2017 IL App (1st) 142409-U

No. 1-14-2409

Order filed February 22, 2017

Third 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.	)	No. 12 CR 6136
	)	
CALVIN BROOKS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in imposing a sentence of 14 years' imprisonment for second-degree murder.

¶ 2 Defendant, Calvin Brooks, was charged with six counts of first degree murder. Following a bench trial, the trial court found defendant guilty of second-degree murder and sentenced him to 14 years in prison. On appeal, defendant contends that his sentence is excessive. For the reasons below, we affirm.

¶ 3 Defendant's conviction arose from an incident that took place between defendant and the victim, Anthony Linnear, during the early morning hours of February 12, 2012. This incident, which led to Linnear's death, occurred after defendant and Linnear attended the same housewarming party hosted by three individuals, Shadey Satterfield, Sadora Franklin, and Dalicia James. Satterfield and Franklin were cousins of Linnear's girlfriend, and Dalicia James was defendant's cousin.

¶ 4 At trial, Virgie Freeman, who was Linnear's girlfriend, and Gerrad Lamour, who was Linnear's cousin, both testified that they went to the housewarming party with Linnear and two of Linnear's childhood friends. They arrived at the party at about 11 p.m. or 11:30 p.m. Freeman testified that when they arrived, there were about 30 to 40 people there, and Lamour testified that there were about 15 to 20 people there.

¶ 5 Freeman and Lamour both testified about events that took place during the party. Freeman testified that, at one point during the party, she saw defendant, who she identified in court, and a second man get upset after Linnear's friend had danced with a girl. The man and defendant spoke to the girl, and the incident "kind of defused." Lamour testified that during the party, he saw a man, identified in court as defendant, hit a child on the back of the head, and when the child's mother comforted the child, defendant took him, pushed his head, and called him a name. At another time during the party, Lamour testified that he saw defendant and another man whispering and making gestures with each other. Lamour testified that they were "cheek to cheek" and rubbing foreheads, "as if they w[ere] hyping themselves up for a football game."

¶ 6 At around 1 a.m., when Freeman, Lamour, and Linnear were getting ready to leave the party, the lights went out by the front door. Freeman testified that defendant was upset and

heard him scream, "Oh, no, we don't do no lights, we don't do no lights, cut the lights on." Lamour did not know who turned off the lights, but heard defendant say "Don't do that." After a few seconds, the lights turned back on. Freeman testified that she left the party with Viola Thomas, Linnear, and Lamour. Lamour testified that he left the party with Linnear and a girl, whom he did not identify. When they were outside, they noticed that Linnear's two friends were not with them, so Linnear went back to the apartment to get them.

¶ 7 The incident between defendant and Linnear occurred when Linnear went back to the apartment. Lamour and Freeman both testified about it.

¶ 8 Lamour testified that because the apartment door was locked, Linnear lightly knocked on it. As soon as Linnear knocked, a woman came out. Lamour and Linnear caught the door before it closed, and when they opened it, defendant was standing in the doorway. Defendant and Linnear looked at each other for about four or five seconds, Linnear said "what's up?" defendant said "what's up?" and then defendant "lunged" at Linnear and pushed him in his throat and neck area. When Lamour tried to get in between them, he noticed a revolver in defendant's waistband. He tried to push defendant back into the apartment. Defendant slipped and lost his balance. When Lamour tried to close the door, Linnear tried to grab defendant and punch him.

¶ 9 After Lamour tried to close the door, defendant and Linnear tussled with each other. During this "tussle," defendant pulled the gun out and tried to aim it at Linnear's head. Because Lamour was trying to separate them, the barrel of the gun faced Lamour. Defendant and Linnear slipped on the snow and ice in the vestibule area. When they separated from each other, Linnear ran out of the door, and defendant followed. Then, as defendant was chasing Linnear out the front door, the first gunshot went off. Lamour paused and then ran to the porch area to help

Linnear. Linnear and defendant were "struggling" and "tussling" in the porch area at the top of the stairs, near the main door of the building. Defendant had the gun in his hand. When Lamour approached them, defendant pointed the gun at Lamour. Lamour ran back to the vestibule area, and after a couple of seconds, he heard another gunshot. He testified that he was "Silent with my God, with myself" and called 911. Then, after about seven or eight seconds, he heard a third gunshot. After the third gunshot, he waited for about one to three minutes, and then went to help Linnear, who was lying on the ground.

¶ 10 On cross-examination, Lamour testified he told the detectives that prior to the shooting, after he pushed defendant back and tried to close the apartment door, the gun fell out of defendant's hand, Linnear tried to pick it up, and Lamour tried to kick it away.

¶ 11 Freeman testified that when Linnear went back to the party to get his two friends, she went to Linnear's van, which was parked directly in front of the building. She testified that when Linnear pushed open the apartment door, he hit the person on the other side. Then, Linnear and defendant argued, defendant hit Linnear, and Linnear fell down, got up, and hit defendant. On cross-examination, she testified that she did not know whether Linnear had pushed defendant first.

¶ 12 Freeman testified that when Linnear and defendant were hitting each other, defendant pulled out a silver revolver from his waistband and held it up. Linnear grabbed defendant's wrist and tried to get the gun from him. When defendant and Linnear were wrestling over the gun, the gun went off, they stumbled out to the porch landing, and continued to "scuffle." Then, the gun went off a second time. Defendant and Linnear fell down the stairs and landed on the sidewalk in front of the apartment building. She testified that after they fell down, defendant got

up, stood over Linnear, who was lying on the ground, and shot him. Defendant then ran from the scene.

¶ 13 Viola Thomas testified that she left the party with Freeman, her sister, and Linnear. After they went down the stairs from the vestibule, Linnear went back to the party to get his cousin. When Freeman directed her attention upstairs, Thomas looked up and saw defendant and Linnear in the hallway area of the apartment building. She saw defendant pull out a silver long gun from his waistband. She ran off with her sister and then heard the gunshots. She could not recall whether Linnear or Lamour had tried to grab defendant's gun, and testified that she never saw anyone other than defendant touch the gun.

¶ 14 Shadey Satterfield, a host of the housewarming party, testified that when Freeman, Linnear, and Linnear's cousin left the party, she heard arguing in the hallway and saw defendant "scuffling" with Linnear. She saw defendant pull a gun out with his right hand from the left side of his waist. She ran to her bedroom, and then heard gunshots. She did not know if Linnear attempted to grab the gun from defendant or how the gun went off.

¶ 15 The parties stipulated that if the assistant medical examiner, who conducted Linnear's autopsy, were called to testify, he would have testified that Linnear suffered a gunshot wound to the chest and two gunshot wounds to the right leg, that the cause of death was multiple gunshot wounds, and that the manner of Linnear's death was homicide. The parties further stipulated that Linnear tested positive for ethanol in his peripheral blood in the amount of 295 milligrams, which would convert to a .289 blood alcohol rate.

¶ 16 Defendant testified that he did not know Linnear before the party. On the night of the party, defendant carried, in his waistband, an eight-inch barrel, .44 Magnum revolver, which he agreed was the largest caliber gun that an average citizen would carry. He carried the gun for

protection and, before he went to the party, the gun was loaded and the cylinder was full with six live rounds.

¶ 17 On the night in question, defendant picked up Taneshia Simms and another woman and dropped them off at the party. Then, he went to his uncle's house because they had planned to play cards with another relative that night. Because these plans did not work out, he went to the housewarming party with his uncle. They arrived at the party at about 10:30 p.m. or 10:45 p.m. At the party, he had a drink, which was the first drink he had that night.

¶ 18 During the party, there was an incident involving defendant, defendant's female cousin, and a man, whom he referred to as "Jaba." Jaba tried to talk with defendant's cousin but his cousin ignored him. Jaba asked his cousin her age three times, and defendant told him, "[S]he's 16, she's my cousin. She okay. She cool." After this interaction, Jaba walked away and met with Linnear, Lamour, and another man and started whispering. Later, Jaba came back and asked defendant, "[U]p or down?" Defendant did not know what that meant, but he considered it a threat. At another point during the party, the lights went off, and defendant said, "[T]hat's crazy, people playing with lights." Defendant did not see Linnear turn them off but thought Linnear had turned them off intentionally, as Linnear responded to defendant's comment and laughed. This incident made defendant nervous but not mad.

¶ 19 After the light switch incident, at around 12:45 a.m. to 1:15 a.m., Linnear left the party. About 20 minutes later, defendant left. When defendant opened the door to leave, Linnear was leaning on the door in front of the doorway and his eyes were "glossy." Linnear stared at him and pushed him. After defendant regained his balance, Linnear grabbed him and pulled him into the hallway.

¶ 20 Defendant and Linnear "tussled" with each other. Linnear grabbed defendant's neck, and defendant tried to push him off. Then, Lamour pulled defendant and started hitting him. Defendant felt Linnear try to take the gun off his waist, and they fought over the gun. He testified that he knew Linnear was trying to get the gun because he could feel the gun moving. Defendant grabbed the gun, and they continued to "tussle" or "struggle" for a few seconds. When defendant was holding onto the barrel and Linnear was holding on the handle of the gun, the gun discharged. Defendant did not know whether Linnear had been hit. After the first gunshot went off, Linnear released his hands from the gun, a woman opened the front door and ran out, and defendant followed her out of the door. When defendant was at the landing outside of the doorway, Linnear grabbed him and threw him down the stairs. Defendant fell on his wrist and left rib area, and the gun "went off to my right side" on the stairs. Linnear came down the stairs and reached for the gun. Defendant testified that he feared for his life. He grabbed the gun and shot Linnear, who was standing above him, in the left hip area. Then, defendant backed up off of the stairs to the sidewalk and tried to run, but someone tripped him. He stumbled, turned around, shot his gun one time in the "general direction," and continued to run. He did not see who tripped him and did not know whether anyone had been hit.

¶ 21 Defendant ran and walked through the alleys and streets for about 30 minutes. He put the gun in a city garbage can located in an alley about three blocks away because he thought the police would try to kill him if they thought he had a gun. He went to his sister's house and told her he "probably hurt somebody because they tried to jump on me." He called his wife and told her that "something bad happened." About an hour later, defendant learned from his uncle that Linnear had died. Sometime during the early morning hours, his uncle moved his car, which was parked by the scene of the incident. At about 5 a.m. or 6 a.m. that morning, he went to the

hospital to get treatment for his wrist. Then, he went to a hotel and stayed there with his wife and children until February 14, 2012, when he turned himself in. He testified that he could not go home during that time because of death threats. He learned that the police were looking for him on February 13, 2012, but did not turn himself in right away because he wanted to get a lawyer first.

¶ 22 Defendant presented stipulations entered into between the parties regarding prior statements from some of the witnesses. The parties stipulated that during Lamour's interview with a detective after the incident, he stated that when Linnear and his girlfriend were leaving the party, defendant was coming back into the party. Then, defendant and Linnear got into each other's faces, defendant pushed Linnear, and Linnear hit back. Lamour saw a handgun fall from defendant's hand to the ground and Lamour tried to kick the gun away from defendant. Lamour ran up the stairs and heard three gunshots. When Lamour came back, Linnear was unresponsive on the sidewalk. With respect to Freeman, the parties stipulated that during her videotaped interview after the incident, she indicated that she did not see how the "scuffle" between defendant and Linnear started.

¶ 23 The parties further stipulated that on February 12, 2012, defendant was treated at the Jessie Brown Veterans' Administration Medical Center, that x-rays showed that his left wrist was fractured, and that he had surgery to the wrist on February 25, 2012.

¶ 24 In rebuttal, the State called Taneshia Simms. She agreed that in February 2012, she was "seeing" or "dating" defendant, and that on February 11, 2012, defendant drove her and her friend to the party. At the party, when she was dancing with her friend, she saw defendant throw a "guy" to the ground and saw this man and defendant "tussle" from the apartment into the hallway. When she could not see the incident anymore, she heard two gunshots come from the

hallway. On cross examination, Simms testified that she did not think that the person she saw defendant push to the ground was the same person who was shot. Defendant presented a stipulation between the parties that, during Taneshia Simms' videotaped interview, Simms indicated that the man who was shot was not the same man she saw defendant push to the ground.

¶ 25 Following closing argument, the trial court found defendant guilty of the offense of second-degree murder and merged all counts. In doing so, the trial court stated as follows:

> "I will note that Calvin Brooks did arm himself with a gun before he went out to go to a party that night. I will also note that I do not believe that he was looking to kill somebody, that that was the motivation or plan that he had going to the party. Anthony Linnear wasn't looking to get into the kind of confrontation that he ultimately succumbed to as well. There was a party. There was alcohol, quite a bit of alcohol. Mr. Linnear was intoxicated. There was some business about turning lights off and upsetting some people at the party. Words got exchanged, things got out of hand. Something happened in the hallway and down the stairs, and I know that at some point Mr. Brooks tumbled down the stairs, and he suffered a wrist injury, something requiring medical attention. It was broken or fractured or something that did happen. That happened before any fatal shots were fired."

Defendant filed a motion for a new trial, which the trial court denied.

¶ 26 At the sentencing hearing, the trial court noted that it had a presentence investigation (PSI) report, and the State read victim impact statements. After the State read the victim impact statements, the State called Lamour as a witness. He testified that Linnear "tend [*sic*] to amaze me of all the things that he said he was going to accomplish," that he was a "fantastic father,"

that he took care of his wife and children, and that he was a "cornerstone in his family." He testified about the impact that Linnear's death had on Linnear's wife. Defendant did not call any witnesses, but defense counsel noted as follows: "I assume your Honor has read the letters. I don't want to read them out loud." The trial court responded, "I've read them and I've received them. I read them again today." Defense counsel requested that the letters be made part of the record, and the trial court indicated that they would be made part of the record.

¶ 27 In aggravation, the State argued that defendant did not demonstrate remorse, acceptance, or responsibility, because he, among other things, had family members retrieve his car from the scene of the incident, did not contact the police, disposed of the firearm, and went to a hotel. The State argued that defendant should be held accountable and responsible and that the impact on Linnear's family "will last a generation" and should not be "minimized or forgotten." The State requested that the trial court impose the maximum sentence of 20 years.

¶ 28 In mitigation, defense counsel argued that defendant's act was not premeditated and that he was attacked, as Linnear and Lamour were trying to get his gun from him. Defense counsel noted that defendant had no criminal history, was married for eight years, and had two children. Defense counsel advised the trial court that defendant grew up in Ogden Court Housing projects, that his parents were both addicted to drugs, that his mother had a mental illness, and that he served in the Army for several years, where he did three tours of duty. Defense counsel informed the trial court of defendant's educational history and noted his volunteer activities at school, church, and at nonprofit organizations. Defense counsel advised the trial court that he received the outstanding parent service award for his work in helping other schools with their children and stated that "[h]e would do everything he could to better his community." Defense counsel explained that the trial court did not have to worry about defendant "ever committing

another crime as long as he lives," that defendant "obviously realizes the seriousness of this situation," that he was not a danger to society, that he was a good father and husband, and that his children needed him at home. Defense counsel requested that the trial court impose the minimum sentence of four years.

¶ 29 In allocution, defendant stated that he was "clearly sorry" and that "[t]his is a situation where everybody lose [*sic*]. On one side, life is lost and can never be replaced. Both families are in extreme pain." Defendant asked for forgiveness from Linnear's family and explained that he did not plan what had happened and it was not something he wanted. He stated, "If I could change it, I would," and that "[a]ll I wanted to do was the stop the threats." He stated that he was "in no way, shape or form a murderer," but was a husband, father, and brother, who liked to play jokes and go to his children's school. At the end of allocution, defendant stated as follows: "I respectfully ask that this Honorable Court have mercy on me. I'm truly regretful and remorseful for the pain I have caused."

¶ 30 The trial court sentenced defendant to 14 years in prison, noting, among other things, "I have considered the facts and circumstances in this case at great length." The trial court denied defendant's motion to reconsider sentence.

¶ 31 On appeal, defendant argues that his 14-year sentence is excessive considering that there were no aggravating factors, that he does not have a criminal record, that he was a devoted parent and community volunteer, and that he was a decorated soldier who served two combat tours in the United States Army. Defendant contends that when the trial court imposed its sentence, it acknowledged the existence of "a great many" mitigating factors, but notes it did not state any statutory aggravating factors, as there were none that applied. Defendant acknowledges his crime caused serious harm, but argues that this fact cannot be used as an

aggravating factor because it is inherent in the offense of second-degree murder. He asserts that he is unlikely to commit another crime, as evidenced by his character references, that he suffered from post-traumatic stress disorder due to his experiences in the military, and that he would comply with terms of probation or mandatory supervised release, as his military service record and lack of criminal history demonstrate that he is a person who will follow the rules. Defendant argues that his prison sentence will impose a hardship on his two children and requests that we reduce his sentence to a term of no more than eight years.

¶ 32 A reviewing court should give great deference to the trial court's sentencing decision because the trial court is in a better position to consider the relevant sentencing factors, including the particular circumstances of the case and the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). To determine an appropriate sentence, other relevant sentencing factors "include the nature of the crime, the protection of the public, deterrence and punishment, as well as the defendant's rehabilitative prospects." *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 14. However, the trial court is not required to make a specific finding that a defendant lacked rehabilitative potential, nor is it required to give more weight to a defendant's rehabilitative potential than to the seriousness of the crime. *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992). The trial court is in the best position to find an appropriate balance between protecting society and rehabilitating the defendant. *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). The reviewing court "must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *Fern*, 189 Ill. 2d at 53.

¶ 33 The trial court is given great discretion to determine an appropriate sentence within the statutory limits (*Fern*, 189 Ill. 2d at 53), and on review, we will not alter a sentencing decision

absent an abuse of discretion (*People v. Jones*, 265 Ill. App. 3d 627, 639 (1994)). A trial court abuses its discretion when no reasonable person could agree with the trial court's position. *People v. Sven*, 365 Ill. App. 3d 226, 241 (2006). "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54.

¶ 34 Second-degree murder is a Class 1 felony with a sentencing range of 4 to 20 years. 735 ILCS 5/5-4.5-30(a) (West 2010). Here, the trial court sentenced defendant to 14 years' imprisonment, a term well within the permissible statutory range. The record indicates that the trial court was not only well aware of, but that it also considered the mitigating factors that defendant has identified. At the sentencing hearing, the trial court noted that it had defendant's PSI report, which included information regarding defendant's family, childhood, education, employment, health, and military service. Further, the trial court specifically stated that it read the letters that defendant submitted, and expressly noted that the letters from Department of Veterans Affairs indicated that defendant had sought treatment for post-traumatic stress disorder, and that the letters from defendant's family members indicated that "there is certainly a good side to him and that we ought not to consider what happened on this one day to be the story of his whole life." Defense counsel orally presented mitigating evidence to the trial court, including defendant's lack of criminal convictions, as well as background on his family, childhood, education, service in the United States Army, and volunteer activities at school, church, and nonprofit organizations. The trial court expressly noted defendant's lack of criminal convictions and his service in the military, and stated that it "considered the facts and circumstances in this case at great length." Accordingly, there is nothing in the record to support that the trial court did not consider any of the applicable mitigating factors that defendant has

identified. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) ("Where relevant mitigating evidence is before the court, it is presumed that the court considered it absent some indication in the record to the contrary other than the sentence itself.").

¶ 35 Defendant asserts that "While this offense did cause serious harm, that fact is inherent in any second degree murder and cannot be used to aggregate the sentence." In his reply brief, defendant clarifies that he is not asserting that the trial court relied on any improper aggravating factors. Rather, he argues that the trial court "failed to identify *any aggravating factors* when issuing sentence." (Emphasis in original.) While we recognize that the trial court "may *not* consider the end result, *i.e.*, the victim's death, as a factor in aggravation where death is implicit in the offense," it may consider the manner of Linnear's death and "the *seriousness, nature,* and *circumstances* of the offense." (Emphasis in original.) (*People v. Dowding*, 388 Ill App. 3d 936, 943 (2009). Here, the record indicates that the trial court expressly stated that it considered the "facts and circumstances in this case at great length." Given this statement, and that the trial court was not required to recite and assign value to each factor (*Bryant*, 2016 IL App (1st) 140421, ¶ 16) or to "articulate the process" it used to determine the appropriateness of defendant's sentence (*People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004)), we conclude that there is nothing in the record to support that the trial court based its sentencing decision on an improper aggravating factor.

¶ 36 Finally, we note the following argument from defendant's reply brief:

> "By far the most pervasive theme throughout the State's argument on this issue is its repeated reliance on the fact that the defendant brought a firearm to a party as some kind of aggravating factor. [Citation.] It cites statements from the trial court that it argues show that this was a significant factor in the trial court's sentencing decision.

> [Citation.] If the State is correct in its claim, then they themselves have proven that the trial court did in fact rely on an improper factor in aggravation [as] [t]he right of a citizen to carry a functional and loaded firearm for self defense is protected by the Second Amendment to the United States Constitution. *People v. Aguilar*, 2013 IL 112116, ¶¶ 21-22."

Defendant concludes that "the only aggravating factor that either the trial court or the State identified was Brooks's constitutionally protected act of carrying a firearm for self defense."

¶ 37 Defendant's argument seems to stem from comments made by the trial court at sentencing. When the trial court imposed its sentence, it stated as follows:

> "I have considered the facts and circumstances in this case at great length. I made the finding that I did, because I do believe that this is not a planned event. The worse [*sic*] thing that happened, though, Mr. Brooks walking around in large groups of people with a loaded gun. I don't understand what reasoning he thought he needed a gun for, and then the gun obviously came out much to [*sic*] quickly, didn't have to come out at all. Never should have been in his waistband in the first place. And that obviously led to why we're here now.
>
> But, there was some context to things that happened. There was nonsense about lights at the party, words, things got physical. He did suffer a broken arm during this event as well. But, he did commit a criminal act for which justice has to be heard."

While we acknowledge that the trial court discussed the fact that defendant had a loaded gun at the party, we find nothing in its comments to indicate that the trial court used that fact as an aggravating factor. Instead, it appears, from the sentencing hearing as a whole, that the trial court's statements occurred in the context of explaining the facts of the case and the seriousness

of the incident. See *Dowding*, 388 Ill. App. 3d at 943 ("In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court."). Accordingly, we find that defendant has not met his burden of establishing that the trial court relied on an improper aggravating factor. See *id.* (the defendant bears the burden of affirmatively establishing that a sentence was based on improper consideration).

¶ 38 We conclude that there is nothing in the record to indicate that the trial court did not consider the evidence in mitigation or that it considered an improper aggravating factor. Given the trial court's consideration of the facts and circumstances of this case, the evidence presented and considered by the trial court in mitigation, and that the 14-year sentence is 6 years below the 20-year maximum sentence for the offense of second-degree murder, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern,* 189 Ill. 2d at 54. Accordingly, we find no abuse of discretion in the length of defendant's sentence.

¶ 39 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 40 Affirmed.