2015 IL App (4th) 130672-U

NO. 4-13-0672

FILED
November 19, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Logan County
CHRISTOPHER J. HARRIS,	)	No. 09CF171
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Drazewski,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justice Turner concurred in the judgment.
Presiding Justice Pope specially concurred.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion in barring the admission of two statements at defendant's jury trial.

¶ 2 Following a May 2013 jury trial, defendant, Christopher J. Harris, was found guilty of five counts of first degree murder (720 ILCS 5/9-1(a) (West 2008)), one count of attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(3) (West 2008)), one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2008)), one count of home invasion (720 ILCS 5/12-11(a)(1) (West 2008)), and one count of armed robbery (720 ILCS 5/18-2(a) (West 2008)). In July 2013, the trial court sentenced defendant to five terms of natural life imprisonment for first degree murder, 30 years' imprisonment for attempt (first degree murder), 30 years' imprisonment for home invasion, and 20 years' imprisonment for armed robbery, all of

which were imposed consecutively. Defendant appeals, arguing the trial court erred in refusing to admit two statements relevant to support his claim of self-defense. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2009, the State charged defendant by indictment with 11 counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2008)) for the death of Raymond ("Rick") Gee, 11 counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2008)) for the death of Ruth Ann Gee, 11 counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2008)) for the death of Justina Constant (16 years old), 11 counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3) (West 2008)) for the death of Dillen Constant (14 years old), 14 counts of first degree murder (720 ILCS 5/9-1(a)(1), (2), (3); 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2008)) for the death of Austin Constant (11 years old), one count of attempt (first degree murder) (720 ILCS 5/8-4(a) (West 2008)) for the injuries caused to T.G. (3 years old), two counts of home invasion (720 ILCS 5/12-11(a)(1), (2) (West 2008)), one count of armed robbery (720 ILCS 5/18-2(a) (West 2008)), three counts of residential burglary (720 ILCS 5/19-3 (West 2008)), one count of robbery (720 ILCS 5/18-1(a) (West 2008)), one count of attempt (criminal sexual assault) (720 ILCS 5/8-4(a) (West 2008)), and one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2008)). (The State later nol-prossed the residential burglary, robbery, and attempt (criminal sexual assault) charges.)

¶ 5 In August 2012, defendant filed a notice of intent to assert the affirmative defense of self-defense as to the charges relating to the death of Dillen.

¶ 6 In March 2013, defendant filed a motion *in limine* seeking to introduce *Lynch* evidence (see *People v. Lynch*, 104 Ill. 2d 194, 470 N.E.2d 1018 (1984)). Defendant alleged he

observed Dillen inside the Gee residence and believed him to be in the process of killing the other members of the Gee family. To demonstrate he reasonably believed he needed to act in self-defense and to show Dillen was the initial aggressor, defendant sought to elicit testimony from various witnesses regarding (1) specific acts of violence by Dillen and (2) Dillen's reputation for violent and aggressive behavior.

¶ 7 In April 2013, defendant filed a motion *in limine* seeking to introduce a hearsay statement of Ruth. Specifically, defendant sought to introduce a 2007 statement wherein Ruth stated to Olivia Messena, Dillen's therapist, she was "worried [Dillen was] going to severely hurt himself or someone else." Defendant alleged "Ruth['s] *** worry about [Dillen's] aggressive, uncontrollable behavior [was] not only central to [his] assertion of self-defense, but it also tend[ed] to prove that [Dillen] *** committed certain offenses with which [d]efendant [was] charged." The State argued Ruth's 2007 statement was hearsay, did not fit within a hearsay exception, and was irrelevant. Following a hearing, the trial court denied defendant's motion and excluded the statement, finding it was remote in time and did not contain a threat by Dillen to any victim of the crime for which defendant was charged.

¶ 8 That same month, following a hearing on defendant's motion *in limine* seeking the admission of *Lynch* evidence, the trial court, over the State's objection, entered an order allowing defendant to elicit testimony from several witnesses regarding specific instances demonstrating Dillen's violent behavior between 2007 and 2009.

¶ 9 A. Jury Trial

¶ 10 In May 2013, the trial court held a jury trial. As defendant is not asserting the evidence was insufficient to convict him, we briefly summarize the evidence adduced at trial.

¶ 11 In September 2009, defendant was living with his ex-wife, Nicole Gee, the daughter of Rick. On September 17, 2009, defendant moved out of his ex-wife's house and moved in with his brother, Jason Harris.

¶ 12 Jason testified, on the evening of September 20, 2009, defendant and Jason smoked marijuana, drank various types of alcohol, and ingested cocaine. Defendant and Jason drove to Nicole's house but left after seeing no lights were on. Defendant told Jason that Justina, Nicole's 16-year-old sister, had "hit on him" a few times and he wanted "to stop and talk to her." Defendant and Jason drove to the Gee residence.

¶ 13 Upon arriving at the Gee residence, defendant exited the truck and retrieved a tire iron, which he hid inside the sleeve of his shirt. Defendant entered the Gee residence. A few minutes later, Jason heard a loud thump and a woman's loud scream. Jason ran and hid behind a group of trees. Approximately 10 minutes later, Jason saw Dillen crawl out of Justina's window. Jason did not see anything in Dillen's hands. Dillen called for Jason, but Jason did not respond. Dillen returned into the house through the front door. Within a few minutes, Jason saw Dillen exiting through the front door with defendant following behind him. Moments later, Jason saw defendant standing over Dillen, who had his back on the ground and his hands up, striking him with the tire iron. Jason heard Dillen say " ' Chris stop, please stop' " in a distressed, hushed voice. Defendant then went back into the house, still carrying the tire iron. A moment later, Dillen followed. Approximately ten minutes later, defendant exited the Gee residence with the tire iron in his hand. Jason approached defendant and asked what happened, to which defendant did not respond but instead returned into the house. Jason heard "multiple thumps," which he believed was defendant destroying the house.

¶ 14 Defendant, covered in sweat and blood, exited the Gee residence, carrying the tire iron and a laptop computer. Jason asked defendant what happened, to which defendant responded he "fucked up" and "killed them all." Defendant and Jason returned to the truck and, while driving away from the Gee residence, defendant stated "he hoped none of them woke up to point the finger at him." Defendant told Jason not to tell anyone anything.

¶ 15 After leaving the Gee residence, defendant disposed of the tire iron, laptop computer, and his shoes. Defendant later burned the clothes he had been wearing.

¶ 16 The next day, Jason spoke with defendant about what happened the night before. Defendant indicated he was in Justina's room, with the tire iron hidden behind his back, and asked Justina if she wanted to go out, to which Justina responded she did not. Dillen then came into the room and asked defendant what he had behind his back. The next thing defendant knew, he "smacked" Justina. Rick then came into the room, and defendant struck him; defendant believed he broke Rick's jaw. Defendant then "took care" of Ruth. Defendant followed Austin into the bathroom and took care of him. Dillen was "the hardest to kill" because he attacked him with a butcher knife. Defendant stated "he couldn't leave any witnesses."

¶ 17 Defendant and Jason devised a story to tell the police in which they had not gone to the Gee residence.

¶ 18 On September 21, 2009, Rick, Ruth, Justina, Dillen, and Austin were found dead in their home. T.G. was found alive but suffering from severe head trauma.

¶ 19 Defendant later visited T.G. at the hospital. Defendant told Jason he was worried T.G. would identify him. Defendant also told Jason he bought a larger size shoe to prevent the police from matching him to shoe prints found at the Gee residence and took the laptop computer

because he thought it might have had a camera. Defendant indicated a blister on his hand was from the use of the tire iron on the night of the incident.

¶ 20 Dr. John Ralston, the pathologist who performed autopsies of Rick, Ruth, Justina, Dillen, and Austin, testified all five had defensive wounds and appeared to have been struck after becoming incapacitated and being unable to defend themselves. Dr. Ralston testified most of the injuries could have been caused by the same type of instrument, such as a tire iron. Dr. Channing Petrak, a physician who treated T.G., testified T.G. suffered severe head trauma and had defensive wounds. The injuries to T.G. could have been caused by a tire iron.

¶ 21 The State offered physical evidence corroborating Jason's testimony, including evidence (1) Dillen's blood was found on a bucket outside, the front door handle, the deck and deck rail, and a knife; (2) Austin's blood was found in the master bathroom; and (3) Rick's blood was found in defendant's truck.

¶ 22 Ty Cline, defendant's cellmate, testified defendant stated he killed Rick, Ruth, and Dillen with a tire iron. Cline also testified defendant stated he struck T.G. and discarded the evidence of the crime. Cline testified defendant did not assert he acted in self-defense.

¶ 23 Defendant testified on his own behalf. Defendant indicated, after arriving at the Gee residence, he discovered Rick lying in the hallway, unresponsive, Ruth in her bedroom, bloody, and Austin in the bathroom, bloody but still breathing. Dillen attacked defendant with a knife. Defendant picked up a tire iron, which he found on the floor next to Rick, and struck Dillen. Dillen left the house and defendant followed him outside. Once outside, Dillen again attacked defendant. After striking Dillen with the tire iron multiple times, defendant returned inside to check on Austin. Dillen came back inside and the fight between defendant and Dillen

continued throughout the house. Defendant struck Dillen multiple times until Dillen could not get back up.

¶ 24 Defendant grabbed the Gee's laptop computer and left. Defendant testified he grabbed the computer because he thought it had a camera and "didn't want to have to explain." Once outside, defendant told Jason, "they're all dead." After leaving the Gee residence, defendant threw away his shoes, the tire iron, and the laptop computer.

¶ 25 Defendant testified he lied to his family and the police and did not tell anyone he acted in self-defense because he did not want to have to explain what happened. Defendant implicated strangers as well as other family members to the police.

¶ 26 Defendant presented the testimony of Dr. Phillip Rossi, Dillen's primary care physician. Dr. Rossi treated Dillen between 2006 and July 2008 for attention deficit disorder (ADD). Dr. Rossi testified children with ADD could exhibit aggression, although it is a common diagnosis and none of the symptoms involve extreme levels of violence. Dr. Rossi testified Dillen's parents reported, in 2007, Dillen had disruptive behavior in school. However, Dillen's parents later reported improved behavior. In January 2007, Dr. Rossi suggested Dillen see a child psychiatrist.

¶ 27 Prior to presenting additional evidence, defendant filed a motion *in limine*, seeking to introduce a statement from "sometime in 2007" in which Rick stated to his mother "if they didn't get some help for Dillen, he was afraid they would wake up dead," and a motion to reconsider the trial court's ruling excluding Ruth's statement. Defendant sought to introduce these statements as evidence of Rick's and Ruth's mental states as they related to their concerns about Dillen's behavioral problems. The State asserted the statements were hearsay, did not fit

within a hearsay exception, and were irrelevant. In relevant part, the State argued the statements were remote in time and there was an absence of a continuity of Ruth's and Rick's states of mind. The State noted, even if there were "continuing behavioral problems, the defense ha[d] at their arsenal the ability to subpoena all those teachers [who wrote disciplinary referrals and] put them on the stand to testify about what [Dillen's] behavior was like *** rather than piggy back it on a statement that is two years old." The trial court denied defendant's motions, finding the statements to be remote in time and they did not contain threats against any of the victims.

¶ 28 Defendant presented the testimony of Olivia Messena, Dillen's therapist. Messena was informed of Dr. Rossi's suggestion Dillen see a child psychiatrist, but she did not make the referral as Dillen did not keep enough appointments for her to complete his assessment.

¶ 29 Defendant presented the testimony of Dr. Craig Anderson. Dr. Anderson testified he reviewed Dillen's records and found Dillen had risk factors for violence, including exposure to video-game violence, ADD, acting out at school, low economic status, and being a male. Dr. Anderson testified regarding Dillen's history of physical violence and aggression toward objects and instances of verbal aggression. Dr. Anderson acknowledged (1) no single risk factor or set of risk factors could predict whether a person will become violent, (2) risk factors cannot be used to predict future violence, and (3) he did not perform a psychological evaluation of Dillen.

¶ 30 In rebuttal, the State presented evidence from Dillen's teachers, coach, and the postmaster, who testified regarding Dillen's behavior between 2007 and 2009. These witnesses' testimonies demonstrated Dillen had not exhibited unusual signs of violence. Defendant did not ask the court to reconsider its rulings on Rick's and Ruth's statements following the State's rebuttal.

¶ 31 B. Jury's Verdict, Posttrial Motion, and Sentencing

¶ 32 On May 31, 2013, the jury found defendant guilty of five counts of first degree murder, one count of attempt (first degree murder), one count of aggravated battery of a child, one count of home invasion, and one count of armed robbery.

¶ 33 On July 9, 2013, defendant filed a motion for a new trial, alleging, in relevant part, the trial court erred in denying his (1) motions *in limine* regarding Rick's and Ruth's statements, and (2) motion to reconsider the denial of his motion *in limine* regarding Ruth's statement.

¶ 34 That same month, the trial court held a hearing on defendant's motion for a new trial and sentencing. The court denied defendant's motion and sentenced him to five terms of natural life imprisonment for first degree murder (720 ILCS 5/9-1(a) (West 2008)), 30 years' imprisonment for attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(3) (West 2008)), 30 years' imprisonment for home invasion (720 ILCS 5/12-11(a)(1) (West 2008)), and 20 years' imprisonment for armed robbery (720 ILCS 5/18-2(a) (West 2008)), all of which were imposed consecutively. (The court merged the aggravated-battery-of-a-child conviction with the attempt (first degree murder) conviction.)

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, defendant argues the trial court erred in refusing to admit the out-of-court statements made by Ruth and Rick relating their concern Dillen would violently act out. Specifically, defendant asserts the court erred in excluding Ruth's 2007 statement she was "worried [Dillen was] going to severely hurt himself or someone else," and Rick's 2007

statement "that if they didn't get some help for Dillen, he was afraid they would wake up dead." Defendant asserts 1) the trial court's grounds for excluding the statements were erroneous, 2) the statements were admissible under the state-of-mind exception to the hearsay rule, and 3) the statements were relevant. As to the relevancy of the statements, defendant contends they were relevant to 1) refute the State's rebuttal evidence, 2) assist the jury in determining whether Dillen was the aggressor, and 3) refute the State's accusation the defense had fabricated his claim of self-defense. Defendant maintains he was prejudiced by the exclusion the statements.

¶ 38 Defendant further asserts, to the extent trial counsel's failure to ask the trial court to reconsider its rulings after the State's rebuttal evidence or argue the statements were admissible pursuant to *Lynch* results in forfeiture of his claims on appeal, trial counsel rendered ineffective assistance.

¶ 39 A. Standard of Review

¶ 40 "The admissibility of evidence rests within the discretion of the trial court, and its decision will not be disturbed absent an abuse of that discretion." *People v. Pikes*, 2013 IL 115171, ¶ 12, 998 N.E.2d 1247. A trial court abuses its discretion only where its "ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001). We may affirm the trial court's exclusion of evidence on any basis supported by the record. *People v. Dunmore*, 389 Ill. App. 3d 1095, 1109, 906 N.E.2d 1233, 1246 (2009).

¶ 41 B. Trial Court's Ruling

¶ 42 The trial court excluded Ruth's and Rick's statements, finding they were too remote in time to be relevant and did not contain any threats by Dillen against his family

members. Forfeiture aside, and regardless of the purpose for which the statements were offered, we find no error in the trial court's exclusion of the evidence.

¶ 43 In determining the admissibility of evidence, a trial court must decide "whether the proferred evidence fairly tends to prove or disprove the offense charged and whether that evidence is relevant in that it tends to make the question of guilt more or less probable." *People v. Wheeler*, 226 Ill. 2d 92, 132, 871 N.E.2d 728, 750 (2007). "Evidence may be irrelevant if it is remote in time from the fact of consequence that it is being offered to prove." *People v. Decker*, 126 Ill. App. 3d 428, 437, 467 N.E.2d 366, 373 (1984). If the evidence is too remote in time or too speculative to shed light on the fact to be found, it should be excluded. *Wheeler*, 226 Ill. 2d at 132, 871 N.E.2d at 750. The point in time at which a piece of evidence may become relevant cannot be fixed with precision. *Decker*, 126 Ill. App. 3d at 437, 467 N.E.2d at 373. "It is entirely within the discretion of the trial court to 'reject offered evidence on grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or possibly unfair prejudicial nature.' " *Wheeler*, 226 Ill. 2d at 132, 871 N.E.2d at 750 (quoting *People v. Harvey*, 211 Ill. 2d 368, 392, 813 N.E.2d 181, 196 (2004)).

¶ 44 We find the trial court was within its discretion to determine two statements from a 14-year-old victim's deceased parents relating their concern of the victim's behavior two years prior to the family's murder should be excluded as too remote in time. We further find the trial court was within its discretion to exclude the statements as speculative as they did not contain any threats by Dillen against his family members. When considering the remoteness of the statements and the lack of specific threats to individual family members, we find the trial court did not abuse its discretion in excluding Ruth's and Rick's statements or deny defendant his

constitutional right to present a defense. As we conclude there was no error on the merits, any claim of ineffective assistance of counsel relating to the admission of these statements must also fail.

¶ 45 III. CONCLUSION

¶ 46 We affirm defendant's convictions and sentences.

¶ 47 Affirmed.

¶ 48 Pope, P.J., specially concurring.

¶ 49 While I concur with the result in this case, I write separately because in my opinion, Ruth's and Rick's states of mind were irrelevant to any issue in the case and should have been excluded on that basis. In *People v. Cloutier*, 178 Ill. 2d 141, 155, 687 N.E.2d 930, 936 (1997), our supreme court held out-of-court statements admitted under the state-of-mind exception may be used to show the state of mind only of the declarant, not of any other person. In addition, in order to be admissible, the *declarant's* state of mind must be relevant to a material issue in the case. *Id.* Under the defense theory of the case, Dillen's state of mind may have been relevant, but Rick's and Ruth's were not. See Committee Commentary to Illinois Rule of Evidence 803(3)(B) (eff. Jan. 1, 2011) ("the hearsay exception for admissibility of a statement of intent as tending to prove the doing of the act intended applies only to the statements of intent by a declarant to prove her future conduct, not the future conduct of another person").