

2014 IL App (2d) 120689-U
No. 2-12-0689
Order filed March 19, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-519
)	
JAMES E. LEWIS,)	Honorable
)	George Bridges,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant proved by a preponderance of the evidence that he had killed the victim with an unreasonable belief that he was acting in self-defense, as he was threatened by the victim and his four friends, he was intoxicated, he stabbed the victim only once and then sought medical assistance for the victim, and he consistently maintained that he had acted in self-defense; thus, we reduced his conviction from first-degree murder to second-degree murder and remanded for resentencing.

¶ 2 After a jury trial, defendant, James E. Lewis, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)). He was sentenced to 30 years' imprisonment. On appeal, he asserts that his conviction should be modified to second-degree murder because he proved by a

preponderance of the evidence that he had killed the victim with an unreasonable belief that he was acting in self-defense. See 720 ILCS 5/9-2(a)(2) (West 2010). We agree. Thus, we modify his conviction, vacate his sentence, and remand for resentencing.

¶ 3 Defendant was charged by indictment with two counts of first-degree murder. The indictment alleged that defendant stabbed John Herres with the intent to kill him and that he stabbed Herres knowing that his act created a strong possibility of death or great bodily harm. At trial, witnesses included four of Herres's friends who were present during the events leading to the stabbing: Devin Miller, Alexander Kutches, Ryan Fecht, and Beau Bisaillon.

¶ 4 Miller testified that, on February 13, 2010, he and his four friends were drinking alcohol and smoking marijuana at a party at Kutches's house. After leaving the party they proceeded to the home of Fecht's mother, Rebecca Trendler. Trendler resided with her boyfriend, defendant. They continued to drink alcohol and smoke marijuana before going to sleep.

¶ 5 The following morning, Miller woke up around 9 a.m. He saw defendant walking back and forth from his room, drinking some beers. Defendant went to the kitchen at least three times. Defendant appeared to be intoxicated. Miller had a beer or two while he watched TV.

¶ 6 Later, Miller and his friends asked Trendler to help them get some marijuana, and Trendler then asked defendant to help them. Miller, Fecht, and defendant took Bisaillon's jeep to get the marijuana at defendant's friend's house. Defendant was the only one to get out of the car; he came back after about 15 minutes. After they returned to defendant's home, Miller noticed that the amount of marijuana was short. Miller and his friends got angry at defendant and asked him for the rest; defendant replied that he had given them all of it and proceeded to go to his room.

¶ 7 About 10 minutes later, defendant came out of his room and began yelling at Trendler. Herres said that defendant should not talk to Trendler like that, since she did everything around the house. At the same time, everyone else was “putting [their] two cents in.” Trendler asked defendant to empty his pockets and knocked a cigarette pack out of his front shirt pocket; the pack contained the marijuana. Everyone yelled at defendant. Defendant told them about five times to get out of his house. They did not leave.

¶ 8 Herres said, “ ‘Ryan, I got it,’ ” and started yelling at defendant, calling him a “ ‘piece of shit’ ” and getting right in his face. Herres then said to defendant, “ ‘Let’s take this outside.’ ” Defendant pulled a knife from his belt holster and said, “back off.” Defendant had his knife out for 30 seconds, telling Herres to get away from him. Herres did not back off and defendant stabbed him one time. Herres walked into the kitchen and collapsed, and defendant went to his room and called 911. Fecht also called 911, and Bisailon put pressure on Herres’s wound. Eventually, paramedics and police arrived.

¶ 9 Fecht testified that he was drinking at Kutches’s house. Following the party, he and his friends went over to Trendler’s house, where she lived with defendant. When they arrived at her home, defendant was sleeping. Earlier that day, Trendler had told him that she and defendant had been arguing. The following morning, Fecht saw defendant drinking and he appeared to be intoxicated.

¶ 10 Fecht and his friends decided to get marijuana through defendant. Miller, Fecht, and defendant went together to get the marijuana. When they returned, defendant gave the marijuana to Kutches, who then said that it “ ‘doesn’t look right.’ ” Fecht asked defendant if he had taken some and Trendler came into the room. She took defendant’s cigarette pack and found the marijuana inside. Defendant then became “very mad” and told them to leave.

¶ 11 Fecht proceeded to ask Trendler for permission to punch defendant. Herres said, “ ‘Don’t worry, I got it.’ ” Herres then got nose-to-nose with defendant and said, “you don’t speak to women like that,” and that they should go outside and fight. Fecht did not see the stabbing. Herres walked into the kitchen and said that he had been stabbed; Fecht called 911. Before the arrival of the police, Fecht threw the marijuana out the window.

¶ 12 Bisaillon testified that he and his friends went to Trendler’s house after the party at Kutches’s house. They went to Trendler’s house because they knew that they could continue the party there. When they arrived at the house, Bisaillon had a couple of beers before going to bed. The following morning, Bisaillon witnessed defendant going back and forth into the kitchen with a couple of beers in hand, three to four times.

¶ 13 Since they were all hung over from the night before, they decided to get some marijuana. Fecht and defendant took Bisaillon’s car to purchase it. When they arrived back at the house, Fecht looked at the bag and said that it was light. Defendant then began swearing and said that he did not take any of it. Trendler grabbed defendant’s cigarette pack out of his pocket and found the marijuana inside. Defendant became angry and screamed that they needed to get out of his house. Trendler said that they did not have to leave. Defendant “brush[ed]” her off when she tried calming him down.

¶ 14 Five minutes later, Herres got face-to-face with defendant, whose back was turned toward the TV. Everyone was in the same room. Someone said, “ ‘You know, James, there are five of us. If you’re going to keep going, you know that something bad could happen.’ ” Bisaillon thought that Herres was going to beat up defendant. Kutches told defendant to take his knife off his belt. Bisaillon thought that defendant would put his knife down and that Herres would beat him up. Defendant then said to Herres, “ ‘You don’t think I’ll stab you?’ ” Herres shook his

head, and defendant stabbed him. Defendant ran into his room and called 911 while Herres walked into the kitchen.

¶ 15 In Bisailon's statement to the police, he wrote that he and his friends stood up and told defendant to stop saying "shit" or "we'll kick his ass." He also wrote that defendant pushed Trendler and that by then they were all standing up and ready to beat up defendant. Furthermore, he wrote that Herres was standing in front of defendant, saying, " 'Don't do shit because we'll kick your ass.' "

¶ 16 Kutches testified that he was hosting a party at his house. He and his friends had to leave because his sister was on her way home. They then went over to Trendler's house to spend the night. The following morning, he saw defendant make six or seven trips to the kitchen, grabbing beers from the refrigerator. He could tell that defendant was intoxicated.

¶ 17 Ultimately everyone woke up and decided to get marijuana. Fecht, Miller, and Bisailon went with defendant to pick up the marijuana. After returning, they noticed that there was some marijuana missing. Everyone was "pissed off," thinking that defendant had taken it. Trendler grabbed the cigarette pack out of defendant's front pocket and found the missing marijuana. Defendant got angry and told everyone to leave the house; Trendler said that " 'they're not going anywhere.' " Defendant then pushed Trendler.

¶ 18 Herres got a few inches from defendant's face and asked him to go outside and fight. Kutches and his three other friends were all standing four to five feet behind Herres. Herres and defendant continued bickering back and forth. Kutches noticed that defendant had a knife on his belt and told him to take it off before Herres and defendant fought. Defendant then pulled out the knife and stabbed Herres.

¶ 19 Defendant went into his bedroom; Herres walked into the kitchen, pulled his shirt up, and fell down. Fecht called 911 while Kutches put pressure on the wound and Miller hid the marijuana. When the police arrived, Kutches and his friends wrote statements. They discussed the statements and agreed not to mention the marijuana.

¶ 20 Trendler testified that she lived with defendant. On the night in question, Fecht and his friends came over to their home. Defendant had been drinking for the past two days and was “extremely” intoxicated. She had told Fecht not to come over that night, because she and defendant had been arguing and defendant had been verbally abusive and had hit her on the head. The next morning, defendant continued drinking and was still intoxicated. He eventually left to purchase some marijuana with Fecht and Miller. Upon their return, an argument erupted over the amount of marijuana. Defendant said that he had not taken any of it. Trendler then took a cigarette pack out of his front shirt pocket and found the marijuana there.

¶ 21 Defendant went to his bedroom for about 20 minutes and then came out and said several times that he wanted all the boys out of his house. Fecht asked her if he could punch defendant; she said no, but Herres said, “ ‘I got you, Ryan.’ ” A few minutes later, Herres and defendant were face-to-face, with defendant’s back against the TV. Herres challenged defendant to go outside and fight. Later, Herres walked into the kitchen holding his stomach, and Trendler saw that he had been stabbed. Defendant appeared surprised and upset, and he went into his bedroom and called 911.

¶ 22 When the police arrived, defendant walked outside, placed the knife on the porch, and did as the police told him. He was cooperative. After defendant was handcuffed, the paramedics came into the house. Herres was taken to the hospital and died later that night. The coroner

testified that Herres had a blood alcohol level of 0.057 and that the knife penetrated his liver, stomach, and aorta and cut the surface of a vertebra.

¶ 23 Defendant's 911 call was played for the jury. In the call, defendant said that he needed an ambulance because "some kids" had "jumped [his] butt" and he "had to stab a guy." He also stated that he needed the police. He added that he thought that Herres was not bleeding and was conscious.

¶ 24 Detective Kevin Keckenstahler testified that he and Detective Bennett interviewed defendant on February 14, 2010. Defendant signed a *Miranda* waiver and was cooperative when talking to the detectives. The interview was video-recorded but only part of it was audio-recorded, as they did not activate the audio for the initial portion. The portion that was audio-recorded was played for the jurors. In it, defendant stated that he had woken up at 8 a.m. and started to drink. He had at least eight beers and was "buzzed." Trendler told him that the boys wanted some marijuana, so defendant went and bought it for them. Trendler told him to take some of the marijuana. The boys were angry because the marijuana was light, which led to yelling and screaming. Trendler took his cigarette pack out of his pocket and he told them to get out.

¶ 25 Defendant went to his bedroom and later came out to grab a beer. On his way back to the bedroom, Herres confronted defendant and got face-to-face. Defendant did not remember what was said between them, but it involved some "bullshit" about Trendler. Herres drew his arm back and defendant took his knife out and stabbed him. Herres grabbed his stomach. Defendant said that he stabbed Herres because Herres got in his face and he felt threatened.

¶ 26 Defendant also gave a written statement. In it, he said, "On Sun[day] morning I had been drinking, going back to my bedroom [and] I was confronted by the victim about the way I talked

to my girlfriend the night before[.] I felt like my personal wellbeing [*sic*] was in jeporty [*sic*][.] When he started back to swing I took out my knife and stabled [*sic*] him, then called 911.”

¶ 27 The jury was instructed on both self-defense and second-degree murder under both mitigating factors, sudden provocation and imperfect self-defense. See 720 ILCS 5/9-2(a) (West 2010). Defendant was convicted of first-degree murder and was sentenced to 30 years’ imprisonment. Defendant timely appeals.

¶ 28 Second-degree murder is a lesser offense of first-degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 122 (1995). “If the defendant’s belief as to the use of force was reasonable, self-defense may apply. If the defendant’s belief was unreasonable, a conviction of second degree murder may be appropriate.” *People v. Hooker*, 249 Ill. App. 3d 394, 403 (1993). Here, at trial, defendant asserted self-defense. Thus, the State had the burden of proving beyond a reasonable doubt that defendant did not have a reasonable belief in the necessity of deadly force. *People v. Hawkins*, 296 Ill. App. 3d 830, 836 (1998). (Here, defendant concedes that the State met that burden.) Subsequently, the burden shifted to defendant to prove by a preponderance of the evidence that he had an *unreasonable* belief in the necessity of deadly force. See 720 ILCS 5/9-2(c) (West 2010). On appeal, the issue is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found that defendant lacked that unreasonable belief. *People v. Blackwell*, 171 Ill. 2d 338, 357-58 (1996).

¶ 29 Here, we agree with defendant that all of the evidence indicated that he had an unreasonable belief in the necessity of deadly force, such that no rational trier of fact could have reached the opposite conclusion. After Herres, backed by his four friends, got into defendant’s face and challenged him to a fight, defendant stabbed Herres once. He then immediately called 911, telling the dispatcher that “some kids” had “jumped [his] butt” and that he “*had* to stab a

guy.” (Emphasis added.) When the police arrived, defendant cooperated, writing a statement in which he explained that he “was confronted by the victim” and “felt like [his] personal well-being was in jeopardy.” Further, by all accounts, defendant was heavily intoxicated, and “[i]ntoxication may contribute to a defendant’s mistaken belief of self-defense.” *People v. Mocoby*, 194 Ill. App. 3d 441, 449 (1990). Although, as defendant admits, his belief was unreasonable, there was no evidence from which the jury could have rationally decided that he did not have that belief.

¶ 30 Defendant relies on *Hawkins* and *People v. Ellis*, 107 Ill. App. 3d 603 (1982), which we agree are on point. In *Hawkins*, the defendant stabbed an unarmed victim multiple times. *Hawkins*, 296 Ill. App. 3d at 833-34. However, the victim had threatened and hit the defendant, and the defendant told the police that he had defended himself. Thus, the appellate court held that, although the defendant’s belief that he needed to use a deadly weapon was unreasonable, the defendant believed that he was acting in self-defense, and the court reduced his conviction to second-degree murder. *Id.* at 838.

¶ 31 In *Ellis*, the defendant was involved in an argument with the victim. The defendant asked the victim to leave his home and the victim refused. The defendant went into the bathroom and grabbed his gun. The victim, unarmed, lunged at the defendant, and, during the ensuing scuffle, the defendant shot the victim. The defendant then asked a neighbor to help him try to “‘save [the victim’s] life.’” *Ellis*, 107 Ill. App. 3d at 606. Holding that the defendant had an unreasonable belief that he was acting in self-defense, this court reduced the defendant’s conviction to voluntary manslaughter (the precursor to second-degree murder). *Id.* at 610-12.

¶ 32 Whereas in *Hawkins* the defendant stabbed the victim multiple times, here defendant stabbed Herres only once. See also *People v. Collins*, 213 Ill. App. 3d 818, 824-25 (1991).

Further, as in *Ellis*, here defendant attempted to obtain assistance for Herres. See also *id.* Finally, as in *Hawkins*, here defendant consistently maintained that he stabbed the victim in self-defense. Thus, we agree that defendant's conviction must be reduced to second-degree murder.

¶ 33 The State devotes most of its argument to establishing that defendant "had no reason to believe that deadly force was going to be used against him." In asserting that *Hawkins* and *Ellis* are distinguishable, the State essentially asserts that the defendants there were more justified (though not *legally* justified) in believing in the need for self-defense. However, as noted, defendant *concedes* that he had no "reason" for that belief, *i.e.*, that any such belief was unjustified. He argues only that he did have that unreasonable belief. Here, given the circumstances, all of defendant's words and deeds were suggestive of such an unreasonable belief. Although we are always reluctant to alter a jury's verdict, in this case the evidence requires that result. See *People v. Deery*, 41 Ill. App. 3d 302, 312 (1976) ("While we are reluctant to reverse a criminal conviction based on a jury verdict we do not believe the evidence in this case is sufficient to sustain the conviction beyond a reasonable doubt.").

¶ 34 For the reasons stated, we modify defendant's conviction from first-degree murder to second-degree murder, vacate the trial court's order, and remand the cause for resentencing.

Affirmed as modified in part and vacated in part; cause remanded.