

No. 1-10-1980

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 06 CR 13408
)	
KRISTOPHER HORTON,)	Honorable
)	Douglas J. Simpson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Justices Hall and Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in excluding evidence that the victim was charged with armed robbery and assault to show his violent tendencies; the trial court did not impose an excessive sentence where it properly considered factors in mitigation and sentenced defendant to a term within the statutory sentencing range; we affirm.

¶ 2 Following a jury trial, defendant Kristopher Horton was convicted of first degree murder and sentenced to 75 years' imprisonment, which included a 25-year enhancement for personally discharging a firearm. On appeal, defendant contends the trial court abused its discretion in excluding evidence that the victim was charged with armed robbery and assault as unreliable and not probative of the victim's propensity for violence. Defendant also argues that

the trial court failed to consider factors in mitigation, and that his sentence is excessive. We affirm.

¶ 3 Defendant's convictions arose from an altercation with the victim, Steven Williams, on April 23, 2006. During a block party on Brookline Street in Chicago Heights, defendant and Williams got into an argument, which resulted in defendant killing Williams by discharging a firearm. The State's witnesses testified that defendant instigated the fight, while defendant testified that Williams was the instigator and that he shot Williams in self-defense.

¶ 4 Before trial, defendant filed a motion for the introduction of Williams' violent character. As relevant to this appeal, defendant sought to introduce evidence of two incidents involving Williams. The first involved an August 1997 incident where Williams and another man, Aaron Estes, robbed Levar Lee at knife point, beat him, and took his wallet. Estes and Williams were charged with armed robbery. Estes subsequently pled guilty to theft and Williams pled guilty to aggravated battery. Defendant indicated that he may call Estes to testify regarding Williams' violent character. At the hearing on defendant's motion, the State did not object to the conviction for aggravated battery being entered into evidence to show Williams' violent character, but argued that Estes should not be allowed to testify because it believed Estes would state that Williams was not engaged in the physical altercation that occurred in August 1997, and did not have a violent character. The defense replied that Estes previously indicated that Williams was very involved in the physical altercation with Lee, and would testify to that effect. After hearing arguments, the trial court ruled that Williams' conviction for aggravated battery would be entered into evidence at trial, and that the defense could call Estes to testify.

¶ 5 The second incident occurred in May 1998 when Williams threatened his teacher, Gwayne Perkins, after Perkins sent him to the principal's office. A police report indicated that an officer was assisting Perkins in escorting Williams to the principal's office and, while en route,

Williams punched the lockers and wall, stating to Perkins, "I hate you. I hate you. Just give me five minutes alone with you in a room." The officer observed that Williams was acting aggressively and he stepped between Williams and Perkins to prevent Williams from hitting Perkins. Williams was charged with assault, but the State *nolle prossed* the case. Defendant sought to introduce evidence of this incident and indicated that he may call Perkins to testify. After hearing arguments, the trial court ruled that this incident was not indicative of violent character, and that Williams showed restraint because he never engaged in any physical contact against the teacher.

¶ 6 At trial, the State presented the testimony of James Holliday, Dasheena Williams, and Dan Logan. Their testimony established that during a block party at about midnight on April 23, 2006, Fannie Mae Harris, defendant's aunt, drove her car through the crowd, blowing her horn and flashing her lights to get the people in the street to move so that she could get to her home. The victim, Steven Williams, alleged that Harris ran over his foot with her car, and he, along with several other people, walked over to her driveway to confront her about the incident. Defendant saw several people walking toward Harris' house and he went to the scene. Although the witnesses testified that Williams was not angry, Harris was cussing loudly and told him that he should not have been standing in the street. Defendant and Williams then began arguing, and defendant stated he was going to get his gun and left. About 15 minutes later, defendant pulled into Harris' driveway, walked quickly towards Williams, and shot Williams three times. Holliday, Dasheena Williams, and Logan testified that they did not see Williams with a gun.

¶ 7 The State also admitted into evidence a videotaped statement defendant made to police where he admitted to shooting Williams. Defendant specifically stated,

"[Williams] was still down there talking on his phone and *** he told them like, man, fuck this pussy ass nigger or some shit, you

know what I'm saying. *** I'm like, man, *** I'm tired of this shit.
*** So I walk down there and he standing there ***. So I'm like,
now what, motherfucker ***. All that shit you're talking and
saying shit now. *** [H]e said something. Then, you know what
I'm saying, that's when I shot him."

Defendant further stated that after he shot Williams, Williams continued to swear at him, so he shot him again.

¶ 8 Defendant testified that when he walked to Harris' residence, Williams was pointing his finger in Harris' face. When defendant asked Williams what was going on, Williams responded by swearing and threatened to beat defendant. Williams then left the scene and walked back down the street, Harris went back into her house, and defendant drove to a liquor store. While at the store, defendant received a phone call from his girlfriend informing him that Williams and a couple other people were back at Harris' residence. When defendant returned, he saw Williams and his companions in an empty lot next to Harris' residence. Defendant went over to the group and saw a gun in Williams' hand, which Williams subsequently placed in the small of his back. Defendant believed that Williams wanted someone to pay for the injury to his foot. Defendant and Williams engaged in an argument and, when another person called out defendant's name, defendant turned around. When defendant turned back around to look at Williams, Williams had a gun in his hand. Defendant then pulled a gun from the waistband of his pants, and fired three or four shots. Defendant saw Williams fall and he ran to his car and drove to a hotel. Defendant subsequently went to Minnesota, where police arrested him.

¶ 9 Following defendant's testimony, defendant sought to call Aaron Estes to show Williams' violent character. The State objected to Estes being called to show Williams' violent character because his testimony would be unreliable and would create a trial within a trial. After

hearing argument from both sides, the trial court reversed its initial decision during the pre-trial proceedings, and found that Estes would not be allowed to testify regarding the alleged armed robbery in August 1997 due to the unreliability of his testimony. The court found that Estes provided different versions of what happened on the day of the incident to the State and defense. The parties stipulated that Williams had a conviction for aggravated battery related to the August 1997 incident, which was entered into evidence.

¶ 10 After the trial, the jury found defendant guilty of first degree murder and that he personally discharged a firearm that proximately caused Williams' death. Defendant filed his posttrial motion arguing that Aaron Estes and Gwayne Perkins should have been allowed to testify about prior incidents involving Williams, which the trial court denied. At sentencing, following arguments in aggravation and mitigation, the trial court sentenced defendant to 50 years for the murder, and a consecutive 25-year term for personally discharging a firearm. Defendant then filed a motion to reconsider his sentence, which the trial court denied.

¶ 11 On appeal, defendant contends that the trial court erred when it barred him from presenting significant evidence of Williams' propensity for violence where defendant raised a theory of self-defense. Defendant specifically maintains that the court should have allowed him to present the testimony of Aaron Estes, who was charged, along with Williams, with armed robbery in 1997, and evidence showing that Williams was charged with assault after threatening a teacher. It is within the trial court's discretion to decide whether evidence is relevant and admissible, and the trial court's decision will not be reversed absent a clear abuse of discretion. *People v. Nunn*, 357 Ill. App. 3d 625, 630 (2005).

¶ 12 When a theory of self-defense is raised in a homicide or battery case, evidence of the victim's violent and aggressive character is relevant to show who was the aggressor, and the defendant may show it by appropriate evidence. *People v. Lynch*, 104 Ill. 2d 194, 200-01 (1984);

People v. Lovings, 275 Ill. App. 3d 19, 24 (1995). Evidence of a victim's violent character may be offered in two circumstances: (1) to demonstrate that the defendant's knowledge of the victim's violent tendencies affected the defendant's perceptions of and reactions to the victim's behavior; and (2) to support the defendant's version of the facts where there are conflicting accounts of what happened, even if the defendant had no prior knowledge of the victim's violent acts. *Lynch*, 104 Ill. 2d at 199-200; *People v. Figueroa*, 381 Ill. App. 3d 828, 841 (2008). In the second instance, the victim's character is circumstantial evidence that provides the trier of fact with additional facts to decide what happened. *People v. Bedoya*, 288 Ill. App. 3d 226, 236 (1997).

¶ 13 The essence of defendant's appeal is that although Williams' conviction for aggravated battery showed his violent tendencies and was admitted into evidence, Estes' testimony regarding that particular incident, and the fact that Williams was later charged for assault when he allegedly threatened a teacher, were also relevant under the second *Lynch* alternative to demonstrate Williams' general propensity to initiate violence. A prior altercation or arrest, short of an actual conviction, has been deemed adequate proof of a victim's violent character when it is supported by firsthand testimony as to the victim's behavior. *People v. Cook*, 352 Ill. App. 3d 108, 128 (2004). But see *People v. Ellis*, 187 Ill. App. 3d 295, 301 (1989) ("evidence of a victim's mere arrest is inadmissible since it does not indicate whether the victim actually performed any of the acts charged"); *People v. Ware*, 180 Ill. App. 3d 921, 929 (1988) (where testimony is too indefinite to be viewed as reliable and *prima facie* probative of violent tendencies, such evidence is inadmissible under *Lynch*).

¶ 14 Here, the court admitted relevant evidence to support defendant's account that Williams was violent and the aggressor. Evidence of Williams' prior conviction provided the jury with proof of his violent character. Despite defendant's contentions to the contrary, Estes'

testimony regarding the August 1997 alleged armed robbery would not have been reliable and *prima facie* probative of his violent tendencies. The trial court found that Estes provided different versions of what happened on the day of the incident to the State and defense, and thus held his testimony inadmissible under *Lynch*. We find that the trial court did not abuse its discretion in doing so, particularly where the court had already admitted defendant's conviction for aggravated battery. We likewise conclude that the trial court did not err in denying defendant's request to admit evidence of Williams' prior arrest in 1998 for allegedly assaulting his teacher. As stated above, evidence of a defendant's mere arrest is inadmissible where it does not indicate whether the victim actually performed any of the acts charged (*Ellis*, 187 Ill. App. 3d at 301), and the trial court specifically found that even if defendant did act as described in the police report, his actions were not indicative of a violent character where he showed restraint in not engaging in any physical contact.

¶ 15 Furthermore, even assuming *arguendo* the trial court erred in excluding Estes' testimony and Williams' arrest for assault, the absence of that evidence did not affect the outcome of defendant's case in light of the evidence admitted at trial. This is particularly true where three eyewitnesses testified that defendant was the aggressor and shot Williams, and defendant's own statements showed that he did not act in self-defense when he fired his gun at Williams. See *People v. Collins*, 366 Ill. App. 3d 885, 893-94 (2006) (applying harmless error analysis to *Lynch* issue and finding no such error in barring evidence).

¶ 16 Defendant next contends that his sentence, which is the functional equivalent of a life sentence, negates any possibility of restoring him to useful citizenship, does not properly account for his poor background, and is excessive. He specifically requests this court to exercise its authority under Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999), and reduce his sentence to a more appropriate term.

¶ 17 The general sentence for first degree murder ranges between 20 and 60 years. 730 ILCS 5/5-8-1(a)(1)(a) (West 2006). Where, as here, the offender personally discharged a firearm during the commission of a murder, the court must add 25 years or up to a term of natural life imprisonment. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006).

¶ 18 A trial court has broad discretion to determine an appropriate sentence, and a reviewing court will reverse only where the trial court has abused that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication to the contrary, other than the sentence itself, that the court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 19 The trial court clearly stated that it had considered appropriate factors in mitigation and aggravation. At defendant's sentencing hearing, the court stated:

"The law does require me to look at the factors in aggravation and mitigation ***. And I agree with the State that the factors that they have identified apply to the defendant in this case, and the factors in mitigation -- there is very little in my judgment that would apply to [defendant]. About the only one that would apply would be if the imprisonment would entail excessive hardship on his dependents, and there has been no testimony of that. I do -- I am

aware that he has a child, and that may impose some hardship upon the child, if he's locked up."

The court also indicated that defendant had a significant criminal history, a "horrific childhood," and considered his prior mental health issues and suicide attempts. From these statements, it is clear that the trial court thoughtfully weighed the appropriate mitigating and aggravating factors and sentenced defendant to a term within the permissible sentencing range. We thus cannot find that the trial court abused its discretion.

¶ 20 In reaching this conclusion, we find *People v. Margentina*, 261 Ill. App. 3d 247 (1994), relied on by defendant, distinguishable from the case at bar. In *Margentina*, 261 Ill. App. 3d at 250, this court found that the trial court abused its discretion in sentencing the defendant to 50 years for murder where he was 18 years old at the time of the murder, was raised in a "terrible" environment, and was provoked. Here, however, defendant was 25 years old at the time of the murder and not provoked. In sentencing defendant, the trial court explicitly emphasized this fact when it stated at sentencing:

"The Defense argues that *** this incident was not unprovoked. And I guess, you could say that it started with somebody running over somebody's foot, and it turned into an altercation. But then the defendant made a very bad choice, and that choice was to leave and to go get a gun; and came back on his own volition, not *** under any kind of legitimate-legal provocation, but came back in sheer anger and shot the victim four times, striking him at least two of those times."

Margentina is thus inapposite to the case at bar. See *People v. Gutierrez*, 402 Ill. App. 3d 866, 901 (2010) (distinguishing *Margentina* on similar grounds).

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¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.