

FIRST DIVISION
August 11, 2014

No. 1-12-1300

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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. 07 CR 8373
)	
LARRY BEASLEY,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 **Held:** Any error in the trial court's decision to bar evidence of the victim's propensity for violence was harmless where the evidence was overwhelming that defendant was the initial aggressor. Defense counsel was not ineffective for failing to introduce into evidence the content of letters the victim wrote to defendant while he was in prison awaiting trial.

¶ 2 Following a jury trial, defendant Larry Beasley was convicted of attempted first degree murder, aggravated battery of a child, and aggravated domestic battery and was sentenced to respective consecutive sentences of natural life, natural life, and 15 years in prison. On appeal, defendant contends that the trial court erred when it barred him from presenting evidence of the

propensity for violence of one of the three victims, as he had raised a theory of self defense and that victim's character was relevant to show who was the initial aggressor. Defendant further contends that defense counsel was ineffective for failing to impeach that victim with the content of numerous letters she sent defendant in prison, which he argues would have contradicted her trial testimony that she ended all contact with defendant because she was afraid of him. For the reasons that follow, we affirm.

¶ 3 Defendant's convictions arose from events on May 20, 2006. Defendant was living with his girlfriend, Erica Robinson, her seven-year-old son, Trevale, and their six-week-old twins, Larion and Eryuna. An altercation occurred that day during which Erica suffered 13 stab wounds and a collapsed lung; Erica's mother, Phyllis Robinson, suffered two or three stab wounds, one of which was to her back; and Eryuna suffered one stab wound to her knee. Defendant was arrested in Mississippi 10 months later and was charged with 4 counts of attempted first degree murder, 2 counts of aggravated battery of a child, 10 counts of aggravated domestic battery, and 10 counts of aggravated battery.

¶ 4 Before trial, defendant asserted the defense of use of force in defense of a person. In response, the State filed a motion *in limine* pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984), to preclude the defense from eliciting any evidence of Erica's prior violent acts. At the hearing on the motion, defense counsel presented an offer of proof that Wonda Luellen would testify that on November 10, 2001, she heard Erica threaten her daughter, Kimberley Luellen, by relating that she was going to "give her an ass whooping and the Vice Lords are going to shoot up the house and burn it down." Wonda then saw Erica, using a car jack, strike and cause damage to the outside door of the house. Counsel related that Erica was arrested for criminal damage to property and assault. She was found guilty – although the records did not delineate on which

counts – and was sentenced to 12 months’ conditional discharge. After hearing counsel’s arguments, the trial court granted the State’s motion. In doing so, the court stated, “The court having done the balancing test required in *Lynch* as far as propensity for violence cannot conclude that this type of behavior as is alleged by your witness in your offer of proof is designed to come in under the *Lynch* case and for the foregoing reasons it will be excluded.”

¶ 5 The State also filed a motion *in limine* to bar any testimony regarding letters Erica wrote to defendant. Defendant filed a motion *in limine* in response, asking that the trial court deny the State’s motion. Defense counsel indicated that Erica wrote nine letters to defendant while he was in prison in 2010. According to the motion, the letters included photographs, money, and drawings made by Eryuna, as well as statements by Erica that she loved and missed defendant and dreamed about him. Counsel asserted in the motion that the content of Erica’s letters would color her anticipated testimony that defendant was the aggressor on the date in question.

¶ 6 At the hearing on the motion, counsel argued that the letters would show Erica’s bias, prejudice, and motive in testifying. The trial court ruled that the content of the letters was hearsay, as they were out-of-court statements being used to prove the truth of the matter asserted. The court advised defense counsel that if, during trial, Erica testified that she did not send defendant money or communicate with him, she could impeach Erica with the existence of the letters. The court explained as follows:

“All I can tell you right now is there’s wide latitude on cross-examination to establish interest, bias or motive. If you receive a response to a question on cross-examination and you have a document that is contrary to that response, and it’s relevant, it’s not collateral, it goes to an ultimate issue in the case, then certainly

you would have the right to impeach the witness. But to simply confront the witness with letters of irrelevant information and hearsay information would not be allowed. That's the only ruling I can give you at this point. During the course of the trial if on cross-examination you ask the witness a question and she comes up with a response, you can ask for a sidebar, you can say this witness has a prior inconsistent statement, this is relevant to the case, their interest, bias or motive, then I may allow you to prove up a prior inconsistent statement if it's relevant."

¶ 7 Later in the hearing, defense counsel returned to the issue of the letters, arguing that their content had an impact on Erica's credibility and her anticipated testimony that defendant was the aggressor. The trial court rejected counsel's argument, finding that the letters' content, which demonstrated Erica's "caring or feelings" for defendant, was not relevant to the ultimate facts and issues of the case. However, the trial court also reiterated that it was "not ruling on this one way or the other until I see if there's some impeachment value in this going to bias."

¶ 8 At trial, Erica Robinson testified that about 8:30 or 9 p.m. on the date in question, she, her three children, and her mother, Phyllis Robinson, came home from doing the laundry and found defendant in the vestibule of the two-flat where Erica and defendant lived. Erica and defendant had been dating for about four years, but had lived with the children in the upstairs apartment of the two-flat for only about two weeks and only had one set of keys. Erica unlocked the doors for defendant, who immediately got into bed. Erica carried Eryuna up the stairs, Phyllis carried Larion and some bags of laundry, and Trevale carried a bag of laundry. At some point, Phyllis left the apartment. Erica put Eryuna in a crib with Larion and started to put away

the clothes. When Eryuna began to cry, Erica asked defendant to pick her up, but he “had an attitude” and refused. Erica picked up Eryuna, continued to put the laundry away, and started arguing with defendant, who was still in bed, about him not helping.

¶ 9 Erica testified that defendant got out of bed, went down the stairs, and retrieved an umbrella. When he got back upstairs, he pulled two butcher knives out of the umbrella and said he was going to kill her. Erica started crying and called Phyllis. Trevale, who had come out of his room, was also crying. Defendant went into Trevale’s room and told him he was not going to hurt them. Shortly thereafter, Phyllis arrived at the apartment and defendant went downstairs to let her in. Erica testified that when Phyllis asked defendant what was going on, he “just got on upstairs talking about we ruined his life.” At that point, defendant came “straight at” Erica, who was standing and holding Eryuna, with the butcher knives. Defendant stabbed Erica all over the right side of her body, causing her to fall. As she lay on the floor on her back, still holding Eryuna, defendant continued to stab her. Erica testified that when Phyllis started to run, defendant stopped stabbing her and followed Phyllis down the stairs. Erica set Eryuna on the floor, got up, and tried to jump on defendant’s back. Erica and defendant fell against the hallway wall and all three of them fell down the stairs. Defendant dropped one of the knives but stabbed Phyllis with the other. He then ran out the front door.

¶ 10 Erica testified that she and Phyllis locked the door and called the police. For a while, Erica sat in the downstairs apartment and tried to staunch her bleeding with a pillow, but then she became lightheaded, went outside to get some air, and collapsed on the front steps. An ambulance arrived and took her to the hospital, where she was treated for a collapsed lung and stab wounds to her arm, hand, chest, back, and neck.

¶ 11 On cross-examination, Erica testified that after “all of this,” she was afraid of defendant, wanted nothing to do with him, and did not contact him. However, when defense counsel asked Erica if she had written letters to defendant in 2010, while he was awaiting trial, Erica admitted that she had written five letters, sent photographs of Eryuna and Larion, and sent drawings made by Eryuna. In a sidebar, the trial court reiterated its ruling that the substance of the letters would not be allowed in evidence because the letters’ content was hearsay. The parties later stipulated that Erica wrote two letters to defendant that she had earlier denied writing or had stated she did not recall writing. The parties also stipulated that Erica sent defendant money and photographs of herself.

¶ 12 Phyllis Robinson testified that around 8:30 p.m. on the day in question, she took Erica, Trevale, Larion, and Eryuna home with their clean laundry. When she entered the apartment with a bag of clothing, she saw defendant lying in bed. Phyllis left, but while she was on her way home, she received a phone call from Erica, who was crying, so she returned to the apartment. After defendant let her in, Phyllis saw Erica sitting on the couch, holding Eryuna and crying. She asked Erica what was wrong, and when Erica told her, Phyllis told defendant “he would have to leave if that continued to go on.” Defendant “stormed” into the kitchen and then returned to the living room with two butcher knives. He said “something about you all ruined my life” and started stabbing Erica, who had stood up when defendant initially left the room. Erica fell to the floor, still holding Eryuna. Defendant continued to stab Erica, so Phyllis decided to run downstairs to get help. Phyllis testified that she made it down about three steps before defendant hit her in the back with one of the knives, causing both of them to fall down the stairs. Erica came down the stairs and stood over Phyllis, fighting defendant. Defendant continued to

swing the knives at Erica and Phyllis, who kicked and hit defendant. Defendant said he would kill Erica and Phyllis, but then dropped one of the knives, opened the door, and ran.

¶ 13 Phyllis testified that after she got Erica situated in a chair in the downstairs apartment, she retrieved the children. Phyllis stated that Eryuna had a long cut on her leg. The police and paramedics came, and Erica walked outside and collapsed on the steps. Phyllis testified that she had been stabbed in the arm, the back, and the head.

¶ 14 Trevale Robinson, age 13, testified that on the day in question, he was seven years old and had come home from doing laundry with his mother, grandmother, brother, and sister around 8 or 9 p.m. Defendant was waiting in the hallway, but then went into a bedroom. Trevale carried a bag of clothing upstairs and then went to his own room. Trevale heard defendant and Erica arguing, looked out, and noticed that his grandmother, Phyllis, was no longer in the apartment. After a while, Trevale went into the front room and sat down on the couch. Phyllis had returned and was standing near the front door. Erica was also standing, holding Eryuna. Larion was in a crib. Trevale testified that Phyllis was talking to defendant “and everybody was talking to each other and eventually [defendant] got mad and ran into the kitchen.” Defendant came back out of the kitchen with two butcher knives, ran at Erica, jumped on top of her, and started stabbing her. Trevale testified that Erica was on her back on the floor, holding Eryuna, while defendant stabbed her. Phyllis started running down the stairs and defendant chased her with the knives. Erica got up, put Eryuna down, and ran down the stairs as well. Trevale testified that he went to check on the babies. He heard someone coming up the stairs and got scared, but it turned out to be Phyllis, who then took all of the children downstairs. Defendant did not come back to the apartment after that day.

¶ 15 Dr. Amardeep Singh, an emergency room physician, testified that he treated Erica Robinson on the night in question. When Erica arrived at the hospital, she was unstable and in critical condition. Dr. Singh testified that Erica had 13 stab wounds to her chest, back, and arm, and that one of the stab wounds had caused a collapsed lung. Erica was treated with a resuscitation catheter, a chest tube, and a blood transfusion, and was admitted to the hospital, where she remained for five or six days.

¶ 16 Dr. Thomas Widell, also an emergency room physician, testified that he treated Phyllis Robinson for a laceration on her left arm and a stab wound on her back. He did not notice any wounds on her head, but did recall that she was wearing some sort of head wrap and he did not have her remove it.

¶ 17 Eryuna was transferred from the emergency room to Comer Children's Hospital. Dr. Brian Toolan, an orthopedic surgeon with the hospital, testified that he treated Eryuna for a laceration on her left knee which exposed the knee joint. The injury required surgery to sterilize and close the wound.

¶ 18 Chicago police officer Maurice Henderson, a forensic investigator, testified that he and his partner processed the scene by taking photographs and recovering evidence. Officer Henderson testified that the building was bloody: there was blood on the outside steps to the sidewalk, on the walls by the mailboxes, in the foyer, inside the downstairs apartment, on the wall of the staircase to the second level, and inside the second floor apartment. The officers recovered some infant clothing, a knife, a black head rag, and a pair of sunglasses, and took blood swabs from some of the locations throughout the scene. The knife was recovered from the foot of the stairs leading to the second floor.

¶ 19 Chicago police detective Elizabeth Miller testified that she was assigned to investigate the stabbings of Erica, Phyllis, and Eryuna. Defendant was named as a suspect in the case. Detective Miller and her partner initiated an investigative alert for defendant and unsuccessfully tried to locate him at the trade school he attended. The officers thereafter conferred with the State's Attorney's office and obtained an arrest warrant for defendant, and the Federal Bureau of Investigation became involved in locating him. In March 2007, Detective Miller obtained information about defendant's whereabouts and, as a result, went to Mississippi with another detective. Once there, the officers took custody of defendant at a local jail.

¶ 20 Christina Caccamo, a forensic scientist with the Illinois State Police Crime Laboratory, testified that she received buccal swabs from defendant, Erica, Phyllis, and Eryuna, extracted DNA from those swabs, and obtained DNA profiles from them. She also received swabs of blood taken from the handle and blade of the knife recovered at the scene. Caccamo testified that the blood samples taken from the knife handle and blade matched Erica's DNA profile.

¶ 21 Defendant testified that he had a prior conviction for armed robbery. He stated that he and Erica had a "rocky" relationship involving arguments and "a lot of fights" over him seeing other women. On the day in question, defendant was hung over from having stayed out all night. When he got home, he waited in the hallway for Erica because he did not have keys for the apartment. When Erica arrived some hours later with Phyllis, Trevale, Eryuna, Larion, and several bags of laundry, defendant ran up the stairs and got into bed because he was cold. At some point, Phyllis left the apartment. Erica came into the room and threw Eryuna on the bed. Defendant testified that he got Eryuna to stop crying, put her in the crib with Larion, and then got back into bed himself.

¶ 22 Shortly thereafter, defendant got out of bed and he and Erica started arguing. When the doorbell rang, defendant opened the door for Phyllis, who came into the apartment and joined in the argument. Erica “stormed” out of the room and then came back holding Eryuna and a butcher knife. Defendant testified that he was scared because Erica came straight at him swinging the knife and he thought she was going to stab him and kill him. Erica slashed defendant across the neck and Phyllis started hitting him. The group started “tussling,” with defendant trying to protect himself and stop Erica from stabbing him. At some point, Erica lunged at him and defendant’s hand was cut across the fingers. Eventually, defendant got hold of the knife. Defendant saw a little blood, but did not know if Erica or Phyllis was hurt. Defendant headed for the hallway to attempt to leave the apartment and Erica and Phyllis chased him.

¶ 23 Defendant testified that the “tussle” moved from the living room to the hallway. Erica was bleeding, and Erica and Phyllis were jumping on his back, hitting him in the head, and kicking him. Defendant acknowledged swinging the knife at “Erica them,” but denied that he was trying to kill Erica, Phyllis, or Eryuna. He also denied ever saying that he was going to kill any of them. However, when asked whether he stabbed Phyllis in the back, defendant answered, “Yes, I guess so.”

¶ 24 At some point, defendant dropped the knife. Erica was on her back on the ground when defendant left the apartment. Defendant acknowledged that blood was coming from Erica’s upper body, but denied knowing that she had been stabbed multiple times. He stated he was still afraid of Erica when she was on the ground.

¶ 25 After leaving the apartment, defendant went to his aunt’s house. He did not go to the hospital or go back to try to help the children because he was “scared of Erica them” and “had made a stupid mistake.” Defendant explained that he did not go to the police because “I was

scared. I got a background. I didn't think nobody would believe me, nothing I said." After a few months, defendant went to Mississippi, where he used a different name to obtain employment but was eventually arrested.

¶ 26 The jury found defendant guilty of the attempted first degree murder of Erica, the aggravated battery of Eryuna, the aggravated domestic battery of Erica, and the aggravated domestic battery of Phyllis. The trial court merged the counts regarding Erica and entered judgment on the verdict. At sentencing, the State made a motion that defendant be sentenced as a habitual criminal, as he had two prior Class X convictions in his background. The trial court imposed two natural life sentences and a 15-year sentence, all to be served consecutively.

¶ 27 On appeal, defendant first contends that the trial court erred when it barred him from presenting evidence of Erica's propensity for violence, specifically, evidence that she had been convicted of criminal damage to property and assault for threatening to beat Kimberley Luellen and have her house shot up and burned down, and then striking the front door of the house with a car jack. Defendant argues that this evidence was admissible under *People v. Lynch*, 104 Ill. 2d 194 (1984), as he had raised a theory of self defense and Erica's character was relevant to show who was the initial aggressor. Defendant asserts that the trial court erred in reasoning that a conviction for assault was inadmissible because it constituted only a threat of violence, and that a conviction for criminal damage to property was not admissible because the violence was aimed at a building, rather than a person. Defendant further argues that the trial court's statement that it conducted a "balancing test" demonstrated that it misapprehended the general admissibility of *Lynch* evidence, as *Lynch* requires no such test.

¶ 28 In *Lynch*, our supreme court held that when a defendant raises self-defense, evidence of the victim's violent and aggressive character is relevant to show who was the aggressor, and the

defendant may show it by appropriate evidence. *Lynch*, 104 Ill. 2d at 200-01. Evidence of a victim's violent character may be offered either: (1) to demonstrate that the defendant's knowledge of the victim's violent tendencies affected his perceptions of and reactions to the victim's behavior; or (2) to support the defendant's version of the facts where there are conflicting accounts of what happened, even if the defendant had no prior knowledge of the victim's violent acts. *Lynch*, 104 Ill. 2d at 199-200. In the second instance – which is the one relevant in the instant case – the victim's character is circumstantial evidence that provides the trier of fact with additional facts to decide what happened. *People v. Bedoya*, 288 Ill. App. 3d 226, 236 (1997). A trial court's determination regarding the admissibility of *Lynch* evidence will not be reversed absent a clear abuse of discretion. *People v. Figueroa*, 381 Ill. App. 3d 828, 840-41 (2008); *People v. Wallace*, 299 Ill. App. 3d 9, 19 (1998).

¶ 29 *Lynch* allows for the admission of evidence that the victim has been convicted of a crime of violence. *Lynch*, 104 Ill. 2d at 201. A conviction for criminal damage to property does not constitute a crime of violence for *Lynch* purposes. *People v. Gilbert*, 224 Ill. App. 3d 624, 631-32 (1992). Accordingly, we find that the trial court did not abuse its discretion in precluding defendant from introducing evidence that Erica struck Kimberley Luellen's door with a car jack.

¶ 30 With regard to Erica's assault of Kimberley Luellen, defendant is correct that when a defendant asserts self-defense, evidence of specific violent threats made by the victim, even when not directed at the defendant, may be admissible as proof of the victim's violent character. *People v. Florey*, 153 Ill. App. 3d 530, 538-39 (1987). However, while such evidence may be admissible, reversible error does not always occur if a trial court improperly excludes such evidence. *Florey*, 153 Ill. App. 3d at 539. Here, after hearing extensive arguments from counsel on the topic, the trial court determined that it could not conclude the "type of behavior as is

alleged by your witness in your offer of proof is designed to come in under the *Lynch* case.” The court commented that an assault is not a completed act of violence, but rather the threat of an act of violence, and asked defense counsel whether an assault had ever been admitted in a case under the theory of *Lynch*. Defense counsel responded in the negative. A trial court may be deemed to have abused its discretion only when its decision is arbitrary, fanciful, or so unreasonable that no reasonable person would adopt its view. *People v. Rivera*, 2013 IL 112467, ¶ 37. Given the trial court’s rationale, we are reluctant to say that the trial court abused its discretion by granting the State’s motion to bar evidence of the assault.

¶ 31 Even assuming, *arguendo*, that the trial court abused its discretion and erred in excluding evidence of the assault, the absence of that evidence did not affect the outcome of defendant’s case in light of the evidence admitted at trial. At trial, three eyewitnesses – Erica, Phyllis, and Trevale – testified unequivocally that defendant was the aggressor in the altercation during which he stabbed Erica, Phyllis, and Eryuna. In light of this overwhelming evidence, any error in excluding evidence that Erica had assaulted Kimberley Luellen was harmless. See *Figueroa*, 381 Ill. App. 3d at 847 (applying harmless error analysis to *Lynch* issue and finding no error in barring evidence of the victim’s character for violence where evidence of the defendant’s guilt was overwhelming).

¶ 32 Defendant’s second contention on appeal is that defense counsel was ineffective for failing to impeach Erica with the content of the letters she sent him in prison. Defendant argues that the content of the letters would have contradicted Erica’s trial testimony that she was afraid of defendant and thus ended all contact with him. Defendant asserts that he was prejudiced by counsel’s failure, because by failing to impeach Erica’s claim that she was afraid of him, defense

counsel “lost the critical opportunity to damage the credibility of the State’s key witness and cast doubt on her claim that [defendant] was the physical aggressor during their argument.”

¶ 33 The standard for a claim of ineffective assistance of counsel has two prongs: deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 685 (1984). First, a defendant must demonstrate that counsel’s representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. Second, a defendant must establish prejudice by showing “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome. *Strickland*, 466 U.S. at 694. If a case may be disposed of on one *Strickland* prong, we need not review the other. *People v. Irvine*, 379 Ill. App. 3d 116, 129-30 (2008).

¶ 34 We cannot find that defendant has satisfied either *Strickland* prong. First, the record reflects that trial counsel did, in fact, attempt to introduce the content of Erica’s letters, both pretrial and during trial. Before trial, counsel filed a motion *in limine* asking that the trial court deny the State’s motion to bar the letters and arguing that their content would color Erica’s anticipated testimony that defendant was the aggressor on the date in question. Counsel argued the motion, asserting that the letters’ content would show Erica’s bias, prejudice, and motive in testifying. The trial court ruled that the content of the letters was hearsay, but advised counsel that if, during trial, Erica testified that she did not send defendant money or communicate with him, she could impeach Erica with the existence of the letters. Then, at trial, after Erica testified that after “all of this,” she was scared of defendant, wanted nothing to do with him, and did not contact him, counsel impeached Erica with the fact that while defendant was in prison awaiting trial, she had indeed written letters to him, sent photographs of Eryuna and Larion, and sent

drawings made by Eryuna. After eliciting these admissions, counsel asked the court in a sidebar for clarification of its ruling on the content of the letters. The trial court reiterated that the substance of the letters would not be allowed in evidence because it was hearsay. Thus, the record shows that counsel attempted to introduce the content of the letters. Just because counsel was unsuccessful in doing so does not mean her efforts were unreasonable.

¶ 35 Moreover, defendant has not shown that he was prejudiced by the letters' content not being revealed to the jury. First, the jury heard evidence at trial that despite being stabbed by defendant 13 times, Erica wrote to him in prison and sent him money, photographs of herself, photographs of their children, and drawings made by Eryuna. We agree with the State that in these circumstances, the jury did have an understanding of the content of the letters, and that common sense dictates that the jury knew the letters were positive in nature. Hearing about the specific contents of the letters would have added little, if anything, to the jury's understanding. Second, we cannot agree with defendant that had the jury learned that Erica wrote defendant that she loved him, missed him, and dreamed about him, it would have "cast doubt on her claim that [defendant] was the physical aggressor during their argument." That Erica had positive feelings about defendant while he was in prison awaiting trial in 2010 does not mean that defendant was not the initial aggressor on May 20, 2006. The jury heard three different witnesses testify unequivocally that defendant was the attacker on that date. There is no reasonable probability that but for counsel's failure to introduce the content of the letters, the outcome of the trial would have been different. See *Strickland*, 466 U.S. at 694. Defendant's claim of ineffectiveness fails.

¶ 36 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 37 Affirmed.