

No. 1-13-3296

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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. 10 CR 3063
)	
EDRINNA BRYANT,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant's second-degree murder conviction was based on provocation stemming from mutual combat, the trial court's consideration of the duration of the fight did not constitute consideration of an improper factor in aggravation at sentencing. Defendant's 10-year sentence for second-degree murder was not excessive.
- ¶ 2 After a bench trial, Edrinna Bryant was found guilty of the second-degree murder of her boyfriend, Lavelle Hardy, which the trial court found resulted from mutual combat between the two individuals. The trial court sentenced defendant to 10 years' incarceration. On appeal defendant contends that the trial court improperly considered the duration of the mutual combat

between her and Lavelle as a factor in aggravation at sentencing. She also argues that her 10-year sentence is excessive. We affirm.

¶ 3 The evidence at trial established defendant called Sylvia Hardy, Lavelle Hardy's mother, on January 7, 2010, and spoke about her troubled relationship with Lavelle. According to Sylvia, defendant indicated that she wanted to pick up clothes from the apartment she shared with Lavelle, but he would not allow her to get them. At the time, defendant was staying with her mother. On January 8, 2010, two neighbors drove up to the apartment building at 10 p.m. According to one of the neighbors, the apartment door "fl[ew] open" and Lavelle fell backwards "with a lot of force." Both neighbors saw Lavelle on the ground with defendant standing over him. She held two knives while Lavelle held his hands palm-up towards her. Defendant then went back into the apartment and subsequently returned without the knives. She helped Lavelle to his feet and walked him to a nearby car where she placed him in the rear seat. One of the neighbors described Lavelle holding his side while "choking" and "spitting out blood." Once he was in the car, defendant entered the apartment again and returned with a purse. According to the neighbor, she drove Lavelle to the nearby hospital down the street.

¶ 4 Once the defendant arrived at the hospital, a paramedic reported that she screamed for help. She told the paramedic that Lavelle had been "cut" and opened the back door of her car. Lavelle was on the floor between the driver's seat and the rear seat. He was unresponsive and barely breathing. When the paramedic asked defendant what happened, she responded that Lavelle had been stabbed in the back. The paramedic and other hospital staff brought Lavelle into the hospital and tried to resuscitate him. A nurse spoke with defendant shortly after she arrived at the hospital. Defendant told the nurse that Lavelle "had been stabbed." Later as medical staff treated Lavelle, the nurse asked defendant what had happened. Defendant indicated

that she found Lavelle lying outside in the street. The nurse suspected this was untrue because it was winter and Lavelle was warm despite only wearing boxer shorts and an undershirt. The nurse later saw defendant again as she was being treated for lacerations on her hand. The nurse told her that Lavelle had died and defendant stated, "It's just not worth it *** I don't believe this shit is happening" and then started hitting herself in the face.

¶ 5 While at the hospital, defendant called Sylvia. According to Sylvia, defendant said she had stabbed Lavelle and that Sylvia should hurry to the hospital because the police were trying to "lock [her] up." Sylvia arrived at the hospital and asked defendant what had happened. Defendant stated, "The usual."

¶ 6 Defendant spoke to police officers multiple times over the course of their investigations. Chicago police detective James Decicco spoke with her at the hospital. According to Decicco, defendant stated that she and Lavelle "were in a fight and [Lavelle] was stabbed." She indicated that he was stabbed in the back when he fell on a knife. Decicco also noticed that defendant was "also cut", and bore lacerations on the tops of her hands.

¶ 7 Chicago police detective Mike Petryla later interviewed defendant at a police station. The interview was recorded on video, and the videotape and a transcript of the interview were admitted into evidence at trial. In the interview, defendant stated that Lavelle "hurt himself, cut himself." She and Lavelle had been "feuding" and she went to stay with her mother. At about 9 p.m., she went to their shared apartment to move her things out. She tried to talk with Lavelle, but "he didn't want to hear." As she started to pack her clothes, Lavelle became enraged and accused her of seeing other men. He tried to take defendant's car keys away and punched her in the jaw. Defendant and Lavelle then began to fight around a pool table until defendant ran into the bathroom. Lavelle kicked open the bathroom door and swung a pool cue at her, causing the

cue stick to break. Defendant picked up a piece of the broken cue stick and they continued to fight, swinging the pieces of the cue stick. Lavelle also had a knife which he swung at defendant, though she did not know when he obtained the knife. While defendant and Lavelle were "tussling", they both were cut and moved into the bedroom. There, they wrestled and both tripped over a rug and fell. As they fell, Lavelle made a "gasp[ing]" noise and stated that "he was cut." When defendant looked at him, she saw a small spot of blood on the front of his shirt. He moved like "he was gonna come at [defendant] again," but he stopped and defendant began to pull him towards the door to take him to the hospital. She eventually maneuvered him out of the front door and drove him to the hospital. She told the officers that she and Lavelle had problems, including a time when she had called the police and had him arrested for domestic battery.

¶ 8 Several hours later, Chicago police detectives Patrick Thelen and Decicco interviewed defendant. This interview was also recorded and the recording was entered into evidence. Defendant repeated what she had told Detective Petryla. She added that Lavelle had struck her in the arm with the cue stick and at one point choked her in the bathroom. Thelen asked defendant how Lavelle had received multiple stab wounds if he only fell on the knife once. Defendant stated that Lavelle had two knives, but she got one of the knives from Lavelle when he dropped it. Thelen asked if defendant had "stuck [Lavelle] a couple times with the knife." And she replied "maybe." When Thelen asked if defendant was defending herself, she replied "Defending myself?" She then indicated that he had tried to stab her and had stabbed her. Thelen asked if Lavelle was stabbed by the knife defendant was holding as she fell, and defendant responded, "I don't know how he got stabbed."

¶ 9 According to a forensic pathology expert, Lavelle's autopsy revealed that Lavelle had seven distinct wounds: a stab wound to the chest near the heart; a stab wound to the left arm; an

incised wound to his left forearm; an incised wound to his left hand; two abrasions on his left arm; and an abrasion on his right arm. The pathology expert opined that the wounds on Lavelle's hands and arms were consistent with defensive wounds.

¶ 10 During the investigation, Detective Thelen entered the apartment shared by Lavelle and defendant. He found "two blood-soaked rags" and more blood on the sidewalk just outside of the apartment. As he entered, he noticed blood on the building door's interior handle. He then walked around the apartment with several forensic investigators. He found blood on the interior of the apartment's door. There was also blood on the nearby floor and multiple bags of luggage with clothing and personal items. In the bedroom, Thelen found two knives on an area rug that was partially turned over. Between the two knives, Thelen found a white towel with blood on it. In the living room, Thelen found another knife and a broken cue stick on the floor near a pool table. The detective found a bloody shirt in the doorway to the bathroom. The door itself was damaged, and Thelen described it as "kicked in." Blood was found throughout the hallway and on rags in the kitchen. An intact cue stick and a broken pool bridge were found in the hallway. According to Thelen, forensic investigators recovered the items and samples of the blood. According to Detective Decicco, two forensic investigators also processed the car which defendant parked near the hospital. The investigators found blood on the steering wheel.

¶ 11 A forensic scientist with the Illinois State Police examined the evidence recovered by police. The DNA in the blood found on the car's steering wheel matched defendant. Blood was also found on the handles and blades of both knives recovered from the bedroom. The DNA in the blood on the handle and blade of one of the knives matched defendant. Blood on the other knife's handle also matched defendant's DNA. The other knife's blade had a major DNA profile

which matched Lavelle, it also had a minor DNA profile from which defendant could not be excluded.

¶ 12 At trial, defendant called two long-time friends. One friend, Danielle Stafford, testified that in 2004, she was at a picnic with defendant, who was seven months pregnant. Lavelle arrived and tried to make defendant leave. When defendant drove off with her friends, Lavelle followed. When the women stopped, Lavelle pulled defendant out of the car and began "stomping her and punching her" as she curled up into a ball. Another friend, Angelique Momon, testified that she visited defendant in 2009 because defendant was upset and was limping. Later Lavelle arrived, yelled at defendant, and punched her in the face. Momon told him to stop, but he continued to punch defendant. When defendant tried to escape, Lavelle picked up a cue stick and chased her. He beat defendant with the stick, punched her, and "stomp[ed]" her. Lavelle told Momon to go outside and she complied with his order. Defendant emerged from the apartment with a black eye and "could barely walk."

¶ 13 The parties stipulated that defendant had been the complaining witness for a charge of misdemeanor domestic battery against Lavelle, but she declined to press charges.

¶ 14 Following arguments, the trial court explicitly found the testimony of defendant's neighbors, the paramedic, and the hospital nurse to be credible. It then discussed defendant's statements to different witnesses and noted that they contained numerous, clear misrepresentations and they began to change as the police investigation proved various comments false. The court concluded that defendant's varying statements indicated that she did not act out of a belief that self-defense was necessary. It noted that the State had proven the elements of first-degree murder beyond a reasonable doubt, but then noted that the physical evidence presented indicated that defendant and Lavelle had participated in mutual combat.

Finding that this mutual combat provided sufficient provocation to defendant, the court found her guilty of second-degree murder.

¶ 15 At sentencing, the State presented victim impact statements from Lavelle's mother and sister. Defense counsel presented an online petition bearing signatures supporting defendant. Defense counsel also presented nine letters and the live testimony of five witnesses generally indicating defendant's good character and work ethic. Defendant's presentence report indicated that she had received court supervision for a 2004 conviction for retail theft. The State argued that defendant had gone to the apartment seeking an argument and finished the argument by stabbing Lavelle. It asked for a sentence of 20 years' imprisonment. Defense counsel argued defendant's child would be without a parent if she were imprisoned and that the combat was mutual, and asked for a sentence of probation. Defendant spoke in allocution. She apologized, stated that her son needed her, and asked for a second chance.

¶ 16 The trial court noted that defendant "in many ways was living an exemplary life working, raising her child," and that she had "no appreciable criminal history." It then noted that there were two aggravating circumstances: (1) the length of time over which defendant's fight with Lavelle occurred and (2) defendant's efforts to "deflect the attention from herself by virtue of the lies that she told." In explaining the first circumstance, the court stated:

"[W]hatever happened inside the apartment on California took a while to happen. It took place over a number of rooms. It was an incident that took place throughout probably every room in the apartment.

It went on for a time. All during that extended time in which it went on, somebody should have stopped herself. Somebody should have appreciated that she crossed the line, and it should have ended, but she didn't. [Defendant] made a decision to

stay, and in making that decision to stay, she made a decision to continue, not to check her emotions that led to the death of Lavelle Hardy."

The court sentenced defendant to 10 years' imprisonment. Defendant subsequently filed a motion to reconsider sentence and argued "The sentence is excessive in light of all factors in aggravation and mitigation." The trial court denied the motion. Defendant appeals.

¶ 17 Defendant contends that the trial court improperly considered the length of time defendant fought with Lavelle as an aggravating factor in sentencing her. She asserts that evidence revealed that Lavelle had beaten her on numerous prior occasions, was the initial aggressor in the fight on the night of the stabbing, punched her, beat her with a pool cue, and kicked in a door to reach her. She argues that accordingly, the length of the fight was out of her control and could not be viewed as an aggravating factor.

¶ 18 The State responds that defendant did not raise this issue in a contemporaneous objection or in her motion to reconsider and has consequently forfeited the issue. The State further argues that defendant has not shown that the trial court's consideration of the duration of the fight was plain error because the length of the fight was properly considered as a circumstance of the crime. Finally, the State argues that there is nothing in the record to support a finding that the court's consideration led to defendant receiving a longer sentence.

¶ 19 Before considering the merits of defendant's claim, we must determine whether the claim was preserved for our review or if it has been forfeited. To preserve a sentencing issue, a defendant must contemporaneously object and include the issue in a post-sentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). This rule exists to ensure that the trial court has an opportunity to review and potentially correct any trial errors without the burden of an appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988), quoting *People v Caballero*, 102 Ill. 2d 23, 31-32

(1984). Defendant argues that her motion to reconsider sentence, claiming "The sentence is excessive in light of all factors in aggravation and mitigation," was sufficient to preserve the issue for appeal. We disagree. The general claim that defendant's sentence was excessive did not inform the trial court that defendant believed it had considered an improper sentencing factor in aggravation, and thus the question was never presented to the trial court. Consequently, because defendant did not raise the issue in an objection and in her written motion, she has forfeited the issue for appeal. See *People v. Bass*, 220 Ill. App. 3d 230, 239 (1991) (the failure to raise an issue with any specificity in a posttrial motion forfeits the issue).

¶ 20 Defendant alternatively asks this court to consider her claim as plain error, arguing that the consideration of improper aggravating factors is an error so serious that it affects fundamental fairness of defendant's sentencing. Under plain error analysis, a reviewing court may consider an error, despite forfeiture, when a clear and obvious error occurred and either (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant or (2) the error is so serious as to challenge the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Before considering defendant's claim under either prong, we must first determine whether error has occurred. *Id.*

¶ 21 The question of whether a trial court considered an improper factor in aggravation is a question of law, and thus it is reviewed *de novo*. *People v. Mauricio*, 2014 IL App (2d) 121340,

¶ 15. A reviewing court presumes that the trial court considered only competent and proper evidence in determining a sentence. *People v. Ashford*, 168 Ill. 2d 494, 508 (1995). Defendant bears the burden of establishing that the trial court based its sentence on improper considerations. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 9.

¶ 22 The Code of Corrections sets forth numerous factors which may be considered by a trial court in sentencing a defendant. See 730 ILCS 5/5-5-3.2 (West 2010). The duration of mutual combat is not included in the enumerated considerations. However, a court should also consider other relevant factors not contained in the statute, including "the nature and circumstances of the offense" because "[s]ound public policy demands that a defendant's sentence be varied in accordance with the particular circumstances of the crime committed." *People v. Saldivar*, 113 Ill. 2d 256, 268-69 (1986); see also *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 17.

¶ 23 Defendant cites no case to support the proposition that the length of time a defendant spent in mutual combat before killing his or her opponent is categorically an improper factor to consider in aggravation when sentencing that defendant for second-degree murder. She was convicted of second-degree murder predicated on a strong provocation stemming from mutual combat. Clearly, the preceding combat was therefore part of the nature and circumstances of her offense and consequently proper for consideration at sentencing.

¶ 24 Defendant also argues that the trial court's finding regarding the duration of mutual combat was purely speculative and unsupported by the evidence, and therefore the finding was not supported by relevant and reliable evidence. All evidence considered in sentencing a defendant must be relevant and reliable. *People v. Jackson*, 149 Ill. 2d 540, 549 (1992); *People v. Rose*, 384 Ill. App. 3d 937, 941 (2008). Furthermore, a sentencing court may draw reasonable inferences from the evidence presented. *People v. Johnson*, 149 Ill. 2d 118, 155 (1992). A sentencing court's determination that evidence is relevant and reliable is reviewed for an abuse of discretion. See *Rose*, 384 Ill. App. 3d at 941.

¶ 25 Defendant's argument that the trial court engaged in improper speculation is unpersuasive. Defendant's statements and the physical evidence presented at trial described a

fight between Lavelle and defendant that moved throughout each room of the apartment. According to their neighbors, the fight then culminated with Lavelle falling outside and defendant straddling him with two knives. Defendant's statements and the physical evidence also indicated that the fight moved through several stages, evolving from an argument to a punch to a fight with cue sticks to a fight with knives. Given the progression of the fight's severity and its movement throughout each room of the apartment and then outside, the trial court could reasonably conclude that the fight did not occur in an instant, but rather continued for some time.

¶ 26 Defendant further argues that it was speculation for the court to conclude that defendant had any control over the length of the fight because Lavelle had abused her before and her statements to police cast him as the initial and primary aggressor. As the trial court noted, defendant's account of events is undercut by the numerous inconsistencies between her various statements and between those statements and the physical evidence. The neighbors' testimony putting defendant over Lavelle while holding two knives, the multiple stab wounds to Lavelle, and his defensive wounds all support the trial court's finding that defendant acted in mutual combat and not out of self-defense. Given the evidence of mutual combat, the trial court could reasonably conclude that defendant was likewise mutually responsible for the escalation and continuation of the fight.

¶ 27 We find that the trial court properly considered evidence in the record regarding the duration of mutual combat between defendant and Lavelle and inferences from the evidence established the circumstances surrounding the murder. Because the court did not err, there can be no plain error in considering evidence in the record. See *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 64.

¶ 28 Defendant also contends that her trial counsel was ineffective for failing to object to the trial court's consideration of the duration of mutual combat and for failing to include the issue in her motion to reconsider sentence. When claiming ineffective assistance of counsel, a defendant must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness and (2) a reasonable probability exists that the result of the proceeding would have been different without counsel's deficient representation. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); see also *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). As already discussed, the trial court's consideration of evidence regarding the duration of the fight was not improper, and therefore defendant was not prejudiced by trial counsel's failure to object or include the issue in the motion to reconsider sentence. Because defendant was not prejudiced, we need not determine the reasonableness of trial counsel's actions. See *People v. Rucker*, 346 Ill. App. 3d 873, 885 (2003).

¶ 29 Defendant also argues that her 10-year prison term is excessive because she had "no appreciable criminal history," her actions were mitigated by Lavelle's actions, and the court noted only two factors in aggravation. The State responds that the trial court properly considered all factors in mitigation and aggravation and rendered a fair sentence.

¶ 30 All sentences must reflect the seriousness of the offense committed and the objective of rehabilitating offenders to useful citizenship. *People v. Cooper*, 283 Ill. App. 3d 86, 95 (1996). A reviewing court may only reduce a sentence when the record shows that the trial court has abused its discretion. *People v. Streit*, 142 Ill. 2d 13, 19 (1991); *People v. Martin*, 2012 IL App (1st) 093506, ¶ 47.

¶ 31 The sentencing court must consider all factors of mitigation and aggravation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). However, the court need not explicitly indicate each

mitigating or aggravating factor that it considered. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. Furthermore, we presume that a trial court considered all relevant factors in fashioning a sentence; a presumption that cannot be overcome without affirmative evidence in the record that the trial court failed to consider mitigating factors. *Id.*

¶ 32 Second-degree murder is punishable by 4 to 20 years' imprisonment. 730 ILCS 5/5-4.5-30 (West 2010). Defendant was also eligible for probation. See 730 ILCS 5.5-5-3 (West 2010). A sentencing decision that falls within the statutory range is entitled to great deference. *People v. Hill*, 408 Ill. App. 3d 23, 29 (2011). Such a sentence will not be overturned unless it is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 33 We cannot find that the trial court abused its discretion. The court explicitly noted there was "much to mitigate," including defendant's employment and minor criminal history. It then weighed that mitigation against defendant's misrepresentations to police and her participation in mutual combat. Defendant identifies nothing in the record which affirmatively indicates that the trial court failed to consider any mitigating evidence. We will not reverse the sentencing court just because the factors could have been weighed differently. *Streit*, 142 Ill. 2d at 19. Furthermore, defendant's 10-year sentence was below the maximum sentence of 20-years and therefore clearly within the statutory range. As such, the trial court's sentence was entitled to great deference and we find that it did not greatly vary from the spirit and purpose of the law nor was it manifestly disproportionate to the nature of the offense.

¶ 34 We find that the trial court's consideration of evidence regarding the duration of defendant's fight with Lavelle was properly considered at sentencing as a circumstance of the offense and was supported by the evidence before the court. We also find that defendant's 10-

year sentence was not an abuse of discretion. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 34 Affirmed.