2019 IL App (1st) 153658-U

No. 1-15-3658

Order filed January 22, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 14 CR 9925
	)	14 CR 9927
LORENZO HEARD,	)	
	)	Honorable
Defendant-Appellant.	)	Brian K. Flaherty,
	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's two convictions for aggravated domestic battery and sentence of two concurrent terms of seven years' imprisonment over his contentions that the trial court erred when it admitted evidence of his prior bad acts and that his sentence is excessive.

¶ 2 Following a bench trial, defendant Lorenzo Heard was convicted of two counts of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)) and sentenced to two concurrent terms of seven years' imprisonment. On appeal, defendant contends that the trial

court erred in admitting evidence of his prior bad acts. He also contends that his sentence is excessive. We affirm.

¶ 3 Defendant was arrested following two separate altercations with Nicole Palmer-Gronewold, his girlfriend, both of which occurred on May 25, 2014. He was charged, by indictment, in two separate cases (14 CR 9925 and 14 CR 9927). In case No. 14 CR 9925, count 1 (aggravated domestic battery) alleged that defendant, in committing a domestic battery, strangled Palmer-Gronewold, his girlfriend. Count 2 (domestic battery) alleged that defendant, who had previously been convicted of domestic battery, struck Palmer-Gronewold, his girlfriend, about the body in an insulting or provoking manner. In case No. 14 CR 9927, count 1 (aggravated domestic battery) alleged that defendant, in committing a domestic battery, strangled Palmer-Gronewold, his girlfriend. Count 2 (domestic battery) alleged that defendant, having previously been convicted of domestic battery, struck Palmer-Gronewold, his girlfriend, causing her bodily harm. The court granted the State's motion for joinder and tried the cases together.

¶ 4 Prior to trial, the State filed a motion to admit proof of defendant's prior bad acts pursuant to sections 115-7.4 and 115-20 of the Illinois Code of Criminal Procedure (Code) (725 ILCS 5/115-7.4; 115-20 (West 2014). The State sought to introduce evidence of six prior bad acts committed by defendant against Palmer-Gronewold. Specifically, the State sought to introduce evidence of defendant's three prior convictions for domestic battery and violating orders of protection, as well as three prior incidents of domestic battery that did not result in a conviction.[1] The State argued that these prior bad acts were admissible to show defendant's

[1] Defendant's convictions included: a 2010 misdemeanor conviction for domestic battery and violating an order of protection; a 2011 misdemeanor conviction for domestic battery and violating an order of protection; and a 2013 misdemeanor conviction for domestic battery.

propensity to commit violent acts, his motive, and his criminal intent. The State noted that the batteries all took place within a five year period.

¶ 5 Defense counsel argued that there were insufficient similarities between the prior bad acts and the instant allegations. Counsel also noted that there was no information suggesting a motivation for a majority of the altercations and, therefore, these acts could not be used as evidence of defendant's state of mind.

¶ 6 The court granted the State's motion.[2] In announcing its decision, the court conducted a balancing test to determine "whether or not the probative value outweighs the prejudicial effect." The court noted the similarities between defendant's prior bad acts and the instant allegations. The court highlighted that all of the alleged incidents involved defendant either striking Palmer-Gronewold in the head or choking her. The court further noted that the incidents were "very close in time" with the instant allegations. The court thus concluded that the probative value outweighed any prejudice to defendant. Defendant waived his right to a jury and the case proceeded to a bench trial.

¶ 7 Palmer-Gronewold testified that she and defendant were in a dating relationship for approximately seven years. For most of that time, they lived together with Palmer-Gronewold's children and grandchildren. Palmer-Gronewold resided on Marshfield Avenue, in Markham, Illinois.

¶ 8 Palmer-Gronewold acknowledged that, during the course of her seven-year relationship with defendant, there had been prior incidents of domestic violence. She testified, over defendant's objection, to three such incidents. First, she testified that, on March 1, 2010,

[2] Although the court granted the State's motion as to all six prior bad acts, the State only introduced testimony at trial regarding defendant's three prior convictions.

defendant had an altercation with his mother at his mother's house. Palmer-Gronewold left the home after the altercation. Defendant approached her from behind and told her that he wanted to go home with her. She told him no. He accused her of being "against" him and then used a bike chain to punch her. He also pulled her hair and choked her. She curled into a fetal position in front of a tree and defendant continued to kick her. Police arrived and she was transported to the hospital. She testified that, as a result, she suffered a fracture in her eye, her jaw, and her nose. Her ribs were also bruised.

¶ 9 Palmer-Gronewold testified that the next incident occurred on March 6, 2011. On that date, about 2:00 a.m., defendant arrived at her home "unconscious." She called an ambulance and defendant was treated in the home. Subsequently, Palmer-Gronewold helped defendant into bed and attempted to take off his shoes. As she did so, defendant bit her on the back. She ran away and defendant grabbed her from behind. She freed herself from his grasp and locked herself in a room with her daughter. When police arrived, defendant was still attempting to enter the room.

¶ 10 Palmer-Gronewold testified that the third incident took place on February 6, 2013. On that date, defendant was at her home and "just attacked" her by punching her in the jaw. The two then "got to tussling" in the front of the house. The police arrived and arrested defendant.

¶ 11 Regarding the instant charges, Palmer-Gronewold testified that, on May 25, 2014, about noon, defendant was mowing the lawn while she sat on the front step of her house. Defendant joined Palmer-Gronewold on the step and asked her to perform oral sex on him. She refused. Defendant stood up and struck Palmer-Gronewold on her cheek with his open hand. He moved to go inside the home, and Palmer Gronewold followed him. As they entered the house, she told

him to leave. Defendant grabbed her by the shirt, causing her to fall backward onto a table. Defendant fell on top of her and the glass portion of the table broke. Defendant remained on top of her and began to choke her with both hands, which caused her vision to momentarily go "black." Palmer-Gronewold's 18-year-old daughter, Delena, entered the room and told defendant to stop. At that point, defendant "kind of calmed" and stood up. He apologized to Palmer-Gronewold and left the home. Palmer-Gronewold did not call the police to report the incident.

¶ 12 Palmer-Gronewold immediately made a phone call to her grandmother and, following that call, her father and stepmother arrived. Her father encountered defendant outside and they exchanged words. Defendant again left the house. Palmer-Gronewold went to her grandmother's house for three to four hours. She eventually returned home later that evening and, shortly thereafter, defendant's cousin, Sidney, arrived.[3] Moments later, defendant returned to the home. Palmer-Gronewold informed defendant that Sidney was in the house and defendant responded "Oh, you f***ing her, too." Defendant then struck Sidney in the face. Police arrived but they left when Sidney did not wish to pursue the matter further. Defendant and Sidney both left soon thereafter.

¶ 13 About 10:00 p.m. that same evening, Palmer-Gronewold walked toward 165th and Ashland to purchase cigarettes. On the way, she heard defendant professing his love for her from across the street. She responded, "Well, if you love me, why you keep doing it?" Defendant became angry, approached her from behind, and began to choke her. During the altercation, defendant also pulled at her hair, tearing the hair extensions from her head. Defendant then put her in a headlock, causing her neck to start "popping." After a moment, defendant calmed down,

[3]Defendant's cousin's name appears in the record both as "Sidney" and "Sydney." We refer to him as Sidney.

grabbed Palmer-Gronewold by the arm, and forced her to walk with him back to the house. When they reached the house, defendant "collapsed" on the front step. Palmer-Gronewold went inside and asked her daughter to call the police, who arrived and placed defendant into custody.

¶ 14 Nykettia Van testified that, on May 25, 2014, she was at an address located on Ashland Avenue in Markham, Illinois. She testified that Mashfield Avenue is one block west of, and runs parallel with, Ashland Avenue. About 10 or 11:00 p.m., she saw two people, one male and one female, arguing in the street. Both individuals were African-American. She saw the man pull the woman's wig off of her head. The woman reached for the wig, but the man kept it away from her. Eventually, the woman retrieved the wig and put it back on her head. The man then grabbed the woman by her neck. Van explained that it looked as though the man was attempting to kiss the woman, but the woman was "going back." The man then walked the woman northbound on Ashland in a "chokehold." Van acknowledged that she was not wearing her glasses at the time of the incident and could not identify the man or woman. She estimated that the incident took place 10 to 15 feet from her. The State rested.

¶ 15 Defendant testified that, on May 25, 2014, he and Palmer-Gronewold were drinking alcohol throughout the morning. Defendant had been mowing the lawn and preparing for a barbeque. He walked past Palmer-Gronewold, who was seated on the front step of the home, and "playfully" pushed her head as he walked into the house. Palmer-Gronewold followed him inside and grabbed him by his shirt. She pulled him toward her, causing them both to fall onto the table. Defendant stood up and went outside to the grill. Shortly thereafter, Palmer-Gronewold's father arrived and confronted defendant. Eventually, defendant left the home on his bicycle and rode to the store.

¶ 16 Defendant remained at the store with a friend "drinking and stuff." At some point, defendant's friend told him that someone was stealing his bike. Defendant looked and saw Palmer-Gronewold riding his bike away from the store. Defendant remained at the store drinking and smoking cigarettes. Later, he walked back to Palmer-Gronewold's house. When he arrived, his cousin Sidney was there. Defendant slapped Sidney in a playful manner. Palmer-Gronewold called the police. Defendant explained that Sidney left because he was a "hot boy" and could not be around police officers. When the police arrived, they arrested defendant.

¶ 17 On cross-examination, defendant testified that he had hit Palmer-Gronewold in the past. He also acknowledged that he bit her back one night when he was drunk. Defendant denied that he choked Palmer-Gronewold.

¶ 18 The court found defendant guilty of aggravated domestic battery (count 1) in both cases and not guilty of domestic battery (count 2) in both cases. In announcing its decision, the court stated that the cases rested on the credibility of Palmer-Gronewold and Van. The court stated that, although Van could not identify the two individuals she saw arguing, her testimony corroborated what Palmer-Gronewold testified occurred in the street. The court stated that it believed "what [Palmer-Gronewold] testified to is exactly what happened."

¶ 19 Defendant moved for a new trial arguing, *inter alia*, that he was denied due process because Palmer-Gronewold was allowed to testify to his prior crimes. The court denied defendant's motion for a new trial.

¶ 20 At sentencing, the court heard arguments in aggravation and mitigation. In aggravation, the State emphasized defendant's criminal history: a 2010 misdemeanor conviction for domestic battery and violating an order of protection; a 2011 misdemeanor conviction for domestic battery

and violating an order of protection; a 2012 misdemeanor conviction for domestic battery; and a 2013 misdemeanor conviction for domestic battery. Defendant's presentence investigation (PSI) report also reflects that defendant twice violated his parole. The State argued that defendant's history showed an escalation of violence and demonstrated that he was a danger to others. The State asked the court to sentence defendant to seven years' imprisonment.

¶ 21 In mitigation, defense counsel argued that defendant's criminal history was limited to four misdemeanor domestic battery cases, all of which involved Palmer-Gronewold. Counsel stated that defendant understood that he needs to "get away from the triggers which cause him to get angry or to get arrested." Counsel argued that Palmer-Gronewold knew how to control defendant, but also knew "how to get him upset." Counsel maintained that this belied the State's contention that defendant was a danger to the community. Counsel asked the court to consider defendant's lack of opportunities and that he had never been convicted of a felony prior to the instant cases.

¶ 22 In allocution, defendant stated that he was ready to get on with his life. He disputed that Palmer-Gronewold suffered any bodily harm and referenced a letter she allegedly wrote to him in which she stated that she loved him. He also stated that he would not return to the area where she lived if he was released from custody.

¶ 23 In announcing its sentencing decision, the court stated that it reviewed defendant's PSI and considered the factors in aggravation and mitigation. The court noted defendant's four prior convictions for domestic battery, all of which occurred over the course of the three years leading up to his arrest in the instant case. The court further noted that defendant was sentenced to a "substantial amount of time" for his four misdemeanor convictions, including 200 days'

imprisonment for his 2013 conviction. Finally, the court stated its belief that defendant "preyed upon" and "tormented" Palmer-Gronewold. The court then sentenced defendant to two concurrent terms of seven years' imprisonment. Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 24 On appeal, defendant contends that the trial court erred when it admitted evidence of his prior bad acts because the acts were so similar to the instant case that the prejudice to him outweighed their probative value.

¶ 25 Other-crimes evidence, or prior bad acts evidence, encompasses criminal acts as well as other misconduct and bad acts that may not rise to the level of a criminal offense. *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 35. Such evidence is *per se* inadmissible to prove a defendant's propensity to commit crime. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). Other-crimes evidence may be introduced for other purposes, such as motive, intent, identity, lack of mistake, and *modus operandi*. *People v. Chapman*, 2012 IL 111896, ¶ 19. But even if other-crimes evidence is offered for a permissible purpose, it "will not be admitted if its prejudicial impact substantially outweighs its probative value." *Id.*

¶ 26 Sections 115-7.4 and 115-20 of the Code provide a statutory exception to the bar against the admission of prior bad acts evidence for propensity purposes. Section 115–7.4 expressly allows for the introduction of evidence in domestic violence cases that the defendant committed prior acts of domestic violence. *People v. Donoho*, 204 Ill. 2d 159, 176 (2003). This evidence is admissible for any relevant matter, including the defendant's propensity to commit the charged offense. *People v. Heller*, 2017 IL App (4th) 140658, ¶ 44 (citing *People v. Dabbs*, 239 Ill. 2d 277, 284 (2010)).

¶ 27 Likewise, section 115-20 of the Code provides: "Evidence of a prior conviction of a defendant for domestic battery * * * is admissible in a later criminal prosecution for any of these types of offenses when the victim is the same person who was the victim of the previous offense that resulted in conviction of the defendant." 725 ILCS 5/115-20(a) (West 2014). Section 115-20 further provides that evidence of a prior conviction "may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant ***." *Id.* This includes admitting the evidence for propensity purposes. See *People v. Chapman*, 2012 IL 111896, ¶ 20.

¶ 28 However, prior to admitting prior bad acts evidence, sections 115-7.4 and 115-20 both require the court to conclude that the evidence's "probative value is not substantially outweighed by the risk of undue prejudice." *Dabbs*, 239 Ill. 2d at 291; 725 ILCS 5/115-7.4(b); 115-20(c) (West 2014). The trial court must therefore weigh the probative value of the evidence against its undue prejudice, taking into account (1) the proximity in time to the charged offense; (2) the degree of factual similarity to the charged offense; or (3) any other relevant facts or circumstances. 725 ILCS 5/115-7.4(b); 115-20(c) (West 2014). We will not reverse the trial court's decision to admit other-crimes evidence unless we find that the court abused its discretion. *Donoho*, 204 Ill. 2d at 182. Under this highly deferential standard of review, a trial court abuses its discretion when its decision is arbitrary, fanciful or so unreasonable that no rational person would adopt the view of the trial court. *Id.*

¶ 29 Prior to trial, the State moved to allow evidence of defendant's prior bad acts. The court examined defendant's prior convictions and determined that (1) the acts were similar in nature, (2) were all committed against Palmer-Gronewold, and (3) were all committed in the preceding

three years. The court thus concluded that the probative value "certainly" outweighed any prejudicial effect to defendant. We agree.

¶ 30 Defendant was charged with committing aggravated domestic battery and domestic battery against Palmer-Gronewold. Specifically, the indictments alleged that defendant struck and strangled Palmer-Gronewold. The State elicited testimony from Palmer-Gronewold regarding three instances of domestic battery committed by defendant against her. First, she testified that, on March 1, 2010, defendant struck her in the head with a closed fist and strangled her. She further testified that, on March, 6, 2011, defendant bit her and then grabbed her from behind before she got away. Finally, she testified that, on February 6, 2013, defendant struck her in the jaw with a closed fist. Given the similarities between the allegations against defendant and his prior bad acts, we cannot conclude that the court's decision was arbitrary, fanciful or so unreasonable that no rational person would adopt its view. Stated differently, the trial court did not abuse its discretion in allowing the State to present this prior bad acts evidence.

¶ 31 Defendant nevertheless argues that the trial court abused its discretion when it allowed the State to introduce evidence of his prior bad acts because the three prior incidents were "so similar" to the instant case that they had "too much" probative value. Defendant's argument contravenes the plain language of the statutes at issue. Both sections 115-7.4 and 115-20 of the Code instruct the court that factual similarities between a prior bad act and the alleged conduct is a factor weighing in favor of its admission. See 725 ILCS 5/115-7.4(b); 115-20(c) (West 2014). Defendant's argument, therefore, is to no avail.

¶ 32 Defendant next contends that the trial court abused its discretion by sentencing him to two concurrent seven-year sentences (the maximum term allowable), given the presence of

several mitigating factors. Specifically, defendant highlights the following evidence as proof of his rehabilitative potential: (1) his employment history; (2) lack of prior felony convictions; and (3) his "clear alcoholism."

¶ 33 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. "Although the legislature has prescribed the permissible ranges of sentences, great discretion still resides in the trial judge in each case to fashion an appropriate sentence within the statutory limits." *People v. Fern*, 189 Ill. 2d 48, 53 (1999) (citing *People v. Wilson*, 143 Ill. 2d 236, 250 (1991)). In reaching this balance, a trial court must consider a number of aggravating and mitigating factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). As the trial court is in the best position to weigh these factors, it has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *Id.* at 212. A reviewing court should not disturb a sentence that falls within the statutory range absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212-13. A trial court abuses its discretion by imposing a sentence that is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. The spirit and purpose of the law are upheld when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant. *People v. Murphy*, 72 Ill. 2d 421, 439 (1978).

¶ 34 Defendant does not dispute that his two concurrent seven-year sentences fall within the permissible statutory range. See 720 ILCS 5/12-3.3(b) (West 2014) ("Aggravated domestic battery is a Class 2 felony); 730 ILCS 5/5-4.5-35 ("The sentence of imprisonment [for a Class 2 felony] shall be a determinate sentence of not less than 3 years and not more than 7 years."). Rather, he argues that his sentence, which is the maximum allowed by statute, is excessive given his rehabilitative potential as evidenced by the presence of several mitigating factors *i.e.* his employment history, his lack of felony convictions, and his alcoholism.

¶ 35 We presume the sentencing court considers mitigation evidence. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. To rebut this presumption, a defendant must make an affirmative showing that the sentencing court did not consider the relevant factors. *Id.* Defendant cannot make such a showing.

¶ 36 We initially note that it is not necessary for a trial court to "detail precisely for the record the exact thought process undertaken to arrive at the ultimate sentencing decision or articulate its consideration of mitigating factors." *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32; *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). That said, the record here shows that the court considered the relevant mitigation factors. In announcing sentence, court stated that it considered all factors in aggravation and mitigation, as well as defendant's PSI report. The court noted that defendant had been convicted of domestic battery "four times in three years." Defendant's PSI also reflects that defendant was twice found guilty of violating his probation. See *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009) ("criminal history alone" may "warrant sentences substantially above the minimum."). During arguments in mitigation, defense counsel brought to the court's attention several of the mitigating factors that defendant highlights on appeal.

Counsel detailed defendant's criminal history for the court and expressly informed the court that this was defendant's first felony conviction. Defendant's PSI report also contains the mitigating evidence that defendant now argues the trial court ignored during sentencing. Specifically, the PSI reflects that defendant was a "daily user of alcohol in 2014," but that he also denied being an alcoholic. The PSI also details defendant's employment history.

¶ 37 Given that most of the factors defendant raises on appeal were discussed in defendant's PSI or by defense counsel during argument in mitigation, defendant is essentially asking us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *People v. Stacey*, 193 Ill. 2d 203, 209 (2000) ("[T]he reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently"); *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. As the trial court is presumed to have considered all evidence in mitigation, and the record suggests that it did, we find that the trial court did not abuse its discretion in sentencing defendant to two concurrent seven-year terms. See *People v. Coleman*, 166 Ill. 2d 247, 261 (1995) (explaining that a defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense); see also *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) ("The trial court was not required to impose a minimum sentence merely because mitigation evidence existed.").

¶ 38 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.