2020 IL App (1st) 162387-U

No. 1-16-2387

Order filed October 15, 2020

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 19649
	)	
ARTHUR BETTIS,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for first degree murder is affirmed over his contention it should be reduced to second degree murder. Defendant's sentence of 57 years' imprisonment is affirmed over his claim it was excessive and the court relied on an improper factor.

¶ 2 Following a bench trial, defendant Arthur Bettis was found guilty of first degree murder and sentenced to 57 years' imprisonment. On appeal, defendant contends his conviction should be reduced to second degree murder where the evidence showed he acted with an unreasonable belief

in the need for self-defense, or, in the alternative, where he acted with a sudden and intense passion resulting from serious provocation. He also argues his sentence was excessive, and that the trial court relied on an improper sentencing factor. We affirm.

¶ 3 Defendant was charged with six counts of first degree murder, which alleged he, without lawful justification, and either intentionally or knowing that such act created a strong probability of death or great bodily harm, shot and killed Kyle Matthews by personally discharging a firearm that proximately caused death. As defendant does not contest he shot and killed Matthews, we recite only the facts necessary to resolve this appeal.

¶ 4 Tremeice Coleman testified she attended a birthday party at Carolyn's nightclub on the night of October 29, 2011, and arrived at approximately midnight. Coleman observed defendant and Maurice Jones inside the club, both of whom she recognized. Matthews, Coleman's boyfriend at the time, entered the club and joined her at the table where she was sitting with her friends.

¶ 5 Someone threw a drink at Coleman's hair and back. She turned around and observed Jones, her former boyfriend. She asked Jones if he threw the drink at her, and he said, "Yeah, b***," and threw a second drink at her. Defendant "came out of nowhere" and started "tussling" with Matthews. Neither Matthews nor defendant threw any punches. A few minutes later, bouncers arrived and separated Matthews and defendant. The bouncers ejected defendant and Jones from the club, but told Coleman and Matthews they could stay.

¶ 6 Coleman and Matthews stayed at the club for a few minutes, then decided to go home. Coleman had taken off her high-heeled boots because her ankle hurt. Coleman left the club first and waited for Matthews to exit. As Matthews exited the club, Coleman observed defendant and Jones walking toward the club from the direction of Bloomingdale Avenue. As defendant

approached the curb, he said, "Where is that b*** we got into it with in the club[?]" or, "Where is that b***-ass n*** I got into it with in the club at[?]" Coleman responded by saying, "Who the f*** you calling a b***?" and defendant said, "You," and began coming toward her "fast." Coleman swung her boots, which she was carrying in her hand, at defendant. She could not recall whether she hit him. Defendant hit Coleman in the center of her forehead, just above her hairline, with a hard object in his hand.

¶ 7 Matthews pushed defendant away from Coleman. Coleman was standing by an iron fence, and Matthews and defendant were on the ground at her side, with Matthews on top of defendant. Coleman heard two shots. She ran toward Carolyn's front door, but the door had been locked, so she ran around the corner. Coleman then observed defendant run across North Central Avenue toward Bloomingdale.

¶ 8 Coleman ran to Matthews, who was on the ground bleeding from his chest and unable to speak. She stayed with Matthews until an ambulance arrived. Neither Matthews nor Coleman had any weapons on their persons that night.

¶ 9 The parties stipulated that a 10-minute video recording from Carolyn's surveillance cameras showed the interior and exterior of Carolyn's from multiple camera angles. Coleman narrated portions of the video, stating they accurately showed the events at Carolyn's that early morning.

¶ 10 On cross-examination, Coleman denied she initiated the confrontation with defendant outside Carolyn's. She testified that, when she and Matthews were outside the club, defendant walked across the street toward them, then walked past them to the door of the club. Defendant

said, "[W]here is that b***-a*** n*** I was tussling with?" which Coleman understood to be referring to her.

¶ 11 Defendant walked away and was about to cross Bloomingdale when Coleman said something to him. Defendant turned and took one step toward Coleman. He did not have a gun or any other objects in his hands at that time. Coleman attacked defendant with her thigh-high, high-heeled boots. The heels of her boots were approximately one inch long. Coleman never observed a gun in defendant's hand during this incident.

¶ 12 Defense counsel showed Coleman a series of still photographs taken from the Carolyn's surveillance camera video recordings. Coleman identified defendant on the sidewalk outside the club, herself closer to the entrance, and Matthews to her left, closer to the iron fence. Coleman identified herself swinging her boots at defendant, who was some distance away with only his foot in the frame, and Matthews behind Coleman and to her left. She identified herself and defendant pushing each other; Coleman testified she was "falling backwards" at this point.

¶ 13 Coleman then identified a photograph of Matthews "going after" defendant. She identified Matthews and defendant "tussling" on the sidewalk, and herself swinging her boots at defendant a second time. She acknowledged she swung her boots at defendant at least three times, and possibly four times. Coleman identified defendant on his back on the ground, and herself "within a step or two" of him. She identified Matthews "on top of" defendant while defendant was on his back or side.

¶ 14 On redirect examination, Coleman testified she swung her boots at defendant because he was "charging" toward her and she believed he was going to hit her. Her boots did not have a

stiletto heel. She agreed one of the video recordings showed her swinging her boots at defendant two times. It did not show her boots making contact with defendant.

¶ 15 Anthony Bullock testified he was working as a bouncer at Carolyn's at approximately 2 a.m. on October 30, 2011, when there was a disturbance on the dance floor when a drink was thrown. Bullock described defendant, whom he identified in court, as the most aggressive and irate of the people involved in this situation. Bullock observed defendant acting drunk, belligerent, aggressive, loud, and "mad," so he grabbed defendant by the shoulders and took him to the exit. Defendant was mad he was being ejected from the club, and tried to get away from Bullock.

¶ 16 Matthew Bannister testified he was working as a bouncer at Carolyn's at approximately 2 a.m. on October 30, 2011, when he observed Bullock escorting defendant, whom he identified in court, toward the door. Defendant was "very irate, hands flailing up, arguing, cussing." As defendant was being escorted out of the club, Bannister grabbed a champagne bottle from his hand. When defendant was outside, he was "really, really upset" about having been ejected. Bannister observed defendant run southbound on Central, cross Central going eastbound, run northbound on Central, and then eastbound on Bloomingdale. Bannister last observed defendant when he ran eastbound on Bloomingdale.

¶ 17 Leonard Lee testified he was working as a bouncer at Carolyn's at approximately 2:30 a.m. on October 30, 2011, when there was a disturbance near the DJ booth. Bullock escorted defendant, whom Lee identified in court, out of the club. Defendant was angry, yelling, and screaming. When Bullock took defendant out the front door, he released defendant, who ran southbound, crossed North Central Avenue, ran north, and then ran east on Bloomingdale. Lee lost sight of defendant at that point. Lee remained outside the club after defendant left.

¶ 18 Two to four minutes later, Lee saw defendant walking toward him. Lee was standing at the corner of Central and Bloomingdale in front of Carolyn's. As defendant walked past Lee, Lee observed a gun in defendant's right jacket pocket. Defendant said, "Where is that punk-a*** who put me out?," which Lee believed meant Bullock. Bullock was not near the outside front area of the club, and Lee observed defendant look through the glass front door. Lee was able to convince defendant to move away from the door.

¶ 19 Defendant turned around and started heading north. When he reached the end of the sidewalk, he turned west. Lee observed a woman standing in the direction defendant was headed. He heard both the woman and defendant say something, but could not recall exactly what they said. When defendant moved toward the woman, Lee observed her swing her boots at him and hit him in the face or shoulder area. Defendant "attack[ed] the woman back." Lee observed defendant and the woman begin "tussling." He did not observe defendant strike the woman. Lee did not try to break up this fight because he knew defendant had a weapon. A man nearby grabbed defendant, and he and defendant started "tussling." At first, defendant and the man were standing, but then they fell to the ground, and Lee heard two gunshots. He observed defendant and another man run across Central and then onto Bloomingdale.

¶ 20 Lee did not observe Matthews or Coleman in possession of any weapons that night. He observed the handle of the gun when it was in defendant's pocket, but he did not observe defendant pull the gun out.

¶ 21 On cross-examination, Lee testified defendant was not speaking or paying attention to Matthews or Coleman when he approached the front door of Carolyn's. As defendant was walking away, something was said by someone, and Lee observed defendant stop and look in Coleman's

direction. As soon as defendant took a step toward Coleman, Lee observed Coleman swing her boots at defendant and hit him with them. Defendant charged at Coleman and attacked her; Lee did not observe a gun in defendant's hand. Lee did not observe defendant try to grab Coleman or throw a punch at her.

¶ 22 As defendant and Coleman were "tussling," Matthews "came to her aid and attacked" defendant, and started "tussling" with him. Defendant was on his back with Matthews "on top of him." There was no "break" in the altercation between Coleman, Matthews, and defendant; it "happened fast." Lee believed Coleman struck the first blow in this altercation.

¶ 23 Chicago police detective John Valkner testified he was assigned to investigate the shooting. At approximately 4:30 a.m. that morning, he spoke with Coleman and noticed a bump at the top of her forehead.

¶ 24 Detective Anthony Noradin testified when he arrested defendant, whom he identified in court, at 9 a.m. on the morning of the shooting, he did not observe any physical injuries to defendant, and defendant did not request medical attention.

¶ 25 Cook County assistant medical examiner Dr. Kristin Escobar Alvarenga testified Matthews's cause of death was a single gunshot wound to the chest. On cross-examination, Alvarenga testified the path of the bullet through Matthews's body was consistent with him leaning over.

¶ 26 The video recordings from Carolyn's surveillance cameras were entered into evidence. The videos show, beginning at approximately 2:20 a.m., several individuals shoving each other amid a crowd of patrons inside the club. Bullock, who identified himself and defendant in this video, grabs defendant by the shirt and pushes him toward the front door. Bullock escorts defendant out the

front door while defendant struggles with and pushes back against him. Defendant pulls away from Bullock and backs toward an intersection. Defendant and another man run out of the cameras' fields of view.

¶ 27 Approximately two minutes later, at 2:22:43 a.m., Coleman, who identified herself and Matthews in this video, exits the club, holding her boots in her right hand. Defendant and "his friend," whom Bannister identified in this video, approach Carolyn's from the intersection. At 2:22:52 a.m., Matthews exits the club through the front door. Just as Matthews exits the club, defendant reaches the corner of the intersection. Lee, who identified himself in this video, approaches defendant at the corner. Matthews and Coleman stand on the sidewalk and watch as defendant walks past Lee, approaches the front door of the club, and looks toward it.

¶ 28 Defendant walks away from Carolyn's front door, but just as he reaches the intersection, he turns back toward Coleman and Matthews. At 2:23:05 a.m., Coleman swings her boots at defendant in an overhead motion with her right arm. The boots come close to defendant's face, but it is not clear whether the boots hit him. Defendant moves toward Coleman and swings his right hand in an overhead motion toward Coleman's head. Coleman stumbles with her back up against a fence running along the sidewalk.

¶ 29 At 2:23:07 a.m., Matthews grabs defendant's shoulders and pushes him back along the sidewalk. Coleman appears to swing her boots at defendant again, but does not appear to hit him. Defendant falls to his right side on the sidewalk, then lands in a seated position with his back to the fence. Matthews bends over defendant for less than a second. It appears defendant shoots Matthews at 2:23:10 a.m., just as Matthews stands up and twists away from defendant. While viewing the video, Lee confirmed the gunshots occurred at 2:23:10 a.m.

¶ 30 Matthews runs down the sidewalk and away from defendant. Defendant runs after Matthews and grabs his vest, pulling it off him. Defendant stops chasing Matthews and runs the opposite direction on the sidewalk. Matthews stumbles two or three steps on the sidewalk, then falls to the ground. Defendant runs into the intersection, crosses a street, and disappears from the cameras' fields of view. Coleman runs up to Matthews, who is laying motionless on his back where he fell. She pulls at his shirt twice, but he does not appear to respond.

¶ 31 Defendant moved for a directed finding, arguing he acted in self-defense. He claimed Coleman started the physical altercation by swinging her boots, a potentially deadly weapon, at him. Defendant contended Matthews became the "second aggressor" when he joined Coleman in attacking defendant. The court denied defendant's motion.

¶ 32 Maurice Jones testified that, on the night of October 29, 2011, and into the morning of October 30, 2011, he was at Carolyn's with defendant, Derrick Warner, and Robert Johnson. Jones had a "lot of blank spots" in his memory of that night. He had no recollection of talking to Coleman, bumping into her, a drink being spilled on her, her getting into an altercation, him being escorted out of the club by bouncers, or walking across the street.

¶ 33 Defendant and Jones walked up to the door of Carolyn's and asked security if they could get their champagne. Coleman said something to defendant and started swinging an object at him. A man grabbed defendant, and then Jones heard two gunshots. Defendant was on his back on the ground when Jones heard the gunshots. Jones tried to see who had been hit by the gunshots, then "took off."

¶ 34 On cross-examination, Jones acknowledged he also testified before a grand jury approximately six days after the shooting, on November 4, 2011. Before the grand jury, Jones

testified he did not recall observing defendant outside Carolyn's and did not observe an altercation outside the club. Before he observed photographs at the grand jury proceedings, he had no memory of this incident. He did not observe defendant with a weapon at any point that night.

¶ 35 Derrick Warner testified that, at approximately midnight on October 29, 2011, he arrived at Carolyn's with defendant, Jones, and Robert Johnson. They ordered champagne and split up. Warner saw that Jones's drink spilled on Coleman, and Jones and Coleman became engaged in a shoving match. Defendant was not involved and was not even close to Coleman; Warner observed defendant near the club, approximately 15 feet away from Jones and Coleman. Bouncers escorted defendant and Jones out of the club. Warner did not observe defendant again that night.

¶ 36 On cross-examination, Warner testified he was drinking "heavily" on the night of October 29 and in the early morning hours of October 30, 2011. He and defendant drove to Carolyn's in defendant's vehicle, which was parked on Bloomingdale approximately three blocks from the club.

¶ 37 In closing, the State argued defendant did not shoot Matthews with any belief in the need for self-defense. Rather, the State submitted, defendant retrieved his gun from his car and returned to Carolyn's intending to shoot someone, initially the bouncers who ejected him from the club. In response, defendant argued he returned to the club to retrieve his champagne, and was walking away when Coleman attacked him with her boots. Defendant noted that, when he fired the gun, he was on the ground, backed up against the iron fence, being attacked by Coleman and Mattthews, with Matthews leaning over him. He argued he was justified in using force to defend himself, and he could reasonably assume he was about to receive great bodily harm.

¶ 38 In rebuttal, the State argued defendant did not act with an unreasonable belief in the need for self defense; rather, he acted as an aggressor throughout the entire incident. The State also

maintained defendant's claim of self-defense negated, as a matter of law, any claim of sudden and intense passion caused by serious provocation. Finally, the State argued that, even if the mitigating factor of sudden and intense passion was available to defendant, his response to the provocation was not proportionate because the victim was unarmed and there was no evidence of any injuries to defendant.

¶ 39 The court found defendant guilty of all six counts of first degree murder, and concluded defendant had not established any mitigating factors that would reduce the offense to second degree murder. The court reasoned defendant had ample time between being ejected from Carolyn's and retrieving the gun from his automobile to calm down, so his decision to return to Carolyn's with the gun made it "obvious" he was "going to get some sort of retribution or revenge" initially directed at Bullock, the bouncer. The court found the video "clearly" showed defendant attacked Coleman. The court inferred defendant's gun was already out when he struggled with Matthews, given that defendant "pistol whipped" Coleman's head. It found there was "no reason" for defendant to shoot the unarmed Matthews, as Matthews was not grabbing, kicking, or pummeling defendant; rather, defendant was falling down and grabbed Matthews as he did so. Thus, the court concluded, defendant's conduct was that of an aggressor, not someone acting in self-defense.

¶ 40 Defendant filed a posttrial motion to reconsider the verdict or for a new trial. He argued, *inter alia*, he should have been convicted of second degree murder because the video established he was assaulted by Coleman and Matthews, and, therefore, had an unreasonable belief in the need for self-defense. The court denied defendant's motion.

¶ 41 At the sentencing hearing, the parties agreed the sentencing range was 45 years to life imprisonment. In aggravation, the State presented victim impact statements from Matthews's daughter, godmother, the mother of his children, and his grandmother. In mitigation, defendant presented three letters from his family members, which the court confirmed it read. The State requested a sentence within the guidelines; defendant requested the minimum sentence of 45 years. In allocution, defendant told the court he was "very sorry" for killing Matthews and apologized to Matthews's family.

¶ 42 The presentence investigation report (PSI) showed defendant had a prior conviction for manufacturing or delivering cocaine. He reported a close relationship with his mother and a "normal" childhood, and no illegal drug use. He graduated from high school and, prior to his incarceration, worked in a warehouse for approximately three years.

¶ 43 After merging the counts, the court sentenced defendant to 57 years' imprisonment on one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)). The court noted it originally believed a sentence of more than 60 years to be appropriate, but decided on a lesser sentence after considering defendant's mitigation evidence. The court stated "[w]hat this case is about is what is pervasive in our society today *** [t]he problem is with handguns and guns *** If Mr. Bettis had not [had] access to a handgun, there's no doubt in my mind that *** this would have been an argument. It would have blown over and none of us would be here today." The court also mentioned hypothetical future accounts of gun violence in the news. The court denied defendant's posttrial motion to reconsider sentence.

¶ 44 On appeal, defendant challenges his conviction for first degree murder and his 57-year sentence. He first argues his conviction should be reduced to second degree murder because he

acted with an unreasonable belief in the need for self-defense when he shot Matthews. In the alternative, defendant contends his conviction should be reducted to second degree murder because he acted under a sudden and intense passion resulting from serious provocation when he was engaged in mutual combat with, or assaulted by, Coleman and Matthews.

¶ 45 To prove defendant guilty of first degree murder as charged, the State had to establish beyond a reasonable doubt he shot and killed Matthews without lawful justification and either intended to kill or do great bodily harm to him or knew his acts would cause Matthews's death. 720 ILCS 5/9-1(a)(1) (West 2010). Defendant does not dispute the State carried its burden with respect to first degree murder.

¶ 46 Second degree murder is a mitigated version of first degree murder. *People v. Parker*, 223 Ill. 2d 494, 504 (2006). " '[T]he elements of first degree and second degree murder are identical, and it is the presence of statutory mitigating factors that reduces an unlawful homicide from first degree murder to second degree murder.' " *People v. Castellano*, 2015 IL App (1st) 133874, ¶ 153 (quoting *People v. Thompson*, 354 Ill. App. 3d 579, 587 (2004)). The statutory mitigating factors are outlined in section 9-2(a) of the Criminal Code of 2012, which provides that a person commits second degree murder when he commits first degree murder but, at the time of the killing, acted under either (1) a sudden and intense passion resulting from serious provocation, or (2) had an unreasonable belief in the need for self-defense. 720 ILCS 5/9-2(a)(1)-(2) (West 2010); 720 ILCS 5/7-1(a) (West 2010) (use of deadly force is justified only if the user "reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another").

¶ 47 When a defendant seeks to be found guilty of second degree murder instead of first degree murder, he must prove by a preponderance of the evidence one of the statutory mitigating factors.

720 ILCS 5/9-2(c) (West 2010). The State retains the burden to prove first degree murder beyond a reasonable doubt and, when raised by a defendant, to disprove mitigating factors. 720 ILCS 5/9-2(c) (West 2010). "Whether a defendant's actions were committed under *** mitigating circumstances is a question of fact for the trier of fact to resolve." *People v. Bennett*, 2017 IL App (1st) 151619, ¶ 43. When a trial court finds a defendant failed to prove the presence of a mitigating factor, we will affirm if we determine that, " 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were not present.' " *Castellano*, 2015 IL App (1st) 133874, ¶ 144 (quoting *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996)).

¶ 48 Defendant contends he had an unreasonable belief in the need to use deadly force to defend himself when he shot Matthews. In order to establish complete self-defense, a defendant must show: (1) force was threatened against a person; (2) the person was not the aggressor; (3) the danger of harm to the person was imminent; (4) the threatened force was unlawful; (5) the person actually and subjectively believed a danger existed, which required the use of the force applied; and (6) his beliefs were objectively reasonable. *People v. Washington*, 2012 IL 110283, ¶ 35. However, to be found guilty of second degree murder, a defendant must only prove the existence of the first five factors. *Castellano*, 2015 IL App (1st) 133874, ¶ 149.

¶ 49 We find a rational trier of fact could reasonably conclude defendant did not act with an unreasonable belief in the need for self-defense when he shot Matthews. There is no dispute Matthews was unarmed. There was no evidence Matthews said anything to defendant outside Carolyn's, much less threatened to hurt or kill him. The trial court found from the evidence that defendant was the aggressor attacking Coleman, and Matthews stepped in to push defendant away

from her. The video recordings establish the entire physical altercation between Matthews and defendant lasted approximately three seconds. The videos also show Matthews never punched defendant, kicked him, or swung at him. At most, Matthews shoved or grabbed defendant one time and was bent over him for less than a second when defendant shot him. The trial court found from the evidence that defendant was "falling down and grabbed" Matthews. Mattthews was not pummeling or kicking him. And when Matthews tried to run away, defendant chased him. Defendant had the burden to prove the first five factors of self-defense (*Castellano*, 2015 IL App (1st) 133874, ¶ 149), including that Matthews threatened force against, and presented a danger of imminent harm to, defendant. He failed to establish the factors of unreasonable self defense; thus, the State was not required to rebut them.

¶ 50 Moreover, the fact that defendant left Carolyn's, retrieved his gun from his automobile three blocks away, then returned to Carolyn's, points to premeditation rather than defendant acting with an unreasonable belief in the need for self-defense. See *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 88 (defendant "carrying his gun that night points more toward retribution and not in any belief in self-defense *** reasonable or unreasonable."). Thus, the evidence supported the trial court's conclusion that defendant did not establish the mitigating factor of unreasonable self-defense, so the State was not required to rebut defendant's claim of an unreasonable self-defense.

¶ 51 The cases defendant relies on are distinguishable because they involved situations in which the victim in some way threatened the defendant, which did not occur here. See *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1998) (victim punched defendant, threw a brick at him, and threatened to kill him); *People v. Mocaby*, 194 Ill. App. 3d 441, 491-92 (1990) (victim threatened to break

defendant's neck). *Hawkins* and *Mocaby* do not warrant the reduction of defendant's conviction to second degree murder.

¶ 52 In the alternative, defendant raises the mitigating factor of a sudden intense passion resulting from serious provication, which is "conduct sufficient to excite an intense passion in a reasonable person." 720 ILCS 5/9-2(b) (West 2010). Illinois courts recognize four categories of serious provocation: substantial physical injury or assault, mutual quarrel or combat, illegal arrest, and adultery with one's spouse. *People v. Randall*, 2016 IL App (1st) 143371, ¶ 45. Defendant first contends he shot Matthews "in the course of mutual combat." Mutual combat is " 'a fight or struggle which both parties enter willingly or where two persons, upon a sudden quarrel and in hot blood, mutually fight upon equal terms and where death results from the combat.' " *Randall*, 2016 IL App (1st) 143371, ¶ 47 (quoting *People v. Austin*, 133 Ill. 2d 118, 125 (1989)). " 'There is no mutual combat where the manner in which the accused retaliates is out of all proportion to the provocation, particularly where homicide is committed with a deadly weapon.' " *Randall*, 2016 IL App (1st) 143371, ¶ 47 (quoting *People v. Sutton*, 353 Ill. App. 3d 487, 496 (2004)). "Our courts have consistently held that mutual combat does not apply where a defendant responds with deadly force to a physical altercation with an unarmed victim." *Randall*, 2016 IL App (1st) 143371, ¶ 48.

¶ 53 A rational factfinder could conclude Matthews's and defendant's altercation did not constitute mutual combat. Matthews was unarmed, and defendant was armed with a gun. The uncontested eyewitness testimony and video evidence establishes that, when defendant shot Matthews, Matthews had shoved or grabbed defendant one time. Matthews did not throw a single punch the night he died. Thus, a rational trier of fact could conclude defendant shooting Matthews in the chest at almost point-blank range was wholly disproportionate to whatever minor

provocation Matthews caused, and, therefore, that defendant failed to establish the mitigating factor of mutual combat. See *People v. Lauderdale*, 2012 IL App (1st) 100939, ¶¶ 26-29 (no evidence of mutual combat when an unarmed victim punched the defendant in the jaw, and the defendant retaliated by shooting the victim multiple times).

¶ 54 The cases defendant cites do not support his position because they all involved more violent or protracted fights than what occurred in this case. See *People v. Goolsby*, 45 Ill. App. 3d 441, 448-49 (1977) (victim punched defendant and hit him with a paperweight); *People v. Hudson*, 71 Ill. App. 3d 504, 510-11 (1979) (fistfight between victim and defendant); *People v. Collins*, 213 Ill. App. 3d 818, 825 (1991) (victim and defendant wrestled for a gun); *People v. Johnson*, 4 Ill. App. 3d 249, 251 (1972) (victim and defendant engaged in fistfight and wrestling).

¶ 55 Defendant also argues he established "he killed Matthews while overcome by a sudden, intense passion of serious provocation by way of a physical assault." Merely "[s]truggling with an attacker in an effort to ward off or defend one's self against an attack is not sufficient to warrant a conviction for second degree murder based on provocation." *Harmon*, 2015 IL App (1st) 122345, ¶ 92. The issue is not whether defendant was simply provoked; it is whether the provocation was serious enough to "excite an intense passion in a reasonable person." 720 ILCS 5/9-2(a) (West 2010); see also *People v. Dowdell*, 84 Ill. App. 3d 707, 709 (1980) ("It is well established not all altercations between individuals provide sufficient provocation to reduce a conviction for [first degree] murder to [second degree murder].").

¶ 56 A rational trier of fact could conclude defendant did not act based on a serious provocation resulting from substantial physical assault. At trial, defendant did not argue his actions were the result of a sudden and intense passion stemming from Matthews's or Coleman's assault. Instead,

defendant argued his actions were in defense of himself, *i.e.*, that he acted reasonably, not as the result of intense passion. Furthermore, none of Matthews's actions qualifed as *substantial* physical assault. Matthews shoved or grabbed defendant one time, and did not hit, punch, or kick defendant. We have explained a punch to the jaw does not constitute substantial physical assault for purposes of second degree murder. *Lauderdale*, 2012 IL App (1st) 100939, ¶ 25. Whatever "assault" Matthews committed, therefore, was less substantial than the assault in *Lauderdale*, and did not constitute serious provocation.

¶ 57 Much of defendant's argument, at trial and on appeal, focuses on Coleman's act of swinging her boots at him. We reject defendant's attempt to bootstrap Coleman's actions onto Matthews. It is not clear whether Coleman hit defendant with her boots, and there was no evidence defendant was injured by her actions. More importantly, defendant has not presented any authority holding that an assault by one person (here, Coleman) mitigates a defendant's use of deadly force against a different person (Matthews). Coleman was not even involved in the altercation when defendant shot Matthews. Rather, she was some distance down the sidewalk watching defendant and Matthews. This case is not similar to *People v. Beathea*, 24 Ill. App. 3d 460, 465 (1974), which defendant cites, and in which the victim struck the defendant in the face several times, knocked her to the ground, and kicked her leg. A rational trier of fact could conclude defendant shooting Matthews was deliberate, and not the result of serious provocation. Accordingly, we affirm defendant's conviction for first degree murder.

¶ 58 Defendant next challenges his 57-year sentence as excessive. He argues his background was "indicative of rehabilitative potential" given his education, employment, and family histories, and minimal criminal history, and his "culpability was mitigated by the fact that he acted under

strong provocation when he shot Matthews." In the alternative, defendant contends this case should be remanded for resentencing because the trial court "improperly considered its personal beliefs about guns as an aggravating factor."

¶ 59 The State argues defendant forfeited both arguments for purposes of review as he did not make a contemporary objection at the sentencing hearing or raise these issues in his motion to reconsider sentence. To preserve a claim of sentencing error, both a contemporaneous objection and a written posttrial motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Failure to properly preserve an issue results in forfeiture of the issue on appeal unless plain error can be demonstrated. *Hillier*, 237 Ill. 2d at 544; *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988).

¶ 60 Defendant forfeited the sentencing issues he raises on appeal. At the sentencing hearing, he agreed with the State that the sentencing range was 45 years to natural life, and the sentence he requested (45 years) was within that range. Defendant did not make any objections during the sentencing hearing. His motion to reconsider sentence only made general claims of error, and did not specifically identify any of the issues he raises now. Thus, defendant failed to preserve his claims of sentencing error, and has forfeited them on appeal. See *Hillier*, 237 Ill. 2d at 544-45 (failure to object to specific issues at sentencing results in forfeiture of those issues on appeal).

¶ 61 Nevertheless, defendant invokes the doctrine of plain error under Illinois Supreme Court Rule 615(a), which provides that "[p]lain errors or defects affecting substantial rights may be noticed [on appeal] although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). "[T]he plain error doctrine is a narrow and limited exception" (*Hillier*, 237 Ill. 2d at 545), "not 'a general saving clause allowing a defendant to appeal matters he did not

raise in the trial court' " (*People v. Herron*, 215 Ill. 2d 167, 177 (2005) (quoting *People v. Precup*, 73 Ill. 2d 6, 16 (1978))). "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *Hillier*, 237 Ill. 2d at 545. This is because "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 795 (2010). We find no error here.

¶ 62 A trial court has broad powers in sentencing, and its sentencing decision is entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). "[T]here is a presumption that a sentence within the statutory guidelines is correct." *People v. Grimes*, 379 Ill. App. 3d 905, 911 (2008). On review, we cannot alter a defendant's sentence absent an abuse of discretion by the trial court. *Alexander*, 239 Ill. 2d at 212. An abuse of discretion occurs when the sentence is " 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Alexander*, 239 Ill. 2d at 212 (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)).

¶ 63 Defendant has not met the threshold requirement for plain error review, which is demonstrating that clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. The base sentencing range for first degree murder is 20 to 60 years (730 ILCS 5/5-4.5-20(a) (West 2016)), and, here, the trial court was required to enhance defendant's sentence by an additional term of 25 years up to natural life for him personally discharging a firearm proximately causing death. See 730 ILCS 5/5-8-1(d)(iii) (West 2016). Thus, the sentencing range in this case was 45 years to natural life, as the parties agreed at the sentencing hearing. Defendant was sentenced to 57 years, within the sentencing range, and less than the maximum of 85 years or natural life. We therefore presume his sentence was correct. See *Grimes*, 379 Ill. App. 3d at 911.

¶ 64 We also presume the trial court considered all of the relevant mitigating factors. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51. The record supports such a conclusion. At the sentencing hearing, the trial court had received defendant's PSI, and we presume the trial court considered the mitigating evidence regarding defendant's criminal, educational, employment, and family histories in it. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 20. Defendant also raised several of the same arguments at the sentencing hearing as he does on appeal. Thus, the trial court not only read the mitigating evidence in the PSI and the letters from defendant's family; it heard the mitigating evidence argued as well, and is presumed to have considered it. See *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Further, the court specifically stated it had considered the PSI, "the evidence offered in aggravation and mitigation by the parties and *** the statutory factors in aggravation and mitigation." Defendant has failed to affirmatively establish the trial court disregarded any mitigating evidence. On the contrary, the court reduced its initial determination of defendant's sentence by more than three years after considering the mitigating evidence.

¶ 65 Further, we cannot say defendant's sentence was greatly at variance with the law or manifestly disproportionate to the offense. See *Alexander*, 239 Ill. 2d at 212. Defendant was sentenced on intentional first degree murder, so it is not manifestly disproportionate that the trial court imposed a significant prison sentence. As explained above, we reject defendant's claim his culpability for first degree murder was mitigated by serious provocation. Thus, that is not a basis for reducing his sentence.

¶ 66 Finally, defendant claims the trial court improperly considered its "personal beliefs" "generally about guns and their prevalence in society" when it imposed sentence. We review a claim the trial court considered an improper sentencing factor for abuse of discretion. *People v.*

Walker, 2012 IL App (1st) 083655, ¶ 30. "A trial court abuses its discretion when *** it fashions a sentence based on the court's personal beliefs." *People v. Miller*, 2014 IL App (2d) 120873, ¶ 36. In making this determination, we do not focus on isolated statements; rather, we consider the record as a whole. *Walker*, 2012 IL App (1st) 083655, ¶ 30. Even if the trial court considered an improper factor, "remand for resentencing is necessary only if the consideration resulted in a greater sentence." *Walker*, 2012 IL App (1st) 083655, ¶ 30.

¶ 67 The trial court's brief comments about the prevalence of gun violence did not constitute an abuse of discretion. Taking the record as a whole, we find these comments simply framed the court's conclusion that, had defendant not decided to return to Carolyn's with a gun, this incident would have been a minor argument and would not have resulted in Matthews's death. It was proper for the court to consider, as an aggravating factor, that defendant's choice to return to the club with his gun caused Matthews's death. See 730 ILCS 5/5-5-3.2(a)(1) (West 2016) (court may consider in aggravation that the defendant's conduct caused serious harm). Moreover, defendant's mitigating evidence, not the court's views on gun violence, altered defendant's sentence by *reducing* it by at least three years. On this record, we cannot find the trial court's views on gun violence resulted in a greater sentence. Thus, resentencing is not warranted. *Walker*, 2012 IL App (1st) 083655, ¶ 30.

¶ 68 For the foregoing reasons, we affirm defendant's conviction for first degree murder and his sentence of 57 years' imprisonment.

¶ 69 Affirmed.