2025 IL App (5th) 230250-U

NO. 5-23-0250

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ARIEANA F. COLBERT, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Champaign County. No. 21-CF-1282 Honorable Randall B. Rosenbaum, Judge, presiding.

PRESIDING JUSTICE McHANEY delivered the judgment of the court.
Justices Boie and Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: Where the defendant presented some evidence of her unreasonable belief in the need for self-defense, the trial court erred in refusing the defendant's proffered second degree murder jury instruction.

¶ 2 Following a jury trial, the defendant, Arieana F. Colbert, was convicted of first degree murder with intent to kill Acarrie Ingram-Triner (720 ILCS 5/9-1(a)(1) (West 2020)) and sentenced to 47 years in the Illinois Department of Corrections followed by 3 years' mandatory supervised release. On appeal, the defendant argues that the trial court erred in refusing to instruct the jury on second degree murder or involuntary manslaughter. The defendant also attributes a number of errors to the State and defense counsel. For the following reasons, we reverse.

¶ 3 I. Background

¶ 4 The following evidence was adduced at the defendant's jury trial. We cite only those facts relevant to this disposition. The 20-year-old defendant lived with her boyfriend, Quincy Hayes, and his two young daughters. The defendant was friends with Acarrie Ingram-Triner, who lived in the same apartment complex. Acarrie had introduced the defendant to Quincy. Acarrie's electricity had been out for a few days due to nonpayment. To raise money to pay her electric bill, Acarrie sold her wifi/cable box to Quincy for $15 as she was unable to use the box without electricity. Later that day, at approximately 3 p.m., Acarrie called Quincy asking him for cannabis and money. When he told Acarrie he had neither, she asked him to return the cable box. Quincy declined to give or sell the cable box back to Acarrie, and she hung up. Throughout the day there was an exchange of phone calls and text messages among the defendant, Quincy, and Acarrie arguing about the cable box. At one point, Acarrie sent a text message to Quincy saying that when it comes to "ass," he would do anything. The defendant believed that Acarrie was referring to her as "ass."

¶ 5 At 9:43 p.m., the defendant spoke with Acarrie on Quincy's phone, informing Acarrie that Quincy would not give her back the cable box. At 9:51 p.m., Acarrie stated she would come over to get the cable box "in five minutes." At 10:19 p.m., Acarrie sent a text threatening to get her brother involved if they did not return the cable box to her. At some point it was agreed they would return the cable box to Acarrie. By the time Acarrie arrived at their apartment, the defendant and Quincy had fallen asleep and awoke to Acarrie pounding on their door.

¶ 6 The defendant got up to bring Acarrie the cable box, as they had agreed, but Quincy grabbed it from her and went to the door. Quincy was angry that Acarrie might awaken his daughters, and he argued with her. The defendant told him to go back inside to calm down, and she stepped into the hallway to talk to Acarrie. The apartment was on the third floor, and the

defendant walked Acarrie downstairs. The defendant had given Acarrie the cable box she had come for, and they were not fighting. The defendant testified that when they got to the bottom of the stairs, the defendant asked Acarrie why she wanted to argue like that when they were supposed to be friends, and Acarrie punched her. The defendant punched back, and they began shoving and pushing each other.

¶ 7 Quincy, hearing the disturbance, came downstairs. Quincy testified that he tried to push Acarrie away from the defendant. Both the defendant and Quincy were yelling for Acarrie to go home. Quincy also testified that Acarrie was screaming that they were going to die. While Acarrie shouted, "You're going to die. Run, run. You're going to die. You're going to die," he was yelling at her to go home. Quincy also testified that Acarrie kept saying "her brother, her brother and that I should run and I should be scared and stuff like that." He did not know whether Acarrie had a weapon.

¶ 8 At some point, the fighting stopped, and they started arguing. Acarrie called the defendant a bitch, the defendant called her a bitch and the fight renewed. At some point, the defendant threw the cable box behind her. Although the physical altercation had stopped, they continued to argue. Acarrie turned to walk away, but she turned around and came back towards the defendant and Quincy. Acarrie was telling the defendant and Quincy, "You're all dead. You're all dead. You're all dead. My brothers are coming. We're going to kick down the door and you're all dead." The defendant testified she felt that her life was being threatened, along with the lives of Quincy's daughters who were asleep in the apartment.

¶ 9 During the scuffle, the defendant's gun fell to the ground, and the defendant bent down to pick it up. Suddenly, the defendant pointed the gun and shot Acarrie, who fell to the ground. When asked why she shot in Acarrie's direction, the defendant responded, "I don't know. I don't think I

thought. I didn't." She testified that she did not intend to kill or harm Acarrie in any way. The defendant ran away. She hid the gun in the bank of a nearby creek. The next day, the defendant and Quincy went on the run. U.S. marshals arrested them in a hotel room outside of Chicago about six weeks later. A medical examiner testified that the bullet hit Acarrie in the left side of her chest and she died within seconds.

¶ 10 The defendant testified in her own defense. On cross-examination, the defendant was asked why she brought her gun outside. The defendant testified that she kept the gun with her. She explained that she had fallen asleep with the gun in the waistband of her sweatpants while she was waiting for Acarrie to arrive. The defendant stated that she bought the gun for protection because she previously had been shot at and held at gunpoint, and she had seen her family and loved ones victimized and felt there was nothing done about it. She further stated that she always had the gun in the trunk of her car, in her purse, or in her waistband.

¶ 11 When asked why she initially had not told the police where the gun was located, the defendant stated that she was a ward of the state in DCFS care when the incident took place and the DCFS child care advocate told her not to talk to the police without her attorney present. The defendant testified she was aware that Acarrie had two older brothers. Prior to Acarrie's death, she had had a cordial phone conversation with one of them regarding Acarrie's apartment. The defendant admitted that she did not call the police when Acarrie stated they would all be dead because Acarrie's brothers were going to come and kick down their door; instead, she reacted. The defendant testified that Acarrie had stated multiple times that she was going to bring her family; that she knew there was a possibility that "he" could come and knock their door down; and that she believed there was a possibility that if Acarrie came back, there could be more drama.

¶ 12 The jury was shown surveillance video from the apartment complex of what happened once the parties were outdoors. One of the videos contained raw footage, and the other was zoomed in, with each of the participants labeled. Neither video had audio.

¶ 13 Prior to trial, defense counsel had asserted the affirmative defense of self-defense. During the jury instruction conference, defense counsel asked the court to provide the jury with second degree murder instructions based on provocation, as well as involuntary manslaughter instructions. In response, the State suggested that the facts were more closely aligned with imperfect self-defense rather than serious provocation. The trial court determined the evidence did not warrant a jury instruction for second degree murder based on provocation or for involuntary manslaughter as a lesser included offense of first degree murder and denied both jury instructions.

¶ 14 After a recess, defense counsel submitted instructions for second degree murder based on imperfect self-defense. Defense counsel explained that she initially believed the argument was stronger for provocation, but she had prepared the imperfect self-defense jury instructions over the lunch hour.

¶ 15 In denying that jury instruction as well, the trial court explained:

> "THE COURT: Just so the record is clear when I'm ruling on this particular instruction request I am applying the law which is the same law that I did apply earlier this morning whether I mentioned it or not which is that instructions are to be given to a jury if there's any evidence however slight. It can be inconsistent. It can even be against a defendant's own testimony. If there's some evidence in the record if believed by a jury would support a lesser included or a mitigating charge it is to be given. It is not up to the judge to decide the credibility of the witnesses. That's up to the jury.

So, the question that I had this morning and the question I have now here today is where is the specific evidence for imperfect self-defense. Just like I considered earlier, where was the evidence to support the other claims.

The Defendant did at one moment say that she felt fear for her safety and thought there could be continuing problems in the future. However, imperfect self-defense means that there are some facts to support self-defense however it's unreasonable objectively, so I have to look at what is self-defense. Self-defense is unlawful force being threatened against her.

She was not the aggressor. It was imminent danger of harm and she actually and subjectively believed a danger existed that required the use of force and that her beliefs were reasonable and if those beliefs were unreasonable or the factors are unreasonable then it potentially would be second degree, but the fact is that she did testify that there were times when she was the aggressor. She did state at times at one point that there was a possibility that these unnamed brothers might come back and have more trouble and when she shot the gun she doesn't remember dropping anything the instant before she shot. She doesn't recall that at all. She just shot without thinking. She said she reacted without time to think. She doesn't know why she shot her.

I would note that it appears that she was holding something. She fell to the ground, stepped down, something fell, she picked it up and fired. With those objective facts whether you believe the Defendant or you believe the other witnesses the facts are really nothing to support again that there was going to be imminent harm to her, certainly not imminent harm of—that could cause death or great bodily harm. There were times, including near the end, when she was, in fact, the aggressor because the victim was actually backing up

at the time, and therefore I can't find that there's a good faith basis of facts however slight to support the mitigating charge of second degree based on imperfect self-defense.

Therefore, the Court is going to deny the request for the instructions that the defense has proposed."

¶ 16 During deliberations, the jurors sent a note reading: " 'Knowing' in the second proposition—is there further legal clarification? Knowing for general knowledge vs. discrete moment of time of action." The parties agreed that no further instruction was necessary, and the judge told the jury to keep deliberating, after which the jury found the defendant guilty of first degree murder with the intent to kill and of personally discharging the firearm that caused Acarrie's death.

¶ 17 In the motion for new trial, defense counsel argued, *inter alia*, that the trial court erred in denying the involuntary manslaughter jury instructions and the second degree murder jury instructions based on either provocation or imperfect self-defense. The trial court denied the defendant's motion, reasoning as follows:

"THE COURT: It was a close call, and I'm gonna be quite frank for the Appellate record, it was a close call here.

I think the best argument the defense has is that the right thing to do, air quotes, the right thing to do would have been to give to the jury the options of second degree and involuntary, and maybe that would have been the right thing to do. However, my obligation as the judge is to follow the law first and foremost. And the law defines what second degree is. The law defines what involuntary manslaughter is. And there have to be facts to support them. And even though it may have been the right thing to do to submit those, I don't think

legally there was sufficient evidence in the record to support the granting of either one of them.

I would note that with respect to involuntary manslaughter, there has to be some evidence, credible evidence. Whether or not it's credible, it's just some evidence whatsoever that she acted recklessly. And it didn't appear that that was the case. She held up the gun. The gun fell. She picked up the gun. She pointed, and she pulled it. There was nothing reckless in that conduct for the jury to come to that conclusion.

And as to second degree with respect to whether or not there was provocation or intense passion, once again, the court made findings of fact based on what the evidence as it existed and as it came in. The court didn't believe there was sufficient evidence whatsoever to support a claim of second degree.

They were close calls. And I guess this case is gonna go up on appeal. And I have never been reversed in a criminal case. If I'm ever gonna be reversed, it wouldn't surprise me if this is the one. But I have to tell you, I believe my rulings were correct on the law and on the facts. But they were very close decisions, and I respect that, the arguments."

It does not appear that the trial court specifically addressed the defendant's argument that the trial court erred in refusing to give the jury instructions for second degree murder based on imperfect self-defense.

¶ 18 At sentencing, defense counsel presented evidence of the defendant's PTSD, bipolar disorder, and depression, as well as time spent in a juvenile mental-health facility. The trial court sentenced the defendant to 47 years in prison. The defendant filed a timely appeal.

¶ 19 II. Analysis

¶ 20 On appeal, the defendant argues that the trial court erred when it failed to instruct the jury on involuntary manslaughter; on second degree murder based on provocation; or on second degree murder based on an unreasonable belief in the need for self-defense—also known as "imperfect self-defense." The defendant also argues that the trial court applied the wrong standard when it denied her request for second degree murder jury instructions. The defendant further argues that the State cannot prove that the errors were harmless. The defendant also attributes a number of other errors to the State and defense counsel. The State responds that the trial court did not abuse its discretion in declining to instruct the jury on second degree murder based on imperfect self-defense as the evidence did not support giving such an instruction; and, further, that any alleged error was harmless. Because we find that the trial court should have instructed the jury on second degree murder based on imperfect self-defense, we decline to address the defendant's other claims of error.

¶ 21 The defendant was found guilty of first degree murder pursuant to section 9-1(a)(1) of the Criminal Code of 2012 (720 ILCS 5/9-1(a)(1) (West 2020)), which provides that first degree murder occurs when a defendant either intends to kill or do great bodily harm to an individual, or knows that such acts will cause death to that individual or another. A defendant is entitled to jury instructions regarding asserted defenses which are supported by the evidence. *People v. Everette*, 141 Ill. 2d 147, 156 (1990). "This is so even in instances where the evidence is 'slight' [citations] or where it is inconsistent with defendant's own testimony." *Id.* The standard for determining whether a defendant is entitled to a jury instruction on a lesser-included offense is whether there is *some evidence* in the record that, if believed by the jury, would reduce the crime charged to a lesser offense. *People v. McDonald*, 2016 IL 118882, ¶ 25. The determination of whether to give

the instruction is a matter within the trial court's discretion, and "when the trial court, after reviewing all the evidence, determines that there is insufficient evidence to justify the giving of a jury instruction," we review its decision for an abuse of that discretion. *Id.* ¶ 42. To determine whether the trial court abused its discretion, a reviewing court must undertake a review of the relevant evidence. *Id.*

¶ 22 Prior to addressing the defendant's argument, it is necessary to discuss the difference between the affirmative defense of self-defense and second degree murder based on imperfect defense. Although self-defense and second degree murder based on imperfect self-defense are factually intertwined, there are some important distinctions.

¶ 23 A. Affirmative Defense of Self-Defense

¶ 24 To prove a defendant guilty of first degree murder, the State must prove beyond a reasonable doubt that the killing was not legally justified, in addition to proving the other elements. 720 ILCS 5/9-1(a)(1) (West 2020); *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995). The affirmative defense of self-defense is recognized as a legal justification to first degree murder. *Jeffries*, 164 Ill. 2d at 127. To support a request for a jury instruction on self-defense, the defendant must establish evidence of each of the following elements: (1) unlawful force was threatened against the defendant, (2) the defendant was not the aggressor, (3) the danger of harm was imminent, (4) the defendant actually and subjectively believed a danger existed that required the use of force, and (5) the defendant's beliefs were objectively reasonable. *Id.* at 127-28. Once the defendant raises the issue of self-defense, the State must disprove at least one element of the defense beyond a reasonable doubt. *Id.* This is because, as previously noted, lack of legal justification is one of the elements the State must prove in order to convict a defendant of murder. *Id.* at 128. If the State has proven each of the elements of first degree murder and has successfully negated the defendant's

claim of self-defense, "then, and only then, may the jury proceed to a determination of second degree murder." *Id.* at 128-29.

¶ 25 B. Second Degree Murder

¶ 26 Conduct that would otherwise constitute first degree murder instead constitutes second degree murder when either of the two statutory mitigating circumstances are present. A defendant commits second degree murder when he commits first degree murder and one of the following mitigating factors exists at the time of the killing: (1) the defendant acted "under a sudden and intense passion resulting from serious provocation" or (2) the defendant acted under an unreasonable belief in the need for self-defense. 720 ILCS 5/9-2(a) (West 2020). This second form of second degree murder, known as imperfect self-defense, is appropriate where " 'there is sufficient evidence that the defendant believed he was acting in self-defense, but that belief is objectively unreasonable.' " *People v. Hampton*, 2021 IL App (5th) 170341, ¶ 99 (quoting *Jeffries*, 164 Ill. 2d at 113). It is the defendant's burden to prove a mitigating factor by a preponderance of the evidence. 720 ILCS 5/9-2(c) (West 2020).

¶ 27 As in the present case, the issues of self-defense and second degree murder based on imperfect self-defense often are raised together. It is only after the State has proven each of the elements of first degree murder and successfully negated the defendant's claim of self-defense that jurors may even proceed to consider whether the defendant has demonstrated that he should be convicted of second degree murder based on the mitigating factor of imperfect self-defense. See *Jeffries*, 164 Ill. 2d at 128-29. Once the State proves its case beyond a reasonable doubt, it is the defendant's burden to prove by a preponderance of the evidence that a mitigating factor was present. 720 ILCS 5/9-2(c) (West 2020).

¶ 28 The defendant argues that a mitigating factor of imperfect self-defense was presented that she subjectively believed she was acting in self-defense even if that belief was objectively unreasonable, and, thus, we should reverse her conviction for first degree murder and remand for a new trial. As previously noted, a defendant is entitled to an instruction on second degree murder if there is some evidence in the record to support her claim that a mitigating circumstance is present. *McDonald*, 2016 IL 118882, ¶ 25. The record discloses that at the hearing on the defendant's motion for new trial, the trial court struggled with whether "the right thing to do" would have been to give the jury the option of second degree murder. In fact, the trial court was so conflicted by this issue that he presciently acknowledged that if he was to ever be reversed in a criminal case, it would be this one. Unfortunately for the trial court, we agree. A fair reading of the record shows that even the State believed the defendant was entitled to a second degree instruction based on imperfect self-defense since its suggestion prompted defense counsel to prepare such a jury instruction for the trial court's review following the lunch break.

¶ 29 We disagree with the State's position that this was harmless error. "[I]nstructional errors are deemed harmless if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed." *People v. Washington*, 2012 IL 110283, ¶ 60. Here, the defendant presented some evidence, albeit slight, that she had the subjective belief that she was acting in self-defense. Thus, "it was for the jury to determine if the defendant did, in fact, have the subjective belief and, if so, that the belief was reasonable or unreasonable under the circumstances." *People v. Lockett*, 82 Ill. 2d 546, 555 (1980). "Pursuant to *Lockett* and its progeny, it was a question of fact as to whether defendant's belief was reasonable or unreasonable." *Washington*, 2012 IL 110283, ¶ 60. Here, as in *Washington*, the trial court took the factual determination away from the jury when it refused to give a second degree murder instruction.

Based upon this record, we cannot say that the result of the trial would not have been different had the jury received a second degree murder instruction where there was some evidence in the record that, if believed by the jury, would have reduced the crime charged to the lesser offense of second degree murder.

¶ 30 After thoroughly reviewing the evidence, we are convinced that the evidence was sufficient to support a finding that the defendant is guilty beyond a reasonable doubt. Under these circumstances, a retrial of the defendant would not violate double jeopardy principles. *People v. Stafford*, 325 Ill. App. 3d 1069, 1075 (2001).

¶ 31 III. Conclusion

¶ 32 For the foregoing reasons, we reverse the defendant's conviction and remand for a new trial.

¶ 33 Reversed and remanded.