2011 IL App (1st) 101384-U

FIFTH DIVISION
December 23, 2011

No. 1-10-1384

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	09 CR 10969
	)	
HUMBERTO MEZA,	)	
	)	Honorable
Defendant-Appellant.	)	Thomas M. Davy,
	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

O R D E R

¶ 1 HELD: The one-act, one-crime doctrine was not violated; the prosecutor's comment was not reversible error; the trial court did not abuse its discretion in refusing defendant's request to question the potential jurors about domestic violence; the trial court did not abuse its discretion in imposing consecutive sentences; and defendant's sentence is not excessive.

¶ 2 Following a jury trial, defendant Humberto Meza was convicted of two counts of aggravated battery and two counts of domestic battery. The trial court subsequently sentenced defendant to two consecutive four-year terms for each of the aggravated battery convictions. Defendant appeals, arguing that: (1) one of his convictions for aggravated battery must be

vacated under the one-act, one-crime doctrine because the charging instrument did not differentiate between acts and did not apportion the charges among different acts; (2) the prosecutor improperly commented on defendant's decision not to testify during closing argument; (3) the trial court abused its discretion by refusing to question the venire about whether they had any strong feelings about domestic violence that would affect their impartiality; and (4) defendant's two consecutive four-year sentences are excessive.

¶ 3 In June 2009, defendant was charged by information with three counts of aggravated battery (720 ILCS 5/12-4(b)(10) (West 2008)) and three counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2008)). The aggravated battery counts each alleged that "between May 15, 2009 and May 28, 2009," defendant committed a battery against Benito Meza, an individual of 60 years of age or older, in that defendant "grabbed Benito Meza about the body and threw Benito Meza to the ground."

¶ 4 The following evidence was presented at defendant's March 2010 jury trial.

¶ 5 Benito Meza testified that at the time of trial, he was 82 years old. He is defendant's father. In May 2009, defendant was living with Meza at Meza's house on Chicago's south side. During the period of time from May 15, 2009, to May 28, 2009, several incidents occurred between Meza and defendant.

¶ 6 The first incident occurred in the basement. Meza testified that defendant "pushed me and threw me to the ground." Meza stated that defendant pushed him in the chest and he fell onto the cement floor. He landed on his right upper arm and he felt pain in that area. Meza admitted that he did not call the police because he thought that defendant "would reflect upon it

and never do it again."

¶ 7 The second incident took place in the kitchen. Defendant pushed Meza and Meza fell to the floor, which was wood with linoleum. Meza stated that he "fell again a little bit to the side and [he] hurt the same arm again." He did not call the police after this incident because he was "waiting for the same thing that [defendant] would reflect upon it and that he wouldn't do it again."

¶ 8 Meza testified that the third incident occurred as they were arguing "as always." Meza was in the living room and defendant was in part of the kitchen arguing with Meza. Defendant grabbed Meza by the chest and "pulled [Meza] about six feet into the living and threw [Meza] onto the sofa with all of [defendant's] force." When he fell, Meza said he felt a bit of soreness but later, he was fine. Again, he did not contact the police because he thought that "one of these instances [defendant] would reflect upon what he was doing and he didn't do it."

¶ 9 Meza stated that he changed his mind after another incident. He said he was arguing with defendant. He was in part of the living room and defendant was in part of the kitchen. Defendant grabbed a fruit bowl and threw it at Meza "with force." Meza ducked and was not struck by the bowl, which broke.

¶ 10 The following day, Meza went to a priest and then went to see one of his daughters, Maria Cruz, because "the situation was dangerous." He called the police with Cruz.

¶ 11 On cross-examination, Meza testified that he could not remember on what days each of the incidents took place because it "is difficult to retain the dates *** with the age that I am." He stated that the arguments were about Meza's disapproval of defendant's lifestyle and that

defendant was not helping with the bills. Meza was supporting defendant because defendant was unemployed. He explained that the did not contact the police because he was "waiting for [defendant] to reflect and him to act like my son." Meza said the second incident occurred "a few days" after the incident in the basement and the third incident involving the sofa was about "a week or less" before he went to the police.

¶ 12 Meza testified that he did not seek medical attention after any of the incidents when defendant pushed him to the ground or sofa. He also said that he did not suffer any bruises or fractures, but felt pain. Meza stated that he received an order of protection against defendant.

¶ 13 Maria Cruz testified that she is defendant's sister and Meza is her father. On May 28, 2009, Meza came to see her at work, the Chicago Board of Education. She said it was unusual for Meza to visit her at work. She described Meza as "scared, shaking, kind of disorientated [*sic*.]; not himself." After speaking with her father, Cruz went with him to the police station and spoke with an officer. The officer took Meza's statement. When they left the police station, Cruz took Meza to her house. Cruz admitted on cross-examination that she was not present for any of the incidents that took place between defendant and Meza. Cruz also was named in Meza's order of protection against defendant.

¶ 14 Following Cruz's testimony, the State rested. Defendant moved for a directed finding, which the trial court denied. Defendant rested without presenting any additional evidence. After closing arguments, the jury deliberated and found defendant guilty of aggravated battery (kitchen), aggravated battery (living room), domestic battery (kitchen), and domestic battery (living room). The jury found defendant not guilty of aggravated battery (basement) and

domestic battery (basement). Defendant filed a motion for a new trial, which the trial court denied.

¶ 15 At defendant's sentencing hearing, the trial court considered defendant's prior criminal history, which included prior convictions for domestic battery against Meza, violating an order of protection twice, and driving under the influence. Defendant also had a conviction from Texas for engaging in organized criminal activity. The court found that it was necessary to protect the public for defendant to receive consecutive sentences. The court imposed two consecutive four-year sentences for each of the aggravated battery convictions with one year of mandatory supervised release. Defendant filed a motion to reconsider his sentences, which the trial court denied.

¶ 16 This appeal followed.

¶ 17 First, defendant argues that one of his convictions for aggravated battery must be vacated under the one-act, one-crime doctrine because the information charged him with the same conduct and did not apportion the charges to multiple acts. Defendant admits that he failed to raise this issue in the trial court. However, a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis. See *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). The State maintains that the evidence established that defendant engaged in two separate and distinct criminal acts against his father and defendant was properly convicted of two counts of aggravated battery.

¶ 18 Defendant was charged by information with three counts of aggravated battery. Each count alleged that "between May 15, 2009 and May 28, 2009," defendant committed a battery

against Benito Meza, an individual of 60 years of age or older, in that defendant "grabbed Benito Meza about the body and threw Benito Meza to the ground." Defendant asserts that since he was charged with identical conduct in the same time period and did not differentiate multiple acts, he received multiple convictions under the one-act, one-crime rule. See *In re Samantha V.*, 234 Ill. 2d 359 (2009), and *People v. Crespo*, 203 Ill. 2d 335 (2001).

¶ 19 The supreme court has held that "when the State charges a defendant with multiple offenses that arise 'from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses' multiple convictions and sentences can be entered." *People v. Miller*, 238 Ill. 2d 161, 163 (Ill.,2010) (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). The court has defined "act" as "any overt or outward manifestation that will support a different offense." *King*, 66 Ill. 2d at 566.

¶ 20 Defendant argues that this case is controlled by *In re Samantha V*. In that case, the minor was charged with two counts of aggravated battery based upon allegations that the minor struck the victim multiple times in the head causing lacerations. *In re Samantha V.*, 234 Ill. 2d at 376-77. The charges were based on a fight that occurred involving one victim and multiple assailants. The victim identified the minor as one of the assailants that kicked her. *In re Samantha V.*, 234 Ill. 2d at 362-63. The court found that the State did not draft the charging instrument to differentiate between the multiple blows, but charged the minor with same conduct under different theories of criminal culpability. *In re Samantha V.*, 234 Ill. 2d at 377. The court further considered that the State also did not differentiate between the blows at trial. As the court stated, "[t]he record demonstrates that the State failed to elicit any testimony which

discussed specific strikes or blows that were administered to the victim by respondent." *In re Samantha V.*, 234 Ill. 2d at 377.

¶ 21 Similarly, in *Crespo*, the State charged the defendant with armed violence and aggravated battery, but did not differentiate between stab wounds. Rather, the State charged the defendant for the same conduct under different theories of criminal culpability. *Crespo*, 203 Ill. 2d at 342-43. The supreme court found that the State made no attempt to apportion the stab wounds until the appeal as the State's theory at trial was "to portray defendant's conduct as a single attack." *Crespo*, 203 Ill. 2d at 344.

¶ 22 Though both cases considered the language of the charging instrument, the supreme court also considered the theories presented by the State at trial. In contrast, here, the State's theory at trial was very clearly based on three separate and distinct acts of aggravated battery. The information alleged that each of the offenses of aggravated battery occurred between May 15, 2009, and May 28, 2009. The information does not allege that each of the incidents occurred on the same date in the course of a single offense. Further, Meza testified at trial about three incidents of defendant pushing him to the ground: one in the basement, the second in the kitchen, and the third in the living room. The verdict forms submitted to the jury differentiated each charge of aggravated battery by including the location in parenthesis. Unlike *In re Samantha V.* and *Crespo*, the State presented evidence of separate acts and apportioned the acts as different offenses of aggravated battery. The one-act, one-crime doctrine was not violated in defendant's case.

¶ 23 Rather than a violation of the one-act, one-crime doctrine, the State contends that

defendant has challenged the sufficiency of the charging instrument. We agree.

¶ 24 When an indictment or information is attacked for the first time on appeal, it is sufficient if the indictment or information informed the defendant of the precise offense charged with sufficient specificity to allow him to prepare a defense. *People v. Davis*, 217 Ill. 2d 472, 479 (2005).

¶ 25 Since defendant has raised this challenge for the first time on appeal, he must show that he was prejudiced in the preparation of his defense. We hold that defendant cannot establish that he was prejudiced. The complaints for preliminary examination for each charge of aggravated battery included language describing the specific incident. The first complaint stated that defendant "caused bodily harm to Benito Meza in that he grabbed Benito Meza about the body and threw him to the couch knowing the victim to be a person 60 years of age or over." The second complaint stated that defendant "caused bodily harm to Benito Meza in that he pushed Benito Meza to the ground in the kitchen knowing the victim to be a person 60 years of age or over." The third complaint stated that the defendant "caused bodily harm to Benito Meza in that he pushed Benito Meza to the ground in the basement knowing the victim to be a person 60 years of age or over."

¶ 26 Moreover, defendant did not challenge the occurrence of three separate incidents at trial. The jury received three separate verdict forms that referenced a specific incident. The jury found defendant guilty of aggravated battery (kitchen) and aggravated battery (living room), but found defendant not guilty of aggravated battery (basement). Since defendant was aware of the three separate incidents, he cannot show any prejudice in the preparation of his defense based upon the

information filed in this case. Accordingly, any challenge as to the sufficiency of the charging instrument fails.

¶ 27 Next, defendant contends that during rebuttal argument, the prosecutor impermissibly commented on his failure to testify at trial, violating his fifth amendment right to remain silent and shifted the burden of proof in violation of due process. The State responds that the prosecutor's argument was based on the evidence introduced at trial or reasonable inferences therein, and was a proper response to defense counsel's closing arguments. In the alternative, the State maintains that any error was harmless.

¶ 28 Defendant argues that we review improper statements by a prosecutor as a legal issue subject to *de novo* review. See *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007). However, this court has noted an "apparent conflict" within two supreme court decisions making it unclear "what the proper standard of review is when reviewing improper remarks made during closing arguments." *People v. Hayes*, 409 Ill. App. 3d 612, 624 (2011); see also *People v. Raymond*, 404 Ill. App. 3d 1028, 1059-60 (2009). As the *Hayes* and *Raymond* courts discussed, the decision in *Wheeler* stated that the standard of review was *de novo*, but in numerous supreme court decisions, the supreme court had applied an abuse of discretion standard of review. *Hayes*, 409 Ill. App. 3d at 624; *Raymond*, 404 Ill. App. 3d at 1059-60 (citing *Wheeler*, 226 Ill. 2d at 121, and *People v. Blue*, 189 Ill. 2d 99, 128 (2000))). However, we need not determine the proper standard of review because the result would be the same under a *de novo* review or abuse of discretion. See also *Hayes*, 409 Ill. App. 3d at 624; *Raymond*, 404 Ill. App. 3d at 1060.

¶ 29 Generally, prosecutors are given wide latitude in closing arguments, although their

comments must be based on the facts in evidence or upon reasonable inferences drawn therefrom, even if such inferences reflect negatively on the defendant. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Further, "A closing argument must be viewed in its entirety, and the challenged remarks must be viewed in their context." *Nicholas*, 218 Ill. 2d at 122.

¶ 30 While a prosecutor's remarks may sometimes exceed the bounds of proper comment, the verdict must not be disturbed unless it can be said that the remarks resulted in substantial prejudice to the accused, such that absent those remarks the verdict would have been different. *People v. Byron*, 164 Ill. 2d 279, 295 (1995). Thus, "comments constitute reversible error only when they engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from those comments." *People v. Nieves*, 193 Ill. 2d 513, 533 (2000).

¶ 31 Defendant asserts that the prosecutor improperly commented on defendant's right to remain silent. Specifically, in rebuttal closing argument, the prosecutor stated, "He wasn't willing to say I did this, so that's why we're here." According to defendant, the prosecutor "clearly implied that [defendant] was under some kind of obligation to confess or to make some kind of statement." The State responds that the comment was properly based on the evidence presented at trial and was in direct response to defense counsel's closing argument. Further, when this comment is read in the context of the entire rebuttal argument, it is clear that the challenged comment referred to the reason why Meza waited to contact the police about defendant's actions.

¶ 32 During rebuttal closing argument, the prosecutor stated:

> "While he [Meza] didn't initially take action, he finally had enough and he did and what Benito said to you on the stand today his exact quote was 'he didn't go to the police because he was waiting for his son to act like a man.' Waiting for his son to act like a man. He was waiting for his son to be responsible; not only in turning down his music, getting a job, but to be taking responsibility for having battered his father, but his son wasn't willing to take on that responsibility. He wasn't willing to say I did this, so that's why we're here."

¶ 33 Defense counsel objected to this comment, but the trial court overruled the objection. "Because an accused has the constitutional right not to testify, a prosecutor cannot make either a direct or indirect comment on the exercise of that right." *People v. Edgecombe*, 317 Ill. App. 3d 615, 620 (2000) (citing *Griffin v. California*, 380 U.S. 609 (1965)). "The test for determining if improper comment has been made on a defendant's failure to take the witness stand and testify is whether the reference was intended or calculated to direct the jury's attention to the defendant's neglect to avail himself of his legal right to testify." *People v. Bannister*, 232 Ill. 2d 52, 88 (2008).

¶ 34 Defendant relies on the decision in *Edgecombe* to support his argument that the prosecutor improperly commented on his right not to testify. However, the facts in *Edgecombe* are distinguishable from the instant case. There, the prosecutor made numerous references to the evidence and stated that "no one" or "nobody" testified that the defendant did not participate in

the crime. The prosecutor also suggested questions that defense counsel should have asked. *Edgecombe*, 317 Ill. App. 3d at 618-20. The reviewing court concluded that the State's arguments improperly drew the jury's attention to the defendant and his decision not to testify. *Edgecombe*, 317 Ill. App. 3d at 621.

¶ 35 In contrast, when the prosecutor's comment in the present case is considered in context, we find that the statement was not intended to comment on defendant's right to remain silent and was not an attempt to draw the jury's attention to the fact that defendant did not testify. The prosecutor was referring to Meza's testimony in which he repeatedly stated that he did not go to the police because he hoped defendant would acknowledge what he had done and take responsibility. The prosecutor's comment related to the reasons Meza waited to contact the authorities, and was not referring to defendant's decision to remain silent. However, while we recognize the prosecutor's intention, we can see how such a comment could be misconstrued. The State should be mindful not to make any comment that could direct the jury's attention that the defendant exercised his right not to testify.

¶ 36 Nevertheless, in the present case, we find that the single comment, when taken in context, was not sufficient to prejudice defendant such that the verdict would have been different absent this comment. Accordingly, we decline to find reversible error based on this single comment by the prosecutor.

¶ 37 Next, defendant asserts that the trial court abused its discretion when it refused to question or allow defense counsel to question potential jurors regarding whether they had any strong feelings about domestic violence that would affect their ability to try the case fairly. The

State maintains that the trial court properly denied defense counsel's request for additional questioning because the trial court fully questioned the potential jurors regarding their ability to be fair. Further, the State contends that defendant cannot prove that he was tried by a biased or partial jury.

¶ 38 Prior to *voir dire*, defense counsel requested the trial judge either to ask or allow counsel to ask the potential jurors an additional question. Defense counsel sought to ask the venire, "Do you have any strong feelings about domestic violence that could affect your ability to give a fair trial." The State objected to the requested question. Defense counsel then asked the trial judge to ask "if they have friends, family members, neighbors, or acquaintances that have been affected by domestic violence." The judge noted that he does ask the potential jurors "if they have any close friends or family members who have ever been the victim of a crime which I am assuming jurors can pick up on." The trial judge then refused defendant's request and did not allow the question. The judge stated, "I think as – basically and practically a lot of jurors are looking for any reason to get out of it and if a suggestion is given to them – and I don't think we want people to be in favor of any crimes and if someone has a bad experience with that in the past and they are not shy about bringing that out, we'll go into it."

¶ 39 Defendant argues that the trial judge's denial of his request denied him "the ability to probe the biases of the jury and to intelligently exercise both his peremptory challenges and challenges for cause."

¶ 40 Supreme Court Rule 431 regulates the voir dire process. The rule provides, in relevant part:

> "The court shall conduct *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors." Ill. S. Ct. R. 431(a) (eff. May 1, 2007).

¶ 41 "[T]he trial court is given the primary responsibility of conducting the *voir dire* examination, and the extent and scope of the examination rests within its discretion." *People v. Strain*, 194 Ill. 2d 467, 476 (2000). "However, the trial court should exercise its discretion in a manner that is consistent with the goals of *voir dire*. *Voir dire* is conducted to assure the selection of an impartial jury, free from bias or prejudice, and grant counsel an intelligent basis on which to exercise peremptory challenges." *People v. Dixon*, 382 Ill. App. 3d 233, 243 (2008). "Thus, the trial court abuses its discretion only if the trial court prevents the selection of a jury that harbors 'no bias or prejudice which would prevent them from returning a verdict according

to the law and evidence.' " *Dixon*, 382 Ill. App. 3d at 243 (quoting *Strain*, 194 Ill. 2d at 476).

¶ 42 Defendant cites cases in which courts have permitted additional questions of the potential jurors about any strong feelings regarding a particular subject. See *Strain*, 194 Ill. 2d at 477 (gang membership); *People v. Stack*, 112 Ill. 2d 301 (1986) (insanity defense); *People v. Clark*, 278 Ill. App. 3d 996 (1996) (interracial relationships); *People v. Lanter*, 230 Ill. App. 3d 72 (1992) (intoxication); *People v. Murawski*, 2 Ill. 2d 143 (1954) (abortion). In *Strain*, the supreme court held that when testimony pertaining to gang membership and gang-related activity was an integral part of the defendant's trial, the defendant must be afforded an opportunity to question prospective jurors concerning any gang bias. *Strain*, 194 Ill. 2d at 477. Defendant argues that domestic violence has much in common with these subject areas because it is a subject for which many people hold strong and intensely negative feelings.

¶ 43 The reviewing court in *Dixon* considered whether under *Strain*, the defendant should be allowed to probe potential jurors for bias against drug or alcohol addiction. *Dixon*, 382 Ill. App. 3d at 245. The *Dixon* court declined to extend the holding in *Strain* to other areas of potential bias. *Dixon*, 382 Ill. App. 3d at 245; see also *People v. Anderson*, 407 Ill. App. 3d 662, 681-82 (recognizing *Dixon's* refusal to extend *Strain*). "We are not persuaded that such a fact would result in effectively closing the minds of jurors to the evidence such ' "that they cannot apply the law as instructed in accordance with their oath." ' " *Dixon*, 382 Ill. App. 3d at 245 (quoting *Strain*, 194 Ill. 2d at 476 (quoting *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993))). The *Dixon* court also distinguished the decision in *Lanter* as the defendant in *Lanter* raised intoxication as an affirmative defense and no affirmative defense was raised in *Dixon*. *Dixon*,

382 Ill. App. 3d at 244. In *Anderson*, the reviewing court, relying on *Dixon*, rejected a defendant's request to question potential jurors whether his prior convictions would affect their ability to be fair and impartial. *Anderson*, 407 Ill. App. 3d at 681-82.

¶ 44 In the instant case, we decline to extend the holding of *Strain* to the subject of domestic violence. The trial court, when ruling on defendant's motion for a new trial, stated that the jurors were aware of the charges in the case and if they had previous experiences, they would have presented it. The court also noted that, "if anyone was asked what their position is on domestic violence, no one would come out in favor of that anymore than they would come out in favor of murder." During *voir dire*, the trial court instructed the potential jurors about their ability to be fair and impartial. Two prospective jurors stated during questioning that they had experience with domestic violence. One previously served on a jury in a domestic violence case and the other had a sister that was a victim of domestic violence. Defendant sought to remove the second juror for cause, but the trial court declined to strike the juror. Defendant did not exercise a peremptory challenge on either of the jurors, but neither served on the jury. The trial court's questioning gave the potential jurors the opportunity to raise any bias. Defendant has not shown how the trial court's refusal to question the venire about domestic violence prevented the selection a jury that was free from bias or prejudice. Accordingly, the trial court did not abuse its discretion when it denied defendant's request.

¶ 45 Finally, defendant raises two challenges to his sentence. We will consider each challenge in turn.

¶ 46 "It is well established that a trial court has broad discretionary authority in sentencing a

criminal defendant." *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007). "An appellate court typically shows great deference to a trial court's sentencing decision since the trial court is in a better position to decide the appropriate sentence." *Evans*, 373 Ill. App. 3d at 967. "Accordingly, a trial court's sentencing decision is not overturned absent an abuse of discretion." *Evans*, 373 Ill. App. 3d at 967.

¶ 47 "The Illinois Constitution mandates the balancing of both retributive and rehabilitative purposes of punishment." *Evans*, 373 Ill. App. 3d at 967; see also Ill. Const.1970, art. I, §11. "The trial court is therefore required to consider both the seriousness of the offense and the likelihood of restoring the offender to useful citizenship. *Evans*, 373 Ill. App. 3d at 967. However, "[a] trial court is not required to give greater weight to the rehabilitative potential of a defendant than to the seriousness of the offense." *People v. Govea*, 299 Ill. App. 3d 76, 91 (1998). "In determining an appropriate sentence, the trial judge is further required to consider all factors in aggravation and mitigation which includes defendant's credibility, demeanor, general moral character, mentality, social environments, habits, and age, as well as the nature and circumstances of the crime." *Evans*, 373 Ill. App. 3d at 967.

¶ 48 First, defendant contends that the imposition of consecutive sentences was inappropriate and unnecessary to protect the public. The State responds that the trial court did not err because it considered all appropriate factors.

¶ 49 " 'Because the trial court is in the best position to consider a defendant's credibility, demeanor, general moral character, mentality, social environment, and habits, the trial court's decision to impose consecutive, rather than concurrent, sentences for multiple crimes will not be

reversed on appeal absent an abuse of discretion.' " *People v. Couch*, 387 Ill. App. 3d 437, 445 (2008) (quoting *People v. King*, 384 Ill. App. 3d 601, 613 (2008)).

¶ 50 Here, the trial court imposed consecutive sentences under section 5-8-4(b) of the Unified Code of Corrections (730 ILCS 5/5-8-4(b) (West 2008)). Section 5-8-4(b) provides for the imposition of consecutive sentences if "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(b) (West 2008).

¶ 51 At sentencing, the trial court stated that it considered defendant's background; "domestic battery, the violation of Order of Protection, the engaging in organized criminal activity in the State of Texas. There are actually two violations of Orders of Protection." The court found the imposition of a sentence of probation "would deprecate the seriousness of the offenses." The judge continued, "I also feel, based on the need to protect the public, or, perhaps specifically one member of the public at least, that a consecutive sentence should be imposed."

¶ 52 The trial court indicated on the record that the sentencing decision was based on defendant's criminal history, his history of abuse against his father, the circumstances of the case, and its finding that consecutive sentences were necessary to protect the public from defendant, as required by section 5-8-4(b). Because the trial court was in a superior position to assess the circumstances of the case and defendant's character and the court outlined its reasons for imposing consecutive sentences, we conclude that the trial court did not abuse its discretion in imposing consecutive sentences.

¶ 53 Defendant also asserts that the trial court abused its discretion in imposing four-year terms for each of the aggravated battery convictions. The State maintains that defendant's sentence was not excessive.

¶ 54 "There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered any evidence in mitigation that is before it." *People v. Bowman*, 357 Ill. App. 3d 290, 303 (2005). "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Starnes*, 374 Ill. App. 3d at 143 (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 55 Here, defendant was found guilty of aggravated battery, a class 3 felony. 720 ILCS 5/12-4(e)(1) (West 2008). The sentencing range for a class 3 felony is not less than two years and not more than five years. 730 ILCS 5/5-8-1(a)(6) (West 2008).[1] The trial court imposed a sentence of four years for each of the aggravated battery convictions, which is within the applicable sentencing range. At sentencing, the trial court found that the sentence was necessary based on defendant's criminal history and the seriousness of the crime. As previously pointed out, the court specifically held that a sentence of probation would "deprecate the seriousness of the offenses." The court discussed defendant's prior abuse toward his father, including a prior conviction for domestic battery and two violations of an order of protection.

¶ 56 Based on the entire record before us and given the nature of the crime and defendant's prior criminal history against his father, we find that the trial court did not abuse its discretion.

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[1] Now codified at 730 ILCS 5/5-4.5-40(a) (West 2010).

Defendant received a sentence within the applicable sentencing range. Additionally, the trial court clearly considered all factors in aggravation and mitigation before imposing the sentence. Accordingly, we affirm defendant's sentence.

¶ 57 Based on the foregoing reasons, we affirm defendant's conviction and sentence.

¶ 58 Affirmed.