

No. 1-10-3231

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee ,	)	
	)	
v.	)	No. 07 CR 20520
	)	
JERMUE ROGERS,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.

Presiding Justice Neville and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in finding that defendant failed to act in self-defense. Defendant's 60-year sentence is not excessive. The 25-year to life sentence enhancement is not unconstitutionally vague. Defendant's mittimus is corrected to reflect one count of first degree murder.

¶ 2 Following a bench trial, defendant Jermue Rogers was convicted of first degree murder and was sentenced to 60 years' imprisonment. On appeal, defendant argues: (1) his conviction should be reversed because the trial court applied an incorrect legal theory and misreclected key facts; (2) his 60-year sentence is excessive; (3) the 25-year to life sentence enhancement is

unconstitutionally vague; and (4) his mittimus should be corrected to reflect a single murder count. For the following reasons, we affirm the judgment of the trial court but correct the mittimus.

¶ 3

### BACKGROUND

¶ 4 Defendant was charged by way of indictment with first degree murder for the 2005 shooting death of Charles Harris.

¶ 5 Prior to January 2005, Charles Harris, also known as Shawn or C-Dub, lived with his fiancé, Kimberly Robinson, nicknamed Sparkle, and their roommate Raymond Stokes, also known as Black or Sherell, at 4049 West Jackson in Chicago, in a third floor apartment. Sparkle's grandmother, uncle and cousin lived in the second floor apartment. In January 2005, Harris went to prison on a gun charge. Sparkle was pregnant when Harris went to prison.

¶ 6 While Harris was in prison, Stokes invited defendant to stay with Sparkle and him on the couch. Defendant began selling drugs out of the apartment. After Stokes had been there about a month, Sparkle went to live with her mother but left all of her belongings in the apartment.

¶ 7 On July 15, 2005, Sparkle and her grandmother went to Union Station to meet Harris who had been released from prison. However, they could not find Harris. On their way back from Union Station, Sparkle called her grandmother's house and found out that Harris made it home to the apartment on his own. When they arrived back at the apartment building, they saw an ambulance and fire trucks pulling up to the back of the building. Defendant walked out of the front of the building and got into a truck that was parked on the street. Sparkle got out of the car and learned that Harris had been shot.

¶ 8 Raymond Stokes testified at trial. In November 2005, after the shooting but before the trial, he was run over by a car and was in a coma for four weeks and suffered some memory loss. Stokes testified that in 2005 he lived with Harris and Sparkle before Harris went to prison. After Harris went to prison, Stokes invited defendant to spend the night. On the night of the shooting, Stokes and defendant were sitting on the back stairs when Harris called and said he was waiting for someone to pick him up at the Greyhound station. About an hour later, Harris arrived at the apartment. Stokes and Harris exchanged pleasantries. Defendant and Harris began to argue, but Stokes didn't know what they were arguing about. Both defendant and Harris went downstairs and Stokes heard two gunshots. Defendant then came back upstairs to Sparkle's grandmother's apartment on the second floor, where Stokes had gone after he heard the gunshots, and said that Harris had been shot. Stokes did not see where defendant went and somebody called the police. Stokes did not see defendant or Harris with a gun. Harris was shot less than ten minutes after he came home. Stokes testified that he had several felony convictions for drug related charges.

¶ 9 Corjuan Robinson testified that he is Sparkle's cousin. At the time of trial, Corjuan had just finished serving a prison term for a drug conviction. In 2005, he lived at 4049 West Jackson on the second floor with relatives. Sparkle, Harris and Stokes lived upstairs. Defendant moved in when Harris went to prison.

¶ 10 At about 9:00 p.m. on July 15, 2005, Harris arrived at the building. Corjuan called Sparkle to let her know that he was home. Corjuan went on the back porch to give the phone to Harris. Harris and defendant were arguing. Harris came upstairs, took the phone, spoke to Sparkle and gave the phone back to Corjuan. Harris then went back downstairs and Corjuan

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stood inside the doorway of the second floor apartment. Corjuan heard more arguing and heard Harris ask defendant why he was selling drugs around his family. Corjuan then heard two gunshots. Defendant then came upstairs and told Corjuan that someone shot Harris. Defendant then went into the apartment and Corjuan ran downstairs and saw Harris "lying down."

Defendant ran down an alley and asked some boys if they saw anyone run past. Defendant then came back but then Corjuan didn't see defendant again.

¶ 11 Fifteen-year-old Shatara Robinson testified that she lived on the second floor at 4049 West Jackson with relatives on July 15, 2005. She was ten at the time of the shooting. She was outside and was walking toward the back of the building when she heard defendant and Harris arguing on the first floor steps of the back porch. She heard Harris say, "[w]hy are you selling drugs out of this building while my baby and Sparkle was (sic) here"? She saw a gun in defendant's right hand and nothing in Harris' hand. She was standing about four feet away.

¶ 12 Shatara ran to the front of the building and up the front steps. As she got to the second floor she heard gunshots. She opened the door and ran toward the back and when she looked down, she saw Harris on the first floor landing bleeding. Shatara saw him inhale and exhale.

¶ 13 Chicago police officer Chinchilla testified that he responded to the shooting and found Harris's body on the first floor landing. He and his sergeant secured the scene until the detectives and evidence technicians arrived.

¶ 14 Detective Garcia and his partner arrived at the scene and observed Harris lying motionless on the first floor landing. They observed one shell casing lying next to Harris' head and another shell casing directly beneath his body below the first floor landing. After speaking

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with Harris' mother, Detective Garcia attempted to locate Raymond Stokes. Later, after speaking with Sparkle, Detective Garcia was interested in speaking with defendant, who at the time they only knew as J-Rock. When detectives eventually spoke with Stokes, he identified defendant as Jermue Rogers. Officer Garcia did not find defendant.

¶ 15 In June 2007, two years after the shooting, the fugitive apprehension unit found defendant living in Missouri under an alias. Defendant was detained on September 16, 2007, and brought to Area 4. Defendant was given his *Miranda* rights and agreed to an interview. The interview, which was recorded and transcribed, was published to the jury. In the interview, defendant stated, in summary, that when Harris returned home from prison and arrived at the apartment building, Harris cursed at defendant because defendant didn't send him money while Harris was in prison. Defendant and Harris argued and both men were armed. Harris came toward defendant as if to hit him in the head, and defendant shot Harris twice. Defendant ran into the alley where he saw Corjuan and tried to "play it off." He asked Corjuan if he had seen someone in a grey shirt running down the alley. Defendant stated that he kept Harris' gun but disposed of his own. After some questioning, defendant admitted that Harris did not have a gun. Defendant stated that he fled the scene and left the State several days later. He remained out of state for over two years.

¶ 16 The partes stipulated to the results of the autopsy on Harris. If called, the assistant medical examiner would testify that Harris suffered two gunshot wounds; one to the left side of his face, with stippling around the wound, which indicated that the bullet had been fired at close range, and one to the left mid-chest area. The cause of Harris' death was multiple gunshot

wounds and the manner of death was homicide. The parties also stipulated that the shell casings recovered from the scene had been fired from the same firearm.

¶ 17 Defendant testified that he was staying at 4049 West Jackson in a third floor apartment with Raymond Stokes and Sparkle in July 2005. Defendant admitted he was selling drugs out of the apartment. Defendant stated that he carried a gun because he had been robbed and shot before. Defendant testified that Harris was a gang-banger who sold drugs. Harris had gone to prison on a gun charge.

¶ 18 On the evening of the shooting, when Harris returned to the apartment building, Harris criticized defendant and Stokes for not visiting or sending money. Harris pointed his finger in defendant's face and called him a "bitch ass." Harris then got in defendant's face. Defendant told Harris he did not have to send him any money. After about two minutes, Harris went downstairs.

¶ 19 Several minutes later, Harris appeared on the second-floor landing and stared up at defendant who was between the second and third floors. Defendant testified that when Harris would stare, he was preparing to fight. Defendant spotted an approaching drug customer so he ran down to the first floor landing and sold the customer two bags of marijuana. After the sale was complete, Harris cursed defendant out telling defendant that he owed him some money because he was "working where I work." Harris stepped forward like he was going to rush defendant so defendant stepped back so that his back was against the door. Defendant pulled out his gun. Harris called defendant a coward and told him that he "won't do nothing (sic) with the gun" and "it probably ain't (sic) even loaded." Defendant testified that Harris took a step forward and defendant cocked the gun. A live round fell out. Harris then rushed defendant and swung at

him with his right arm. Defendant blocked the blow with his left hand. Then defendant pulled the trigger and the gun went off. When it went off, it jerked and went off a second time.

Defendant testified that the second shot was accidental. They were about two feet apart when the gun went off. Defendant saw Harris fall and defendant ran past him.

¶ 20 Defendant ran upstairs and then to the alley where he disposed of the gun. Defendant saw a young man in the alley, who he believed to be Corjuan's cousin, and asked him if he had seen anyone run by. When he responded no, defendant walked back to the porch and dialed 911 and handed the phone to Corjuan's cousin and told him to call an ambulance. When the police arrived, defendant did not tell the police what happened because he "shot an unarmed man, and I had just got through selling some drugs." He saw Sparkle but didn't say anything to her.

¶ 21 Defendant left and went to his mother's house and then a friend's house for a couple of days. Defendant then went to Arkansas and Missouri, where he used his brother's name as an alias. Defendant admitted that he lied to the police when he told them that Harris had a gun. He was just scared and was trying to defend himself.

¶ 22 On cross-examination, defendant testified that he was smaller than the victim. He admitted that he could have left instead of shooting Harris and that he intentionally pulled the trigger. He also testified that he never had a problem with Harris before that night. Defendant claimed that when Harris rushed him, he thought Harris was going to hit him and take his gun so he raised his hand to block the punch and he just shot. Defendant denied that he went upstairs after the shooting and told anyone that Harris had been shot. Defendant admitted that he fled the state shortly after the shooting and hid for two years.

¶ 23 After hearing all of the evidence, the trial court issued findings of fact. The court stated in relevant part,

"The facts were that the defendant was the only one who was armed. The victim was unarmed even by defendant's statement. Nobody saw a weapon in the victim's hand, and there were words that were exchanged either before and definitely during this exchange between the defendant and the victim.

\* \* \*

He appeared to be remorseful in the videotape that I did watch. However I do not believe this case rises to the level of self-defense, and I believe this defendant, even if it is to be believed, and I do not believe that he was being threatened by the victim, could have retreated. He did not need to fire two times at the victim to stop any kind of aggression, if you want to call it that by the victim, and I do not believe his actions were reasonable.

I do not believe this was self-defense, and based on that there's a finding of guilty as to Count 1 and as to Count 2 as to personally discharging the firearm, also."

After hearing argument and after considering the factors in aggravation and mitigation, the court sentenced defendant to 30 years' imprisonment for murder and 30 years' imprisonment for discharging a firearm that caused Harris' death, for a total of 60 years' imprisonment. It is from this judgment that defendant now appeals.

¶ 24 ANALYSIS

¶ 25 Defendant first argues that his conviction for first degree murder should be reversed

because the trial court improperly found that if Harris had been aggressive towards defendant, defendant could have retreated, but did not. Defendant argues that he had no duty to retreat and there was no evidence to support the inference that he could have retreated where he testified that his back was to the door.

¶ 26 Defendant acknowledges that he forfeited these issues by failing to object at trial and failing to include them in a post-trial motion as required. *See People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, defendant urges us to consider them under the plain error doctrine.

¶ 27 The plain error doctrine is an exception to the general rule of procedural default. *People v. Walker*, 232 Ill. 2d 113, 124 (2009). It applies when a clear error has been committed and the evidence of the defendant's guilt is so closely balanced that the error may unfairly "tip the scales of justice" against the defendant. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Alternatively, plain error applies when the error is so serious that it affects the integrity of the judicial process, without regard to the strength of the evidence against the defendant. *Id.* However, in evaluating the applicability of plain error, we must first determine whether any error occurred at all, by engaging in a substantive review of the issue. *Walker*, 223 Ill. 2d at 124-25.

¶ 28 Defendant contends that error occurred in this case because the trial court focused on defendant's failure to retreat, when in fact defendant had no duty to retreat, and could not retreat if he wanted to because his back was up against a door. Specifically, defendant takes issue with the court's finding that, "I do not believe this case rises to the level of self defense, and I believe this defendant, even if he is to be believed, and I do not believe that he was being threatened by the victim, could have retreated" and, "[h]e did not need to fire two times at the victim to stop

any kind of aggression, if you want to call it that by the victim, and I do not believe his actions were reasonable."

¶ 29 Defendant's assertions here are belied by the record. The court did not reject defendant's claim of self-defense based on his failure to retreat. The court rejected his claim of self-defense because it did "not believe this case rises to the level of self-defense." Offering an alternative explanation, the court then went on to say that *even if* it believed defendant acted in self-defense, which it did not, defendant's belief that he needed to act in self-defense was unreasonable because he had the opportunity to retreat.

¶ 30 "Whether a killing is justified under the law of self-defense is a question of fact to be determined by the trier of fact." *People v. Young*, 347 Ill. App. 3d 909, 920 (2004). "In a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 31 We agree that defendant's trial testimony does not support a finding that defendant acted in self-defense. "The use of deadly force is not justified where the victim, even though initially the aggressor, has been disarmed or disabled." *People v. Lee*, 243 Ill. App. 3d 1038, 1043 (1993). Defendant testified that he knew Harris was unarmed, yet defendant intentionally pulled the trigger and shot him after Harris took a swing at him. Defendant admitted on cross-examination that he could have left instead of shooting Harris. Because the trial court committed no error, plain error analysis in this case is unnecessary.

¶ 32 Defendant next claims that the trial court abused its discretion in imposing a 60-year

sentence where defendant "expressed deep regret" for murdering Harris.

¶ 33 It has long been established that the trial court has broad discretionary powers in choosing the appropriate sentence a defendant should receive. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). A reasoned judgment as to the proper sentence to be imposed must be based upon the particular circumstances of each individual case and depends upon many factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The imposition of a sentence is a matter within the trial court's discretion. *Jones*, 168 Ill. 2d at 374. Where the sentence chosen by the trial court is within the statutory range permissible for the criminal offense for which the defendant has been tried and convicted, a reviewing court has the power to disturb the sentence only if the trial court abused its discretion in the sentence it imposed. *Id.*

¶ 34 We reject defendant's contention that the trial judge abused her discretion in sentencing him to 60 years in prison. Defendant was convicted of first degree murder, which carried a sentencing range of 20 to 60 years in prison. 730 ILCS 5/8-1(a)(1) (West 2004). In addition, the trial court found defendant was subject to a 25-to-life sentence enhancement for personally discharging a firearm that proximately caused Harris' death. See 730 ILCS 5/5-8-1(a)(1)(d)(ii) (West 2004). The court imposed a 30-year sentence for murder and a 30-year sentence for personally discharging a firearm that caused Harris' death, for a total of 60 years' imprisonment. A sentence that falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Thus, it is presumed that since the 60-year sentence falls

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within the statutory range, it is proper. Consequently, we decline defendant's invitation to reduce his sentence.

¶ 35 Defendant next argues that the "25 to life" firearms enhancement statute, section 5-8-1(a)(1)(d)(iii) of the Code of Corrections, violates his due process rights and is unconstitutional on its face and as applied to him because its broad sentencing range encourages arbitrary and discriminatory sentencing based on the opinions and whims of judges.

730 ILCS 5-8-1(a)(1)(d)(iii) (West 2004). The relevant portion of the statute defendant is challenging provides that for the offense of first degree murder, if "during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, *25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.*" 730 ILCS 5-8-1(a)(d)(iii) (West 2004) (emphasis added).

¶ 36 The constitutionality of a statute can be raised at any time. *In re J.W.*, 204 Ill. 2d 50, 61, (2003). We begin by assuming that the statute in question is constitutional. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). As a result of this presumption, defendant, the party challenging the constitutionality of a statute, bears the burden of demonstrating that a constitutional violation exists. *Id.* We give great deference to the legislature's determination of the seriousness of various offenses and the sentences that the legislature has deemed appropriate for those offenses. *Id.* We review the question of whether a statute is constitutional *de novo*. *Id.* at 486-87.

¶ 37 We begin our analysis by noting that our supreme court has previously rejected other vagueness challenges to the statutory language of this particular statute, specifically the language

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"during the commission of the offense" and "another person." *People v. Sharpe*, 216 Ill. 2d 481, 528 (2005). A statute is not void for vagueness if it is "explicit enough to serve as a guide to those who must comply with it." *General Motors Corp. v. Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 24 (2007). Due process requirements are satisfied when a statute is sufficiently clear so that persons of common intelligence are not required to guess at its meaning or application. *People v. Ramos*, 316 Ill. App. 3d 18, 26 (2000). The statute's prohibitions must be sufficiently definite so as to give a person of reasonable intelligence knowledge of what conduct is prohibited, and must delineate boundaries "sufficiently distinct for judges and juries to administer the law fairly in accordance with the intent of the legislature." *People v. Greco*, 204 Ill. 2d 400, 415-16 (2003). Sentencing statutes must have terms that are not so ill-defined that the decision as to the statute's meaning rests on the "opinions and whims of the trier of fact rather than objective criteria." *General Motors Corp.*, 224 Ill. 2d at 24.

¶ 38 Contrary to defendant's argument here, trial courts are guided in crafting an appropriate sentence by the factors in aggravation and mitigation listed in sections 5-5-3.1 and 5-5-3.2 of the Code. 730 ILCS 5/5-5-3.1, 3.2 (West 2004). Sections 5-5-3.1 and 5-5-3.2 provide long lists of factors that the court must consider in determining an appropriate sentence, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *Perruquet*, 68 Ill. 2d at 154. The trial court has the discretion to determine the appropriate sentence to be imposed so long as the court properly considers the factors in aggravation and mitigation. *People v. Martin*, 2012 IL App (1<sup>st</sup>) 093506. The use of these factors in aggravation and mitigation ensures that the trial court does not impose a sentence on a

"whim." Accordingly, we hold that section 5-8-1(a)(1)(d)(iii) of the Code is not unconstitutionally vague as it does not encourage arbitrary and discriminatory sentencing based on the opinions and whims of judges.

¶ 40 Finally, defendant argues and the State agrees that the mittimus should be corrected for the sake of clarity. Defendant was convicted of two counts of first degree murder, but the court specifically found that those counts were to merge. The mittimus reflects both counts of murder but states, "IT IS FURTHER ORDERED THAT DEFT PERSONALLY DISCHARGED FIREARM PROVEN ADDITIONAL 30 YEARS IDOC ADDED 60 YEARS TOTAL 3 YRS MSR COUNTS 1 AND 2 MERGE." The upper portion of the mittimus however, shows both counts of murder and a sentence of 30 years for each. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court of cook county to correct the mittimus to reflect one conviction for first degree murder. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, the judgment of the circuit court is affirmed. Mittimus corrected.

¶ 42 Affirmed; mittimus corrected.