2023 IL App (2d) 220136-U
No. 2-22-0136
Order filed June 1, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TRAVARIS STEVENSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 18-CF-0875 Honorable David P. Kliment, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justice Jorgensen concurred in the judgment.
Presiding Justice McLaren specially concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in declining to give portion of jury instruction pertaining to use of deadly force to prevent a forcible felony.

¶ 2 A jury convicted the defendant, Travaris Stevenson, of one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2016)), one count of second degree murder (*id.* § 9-2(a)(2)), and one count of armed violence (*id.* § 33A-2(a)). He was sentenced to a total of 95 years' imprisonment. He appeals, contending that the trial court erred by refusing to instruct the jury under a portion of

Illinois Pattern Jury Instructions, Criminal, No. 24-25.06 (4th ed. 2000) (hereinafter IPI 24-25.06). We affirm his convictions.

¶ 3 I. BACKGROUND

¶ 4 The evidence at trial showed that, on April 29, 2018, the defendant fatally shot two people, Mark McDaniel and Raymond Dyson, in a drug deal gone wrong. He was arrested shortly after the shooting and gave a statement to the police. The defendant told them that he had traveled to the area with a friend to sell cannabis to McDaniel and Dyson, whom his friend knew. He told the police that he did not bring a gun. According to the defendant, McDaniel and Dyson tried to rob him of his money and the cannabis at gunpoint. He grabbed the gun and, during the ensuing struggle, shots were fired, killing McDaniel and Dyson.

¶ 5 At trial, the defendant testified to a different version of events. In the face of evidence that his phone contained pictures of him posing with the same gun later recovered near the scene, which fired the bullets that killed McDaniel and Dyson, the defendant admitted that he had brought his own gun to the drug deal. He said that he did so because, although he trusted his friend, he did not trust the others. During the transaction, he was sitting in the back seat of a car, with McDaniel sitting in the driver's seat and Dyson sitting in the front passenger seat. After he showed McDaniel and Dyson the cannabis he had brought, Dyson raised a gun and pointed it in his face. They told him to give them all his money. He put his money on the console with the cannabis. The defendant thought he was going to die because McDaniel was urging Dyson to shoot him and, in his experience, people who robbed others during drug deals then shot the people they had robbed. However, Dyson momentarily lowered his gun as someone walked by near the car. The defendant seized that opportunity to pull out his own gun and shoot, hitting Dyson in the back of the head

and hitting McDaniel with two shots in the back as McDaniel got out of the car. The defendant then picked up most of the cannabis and some of the money he had given up earlier, and ran.

¶ 6 Asked why he had brought his gun to the drug deal, the defendant said that it was "[i]n case they try to kill me." Asked to describe how he felt when Dyson pulled the gun and the two demanded his cannabis and money, the defendant testified that he was "terrified" and "scared" about whether they were "going to kill me or not." He continued to describe his fears as follows:

"Q. [DEFENSE COUNSEL] Why did you pull the gun out?

A. [DEFENDANT] Because my thing was, he [McDaniel] told him [Dyson] to shoot me, shoot me. Kill his ass. And I'm not sure what's going to happen next.

Q. Were you afraid he was going to shoot you?

A. Yes.

* * *

Q. Was there anything else that happened that you witnessed that led you to believe this might be a shooting, that you might be shot?

A. Yes. The driver told the passenger, He's playing around. Shoot his ass—

Q. No. I'm referring to something else that you witnessed previously that led you to believe you might be shot—

A. Yeah. In my lifetime, I was growing up in Chicago. Every person that got robbed or hurt or got robbed, got killed. Even if they gave the money up, the drugs up, they still got killed or shot.

Q. Were you thinking about that?

A. Yes."

¶ 7 After the State rested, the trial court dismissed various counts based on a theory of felony murder, stating that the evidence showed that, despite bringing a gun, the defendant did not arrive with the intent to commit violence but instead simply intended to consummate a drug deal. In the course of its ruling, the trial court commented that, "[w]hen the defendant pulled his firearm and shot the victims, the cannabis transaction was over and the defendant was very possibly the victim of an armed robbery."

¶ 8 At the jury instruction conference, the defense tendered a version of IPI 24-25.06 that stated:

> "A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.
>
> However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to:
>
> (a) prevent imminent death or great bodily harm to himself, or
>
> (b) prevent the commission of robbery against him."

The defense also submitted an instruction defining robbery. The State objected to that instruction and to the inclusion of the last phrase in IPI 24-25.06 (the justification based on the prevention of a robbery) on the ground that it would confuse the jurors.

¶ 9 The trial court agreed to give the first part of IPI 24-25.06, describing justification based on reasonable self-defense, but declined to include the reference to justification based on preventing the commission of a forcible felony, because

> "[t]he testimony in the case from the defendant was that he pulled his weapon out to use it because he was being threatened with another weapon by— one of the victims upped the

> gun and stuck it in his face. There's no testimony about him defending himself from a robbery."

Defense counsel reminded the trial court that the defendant did testify that he was robbed. The trial court agreed that that was accurate but still declined to give the second part of the instruction, saying "[t]hat's not why he testified he pulled his gun out."

¶ 10 The jury convicted the defendant of one count of first degree murder, one count of second degree murder, and armed violence. The trial court denied the defendant's motion for a new trial, which included the argument raised in this appeal.

¶ 11 II. ANALYSIS

¶ 12 The defendant's sole argument on appeal is that the trial court erred in refusing to instruct the jury that the use of deadly force could also be justified to prevent the commission of a forcible felony such as robbery. That refusal was based on the trial court's determination that the instruction was not warranted because there was no evidence that the defendant in fact was acting to prevent a robbery when he shot McDaniel and Dyson.

¶ 13 A defendant is entitled to have the jury instructed on any legally recognized defense theory as long as there is some evidence which, if believed by the jury, would support that defense. *People v. McDonald*, 2016 IL 118882, ¶ 25. A trial court's determination that the evidence does not support the giving of a particular jury instruction is reviewed for abuse of discretion. *Id.* ¶ 42. "[A]n abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *Id.* ¶ 32.

¶ 14 The trial court's decision here was not an abuse of discretion. The relevant evidence was provided by the defendant himself. At trial, he stated unequivocally that he shot at McDaniel and Dyson because he feared that they were about to kill him. At no point did he indicate in any way

that he shot at McDaniel and Dyson to prevent them from robbing him. Thus, there simply was no evidence supporting the theory that the defendant's use of deadly force was justified as an attempt to prevent himself from being robbed.

¶ 15 The defendant points out that there was evidence—his own testimony—that he was indeed being robbed by McDaniel and Dyson at the time he shot them. We do not dispute that. Nevertheless, the trial court was correct that, according to the defendant's own testimony, he did not pull out his gun and shoot in order to prevent himself from being robbed. Rather, according to the defendant, he voluntarily gave up the cannabis and money he had arrived with, but he believed that he still was in danger because, in his experience, victims of robbery would be killed even if they cooperated with the robbers. Although the quantum of evidence needed to support instructing a jury on a defense theory is not high, there still must be some evidence in the record that, if believed, would provide a basis for a jury to find for the defendant on that theory. *Id.* ¶ 25. Here, there was no evidence that the defendant shot McDaniel and Dyson to prevent himself from being robbed. The trial court did not abuse its discretion in denying the requested jury instruction.

¶ 16 The defendant cites *People v. Milton*, 72 Ill. App. 3d 1042, 1049 (1979), in which the reviewing court found that the trial court committed reversible error by failing to give the portion of IPI 24-25.06 regarding the use of justifiable deadly force to prevent a robbery. In *Milton*, three witnesses testified that the two victims, Johnson and Wilson, were shot while attempting to rob the defendant, who had won at cards throughout the evening. According to them, Johnson had been arguing with the defendant, saying that the defendant had to give him the winnings. *Id.* at 1046-47. The defendant refused. Johnson and Wilson began struggling with the defendant, trying to reach his money. Johnson had a gun, which he brought out during the struggle. The defendant was trying to hold Johnson's hands while Wilson tried to go into the defendant's pocket. The gun

discharged three times, leaving Johnson dead and Wilson injured. *Id*. at 1046-47. The reviewing court held that there was sufficient evidence to warrant instructing the jury on the use of deadly force to prevent a robbery. *Id*. at 1047.

¶ 17 *Milton* distinguishable on its facts and thus it does not support reversal here. In *Milton*, there was ample evidence supporting the defense theory that Milton killed Johnson and Wilson during an attempt to prevent them from robbing him. Here, by contrast, there was no evidence at all that the defendant shot McDaniel and Dyson because he was resisting a robbery. Instead, he testified that he voluntarily gave them the cannabis and money they demanded, and shot them only because he was in fear for his life. The trial court did instruct the jury on his theory of justifiable self-defense, although the jury rejected that theory. On these facts, there was no abuse of discretion.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.

¶ 21 PRESIDING JUSTICE McLAREN, specially concurring.

¶ 22 I specially concur because I believe that defendant was entitled to a jury instruction regarding the use of force to prevent or terminate a robbery. That being said, however, I determine that harmless error was established. Unlike the majority analysis, I defer to what the jury did rather than what it was not allowed to do. Based upon its verdict, it is patent that the jury did not believe the defendant's version of the events that resulted in the deaths of the two victims. I do not believe there was a reasonable probability that the additional instruction would have altered the verdict.

¶ 23 The law states that there need be *slight* or *some evidence* to entitle a defendant to have an instruction given. "A jury instruction on an affirmative defense is justified when, viewing the

evidence in the light most favorable to the defendant, 'slight evidence is presented that, if believed, establishes the elements of the defense.' " *People v. Trice*, 2017 IL App (4th) 150429 ¶ 29 (quoting *People v. Couch*, 387 Ill. App. 3d 437, 443–44 (2008)). Recently clarifying this standard, the supreme court held that the appropriate inquiry is "whether there is *some evidence* in the record [,] *** not whether there is *some credible* evidence." (Emphases in original.) *People v. McDonald*, 2016 IL 118882, ¶ 25. "[W]hen the trial court *** determines that there is insufficient evidence to justify the giving of a jury instruction, the proper standard of review of that decision is abuse of discretion." *Id.* ¶ 42.

¶ 24 The following is also well-established law:

> "It is the province of the court to instruct as to the law only (par. 52 of the Practice Act); hence it has been frequently held that the court should not invade the province of the jury as to the facts by any intimation as to the credibility of the witnesses or the weight of the evidence, or by assuming that a fact in controversy has been proved. * * * No doubt it might be proper to call the attention of the jury to some of the elements or considerations which affect the value of testimony adduced as to the verbal declarations or statements of parties, *** but care should be taken to avoid any intimation as to whether those to which the instruction applies are weak or strong in any respect, and especially there should be nothing that might appear to discriminate in favor of or against any particular class of such proof." *Doerr v. Brune*, 56 Ill. App. 657, 660 (3d Dist. 1895).

¶ 25 If I may repeat the pertinent facts in the record: After defendant showed McDaniel and Dyson the cannabis he had brought, Dyson raised a gun and pointed it in his face. They told him to give them all his money. Defendant put his money on the console with the cannabis. He thought he was going to die because McDaniel was urging Dyson to shoot him *and*, in his experience,

people who robbed others during drug deals then shot the people they had robbed. However, Dyson momentarily lowered his gun as someone walked by near the car. Defendant seized that opportunity to pull out his own gun and shoot, hitting Dyson in the back of the head and hitting McDaniel with two shots in the back as McDaniel got out of the car. Defendant then picked up most of the cannabis (he left the "sample bag"), and some of the money he had given up earlier, and ran.

¶ 26 The evidence presented was that during the course of a sale of marijuana the purchasers demanded all the marijuana and defendant's money under threat of force while armed with a firearm. As the trial court stated, "[w]hen the defendant pulled his firearm and shot the victims, the *cannabis transaction was over* and the defendant was very possibly the victim of an *armed robbery*." (Emphasis added.) *Supra* ¶ 7.

¶ 27 I submit that it is reasonable to conclude that when defendant shot the robbers the alleged robbery was terminated, the stolen money and marijuana recovered, and defendant departed the scene. Not only did defendant describe the particulars of the robbery, he also mentioned the term robbery two or three times during his testimony. (He failed to call it an *armed* robbery even though Dyson was within close proximity of a revolver found on the passenger side of the car, which is compatible with his testimony that Dyson menaced him with a revolver.)

¶ 28 Curiously, the trial court determined that there was *no* evidence to permit giving the instruction despite its statement that defendant was a possible victim of armed robbery. I surmise the trial court came to that conclusion because defendant never specifically said, "I shot them in order to prevent or terminate the forcible felony." This defendant allegedly cannot read and dropped out of high school after 3 months as a freshman. Assuming, *arguendo*, that he was an erudite college graduate, he still would not be required to state his reason for terminating the

robbery when the circumstantial evidence indicates that he shot them before they shot him while he was resisting the armed robbery, thereby terminating the armed robbery with extreme prejudice.

¶ 29 The majority disposition repeatedly states that there was *no* testimony that defendant related that he shot them in order to prevent or terminate the robbery. I am not aware that a defendant is required to make specific reference to a statute in order to present a "slight amount of evidence" for an instruction regarding a defense. Moreover, would it have sufficed if defense counsel had asked a leading question asking defendant if he used force to prevent or terminate the forcible felony/armed robbery? Would that failure be grounds for ineffective assistance of counsel? Furthermore, the trial judge and the majority invaded the province of the jury by weighing the evidence and deciding that there was no testimony that followed the statutory defense. Imagine a *necessity* defense wherein a person's child is being threatened with bodily harm but the instruction was not given because the defendant never said, "it was a necessity." Fearing for a child's safety, or the defendant's safety is *insufficient* testimony for an instruction, according to the majority's analysis.

¶ 30 The trial judge and the majority fail to comprehend that there was a substantial quantum of evidence of what defendant did in response to the armed robbery to prevent or terminate it. Although there was no evidence that at the time of the robbery defendant knew of the statutory defense, I am not aware of any authority that requires a defendant to be aware that his actions are statutorily protected at the time the forcible felony is inflicted upon him so long as his actions infer that he was attempting to prevent or terminate the forcible felony. I submit when the facts support the inference there is no need to state the relevant legal conclusion as a self-serving statement of intent.

¶ 31 The major problem I perceive with the trial court's refusal and the majority's analysis is that they usurp the function and prerogatives of the jury to decide whether or not such magical words—or even a simple, self-serving statement such as "I resisted and shot them"—would suffice. It was up to the jury to decide if defendant was entitled to the exemption provided by the statute and not because of a missing statement about attempting to stop a robbery that may result in the defendant's injury or death.

¶ 32 I submit the syllogism the majority utilizes is an enthymeme. It presumes that self-defense, as a metaphysical concept, *cannot* also include actions taken to prevent or terminate a forcible felony. Preventing or terminating a forcible felony does not require fear of death, but fear of death can be a proper reason to attempt to prevent or terminate a forcible felony. Alternatively, the majority may presume that one can only act via a single motive and, therefore, defendant's choice of self-defense, as it is legally defined, precludes self-defense as a metaphysical concept that is compatible with the exemption relating to forcible felonies. I submit that had the legislature deemed that the two defenses had to be pled only as singular alternatives, the statute would have so stated.

¶ 33 By sanctioning the trial court's erroneous weighing of the evidence as less than "slight," the majority duplicates the error. The result precluded the jury from addressing and deciding the merits of the defense presented of the termination of the armed robbery by the defendant.