2018 IL App (1st) 162706-U
No. 1-16-2706
December 31, 2018

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARTELL McGREW, Defendant-Appellant.	Appeal from the Circuit Court Of Cook County. No. 11 CR 18962 The Honorable Luciano Panici, Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not commit reversible error by excluding evidence that the defendant saw the victims attacking another person a few minutes before they confronted the defendant because the defendant agreed to the prosecutor's motion *in limine* to bar any evidence of prior bad acts of any witness or the victim[s] in this case.

¶ 2 A jury found Martell McGrew (Martell) guilty of one count of first degree murder and two counts of attempted murder, rejecting evidence that he acted in self-defense when he shot three victims, one fatally, outside a party. Martell was sentenced to 26 years in prison for each attempted murder count and 50 years for first degree murder, with the sentences to

run consecutively for a total of 102 years. On appeal, Martell argues that the trial judge erred when he excluded evidence that Martell saw his victims and others in their group attack and fight with another guest at a party. Martell contends that exclusion of this evidence denied him the opportunity to present a viable and full affirmative claim that he shot the victims in self-defense. Martell also contends that the sentences were excessive because they are to run consecutively instead of concurrently. The State contends that Martell forfeited the issue of the exclusion of evidence by failing to make an offer of proof regarding the alleged fight that took place before the shooting.

¶ 3 A. BACKGROUND

¶ 4 On October 8, 2011, Danielle Monroe (Monroe), a high school student, held a party in her home in Markham. Brandon Eggleston (Eggleston) came to the party with Jacoby Gilliand (Gilliand), Domonique Herron (Herron), Devante Dill (Dill), and Brooken Woodfield (Woodfield). Deslyn McGrew and his older brother, Martell, came to the party with Jerome Bowman and Martell's girlfriend, Dorrea'l Cook (Cook). Deslyn and Martell did not know Eggleston and his group, and the two groups had no animosity.

¶ 5 Around 11 p.m. a fight erupted in the house and Monroe's mother told all the guests to leave. When Dill reached the driveway, he saw Martell leaning on Dill's car, talking to Cook. Dill and Martell exchanged words as Martell stood and walked away from the car. Eggleston punched Martell once, breaking Martell's jaw and knocking him backwards. Martell fired his gun. The shots hit Herron, Gilliand, and Eggleston. Gilliand died from a single gunshot wound to his abdomen. Martell and Deslyn drove away with Cook and Bowman.

¶ 6 Police told Martell's parents they wanted to speak with Martell. Martell, with a badly swollen jaw, walked into the police station on October 14, 2011. Police took him to the hospital, where a surgeon inserted metal plates into Martell's jaw to help it heal.

¶ 7 Prosecutors charged Martell with murdering Gilliand and attempting to murder Herron and Eggleston. Before trial the prosecutors filed a motion *in limine* to bar any questions about "prior bad acts of any witness or the victim[s] in this case." Defense counsel did not object.

¶ 8 Eggleston testified that an altercation at the party caused his group of friends to leave. The prosecutor elicited the following testimony:

"Q *** [W]ere you involved in that altercation?

A No, ma'am.

Q Was anyone in your group involved in that altercation?

A No, ma'am."

¶ 9 In the driveway, Eggleston heard Dill say to Martell, "Can you please move off the trunk of the car so we can leave the party?" Eggleston testified that Martell, with his hand in his pants, got off the car and approached Gilliand aggressively. Eggleston believed Martell held a weapon. Eggleston testified that, because he felt threatened, he punched Martell. Eggleston started to run when he heard a gunshot. He fell when a bullet tore through his legs. Eggleston heard Martell say, "I told y'all mother fuckers somebody was going to lay down today." Martell then stood over Gilliand, who said, "I'm already shot, bro." Martell did not shoot again. He got into his car with Cook and drove off.

¶ 10 At the time of trial, Eggleston weighed 280 pounds. He testified that at the time of the party, he weighed only 175 pounds, and he stood 5 foot 10 inches tall.

¶ 11 Herron, who stood 6 foot 2 and weighed 200 pounds in 2011, testified that when he left the party with Eggleston, Dill, Gilliand, and Woodfield, he saw Martell sitting on Dill's car. Dill said, "Why you on my car? Get off my car." Herron testified that Martell "got real tough like, 'Y'all ain't going to do nothing.'" As Martell walked up to Dill, Herron noticed that Martell kept his hand in his pocket, "like you got to hold the gun when you walk." Eggleston punched Martell, someone yelled "He got a gun," and Herron started running. But he turned around when he heard a gunshot. Herron testified that a bullet struck his left hip and exited through his stomach. The parties stipulated that the doctors who treated Herron would testify that the bullet struck Herron in the gut and exited by his left hip, coursing front to back, from the right side to the left.

¶ 12 After the shots, Herron, like Eggleston, heard Martell say, "Y'all mother fuckers going to lay down."

¶ 13 Dill testified that he and his friends left the party when a fight broke out. The prosecutor elicited the following testimony:

"Q *** [D]id you have something to do with [that fight]?

A No.

Q Did Brandon have something to do with that fight?

A No.

Q What about Jacoby, did he?

A No."

¶ 14 Dill saw Martell and Cook sitting on Dill's car. Dill said, "Could you please get off my car." Martell immediately became enraged, and said, "Who is going to make me get off the car?" Martell got off the car, with his hand in his waistband, and approached Gilliand. Dill thought Martell had a weapon. Dill saw the punch and heard the shots, then he heard Martell say, "Y'all mother fuckers going to lay down." Dill saw Martell walk up to Gilliand, who said, "I'm already hit."

¶ 15 Jaclyn Burton (Burton), who knew Martell through a cousin and who considered Gilliand a close friend, saw Martell at the party, and Martell did not appear angry. She could not hear the words exchanged in the driveway, but she saw Eggleston punch Martell, and after the punch she saw Martell reach for his waistband and pull out a gun.

¶ 16 Bowman testified that when he left the party, he saw a crowd of about nine persons standing around Martell. Eggleston punched Martell, and the crowd stayed facing Martell until gunshots rang out. Bowman left the area and met up with Martell, Deslyn, and Cook at a nearby gas station. Martell could barely talk through his swollen jaw.

¶ 17 Deslyn testified that he saw the altercation at the party, and then he left the house. He saw Martell leaning on a car, talking to Cook, and then he saw a group coming out of the house. The transcript shows the following exchange:

"Q *** [D]id you recognize these people as having been inside that party?

A Yes. It was the same group of people that jumped on the boy in the party.

MS. CORBIN [Prosecutor]: Objection, relevance.

THE COURT: Sustained.

MS. CORBIN: Move to strike.

THE COURT: That last statement is stricken. The jury is to disregard it."

¶ 18 Deslyn testified that the group of seven or eight persons walked up to him and Martell. Dill yelled, "[W]ho the fuck was sitting on my car?" Martell, who had gotten off the car, said he was not sitting on the car. Eggleston punched Martell. When Martell fell, four men rushed at him. Deslyn heard gunshots and saw the men running away. Deslyn drove off to a nearby gas station. He called Martell's cellphone. Martell could barely talk. They met at the gas station. Deslyn and Martell both stood about 5 foot 4. Deslyn weighed about 120 pounds, and Martell weighed 145.

¶ 19 Martell testified that he carried a gun because he lived with his mother in a bad part of Harvey. Blackstone Rangers tried to force him to join their gang. He carried the gun at all times because he feared that the gang would attack him or his family.

¶ 20 At the party Martell saw the fight break out, so he and Cook left. He leaned on a car next to Deslyn's. A crowd of about eight persons approached him.

¶ 21 At this point in the testimony, the prosecutor asked for a sidebar. The court agreed and found that Martell "is going to say they were involved in the [fight in the] house. That is not relevant. I don't want that to come out." The court barred the expected testimony.

¶ 22 Martell testified that the crowd surrounded him, and Dill said, "Get the fuck off my car." Martell immediately got off the car. Martell testified, "Then they're like, no, man, who the

fuck was on the car. I'm like, man, I ain't on that. And then I got hit." He stumbled backwards, in excruciating pain, and saw the group, including large men, approaching.

¶ 23 The transcript shows the following exchange:

¶ 24 "A. *** [W]hen I retrieved my weapon, like I say, they were closing in on me ***. I was afraid.

Q. The same group?

A. The guys who were inside the party that was fighting, so I was –

MS. CORBIN: Objection.

THE COURT: Sustained as to the last statement.

MS. CORBIN: Move to strike.

THE COURT: The jury is instructed to disregard the last statement."

¶ 25 Martell testified that he fired in three directions to get away from the surrounding crowd. Martell ran to his car with Cook and they drove to the gas station.

¶ 26 On cross-examination, the prosecutor asked about the group who surrounded Martell. The transcript shows the following colloquy:

"Q. And all you remember is that they were taller than you?

A. No. I remember Brandon, because he was inside the party. He was one of the guys who was –

MS. CORBIN: Objection.

THE COURT: No more about that, what happened inside the house. Okay?

THE WITNESS: All right.

THE COURT: Sustained."

¶ 27 In closing argument, the prosecutor explained the confrontation in the driveway. "Brandon tried to defuse the situation. He saw what he thought was threatening behavior when he got off that car. He saw him reaching into his pocket. *** And he thought you know what? I'm going to d[e]fuse the situation and he hit him."

¶ 28 At Martell's request, the court instructed the jury on second degree murder based on an unreasonable belief in the need to use deadly force. The jury found Martell guilty of the attempted murders of Eggleston and Herron, and the first degree murder of Gilliand.

¶ 29 In his motion for a new trial, Martell argued that the court erred by excluding evidence that Eggleston and others in the group that surrounded Martell "jumped on the boy in the party," and started the fight that led Monroe's mother to tell everyone to leave. The judge said, "I believe that the fight inside was not even relevant to what happened outside. I think it was a different group of people." Thus, the judge rejected the testimony of Martell and Deslyn based on the judge's resolution of the contested factual issue of whether Eggleston, Herron, and members of their group participated in the fight that ended the party. The judge denied the motion for a new trial.

¶ 30 The presentence investigation report showed one prior felony conviction for aggravated possession of a stolen motor vehicle, committed when Martell was 17, and three prior misdemeanor convictions. The report said, "McGrew stated that he has never been a member of a street gang," and the report included no contrary evidence. In sentencing, the judge said, "He is a People gang member." The judge sentenced Martell to 26 years in prison for each

attempted murder and 50 years for first degree murder, with the sentences to run consecutively for a total of 102 years. Martell now appeals.

¶ 31 B. ANALYSIS

¶ 32 On appeal, Martell argues that the trial judge erred when he excluded evidence that Martell and Deslyn saw Eggleston and others in his group attack and fight with another guest at the party. Martell contends the exclusion of this evidence denied him the opportunity to present a viable and full affirmative claim that he shot the victims in self-defense. Martell supports his contention by asserting that the testimony excluded concerning the violent tendencies of the group that confronted him was highly relevant to his state of mind when he attempted to defend himself, and it also contradicted the witnesses' alleged peaceful nature when they confronted Martell and his friends.

¶ 33 Evidentiary rulings are within the sound discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001). The State contends that Martell forfeited the issue by failing to make an offer of proof regarding the alleged fight that took place before the shooting.

¶ 34 We first note that on the issue of forfeiture, Martell elected not to file a reply brief. Martell's opening brief simply addressed the claimed error on the merits (*i.e.*, as if the error had been preserved), without acknowledging (i) his agreement to the State's motion *in limine* to preclude evidence of any prior bad acts by victims or witnesses, (ii) his failure to make an offer of proof, and (iii) his failure to invoke plain error as a means of bypassing forfeiture. Accordingly, he has not responded to the State's arguments in this regard. "[A]s a general rule, '[o]ur adversary system is designed around the premise that the parties know what is

best for them, and are responsible for advancing the facts and arguments entitling them to relief.' " *Greenlaw v. United States*, 554 U.S. 237, 244 (2008) (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003)).

¶ 35 Nonetheless, we address the State's contention that Martell forfeited the issue by failing to make an offer of proof. "[T]he key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court." *In re A.M.*, 274 Ill. App. 3d 702, 709 (1995). The purpose of requiring an offer of proof as a prerequisite to appellate review is to enable the reviewing court to determine whether the exclusion of evidence was proper." *People v. Armstrong*, 183 Ill. 2d 130, 155 (1998). In the absence of an offer of proof, snippets of volunteered testimony are usually insufficient to permit meaningful analysis either by the trial court or a reviewing court. *People v. Beaty*, 377 Ill. App. 3d 861, 890 (2007) (" 'Where it is not clear what a witness would say, or what his basis would be for saying it, the offer must be considerably detailed and specific. A reviewing court can thereby know what was excluded and determine whether the exclusion was proper.' " (quoting *People v. Peeples*, 155 Ill. 2d 422, 457 (1993))); see also *People v. Hughes*, 2015 IL 117242, ¶ 46 ("By declining or failing to raise these claims below, defendant deprived the State of the opportunity to challenge them with evidence of its own, he deprived the trial court of the opportunity to decide the issue on those bases, and he deprived the appellate court of an adequate record to make these determinations.").

¶ 36 Here, our review of the record establishes that there was no attempt by Martell to present a motion *in limine* regarding evidence of the alleged earlier fight. One mention of the fight came during trial where Deslyn's and Martell's stricken testimony shows that they would

have testified that Eggleston and others in the group that surrounded Martell "jumped on the boy in the party," and Martell had seen Eggleston and others fighting with the boy. Without an offer of proof, we know little regarding the nature of the excluded testimony or its potential effect on the outcome of this case. Was Eggleston the aggressor? Who are "the others in the group?" Were blows exchanged? From the scant testimony provided we have no way of knowing whether the "fight" was a shoving match or a violent melee. Additionally, in advance of trial, defense counsel agreed to the State's motion seeking to preclude the introduction of evidence regarding any prior bad acts through either the cross-examination of the State's witnesses or examination of defense witnesses. Defense counsel informed the court, "There is no issue as to the motion [*in limine*]—no objection." Having agreed to the motion *in limine*, the evidence was properly precluded. See *In re Swope*, 213 Ill. 2d 210, 217 (2004) ("Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented.").

¶ 37 Additionally, we find that Martell did not preserve the error for review because Martell failed to object to the exclusion of this evidence during trial and in his post-trial motion, only raising it for the first time on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for appellate review, "[*b*]*oth* a trial objection *and* a written post-trial motion raising the issue are required" (Emphasis in original)); *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2010) (same). At trial, defense counsel never argued that the *in limine* order did not apply to the fight inside the house. Although the record details four instances during the trial when the court sustained objections to testimony regarding the previous fight, none of the references to the fight were responsive to questions asked by defense counsel; rather, they

were all volunteered, either by Martell or his brother. Defense counsel's only questions to witnesses, including Martell, pertaining to the fight inside the house were designed to show that Martell was not involved, just as the State asked Eggleston, Herron and Dill whether they were involved in the earlier fight, which they denied. Furthermore, following a sidebar convened specifically to address Martell's volunteered testimony regarding Eggleston's involvement in the earlier fight, defense counsel represented that he was only trying to show that the crowd that approached Martell outside the party was the same crowd Martell had seen inside the party. Accordingly, we find that not only did Martell fail to provide offer of proof to enable us to determine whether the exclusion of evidence was proper, he also did not object to the exclusion of this evidence at trial, and therefore, we hold that Martell forfeited the issue. *Armstrong*, 183 Ill. 2d at 155.

¶ 38 Because Martell failed to preserve this issue, the only available avenue of review is plain error. Given that Martell has not responded to the State's discussion of plain error, we will not reach the sole evidentiary error raised by Martell on appeal. The trial court's decision not to permit the volunteered testimony is not a ruling that can be characterized as "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." (Internal quotation marks omitted.) *People v. Peterson*, 2017 IL 120331, ¶¶ 124-25 (as modified on denial of reh'g (Jan. 19, 2018)); see also *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 39 This is not a case where Martell was prevented from introducing evidence regarding his state of mind and the claimed need to act in self-defense. See *People v. Lynch*, 104 Ill. 2d 194 (1984); *People v. Keefe*, 209 Ill. App. 3d 744, 756 (1991) (trial court denied defendant the

opportunity to testify regarding his fear of the victim at the time he stabbed him). Martell and his brother (who stood next to Martell but claimed that he never saw him with a gun) testified in detail regarding their version of the altercation: the "group," consisting of seven to nine individuals who were taller and heavier than Martell and his brother, angrily approached them outside the party and "surrounded" them; Martell immediately stopped sitting on Dill's car; Martell's brother told the group they did not want to fight; Eggleston, unprovoked, punched Martell in the jaw; as Martell fell, the group "rushed" him; and, fearing for his life, he "retrieved" his gun from his waistband and began shooting so that he and his brother could escape.

¶ 40 We could detail all the evidence justifying rejection of Martell's version of events, but suffice to say that the evidence presented by the State, which the jury was entitled to accept, was diametrically opposed to Martell's version. It was the jury's province to decide which version they believed. See *People v. Turcios*, 228 Ill. App. 3d 583, 597 (1992) (jury not required to accept defendant's version of altercation with victim and defendant's flight from scene tended to negate claim of self-defense). It makes no difference whether Martell reached for his gun, which prompted Eggleston to punch him, or whether instead Eggleston punched Martell even though Martell made no movement toward his weapon. Neither scenario makes it more or less likely that Martell reasonably believed he needed to use deadly force to respond to a punch. See *People v. Thompson*, 354 Ill. App. 3d 579, 589-90 (2004) (defendant shot victim in response to being punched once; first degree murder conviction affirmed because defendant's response was "wholly disproportionate to the provocation").

¶ 41 Finally, Martell argues that his sentence was excessive. Martell received a 50-year sentence for the first degree murder of Gilliand and two 26-year sentences for the attempted murders of Eggleston and Herron. As Martell does not contend that any of these sentences were outside the statutory range, they are presumed proper. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 12 (under abuse of discretion standard, sentence within statutory range is presumed proper).

¶ 42 Martell's excessive sentence argument focuses on the trial court's determination that the attempted murder sentences should be served consecutive to the murder sentence and to each other, resulting in a total sentence of 102 years. The trial court based its determination that the sentences should be served consecutively on its factual determination that Eggleston and Herron sustained severe bodily injuries as a result of their gunshot wounds.

¶ 43 Consecutive sentences are mandatory when "[o]ne of the offenses for which defendant was convicted was first degree murder, a Class X or Class 1 felony, and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(d)(1) (West 2010). We review a trial court's determination that bodily injury is "severe" for purposes of consecutive sentences under the manifest weight of the evidence standard. *People v. Deleon*, 227 Ill. 2d 322, 331-32 (2008). We will not reverse a trial court's finding that a victim sustained severe bodily injury unless the opposite conclusion is clearly evident or unless the finding is unreasonable, arbitrary, or not based on the evidence. *Id.* at 332.

¶ 44 The trial court's finding that both Herron and Eggleston sustained severe bodily injury is amply supported by the evidence. Herron was shot as he was running away and as he turned to see if Martell was firing at him. The bullet entered his left hip area from the rear, traveled

through his abdomen and exited through the front right hip. Herron was hospitalized for two weeks. The gunshot wound resulted in diffuse peritonitis, a widespread inflammation of the tissue of the inner wall of the abdomen, which required removal of 10 centimeters of his small bowel and 2 centimeters of his colon. Herron also sustained injuries to his sigmoid colon, near the rectum. While hospitalized, Herron experienced blood clots that led to a heart attack. Eggleston likewise experienced a through and through gunshot wound that entered and exited his left thigh, with fragments of the bullet injuring his right leg in multiple locations as well. As a permanent consequence of these injuries, Eggleston has a drop foot. These injuries were "severe" for purposes of consecutive sentencing. See *People v. Johnson*, 149 Ill. 2d 118, 159 (1992) (gunshot wound to the shoulder sustained by victim that required hospitalization for one day properly considered "severe bodily injury"); *People v. Austin*, 328 Ill. App. 3d 798, 808-09 (2002) (victim suffered severe bodily injury where he required overnight hospitalization after one bullet struck him in the shoulder and a second grazed his head); *People v. Primm*, 318 Ill. App. 3d 411, 414-15 (2000) (single gunshot wound to victim's thigh satisfied severe bodily injury requirement for purposes of section 5-8-4)

¶ 45 Martell also takes issue with the trial court's failure during the sentencing hearing to articulate how information in the presentence investigation report, letters in mitigation from family members and others, and Martell's mental health issues impacted its sentencing decision. The trial court had all this information available at the time of sentencing and is presumed to have considered it unless the record affirmatively demonstrates otherwise. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Accordingly, Martell is not entitled to a new sentencing hearing.

¶ 46 C. CONCLUSION

¶ 47 The trial judge did not err when he excluded evidence that Martell saw the victims attacking another person a few minutes before they confronted the defendant because Martell agreed to the prosecutor's motion *in limine* to bar any evidence of prior bad acts of any witness or the victim[s] in this case, failed to provide offer of proof regarding the alleged confrontation, and failed to object to the exclusion of the evidence at trial or raise the issue in a posttrial motion. Finally, the court did not err when it held that the attempted murder sentences should be served consecutive to the murder sentence and to each other, resulting in a total sentence of 102 years because the trial court's determination that the sentences should run consecutively was properly based the court's factual determination that in addition to the murder of Gilliand, Eggleston and Herron sustained severe bodily injuries as a result of their gunshot wounds.

¶ 48 Affirmed.