

No. 1-10-2012

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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 25630
)	
RONNIE JENKINS,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant raised self-defense theory, trial court's exclusion of prior violent acts of victim toward third party based only on the incidents' remoteness in time constituted error but error was harmless in light of evidence of defendant's guilt; defendant's conviction was affirmed.

¶ 2 Following a jury trial, defendant Ronnie Jenkins was convicted of first degree murder in the stabbing death of Sheryl Granberry. Defendant was sentenced to 55 years in prison. On appeal, defendant contends his murder conviction should be reversed and this case remanded for a new trial because the trial court barred him from introducing evidence of the victim's prior acts

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of violence seven years earlier to support his self-defense claim. We conclude that the trial court erred in excluding that evidence based only on its remoteness but that the error was harmless in light of the evidence presented at trial.

¶ 3 At trial, the State presented testimony that on March 17, 2004, defendant and Granberry had consensual sex in exchange for which defendant gave her money and crack cocaine. Granberry died after she and defendant struggled with a knife in defendant's apartment, and Granberry's body was discovered the next day in a nearby alley. Investigators discovered a match between defendant's DNA and semen recovered from Granberry's mouth.

¶ 4 Defendant testified that he encountered Granberry, whom he knew prior to the evening in question, at a store and they agreed to have sex for which defendant would give her money and drugs. After they went to defendant's apartment, she left to deliver cocaine to another person. She returned an hour later, and they both smoked cocaine from a pipe. Granberry performed oral sex on defendant.

¶ 5 Defendant said Granberry smoked more cocaine while he was in the bathroom, and when he came out, defendant accused her of taking it. Defendant told her to leave and started walking her to the door. As they approached the back door of the apartment, Granberry started smoking cocaine from a pipe and they argued. Defendant pushed her shoulder, and she responded by telling defendant she was not leaving.

¶ 6 Defendant testified that Granberry pulled from her pocket a knife with a four-inch blade, and she held the knife above her shoulder and moved it toward him in a downward motion. Defendant caught her wrist, and they started "wrestling and tussling around," starting near the back door and moving back into the dining room. Defendant said they fought for about five minutes until both of them were "tired."

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¶ 7 Defendant and Granberry then resumed wrestling on a couch, with Granberry holding the knife and striking him in the shoulder and neck with her other hand. Defendant got the knife away from her as they fell onto the couch, and he "threw it on the other end of the couch" and left the room to see why his dog was barking.

¶ 8 When defendant returned, Granberry was holding the knife and she "came at" him again, saying, "Mother f—, you hit me in the face." They started "wrestling and tussling again over the knife," and defendant grabbed her wrist to keep her from stabbing him. Defendant was cut on the hand when he grabbed the knife's blade.

¶ 9 Defendant "wrestled [her] down" to the couch, and Granberry was lying on the couch on her stomach, holding the knife in her hands with her arms underneath her. Defendant held her on the couch for "at least a good five or ten minutes" and then his arms were getting tired.

Defendant said Granberry told him, "I quit, I give up."

¶ 10 Defendant released his hold on Granberry, and she swung at defendant with her free hand and also swung at him with the knife. Defendant forced the hand holding the knife into the air above their heads. Defendant testified that she "tried to grab the blade with her other hand. She tried to use the other hand to snatch the knife or bend it out my hand [*sic*]."

¶ 11 Defendant said that "[w]hen we fell down on the couch again[,] that's when the knife went through her chest." Defendant said the knife went into Granberry's chest and he heard "gurgling sounds."

¶ 12 A short time later, Granberry died, and defendant undressed her, placed her clothing in a garbage bag and dragged her to the alley where she was found. Defendant testified he "just panicked" after he realized Granberry had died and that during their altercations, he was defending himself because he thought she was trying to kill him when she came at him with the knife. Defendant admitted that when he was first questioned by police, he denied having sexual

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contact with her or striking her. However, when confronted with DNA evidence of their sexual activity, defendant told police Granberry was the aggressor and that he feared for his life.

¶ 13 On cross-examination, defendant stated he was 5 feet 10 inches tall and weighed about 180 pounds. Defendant said that when they first began fighting in the dining room, he struck her with his hand while she held the knife. When they became tired and stopped struggling, defendant left Granberry in the apartment and went to the back porch to check on his dog because he was afraid the dog's barking would cause neighbors to complain to the police. Defendant said he did not feel threatened by her at that point.

¶ 14 When defendant returned to the apartment, Granberry was holding the knife, and he punched her in the face for the second time. They struggled again, and Granberry knelt in front of the couch with her upper body on the couch and her hands folded under her chest, holding the knife. Defendant knelt on the floor behind her and held her down by her shoulders and arms.

¶ 15 They stopped struggling and then resumed, and defendant said the knife "went through her chest when we fell down on the couch." Defendant said his hand was over her hand as she held the knife. When defendant was asked by the prosecution if he "forced the knife" so that it was turned toward Granberry, defendant responded, "No, that's just the way it happened. It wasn't intentional." Defendant said he was afraid of Granberry as she wielded the knife because he had previously been stabbed in the back.

¶ 16 After defendant's testimony, defense counsel asked to call LaShondra McMillian to testify about two altercations she had with Granberry. Counsel indicated McMillian would testify that in March 1997, Granberry stabbed her in the hand and lacerated her finger. A second incident between the two women occurred on March 29, 1997. Granberry attacked McMillian's cousin, Rose, and McMillian came to Rose's defense. According to a police report, Granberry held a

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broken piece of glass and McMillian displayed a steak knife, and each threatened the other with bodily harm. Both McMillian and Granberry were arrested and charged with aggravated assault.

¶ 17 After hearing defense counsel's proffer, the trial court ruled that the defense could not offer McMillian's testimony about those altercations, which occurred seven years before the instant crime. The court stated an event that took place involving Granberry "years and years and years before would be remote, in my opinion, to establish that reputation for who the aggressor was that was the initial aggressor seven years later."

¶ 18 For the State, a medical examiner testified that she performed an autopsy on Granberry, who measured 5 feet 5 inches tall and weighed 123 pounds. Granberry had fractured or broken bones in her spine and a stab wound in the neck that severed her vertebral artery leading to her brain. She also had a stab wound to her left chest. Granberry had 11 wounds on her hands that the medical examiner opined were indicative of her attempts to protect herself. Granberry had blunt trauma injuries to her face and head. The medical examiner testified that Granberry died as a result of multiple stab wounds and that the manner of death was homicide.

¶ 19 The jury was instructed, *inter alia*, on first degree murder, second degree murder (based on an unreasonable belief in the need for self-defense) and felony murder (based on the commission of aggravated criminal sexual assault). After deliberating, the jury found defendant guilty of first degree murder under an intentional or knowing theory. The trial court sentenced defendant to 55 years in prison.

¶ 20 On appeal, defendant contends the trial court erred in excluding evidence of Granberry's previous violent acts to support his self-defense claim. The defense proffer indicated that McMillian would testify about two incidents in 1997 in which Granberry wielded a sharp object while threatening McMillian. In excluding that testimony, the trial court stated the incidents occurred seven years prior to the instant crime and were "remote" on the point of determining the

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initial aggressor in the events involving defendant. Defendant argues on appeal that the exclusion of that evidence based on the seven-year passage of time since the events constituted reversible error.

¶ 21 It is within the trial court's discretion to decide whether evidence is relevant and admissible, and a trial court's decision concerning the relevance and admissibility of evidence will not be reversed absent a clear abuse of discretion. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). An abuse of discretion occurs when the ruling is arbitrary or fanciful, or where no reasonable person would adopt the trial court's view. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 22 Evidence is admissible if it (1) fairly tends to prove or disprove the offense charged; and (2) is relevant in that it tends to make the question of guilt more or less probable. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). A trial court may reject offered evidence on the grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty or possibly unfair prejudicial nature. *Id.* at 392. "Evidence should be excluded if it is too remote in time or too speculative to shed light on a fact to be found." *Wheeler*, 226 Ill. 2d at 132.

¶ 23 Defendant contends on appeal, as he did in seeking to introduce the evidence at trial, that McMillian's testimony was relevant under *People v. Lynch*, 104 Ill. 2d 194, 199-200 (1984), which holds that when a theory of self-defense has been properly raised, a defendant may offer evidence of the victim's aggressive or violent character for one of two purposes. First, a defendant may present such evidence to demonstrate his knowledge of the victim's tendencies

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that affected his perception and reaction to the victim's behavior. *Id.* at 199-200 (this theory requires the defendant knew the victim and his violent nature prior to the incident in question).

¶ 24 The second *Lynch* theory, which defendant attempts to employ here, occurs when there are conflicting accounts of an incident underlying a self-defense claim. *Id.* at 200 (under this theory, a defendant's prior knowledge about the victim is irrelevant). The supreme court noted that additional evidence can be relevant in self-defense cases, which often involve incomplete accounts of witnesses who viewed or can recall only part of a quickly developing situation and which also can feature conflicts in testimony. *Id.* at 200.

¶ 25 Evidence of an individual's prior altercation or arrest can be adequate proof of violent character when it is supported by firsthand testimony. *People v. Cook*, 352 Ill. App. 3d 108, 128 (2004); see also *People v. Huddleston*, 176 Ill. App. 3d 18, 28 (1988) (a police officer who had not observed an incident could not testify). In the instant case, defendant argues he should have been allowed to present McMillian's first-hand account of her interactions with Granberry to establish Granberry's violent nature and support defendant's own claim that he acted in self-defense.

¶ 26 The trial court in this case allowed the jury to receive a self-defense instruction, though we note that whether a self-defense instruction is given is not dispositive of the relevance of *Lynch* evidence. *People v. Figueroa*, 381 Ill. App. 3d 828, 842-43 (2008) (although self-defense was one theory on which jury was instructed, *Lynch* material was properly barred because evidence showed defendant was aggressor). The trial court determined that the seven-year-old incidents to which McMillian would have testified were too distant in time to be relevant. That ruling by the trial court constituted error. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. *Harvey*, 211 Ill. 2d at 392. By analogy, a

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defendant's 10-year-old conviction can be admitted to impeach his credibility under *People v. Montgomery*, 47 Ill. 2d 510, 516-17 (1971). Similarly, an incident of violence that occurred seven years ago by an individual purported to be an aggressor in a self-defense case should not be considered too remote to have probative value.

¶ 27 The trial court's exclusion of Granberry's previous violent acts solely based on their remoteness in time constituted error. However, that error was harmless beyond a reasonable doubt in light of the overwhelming evidence presented in support of defendant's conviction. See *People v. Bowens*, 407 Ill. App. 3d 1094, 1104-05 (2011) (an error is harmless when it appears beyond a reasonable doubt that it did not contribute to the verdict). The medical examiner testified that Granberry suffered multiple stab wounds, including a stab wound to her neck that broke her vertebrae and severed an artery leading to her brain. She had multiple defensive wounds on her hands, among the 37 external and 5 internal injuries. There were also multiple blunt trauma injuries to her face and head. Defendant and Granberry engaged in mutual combat with the knife with several "breaks" in between and following one struggle over the knife, he left the room to check on his dog, leaving Granberry and the knife in close proximity. After Granberry died, defendant put her clothing in a garbage bag and placed her nude body in an alley, and defendant denied involvement in her death when first questioned by police. In light of that evidence, the trial court's exclusion of McMillian's testimony as to Granberry's prior violent acts based on remoteness constituted harmless error.

¶ 28 Accordingly, the judgment of the trial court is affirmed.

¶ 29 Affirmed.