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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 27147
	)	
DELILAH MCCURTIS,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Admission of multiple prior inconsistent statements by a single witness is proper. Defendant's 27-year prison term for first degree murder was not excessive in light of mitigating factors, as the court properly considered those factors, and in light of court's rejection of argument that defendant was sufficiently provoked to serve as mitigation.
- ¶ 2 Following a jury trial, defendant Delilah McCurtis was convicted of first degree murder and sentenced to 27 years' imprisonment. On appeal, defendant contends that the court erred in admitting as trial evidence multiple prior statements by three trial witnesses, arguing that they constitute improper prior consistent statements because the multiple statements by each witness were duplicative and bolstering of each other. The State responds that the witnesses at trial recanted their earlier accounts and thus their earlier statements were properly admitted as prior

inconsistent statements. Defendant also contends that her sentence is excessive in light of her lack of criminal history, youth, limited education, strong family ties, and character as attested by two witnesses.

¶ 3 Defendant was charged with first degree murder in the stabbing death of Latoya Jones on or about October 15, 2005.

¶ 4 The evidence at trial showed that Jones was found by police after midnight on the day in question with stab wounds, her upper clothing pulled over her head from the rear and wrapped around her arms, with a folding knife in her pocket and a brick and two empty unbroken glass bottles nearby. She died of her four stab wounds to the back shortly after police arrived.

¶ 5 Shakema Taylor, Jones's cousin, testified that she was walking home with Jones when they passed several people, including defendant, arguing at a bus stop. Defendant left the bus stop just ahead of Taylor and Jones, walking ahead of them briefly but then turning onto another street. However, after Taylor and Jones had walked on, Taylor saw defendant, accompanied by two women and a man, approaching them again. Defendant was holding a brick in one hand and a glass bottle in the other as she confronted Taylor and Jones. Though Taylor told defendant they had not been involved in the bus-stop altercation, defendant struck Taylor with the bottle and raised the brick towards Jones. Taylor fled, with defendant throwing the bottle after her, but then looked back from across the street. One of the women with defendant was fighting with Jones. Taylor ran away but looked back again, seeing the woman and Jones still fighting. Taylor then saw defendant, standing behind Jones, strike Jones in the back once; Taylor did not see a knife. When Taylor looked back a third time during her flight, she saw defendant and her companions walking away, while Jones was staggering as if about to fall. Taylor told police after the incident that she had looked back only once, not three times, and did not describe defendant standing

behind Jones nor Jones staggering. Taylor made no identification from a photographic array that day that included defendant. However, she identified defendant in a lineup weeks later.

¶ 6 Dawana Barry, Christine Barry, and Tyrone Watson – defendant's cousin, sister, and Christine's boyfriend respectively – testified that defendant phoned Dawana on the night in question and told her that "somebody jumped me" and was "trying to fight me." When they went to defendant's location, Dawana saw defendant confronting Taylor and Jones, who were responding "it wasn't me." Dawana saw Taylor with a bottle in her hand, which defendant grabbed from her. Dawana and Watson saw Taylor flee and defendant throw the bottle at her. Defendant and Jones then fought; none of the three witnesses saw who threw the first blow. Christine tried to break up the fight. The three witnesses did not see a knife at any time during the fight. The fight ended with defendant walking away and Jones leaning against a fence. During their testimony, the three witnesses were confronted with their statements to police and Assistant State's Attorneys and with their grand jury testimony, admitting that they had made some of the statements but denying or not recalling others. In their earlier accounts, Dawana, Christine, and Watson testified to seeing defendant repeatedly strike Jones in the back, and Dawana saw the knife in defendant's hand and the blood on Jones's back.

¶ 7 Defendant testified that she was walking past a bus stop on the night in question when several girls there, including Jones, repeatedly said an insulting word. Defendant did not at first believe they were addressing her, so she walked on. However, the girls then confronted defendant directly and began to follow her. She phoned Christine and spoke to Dawana, then picked up a glass bottle nearby to defend herself; she denied having a knife. Taylor struck defendant in the face, and she and Jones fought. Taylor was simultaneously hitting defendant, so she struck Taylor with the bottle. Jones came at defendant with a knife in hand but dropped it during the struggle. Defendant picked it up and swung it wildly out of fear, striking Jones at least

once. Christine intervened, separating defendant and Jones. When defendant then fled, Jones was leaning against a fence. Defendant admitted on cross-examination that she did not tell police that Jones had the knife or that she stabbed Jones, though she told them that she acted in self-defense because Jones attacked her.

¶ 8 In addition to first degree murder, the jury was instructed on second degree murder under both theories: sudden and intense passion based on serious provocation, and unreasonable self-defense. Following deliberation, the jury found defendant guilty of first degree murder.

¶ 9 At sentencing, the pre-sentencing investigation report included defendant's 1983 birthdate, the absence of a juvenile or criminal record, the absence of abuse in her childhood, that she has two children, and her limited education ("alternative" grade and high school, not completing the latter) and employment history. The State presented a victim impact statement from Jones's mother. Defendant's uncle and aunt testified as character witnesses for defendant. Defense counsel argued defendant's lack of criminal record, her children, and her limited education as mitigating factors; she also argued that, while there may have been insufficient provocation for second degree murder, provocation should be a mitigating factor.

¶ 10 Before passing sentence, the court noted defendant's lack of criminal history. However, the court also noted that Jones had been stabbed in the back four times, so that defendant was aware or should have been aware that her actions would cause serious physical harm. The court expressly rejected the defense argument of provocation as mitigation, stating "I don't believe that the defendant acted under any strong provocation" and noting that the jury had rejected a second degree murder verdict. The court sentenced defendant to 27 years' imprisonment and denied her post-sentencing motion, and this appeal timely followed.

¶ 11 On appeal, defendant first contends that the court erred in admitting as trial evidence multiple prior statements by Dawana, Christine, and Watson , arguing that they constitute

improper prior consistent statements because the multiple statements by each witness were duplicative and bolstering of each other. The State responds that this court has rejected that contention, expressly holding that the introduction of more than one statement inconsistent with a witness's trial testimony is proper. *People v. White*, 2011 IL App (1st) 092852, ¶¶ 48-56 (and cases cited therein).

¶ 12 Defendant acknowledges these cases but argues that they are wrongly decided "because they fail to appreciate the fact that where prior inconsistent statements are admitted substantively, they may not be bolstered through repetition." However, the *White* defendant similarly demurred, and the *White* court addressed this claim:

"While a blanket prohibition (with limited exceptions) makes sense for prior consistent statements, applying that same general bar to inconsistent statements that are consistent with each other would frustrate the legislature's goal of discouraging recanting witnesses. [Citation.] A witness could be questioned as to prior inconsistent statements, but after one is admitted as substantive evidence, the witness would be free to deny other prior statements without a risk that those statements would be admitted as substantive evidence." *Id.*, ¶ 53.

¶ 13 The *White* defendant also raised defendant's argument that "there is no limit to how many prior statements may be used, and the prosecution could fill days of testimony repeating the same substantive statement as given at different times," but the *White* court found that the trial court has discretion to limit the number of statements. *Id.*, ¶ 54. Seeing no reason to set aside our well-reasoned precedents, we hold that the admission of multiple prior statements by each of the three witnesses here, inconsistent with their trial testimony, was proper.

¶ 14 Defendant also contends that her sentence was excessive in light of her lack of criminal history, youth, limited education, strong family ties, and character as attested by two witnesses.

First degree murder is punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West 2010). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 15 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Alexander*, 239 Ill. 2d at 213. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Perkins*, 408 Ill. App. 3d at 763. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *People v. Flores*, 404 Ill. App. 3d 155, 158-59 (2010).

¶ 16 Here, first and foremost, the trial court was properly apprised on the record of all the factors now cited by defendant, with many of them expressly argued by defense counsel and the

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most significant – that she has no prior criminal convictions – acknowledged by the court. Secondly, the court expressly rejected defendant's argument that there had been sufficient provocation to serve as mitigation and found that Jones's four stab wounds indicated that defendant realized or should have realized that her actions would cause serious physical harm. We see no basis for concluding that the trial court abused its discretion in sentencing defendant to a prison term near the low end of the statutory range: 27 years on a range of 20 to 60 years.

¶ 17 Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.