bloodstains, but no blood was found in the bedroom where defendant claimed the shooting took place. There were bloodstains on the inside of the apartment door, the adjacent wall, door handle and light switch. In the living area of the apartment, there was a large blood stain on the wall near the base of the entranceway to the kitchen. Furthermore, no bullets or shell casings were recovered inside the bedroom. Instead, a fired .9-millimeter shell casing was found in the hallway near the entrance of the building. The absence of blood or bullets in the bedroom contradicts defendant's account of the shooting, especially given the grievous nature of Porch's wounds and the number of gunshot wounds he sustained. Although Williams' apartment appeared to have been vandalized after the shooting by several people, they were searched by the police before they left the premises and their vandalism did not affect the location of the blood stains.

¶ 35 The non-aggressor in a quarrel has a duty not to become the aggressor (*People v. De Oca*, 238 Ill. App. 3d 362, 367-68 (1992)), and because there was ample evidence that Porch was unarmed, retreating, and not within close range of defendant when defendant shot him, it was reasonable for the trial court to find that defendant became the aggressor and any belief he had that he was acting in self-defense when he fired multiple gunshots at Porch was unreasonable.

¶ 36 **B. Involuntary Manslaughter**

¶ 37 Defendant contends his second degree murder conviction should be reduced to involuntary manslaughter because he acted recklessly and without practical certainty that his

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actions would cause death or great bodily harm.

¶ 38 A defendant is guilty of second degree murder if the evidence shows that he intended to kill or do great bodily harm, knew that his acts would cause death or great bodily harm, or knew that his acts created a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2008). A defendant is guilty of involuntary manslaughter if the evidence shows that he recklessly performed an action likely to cause death or great bodily harm. 720 ILCS 5/9-3(a) (West 2008). The chief element distinguishing involuntary manslaughter from second degree murder is the defendant's mental state. *People v. DiVincenzo*, 183 Ill. 2d 239, 250 (1998). Concerning second degree murder, a defendant acts knowingly when "he is consciously aware that such result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(b) (West 2008). Concerning involuntary manslaughter, a person acts recklessly if he consciously disregards a substantial and unjustifiable risk that death or great bodily harm will occur. 720 ILCS 5/4-6 (West 2008).

¶ 39 "[T]he intentional use of a deadly weapon is accompanied by a presumption the actor knows his acts create a strong probability of death or great bodily harm because a person intends the natural and probable consequences of his acts." *People v. Jones*, 404 Ill. App. 3d 734, 745 (2010), quoting *People v. Gresham*, 78 Ill. App. 3d 1003, 1007 (1979). Proof that a death resulted from a defendant's act of deliberately firing a gun in the general direction of his victim is sufficient to sustain a conviction for murder rather than involuntary manslaughter. *People v. Lemke*, 384 Ill. App. 3d 437, 446 (2008); *People v. Wilks*, 175 Ill. App. 3d 68, 73 (1988). "[W]hen the defendant intends to fire a gun, points it in the general direction of his or her

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intended victim, and shoots, such conduct is not reckless, regardless of the defendant's assertion that he or she did not intend to kill anyone." *People v. Eason*, 326 Ill. App. 3d 197, 210 (2001).

¶ 40 The evidence and testimony established that when defendant shot Porch, he did so intentionally under an unreasonable belief that he was acting in self-defense. Defendant testified that after struggling with Porch, defendant gained control over the gun, placed his finger on the trigger, pointed the gun at Porch and fired multiple shots in order to keep Porch from attacking him. Porch suffered five gunshot wounds to his arm, buttock and back, with no evidence of close-range firing. Because the medical evidence contradicted defendant's claim that Porch was facing him and grabbing him when defendant shot Porch, a reasonable trier of fact could conclude that Porch was trying to flee when he was gunned down and the shooting was done intentionally.

¶ 41

III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court finding defendant guilty of second degree murder.

¶ 43 Affirmed.