2012 IL App (1st) 103277-U

THIRD DIVISION
December 21, 2012

No. 1-10-3277

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 12812
	)	
JERMAINE HOWZE,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Steele concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction of second degree murder affirmed over his challenge to the sufficiency of the evidence because the evidence established that defendant, in response to victim throwing a punch or an object at him, hit victim multiple times with his fists, he got on top of victim who weighed approximately 44 pounds less than defendant, he knocked victim to the ground using victim's cane and hit him with the cane. Also, defendant possessed the requisite mental state to support a conviction of second degree murder.

¶ 2 Following a bench trial, defendant Jermaine Howze was found guilty of second degree murder, then sentenced to eight and a half years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty of second degree murder beyond a reasonable doubt

where it did not establish that he caused the victim's death. Alternatively, he contends that his conviction should be reduced to involuntary manslaughter because his acts were merely reckless.

¶ 3 The record shows, in relevant part, that in the early morning hours of June 11, 2008, defendant and Gregory Scruggs, aka "Old School," were involved in a physical altercation outside of Scruggs' home. Scruggs died from a ruptured spleen shortly thereafter.

¶ 4 At trial, Dr. Michelle Jorden, an assistant medical examiner formerly of the Cook County Medical Examiner's Office, testified that she conducted an autopsy of Scruggs on June 11, 2008. She identified several photographs from that autopsy, and the external photographs showed bruising and abrasions to Scruggs' body, including "a very distinctive curvy linear bruise" above the ribs and spleen. The internal photographs further showed that Scruggs' abdomen was filled with 4.3 liters of blood, and that he had a lacerated spleen and an acute fractured rib on the left side of his chest right below the spleen.

¶ 5 During her testimony, Dr. Jorden noted that the 4.3 liters of blood collected from Scruggs' abdomen constituted about an 81% blood loss and would have taken only minutes to pool up. She also testified that a spleen cannot self-rupture, and that Scruggs' lacerated spleen was caused by "blunt force trauma that was exerted along the left side of [his] back." In sum, Dr. Jorden opined that Scruggs' death was the result of a massive hemoperitoneum, *i.e.*, bleeding into the abdominal cavity, and explained that "[h]e essentially exsanguinated from a ruptured spleen due to a blunt force trauma due to an assault." She also opined that the manner of death was homicide.

¶ 6 On cross-examination, Dr. Jorden stated that Scruggs was six feet tall and weighed 181 pounds. She also stated that Scruggs had alcoholic cirrhosis of the liver which resulted in an enlarged spleen that was three times the normal size, and, consequently, much more prone to being ruptured or torn by blunt force trauma. She further stated that Scruggs had .08 microgram

per milliliter of cocaine in his peripheral blood which indicated that he used cocaine in very close proximity to his death. On redirect, Dr. Jorden testified that toxicology of Scruggs was negative for the presence of alcohol.

¶ 7 Chicago police detective Darletta Meyers testified that Scruggs is her brother and was living at 9609 South Chappel Avenue in June 2008. Meyers last saw him on June 1, at which time he was alive and well. Meyers testified that Scruggs walked frequently and would sometimes use a cane.

¶ 8 James Clay, aka "Little Man," testified that on the evening of June 10, 2008, he went to Scruggs' house at 9603 South Chappel Avenue for a barbecue, and was drinking and getting high out on the front lawn in the company of defendant, Mi-Mi (defendant's girlfriend), and a person referred to as "Heeman." At some point, defendant, Mi-Mi, and Scruggs walked away and went around the corner. When they came back, defendant and Scruggs were arguing. Scruggs threw a punch at defendant's face which "missed by a long shot," and defendant responded by knocking Scruggs down onto his back with a punch to the chin. He then got on top of Scruggs, straddled him, and punched him about 10 or 15 times in the face and body while Scruggs covered up, tried to throw an occasional punch, and pleaded for defendant "to get up off him." Clay told defendant to stop, and said, "You're going to hurt him." Defendant hit Scruggs a few more times, then stopped. At that point, Scruggs retrieved his cane and swung it at defendant who grabbed the cane and hit Scruggs with it. Scruggs fell to the ground, and defendant hit him in the legs and arms with the cane about four times before Clay finally stopped him. Clay testified that the entire incident took about two minutes, and that he "couldn't say" if Scruggs appeared injured, but he noted that defendant did not look hurt.

¶ 9 On cross-examination, Clay stated that Scruggs was drinking alcohol the night of the fight, and that Scruggs' house was a place to get high, though he had never seen Scruggs smoke

crack cocaine. Clay also stated that he was smoking marijuana that night, but that Scruggs was not, and described Scruggs' cane as about three feet long with a hook and bow on it.

¶ 10 Marilyn Akins[1] testified that she was defendant's girlfriend in June 2008. About 6 p.m. on June 10, 2008, she and defendant were walking past Scruggs' house when Scruggs called her a "bitch" and tried to start an argument over a lighter. They both ignored him and continued on to the home of defendant's grandmother. Later, when she was returning from a friend's house about 1:30 or 2 a.m., Akins saw defendant in Scruggs' driveway having words with Scruggs on the porch. Scruggs threw "a beer can or something" at defendant, and defendant hit back, at which point they went to the ground fighting.

¶ 11 During the fight, defendant got on top of Scruggs, who was on his back, and punched him in the face about four times. He also hit Scruggs in the side and told him, "looks like you're going to have some broken ribs." Scruggs hit defendant as well, but Akins never saw defendant hit Scruggs with a cane. The two finally stopped fighting when Akins urged defendant to "just leave him alone" and said "let's go." Scruggs then went into the house, and Akins and defendant walked away. Akins did not see blood on anyone or any injuries on defendant. On cross-examination, she stated that she knew Scruggs' house was a place to smoke crack cocaine, and that she had seen him doing it there before.

¶ 12 Chicago police officer Frahm testified that about 2:17 a.m. on June 11, 2008, he and his partner, Officer Sandoval, responded to a call of a battery in progress at 9609 South Chappel Avenue. Upon arriving, they observed a black male lying on his back on the front lawn and asked if he needed medical assistance. The man did not respond and was "laboring to breathe, gasping for air," so the officers called for EMS. As they were waiting for the ambulance, they

[1] The record indicates that Marilyn Akins also uses the name Marilyn Remus.

looked around and observed blood stains on the front steps to the residence, but found no one inside.

¶ 13 Chicago police detective Darryl Shaw testified that about 3 a.m. on June 11, 2008, he was assigned to investigate the beating of Scruggs and brought defendant to the Area 2 detective division. He did not observe any injuries on defendant and learned that he was about 6'1" tall and weighed 225 pounds. On cross-examination, Detective Shaw stated that a knife was recovered at the crime scene.

¶ 14 The defense presented a stipulation as to a portion of Clay's grand jury testimony where he testified that Scruggs did not initially swing at defendant with his fist, that his first attempted punch missed, and also that he swung at defendant with his cane. The defense then rested without calling any witnesses.

¶ 15 The trial court found defendant guilty of second degree murder, noting, *inter alia*, that defendant was "acting under a sudden intense passion resulting from serious provocation by the individual killed," and that he "intended on creating some injury to [Scruggs] and maybe even intended to break his ribs." Thereafter, the court sentenced him to eight and a half years' imprisonment.

¶ 16 In this appeal from that judgment, defendant contends that the evidence failed to support his conviction of second degree murder beyond a reasonable doubt. He specifically claims that the State failed to prove that Scruggs died as a result of the fight where Scruggs walked away from the fight, entered his house, and was later found lying in his front yard, and that the evidence suggests that Scruggs probably suffered a lacerated spleen after the fight. He alternatively claims that the State failed to prove that he was practically certain that punching Scruggs in the side with his fist would lead to his death.

¶ 17 The State responds that the evidence supported his conviction of second degree murder because defendant struck the victim several times with the intent to cause great bodily harm and victim subsequently died.

¶ 18 We initially note that the parties disagree on the standard of review to be applied in this case. Defendant argues that this court should review *de novo* whether the trial court misapplied or misunderstood the law, citing *People v. Moore*, 207 Ill. 2d 68 (2003). However, the State responds that defendant is ultimately challenging the trial court's findings of fact, and thus the more deferential standard of review for sufficiency of the evidence cases should be applied.

¶ 19 We agree with the State that defendant is ultimately challenging the trial court's findings of fact, and that *de novo* review is not proper here. *People v. Jones*, 376 Ill. App. 3d 372, 382 (2007). Rather, under the applicable standard of review, we determine whether defendant's conviction was against the manifest weight of the evidence, *i.e.*, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jones*, 376 Ill. App. 3d at 382, citing *People v. Hall*, 194 Ill. 2d 305, 330 (2000). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given to their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992).

¶ 20 To sustain defendant's conviction of second degree murder in this case, the State was required to prove that defendant committed first degree murder and, defendant must prove that at the time of the killing, he was acting under a sudden and intense passion resulting from serious

provocation by the individual killed, but he negligently or accidentally causes the death of the individual killed. 720 ILCS 5/9-2(a)(1) (West 2008). " 'Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.' " *People v. Ingram*, 409 Ill. App. 3d 1, 19 (2011), quoting 720 ILCS 5/9-2(b) (West 2004). Defendant bears the burden of proving the existence of this mitigating factor by a preponderance of the evidence. *Ingram*, 409 Ill. App. 3d at 19, citing 720 ILCS 5/9-2(c) (West 2004). In Illinois, the only recognized categories of serious provocation are substantial physical injury or assault, mutual quarrel or combat, illegal arrest, and adultery with the offender's spouse. *Ingram*, 409 Ill. App. 3d at 19, citing *People v. Leach*, 391 Ill. App. 3d 161, 178-79 (2009).

¶ 21 Viewed in the light most favorable to the prosecution, the evidence shows that in the early morning hours of June 11, 2008, defendant and Scruggs became embroiled in a verbal argument which turned physical when Scruggs threw either a punch or a beer can at defendant. In retaliation, defendant knocked Scruggs to the ground, got on top of him, and punched him repeatedly about the face and body, telling Scruggs, "looks like you're going to have some broken ribs." The fight then stopped for a time at the urging of other parties, but erupted again when Scruggs retrieved his cane and swung it at defendant. This time, defendant grabbed the cane from Scruggs, knocked him to the ground with it, and hit him about four times with the cane before walking away. Shortly thereafter, Scruggs died from a ruptured spleen caused by blunt force trauma. In light of the temporal proximity between the beating and Scruggs' death by blunt force trauma, and the fact that defendant told Scruggs that the beating he was inflicting on him would result in broken ribs (see *People v. Steffens*, 131 Ill. App. 3d 141, 149 (1985) (noting that intent may be inferred from the surrounding facts and circumstances, including words and actions of defendant), we find that it was reasonable for the trial court to conclude that defendant knew

his acts created a strong probability of great bodily harm to Scruggs, which was sufficient to support his conviction of second degree murder (720 ILCS 5/9-1(a)(2), 5/9-2(a)(1) (West 2008)).

¶ 22 Defendant nonetheless claims that the State failed to prove beyond a reasonable doubt that he caused Scruggs' ruptured spleen, and asserts that "it was very possible that Scruggs' [*sic*] may have fallen as he was attempting to enter or exit his home." Contrary to defendant's speculative claim, the evidence showed that Scruggs died shortly after defendant struck him multiple times on his body using both of defendant's fists and a cane, and defendant weighing approximately 44 pounds more than him got on top of him and continued to hit him. Also, the medical examiner who conducted the autopsy opined that Scruggs' ruptured spleen was the result of an assault, and that the manner of his death was homicide. From this evidence, the trial court could reasonably infer that defendant's beating of Scruggs caused the ruptured spleen, and ultimately his death. *Sutherland*, 223 Ill. 2d at 242. Defendant's speculative theory that Scruggs may have ruptured his spleen by falling after the fight finds no support in the record and does not necessarily raise a reasonable doubt of his guilt. *People v. Manning*, 182 Ill. 2d 193, 211 (1998). To the contrary, we find that the evidence presented by the State was not so unreasonable, improbable, or unsatisfactory as to justify any such doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 23 Alternatively, defendant claims that the State failed to establish that he had the requisite intent to commit second degree murder where the evidence showed that he acted recklessly. He thus requests this court to reduce his conviction to involuntary manslaughter.

¶ 24 A person acts knowingly when he is consciously aware that a particular result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2008). A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a particular

result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. 720 ILCS 5/4-6 (West 2008).

¶ 25 Relying on this distinction, defendant claims that the State failed to show that he was responsible for Scruggs' death, and that the court failed to consider that he "could not have been practically certain that his actions would cause Scruggs' spleen to rupture and that Scruggs would subsequently die from internal bleeding." As noted above, however, we find that the evidence presented by the State at trial established that defendant possessed the requisite mental state for murder where his words show that he knew his acts created a strong probability of great bodily harm to Scruggs. Moreover, it is well-settled that defendant takes his victim as he finds him, and so long as defendant's acts contribute to the victim's death, there is sufficient proof of causation despite a preexisting health condition. *People v. Brackett*, 117 Ill. 2d 170, 178 (1987). We thus find this claim to be without merit.

¶ 26 Defendant also points out that "[m]ost healthy individuals would not have suffered a ruptured spleen from a punch to the back," and notes that "death is not ordinarily contemplated as a natural consequence from blows from bare fists." In support, he cites *People v. Crenshaw*, 298 Ill. 412 (1921), *People v. Mighell*, 254 Ill. 53 (1912), and *People v. Cates*, 111 Ill. App. 3d 681 (1982) as examples of cases where the victim died during a fistfight and the court determined that defendant's actions were merely reckless.

¶ 27 In *Crenshaw*, 298 Ill. at 414, defendant killed the victim with one punch. In *Mighell*, 254 Ill. at 54, defendant killed the victim with two punches. Here, unlike those cases, defendant repeatedly punched an impaired Scruggs on his face and body, then hit him with a cane approximately four times. In these respects, we find *Crenshaw* and *Mighell* factually distinguishable from the case at bar. We also find defendant's reliance on *Cates*, 111 Ill. App. 3d at 682, to be misplaced because in that case, unlike here, defendant was convicted of involuntary

manslaughter, and this court therefore had no occasion to discuss whether the evidence would support a conviction for second degree murder. Accordingly, these cases provide no basis for reducing defendant's conviction to involuntary manslaughter in the case at bar.

¶ 28 For the reasons stated, we affirm the judgment of the trial court.

¶ 29 Affirmed.