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# IN THE COURT OF APPEALS OF INDIANA

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| WILLIAM LEON LILE, JR., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 79A02-0601-CR-31 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0412-MR-3

**November 15, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

William Lile, Jr. appeals his convictions for murder, Class A felony burglary, Class B felony robbery, Class B felony criminal confinement, and Class D felony resisting law enforcement. He also challenges his aggregate 188-year sentence, which includes a thirty-year habitual offender enhancement. We affirm.

## Issues

The restated and reordered issues before us are:

I. whether the trial court properly admitted hearsay into evidence;

II. whether the trial court properly admitted into evidence a will prepared by Lile;

III. whether there is sufficient evidence to support Lile's convictions; and

IV. whether Lile was properly sentenced.

## Facts

The evidence most favorable to the convictions reveals that Lile had been involved in a relationship with Andrea Browell. However, a few days before Thanksgiving 2004, Browell sent Lile a letter saying she wanted no further contact with him. On Thanksgiving morning, November 25, 2004, Browell saw Lile walking outside her house in Lafayette. She told Lile he needed to leave, and he ran away.

Browell then called her daughter, Tara Eby, who did not answer the phone. While leaving a message on Eby's answering machine, Browell saw that Lile had returned and was carrying a shotgun, which she related as part of her message. Browell's son, Eric

Gilley, was home from the Army and told her to hide under her bed. Lile broke into Browell's house by breaking out a kitchen window. He then shot Gilley in the chest with the shotgun, killing him. Browell, meanwhile, had managed to place two 911 calls while hiding under the bed and told the operator that Lile had broken into her house with a gun and had shot her son.

One of the last things heard on the 911 recording is Lile yelling, "Hurry where's the keys come on . . . ." Ex. 111A p. 2. Lile found Browell under the bed, dragged her out, and forced her into her car. When Lile opened the garage door and started to back out, he discovered that several police officers had arrived at the house. Police ordered Lile to stop, but he backed out quickly and continued driving. Several officers fired shots at the car as Lile drove away. Browell apparently was injured by at least one of these shots. Shortly thereafter, Lile crashed into a police car, flipping Browell's car onto its roof. Lile then surrendered to the police. In addition to at least one gunshot wound, Browell sustained a head injury.

The State charged Lile with murder, felony murder, two counts of Class A felony burglary, two counts of Class A felony robbery, Class B felony criminal confinement, Class B felony possession of a firearm by a serious violent felon, Class D felony theft, and Class D felony resisting law enforcement; it also alleged that he was an habitual offender. The State also sought to have Lile sentenced to life without parole. Lile filed a notice of intent to pursue an insanity defense, but he later withdrew this notice after a psychologist found no evidence that would support it.

The State later dismissed the serious violent felon charge. On November 16, 2005, a jury found Lile guilty as charged on the remaining counts. The next day, however, it was unable to reach a unanimous decision as to whether to recommend a sentence of life without parole. On December 13, 2005, the trial court declined to sentence Lile to life without parole. Instead, it sentenced him to the maximum sixty-five year term for murder, the maximum fifty year term for one count of Class A felony burglary, the maximum twenty year term for one count of Class B felony robbery, the maximum twenty year term for one count of Class B felony criminal confinement, and the maximum three year term for Class D felony resisting law enforcement. The court did not enter judgments of conviction for the other outstanding guilty verdicts. It also found Lile to be an habitual offender and enhanced the murder sentence by thirty years. All the sentences were to be served consecutively, for an aggregate term of 188 years. Lile now appeals.

## Analysis

### *I. Admission of Hearsay*

Lile first argues the trial court erroneously allowed the State to introduce into evidence hearsay statements made by Browell. He specifically challenges the admission of the recordings of the two 911 calls Browell placed and their transcripts, as well as the answering machine message she left for her daughter in which she said Lile was at her house with a gun. On appeal, Lile only asserts that admission of this hearsay evidence violated his right to confrontation under the Sixth Amendment to the United States

Constitution; he does not contend that these statements were inadmissible under the Indiana Evidence Rules.

We review rulings on the admission of evidence for an abuse of discretion. McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005). The Sixth Amendment does not permit the admission of testimonial statements of a witness who does not appear at trial unless he or she was unavailable to testify and the defendant had had a prior opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004). State hearsay law governs the admission of nontestimonial out-of-court statements. See id. at 68, 124 S. Ct. at 1374. Lile contends that the answering machine message and 911 calls constitute "testimonial" statements whose admissibility is governed by Crawford. We disagree.

We first address the admission of the answering machine message. The Crawford court did not provide a comprehensive definition of "testimonial" statements, but did indicate that they included the following:

> "ex parte in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially"; . . . "extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions"; . . . "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial"; . . . . Statements taken by police officers in the course of interrogations . . . .

Id. at 51-52, 124 S. Ct. at 1364 (citations omitted). Applying this formulation, this court has held that statements made by a child to his parents, who suspected that the child was being abused, were not "testimonial." Purvis v. State, 829 N.E.2d 572, 579 (Ind. Ct. App. 2005), trans. denied. This was so, despite the parents' suspicions and the fact that they informed the police of what the child had said. Id.

Applying Crawford and Purvis, we readily conclude that the message Browell left on her daughter's answering machine was not "testimonial." There was no government involvement whatsoever in the making of the statement. We also believe there is no indication Browell was contemplating that the message might be used in a later trial. She simply was describing what she was observing at the precise moment she was observing it. The trial court did not abuse its discretion in admitting the message into evidence.

With respect to the introduction of Browell's 911 calls, this case fits squarely under the Supreme Court's refinement of the Crawford rule in Davis v. Washington, -- U.S. --, 126 S. Ct. 2266 (2006).[1] The Court there held: "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." Davis, -- U.S. at --, 126 S. Ct. at 2273. The Court concluded that the 911 call of the victim in that case was "nontestimonial" under this definition, where the victim was speaking about events as they were happening, rather

[1] Davis was decided after Lile filed his initial brief in this case.

than describing past events; the call "was plainly a call for help against bona fide physical threat"; the statements made in the call, including the identity of the assailant, were necessary to resolve the ongoing emergency; and the statements were not made in a "tranquil" environment. Id., 126 S. Ct. at 2276-77.

The facts of this case directly parallel Davis. When Browell made the 911 calls, she was describing events as they were happening. It also is plain that Browell was calling for help against a bona fide physical threat. The statements Browell made in the call, including Lile's identity, were necessary to resolve the emergency. Finally, the environment in which Browell made the statements could in no sense be described as "tranquil." Indeed, Lile's shooting of Gilley, Browell's son, can be heard on the 911 recording. Browell's statements during the 911 calls clearly were made under circumstances objectively indicating that the primary purpose of the "interrogation" was to enable police assistance to meet an ongoing emergency. See id., 126 S. Ct. at 2273. The trial court did not abuse its discretion in admitting the 911 calls into evidence.

### *II. Admission of Will*

Lile next contends the trial court erroneously allowed the State to introduce into evidence a handwritten will he prepared on November 22, 2004.[2] The State intimated in argument to the jury that the will was evidence that Lile had planned the November 25 attack ahead of time, i.e. that he thought there was a possibility he might die while carrying out the attack.

[2] The will itself does not state what year it was written, but Lile describes it as having been written a few days before the November 25, 2004 incident.

Lile specifically argues the prejudicial impact of the will outweighed any probative value it might have had. Indiana Evidence Rule 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Even if proffered evidence or testimony is only marginally relevant, it is within the sound discretion of the trial court to admit it under Rule 401. Houston v. State, 730 N.E.2d 1247, 1250 (Ind. 2000). Under Evidence Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." When determining the likelihood of unfair prejudicial impact from relevant evidence in a criminal case, courts must assess the danger that the jury will substantially overestimate the value of the evidence or that the evidence will arouse or inflame the passions or sympathies of the jury. Sanders v. State, 840 N.E.2d 319, 323 (Ind. 2006).

We conclude the will was at least marginally relevant in tending to prove that Lile anticipated facing grave danger in the near future. It is true that the execution of a will does not necessarily demonstrate that the person anticipates the possibility of imminent death, but the timing of the will in this case is telling. Certainly, the State was free to argue that it was telling. We also perceive little danger that the will would arouse or inflame the passions or sympathies of the jury. Nothing in the will referenced prior bad acts or plans to carry out bad acts in the future. It simply and straightforwardly disposes of Lile's property. We further believe there is little risk the jury would have

overestimated the value of this evidence, especially as compared to Browell's testimony and her admissible statements on her daughter's answering machine and in the 911 calls. The State did not make the will a focal point of its arguments. The trial court acted within its discretion in admitting the will into evidence.

### *III. Sufficiency of the Evidence*

We next address Lile's argument that there is insufficient evidence to support his convictions. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). "If there is sufficient evidence of probative value to support the conclusion of the trier of fact then the verdict will not be disturbed." Id. Lile generally contends the State failed to prove that he perpetrated the crimes against Gilley and Browell.

Lile challenges the credibility and consistency of Browell's testimony, as well as the lack of physical, forensic evidence linking Lile to the attack. He claims Browell's testimony describing the attack and identifying him as the perpetrator was incredibly dubious. Under the "incredible dubiosity" rule, we may reverse a conviction if a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. Moore v. State, 827 N.E.2d 631, 640 (Ind. Ct. App. 2005), trans. denied. Application of this rule is rare and will occur only if the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. Id.

Browell's testimony was not incredibly dubious. She was unable to recall perfectly everything that happened during the incident, especially after Lile pulled her

out from under the bed. She also made pretrial statements that were not perfectly consistent in every detail with what she testified to at trial. However, her general description of Lile breaking into her house, shooting her son, and dragging her out from under her bed remained consistent. Any minor variations in unimportant details as she attempted to recall the morning of November 25, 2004, do not render her testimony incredibly dubious.

The recordings of the 911 calls also plainly implicated Lile as the perpetrator of these crimes. Browell identified Lile as an armed intruder in her home. Two men can be heard arguing in the background, then a gunshot can be heard, followed by a man's screams. Then, another man can be heard yelling at Browell. To say that these recordings and Browell's testimony, along with the brief police chase that ensued after Lile drove out of Browell's garage, are not enough to sustain Lile's convictions clearly is an invitation to reweigh the evidence. We will not do so. There is sufficient evidence to support the convictions.

### *IV. Sentence*

Finally, we address Lile's claim that his 188-year sentence must be reduced. We first note that Lile committed these crimes before the legislature replaced our "presumptive" sentencing scheme with the current "advisory" sentencing scheme, although he was sentenced after the new statutes took effect. This court has, for the most part, applied the "presumptive" sentencing scheme in such situations. See, e.g., Weaver v. State, 845 N.E.2d 1066, 1072 (Ind. Ct. App. 2006), trans. denied; but see Samaniego-

Hernandez v. State, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005). We will apply the "presumptive" sentencing laws in this case.[3]

When faced, as here, with a non-Blakely challenge to an enhanced sentence under the prior presumptive sentencing scheme, we must first determine whether the trial court issued a sentencing statement that (1) identified all significant mitigating and aggravating circumstances; (2) stated the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulated the court's evaluation and balancing of the circumstances. Hope v. State, 834 N.E.2d 713, 717-18 (Ind. Ct. App. 2005). If we find an irregularity in a trial court's sentencing decision, we may remand to the trial court for a clarification or new sentencing determination, affirm the sentence if the error is harmless, or reweigh the proper aggravating and mitigating circumstances independently at the appellate level. Id. at 718. Even if there is no irregularity and the trial court followed the proper procedures in imposing sentence, we still may exercise our authority under Indiana Appellate Rule 7(B) to revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender. Id.

Lile's first contention is that the trial court erred in not assigning any mitigating weight to his allegedly poor mental health. Our supreme court recently observed:

> The American Psychiatric Association's definitions of mental illness, contained in the Diagnostic and Statistical Manual of Mental Disorders (presently "DSM-IV-TR") have continued to expand to the point that a recent study declared that about half of Americans become mentally ill and half do not. This suggests the need for a high level of discernment when

[3] Additionally, Lile and the State both rely on cases decided under the prior statutes.

> assessing a claim that mental illness warrants mitigating weight.

Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006) (footnote omitted). When considering the mitigating force of a mental health issue, courts should weigh the extent of inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime.[4] Id. Also, as a general matter, a trial court does not err in failing to mention an alleged mitigator that is highly disputable in nature, weight, and significance. Cloum v. State, 779 N.E.2d 84, 89 (Ind. Ct. App. 2002).

Dr. Jeffrey Wendt, a psychologist, evaluated Lile in connection with his notice of intent to pursue an insanity defense. Dr. Wendt noted that Lile had received some mental health treatment in the past and had been diagnosed with certain disorders over the years, including bipolarity, conversion disorder, and post-traumatic stress disorder related to sexual abuse Lile claims he was subjected to as a minor. Dr. Wendt, however, concluded that Lile did not meet the diagnostic criteria for any of these disorders, at least at the time of the crimes at issue here. He also suggested the possibility of malingering on Lile's part.

Dr. Wendt's evaluation concluded in part as follows: "[Lile's] self report and review of treatment records do not indicate that Mr. Lile has ever suffered from valid

[4] In addition, most, though not all, cases in which a defendant's mental illness commanded significant mitigating weight were ones in which the defendant was found guilty but mentally ill. See, e.g., Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998). There was no such finding here.

psychotic symptoms that would impair his contact with reality. Rather, his problems appear to be the product of chronic substance dependence combined with antisocial and borderline personality traits." App. p. 42. The report also stated, "Based on the available evidence, it is my opinion that [Lile's] behavior was not delusional or dissociative, but rather, an exaggerated reaction to his perceived wrongs." Id. at 43. Additionally, "[Lile's] reported amnesia regarding the period surrounding the alleged offenses is consistent with a prolonged cocaine and methamphetamine binge. . . . The question of mental disease or defect aside, it is my opinion that Mr. Lile had the capacity to appreciate the wrongfulness of his conduct." Id.

To be blunt, to the extent Dr. Wendt's statement that Lile has "antisocial and borderline personality traits" constitutes a diagnosis of mental illness, it is a label that would seem to apply to many, if not most, habitual criminals such as Lile. Id. at 42. As for Lile's drug usage, the presentence report reveals that Lile has been in numerous programs to address his substance abuse issues, but none had proven successful over the long term. This incident apparently was fueled by his drug use; Lile claimed to have been awake for five days straight because of his methamphetamine and cocaine usage before these crimes occurred.

In light of Dr. Wendt's evaluation of Lile, we cannot say the trial court erred in not assigning any mitigating weight to his claim of mental illness. That evaluation fails to provide solid evidence that Lile's mental health created an inability to control behavior, limited his overall functioning, or had a nexus with these crimes. At best, the mitigating

weight of Lile's mental health issues is highly disputable in weight, nature, and significance.

Having found no error in the trial court's sentencing statement, we now consider whether Lile's 188-year sentence is inappropriate under Appellate Rule 7(B) in light of his character and the nature of these offenses. As for Lile's character, the presentence report reveals that he has a juvenile delinquency adjudication from 1974 for theft; there were a number of other juvenile allegations against him that apparently were not reduced to adjudications. In 1978, Lile was convicted as an adult of burglary and was ordered to complete drug treatment. When he did not do so, his probation was revoked. In 1979, he was convicted of attempted theft. In 1985 he was convicted of criminal recklessness. In 1985 he was convicted of burglary in Florida. In 1989 he was convicted of child molesting and found to be an habitual offender; he also twice violated parole after he was released from incarceration for this offense. In August 2004 he was arrested for theft and was out on bond for that arrest when he committed the present crimes. There are numerous other arrests for Lile in the record that did not result in convictions. He reported having been through substance abuse programs at least ten times, including outpatient, inpatient, and prison programs. In sum, despite Lile's nearly-continuous run-ins with law enforcement for thirty years and multiple attempts to control his substance abuse problems, he was not dissuaded from again heavily using drugs and committing the crimes here. There is little or nothing positive to say about Lile's character.

As for the nature of the offenses, Lile went on an illegal drug binge, then went to Browell's home on Thanksgiving morning in a rage after she informed him that she

wanted no contact with him. Lile then shot her son when he attempted to protect her. He then abducted Browell, forced her into the car, and fled from numerous police officers before wrecking the car. It is perhaps fortunate that he did so, as it is unclear what Browell's fate might have been if Lile had successfully escaped with her. We agree with Dr. Wendt that Lile's actions were "an exaggerated reaction to his perceived wrongs." Id. at 43.

Lile received the maximum sentence possible. Such sentences generally are most appropriate for the worst offenders and offenses. Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002). This is not, however, a guideline to determine whether a worse offender could be imagined, but instead refers generally to the class of offenses and offenders that warrant the maximum punishment. Id. Such class encompasses a considerable variety of offenses and offenders. Id. We conclude that Lile's character and these offenses fall into that class. The maximum sentence of 188 years is not inappropriate.

**Conclusion**

The trial court did not err in any of its evidentiary rulings, and there is sufficient evidence to support Lile's convictions. Additionally, the trial court did not err in sentencing Lile, and his sentence is not inappropriate. We affirm.

Affirmed.

NAJAM, J., and DARDEN, J., concur.