

No. 2-09-0799  
Order filed March 4, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ) Appeal from the Circuit Court  
ILLINOIS, ) of Du Page County.  
Plaintiff-Appellee, )  
v. )  
NICOLE M. ABUSHARIF, ) No. 07—CF—735  
Defendant-Appellant. )  
Honorable  
John J. Kinsella,  
Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

## ORDER

*Held:* The trial court did not abuse its discretion in allowing evidence of both text and MySpace messages and finding that such evidence was more probative than prejudicial. Additionally, the trial court did not abuse its discretion in sentencing the defendant.

On May 5, 2009, following a jury trial, the defendant, Nicole Abusharif, was convicted of first degree murder of her girlfriend and housemate, Rebecca Klein (the victim). The trial court subsequently sentenced the defendant to 50 years' imprisonment. On appeal, the defendant argues that the trial court erred in admitting evidence of both text and MySpace messages between the

defendant and another woman, Rose Sodaro. The defendant also argues that the trial court abused its discretion in imposing a 50-year sentence. We affirm.

On March 21, 2007, the defendant was charged by complaint with first degree murder (720 ILCS 5/9—1(a)(1) (West 2006)) and concealment of a homicidal death (720 ILCS 5/9—3.1(a)(West 2006)). On April 12, 2007, the defendant was indicted on five counts of first degree murder (720 ILCS 5/9—1(a)(1), 1(a)(2) (West 2006)) and one count of concealment of a homicidal death. Prior to trial, the State nolle prossed the latter count.

On March 20, 2009, the defendant filed a motion *in limine* to prevent the State from presenting evidence of communications between the defendant and Sodaro while on “MySpace,” a social networking website. The defendant argued that any evidence of her lying to Sodaro on MySpace did not make it more or less likely that she committed the murder and was more prejudicial than probative. The State argued that the messages were relevant because they demonstrated the nature of the relationship between the defendant and Sodaro. The State intended to argue that the defendant had motive to murder the victim because their relationship had deteriorated and the defendant wanted to start a new life with Sodaro.

On April 9, 2009, following a hearing, the trial court noted that, generally, statements showing that a person wanted to end a relationship would be deemed relevant evidence of motive. However, the trial court noted that if an excessive amount of statements were introduced to merely paint the defendant in a bad light and did not directly bear on the element of motive, it would entertain a limitation on such statements. The trial court determined that the State should identify the messages that it intended to introduce at trial and then the defendant could renew the motion. Accordingly, the trial court did not rule on the matter but decided to take it under advisement.

A jury trial commenced on April 20, 2009. At trial, Melanie Baldridge testified that she was the victim's sister. The defendant was the victim's partner and was treated as a member of the family. The victim and the defendant had lived together since 2001. The victim and the defendant had purchased the house in Villa Park and moved in about nine months prior to the murder. In March 2002, the victim told Baldridge that she wanted to break up with the defendant. When the victim discussed the issue with the defendant, the defendant threatened to drink herself to death. Thereafter, the victim decided to remain with the defendant. Baldridge testified that, other than that incident, she was not aware of any other disagreements between the victim and the defendant.

Baldridge further testified that on the evening of March 15, 2007, she was at the victim's house preparing the house for a family birthday party. She arrived at 4:30 p.m. and she and the victim stopped to eat dinner around 6:15 p.m. The defendant was there, but was not helping with the party preparations. Baldridge left at 7:20 p.m. She called the victim at 8 p.m., but did not get an answer. The next morning, Friday, March 16, Baldridge did not hear from the victim as she normally did. She and the victim normally talked on the phone while on their way to work every morning. Just before lunch, Baldridge's mother called to say that no one had been able to reach the victim. Baldridge left work, picked up her husband, and went to the victim's house. When they arrived, the defendant was there along with the victim's parents and a Villa Park police officer. Baldridge found the victim's cell phone on a window ledge in the basement. On March 17, Baldridge learned that the police had found the victim's body in the trunk of the defendant's Mustang.

John Lawlor testified that he was the victim's boss. He had expected her at work on the morning of March 16, 2007. Around 11:30 a.m. he called the victim's house and spoke with the

defendant. The defendant told him that the victim had left for work that morning. Lawlor told the defendant that he had not been able to reach the victim on her cell phone, and the defendant stated that the victim had been having trouble with her cell phone the last couple of days. However, Lawlor had spoken with the victim numerous times in the previous two days and the victim did not mention any problems with her cell phone. Lawlor testified that the victim drove a white van that belonged to their employer because her job involved the planning of recreational activities for disabled adults and she often provided transportation to her clients.

Marilyn Klein, the victim's mother, testified that the defendant had called her at 11:39 a.m. on Friday, March 16, 2007, to ask if she had heard from the victim. The defendant told Marilyn that the victim had gone to work that morning, but that no one had been able to reach her by phone. Marilyn called her husband and Baldridge to find out whether either of them had spoken with the victim, but neither had. She then called the defendant back to tell her that the family was worried because the victim had not called anyone and had not gone to work. The defendant said that she was going to drive around to see if she could find the victim's work van. At 1:15 p.m., the defendant called Marilyn to tell her that she had found the victim's van on the street around the corner from their house.

Marilyn went to the victim's house at 2:50 p.m. The police and her husband were already there. The police wanted the defendant to accompany them to the bank to find out if there had been any unusual activity on the victim's bank accounts. The defendant initially refused because she wanted to be at home in case the victim called. However, after about 20 minutes, the defendant agreed to go to the bank. On March 17, 2007, the police told the defendant that they wanted to search her house for clues. The defendant refused but after the police persisted, she gave them

consent to search. The day before, the defendant had readily consented to a search of the house and garage. After searching the house on March 17, the police found the victim's body in the trunk of the Mustang in the garage. Marilyn was aware that the victim wanted to have children and the defendant did not. However, Marilyn had never witnessed any major arguments between the victim and the defendant.

Dave Subject testified that he was a Villa Park police officer. On March 16, in response to a missing person report, he went to the defendant's home at around 2 p.m. The defendant was in front of the house. He asked her what happened. The defendant stated that her girlfriend was missing. She stated that they did things around the house the night before and eventually went to bed. The defendant further stated that the victim had left the house for work at 6:30 a.m., the usual time she left for work. The defendant then went back to sleep and was awakened by a phone call at 11:37 a.m. from the victim's boss, who told the defendant that the victim had not showed up for work. The defendant told Officer Subject that she had found the victim's work van around the corner at about 1:30 p.m. She went to the vehicle and found the doors unlocked, keys in the ignition, and the victim's backpack on the seat. That's when she called the police. Officer Subject further testified that he overheard the defendant tell another detective that the victim had left for work at 7:30 a.m.

William Roger Baldridge (Roger) testified that he was married to the victim's sister Melanie. On Friday, March 16, 2007, when everyone was at the victim's house, the police were trying to use the defendant's laptop computer, which was in the dining room. There were unable to connect to the Internet so Roger went downstairs to reset the wireless connection. However, the officer was still not able to make a connection. The computer showed that the wireless connection was working,

then it went dead. Roger went back downstairs and saw that the modem had been unplugged. Roger further testified that when the defendant purchased the Mustang in 2005, she brought it over to his house. She showed him the inside of the trunk and they discussed what sort of stereo equipment would fit in it.

Rose Sodaro testified that she became acquainted with the defendant in March 2006 through MySpace. The defendant's MySpace name was "Hollywood." Over a period of a month, they went from MySpace messaging, to text messaging, to speaking on the phone. Eventually, they met at Sodaro's house. They started out as friends, but eventually their relationship became sexual. When the defendant called Sodaro, the name on the caller ID was "Hollywood." The defendant had showed Sodaro the Mustang numerous times and Sodaro remembered seeing the defendant's guitar in the trunk on one occasion.

Sodaro went to the defendant's house for the first time in June 2006, when the defendant lived in Lemont. The defendant told Sodaro that the defendant's brother bought the house so that the defendant could take care of him, because he was dying of Wilson's disease. The defendant claimed that she also was dying, and was moving back to New York. The defendant told Sodaro that she and her alleged brother, Danny, had been firefighters at Station 67 in New York City. Sometime in 2006, the defendant told Sodaro about a group of her firefighter friends from New York: Gino, Becky (not the victim), Cap and Nula. The defendant once told Sodaro that she also had Wilson's disease and was in the hospital for a liver transplant. Sodaro asked what hospital she would be at, but the defendant would not tell her. Sodaro testified that she knew the stories about liver cancer were untrue, and that she had once told the defendant that she had lung cancer.

Sodaro went to a party at the defendant's neighbors house in the summer of 2006. At some point, the two were in the defendant's house kissing. At some point thereafter, because Sodaro's mother did not approve of the defendant, Sodaro ended her relationship with the defendant. However, they started talking again in the fall of 2006. In early 2007, Sodaro received several text messages from the defendant. At that point, Sodaro began to feel suspicious of the defendant.

On March 15, 2007, Sodaro invited the defendant to go bowling with her and some of her friends. The defendant invited Sodaro to her house, but Sodaro declined. They met at a restaurant at about 9:20 p.m. They left the defendant's car in the parking lot and drove to the bowling alley together in Sodaro's car. They arrived shortly before 10 p.m. The defendant drank shots and beers at the bowling alley. They left the bowling alley around 1:30 a.m. Because the defendant was intoxicated, Sodaro drove the defendant home. They arrived at the defendant's Villa Park home around 3 a.m. Sodaro parked her car in the driveway, next to the front door. A white van was farther up in the driveway, near the garage. Sodaro did not know whose van it was. There was no one in the defendant's house. The defendant got clothes for Sodaro to sleep in. Sodaro saw that there was a gun in an open case on the bed. Rose asked why it was there and the defendant told Sodaro not to worry about it and put the gun in a bedside table. Sodaro had slept in the defendant's bed between five and eight times. The victim was never there when she spent the night. Sodaro did not know that the victim and the defendant were a couple.

Sodaro testified that the defendant woke up between 7 and 8 a.m. Sodaro fell back asleep. When she woke up, she and the defendant watched television. After about 20 minutes, the defendant started getting phone calls that seemed to distress her. They left the house around noon to get the defendant's car from the restaurant parking lot. Before they left, the defendant told Sodaro that the

victim was missing and that the victim's boss and father had called. As they were driving, the defendant made and received several more phone calls. Sodaro dropped the defendant off and went home. She and the defendant were supposed to meet at 3:30 to attend a wake together. The defendant called her to tell her that she would not be able to meet in time, but wanted Sodaro to wait for her because she wanted to come.

As Sodaro was driving home from the wake, the defendant called her and told her that if she was pulled over by the police she should deny knowing the defendant and deny having a MySpace account. Later, the defendant called to apologize that one of the neighbor's had seen Sodaro's car in the defendant's driveway. She asked why that mattered, but the defendant would not tell her. The defendant told Sodaro that if she was questioned by the police, she should say that she was out drinking with a friend on the night of March 15 and left her car at the defendant's house because she could not drive. The defendant explained that she wanted Sodaro to say these things because she was trying to keep Sodaro from getting involved.

On Saturday, March 17, 2007, a police officer located Sodaro and brought her to the police station. Sodaro told the police what the defendant had told her to say. She told the police that she and the defendant were together on the night of March 15. She did not tell the police the nature of her relationship with the defendant because she was embarrassed. Sodaro testified that her relationship with the defendant had been a sexual one but that she did not know the true nature of the defendant's relationship with the victim.

People's Exhibit Nos. 200-259, text messages between the defendant and Sodaro, were admitted into evidence. The State had filed a memorandum in support of admitting the text messages. In that memorandum, the State explained that its theory of the case was that the defendant

and the victim were involved in a committed relationship similar to a marriage. They shared all their property and even insured each other with life insurance. A year prior to the murder, the defendant found another lover, Sodaro. The State argued that the text messages showed that the defendant's relationship with Sodaro increased in intensity in the months just prior to the murder and that they provided motive for the murder. The State believed that the messages demonstrated the desperation of the defendant to win Sodaro's affection and the lengths she would go to "ensnare, seduce and keep" Sodaro's affection. The State also argued that the subject text messages were relevant evidence of consciousness of guilt because the defendant had originally attempted to conceal her relationship with Sodaro.

On April 24, 2009, the trial court, after reviewing People's Exhibits 200-259, determined that, if the proper foundation was laid, the text messages were admissible. The trial court found that the messages set forth a pattern of communication between the defendant and Sodaro, showing that the defendant wanted to engender a relationship with Sodaro, and provided a motive for the murder. The trial court further found that the fact that some of the messages were false corroborated the motive of the defendant. Specifically, the trial court stated that the fact that the defendant created elaborate stories as to why she was either unavailable or out of town corroborated the fact that she was attempting to develop a relationship with Sodaro as well as conceal her relationships with the other from the victim and Sodaro. Thereafter, upon questioning by the State, Sodaro testified as to each of the text messages and explained them in context. The defendant objected throughout this testimony and maintained that the messages were more prejudicial than probative.

The text messages occurred between January 29 and March 15, 2007. The text messages contained various fictitious stories concerning the defendant's time as a New York and Villa Park

firefighter, her fictitious brother Danny who died of Wilson's disease, and the defendant's liver cancer. There were related messages about the defendant's tendency to get drunk in spite of her diseased liver. The defendant often referred to Sodaro as "baby" and "pretty girl." The defendant stated that she loved and needed Sodaro and that she wanted to get a new house so she and Sodaro, and some of Sodaro's family, could live together. The messages also showed that the defendant often presented herself as immediately unavailable to Sodaro because she was either out of town, at firefighter training, or on shift at the firehouse. On March 15, 2007, the text messages showed that the defendant was planning to go out with Sodaro that evening, but that she was on shift at the Villa Park firehouse and did not think she would get off until 7:30 p.m.

Sodaro also testified concerning People's Exhibit Nos. 38, 41, 45, 48, and 63, MySpace postings, that were admitted into evidence. The MySpace messages were sent to Sodaro from Sam, Tiff, Becky and NYFD. The State presented testimony that all the messages originated from IP addresses that were associated with the defendant. The messages showed that the defendant was creating the illusion that she was in high demand, *i.e.*, that there were multiple people vying for her affection and that she regularly had people hitting on her at bars. The transcript of the testimony regarding the text and MySpace messages exceeded 70 pages.

Ralph Sajdok, one of the defendant's neighbors, testified that he had met Sodaro before and knew what her car looked like. He told the police that he had seen Sodaro's car in the defendant's driveway on the night of March 15 to 16, 2007. He woke up early on March 16 and went to Dunkin Donuts at 6:45 a.m. He returned by 7 a.m. and, at that time, the victim's white van was parked in the driveway along with Sodaro's vehicle. Fred Skawinski, another neighbor, testified that he left his house at 8:30 a.m. and saw a black SUV parked in the driveway, but did not see any other

vehicles there. When he returned at 10:30 a.m., he saw a white van parked on the corner next to his house.

The parties stipulated that representatives of the New York and Villa Park fire departments would testify that the defendant had never been employed as a firefighter in those cities; that a representative of American General Insurance Company would testify that the victim and the defendant were both insured with their company for \$125,000 with each woman being the beneficiary of the other's policy; and that a member of Protective Life Corporation would testify that the victim was insured for \$250,000 and that the defendant was the beneficiary of that policy.

Edward Zorich testified that he was the Villa Park police department's lead detective in this case. When he first went to the defendant's house on Friday, March 16, the defendant told him that she and the victim had watched television until 10:30 p.m. on Thursday and then they both went to bed. The next morning, the victim kissed the defendant goodbye and left for work between 7 and 7:30 a.m. The defendant told Detective Zorich that she and the victim had been living together for about seven years, that they had a loving and committed relationship, and that there was absolutely no infidelity. When Detective Zorich looked through the house and garage, he noticed that the Mustang in the garage was covered with a layer of dust, except for a spot on the trunk lid. When another officer asked for keys to the trunk, the defendant stated that she only had ignition keys and never had a key to the trunk.

Detective Zorich further testified that after he spoke with a neighbor and learned that Sodaro's car and the victim's white van had been in the driveway overnight, he asked the defendant about this information. The defendant stated that Sodaro had dropped her car off in the middle of the night because she was intoxicated and that a friend of Sodaro's had driven Sodaro home. The

defendant explained that she had not said anything about Sodaro earlier because she did not want Sodaro to get in trouble for underage drinking. The defendant stated that she did not have an address or phone number for Sodaro.

Detective Zorich testified that on Saturday, March 17, he asked the defendant if he could do a more intensified search of the house. The defendant initially refused, but eventually allowed the search. The defendant again indicated that she did not have keys to the trunk of the Mustang. Another detective, Brian Barkalow, entered the back seat of the Mustang and removed a speaker from the rear deck, and saw a body in the trunk. The body was lying on its side in the fetal position, the hands were bound behind the back and there was a plastic bag over the head. There was no sign of forced entry to the garage. The record reveals that the victim's hand's and feet were bound together with duct tape and that the plastic bag over the victim's head was secured with duct tape.

Detective Daniel McCann testified that he was an investigator of computer crimes. Upon questioning, the defendant told him that there were two computers in the house. The defendant told him that she had used MySpace in 2006, but that she had stopped using it because there were too many crazy people on it. Detective McCann testified that he could tell that several websites had recently been accessed from the defendant's laptop computer: AOL, Yahoo, MySpace and Craig's List. The defendant told Detective McCann that Sodaro was a friend that she met on MySpace, but she did not remember Sodaro's screen name. The defendant stated that she did not have Sodaro's phone number and did not know how to contact her. Finally, Detective McCann testified that, pursuant to his investigation, he learned that a roll of duct tape had been purchased at a nearby Walgreens store at 7:34 p.m. on March 15, 2007.

Deputy Sheriff Brian Barkalow, a forensic investigator, testified that he found the victim's body in the trunk of the Mustang after removing a speaker. After having found the body, and without divulging that information to the defendant, he went inside to ask the defendant if she had keys to the trunk of the Mustang. The defendant told him that the locks had been changed and she did not have a key. In a search of the house that took place after the police obtained a search warrant, Deputy Barkalow found two sets of keys on an end table in the living room and a key in a dresser in the master bedroom. One of the keys from the living room and the key from the dresser fit the lock of the trunk. The set of keys from the living room containing the trunk key was identified by Melanie Baldridge as belonging to the defendant.

Former Deputy Sheriff Paul Dunklau testified that three latent fingerprints from the rear end of the Mustang were identified as coming from the defendant's left hand. DuPage Crime Laboratory scientist John Collins compared duct tape in the defendant's garage with the duct tape found on the bag that covered the victim's head. He testified that characteristics of the tearing patterns indicated that the tape matched one another. Officer Richard Wistocki, a computer crimes investigator, testified that MySpace messages that purported to come from Hollywood, Becky, NYFD, Sam and Tiff all originated with, or were part of, the defendant's MySpace account. Additionally, Joshua Suvetor testified that he had met "Becky" on MySpace. They had exchanged phone numbers and photographs and met in person on one occasion. Suvetor identified the defendant as "Becky."

Tamara Camp, a DNA expert, testified that two profiles of DNA were on the bandanas that were tied around the victim's eyes and mouth. The major contributor was the victim and the minor contributor was the defendant. Jennifer Cones, a fingerprint expert, testified that most of the palm

prints on the plastic bag that covered the victim's head matched the defendant's palm print. Several of the defendant's fingerprints matched those taken from the bottom of the plastic bag.

Dr. Scott Denton performed an autopsy on the victim on Sunday, March 18, 2007. There were no outward signs of injury and there was no dirt or debris inside the plastic bag that covered the victim's head. The bag had been tied tightly enough that no air would have gotten through and the victim's death was caused by suffocation. The state of digestion of the content of the victim's stomach indicated that she had died within an hour and a half after she had eaten.

Dr. Mohammed Ahsan testified, for the defense, that the defendant suffered from arthritis in her back and had received treatment for pain in November 2006. The treatment included injections of steroid and anesthetics to her spine. In January 2007 she underwent surgery to palliate her pain. Even after surgery, she continued to complain of pain and numbness in her leg.

The defendant testified that she was 28 years old at the time of trial. She met the victim when she was 19 and the victim was 25. The victim was her boss and was engaged to be married at the time. Following a work-related Christmas party, the two began a lesbian relationship. Shortly thereafter, the defendant, the victim, and a third person started to rent a house together. About a year later, the defendant and the victim purchased a house together and the three lived there for four or five years. The defendant and the victim bought the Villa Park home in May 2006.

The defendant testified that in 2006 she was shot in the stomach and the exit wound left her with recurring back problems. Also in 2006 she fell at work and injured her back again. In February 2007 she slipped on some ice. On good days she could only lift 40 pounds and on bad days she could not lift anything. Her doctor advised her to never lift anything over 25 pounds. In March 2007, she would not have been able to lift the victim, who weighed 162 pounds.

About a year before the victim's death, she and the victim agreed to have an open relationship. The victim wanted to have children but the defendant did not feel ready for the responsibility. The defendant testified that she never hid her MySpace communications from the victim and the victim was free to read them whenever she wanted to.

The defendant further testified that she met Sodaro in person in February 2006. The victim knew everything about the defendant and Sodaro's computer communications. Sodaro had kissed the defendant in front of the victim at a summer party in 2006. The defendant and Sodaro did not communicate much after that, but resumed their relationship after a December 31, 2006, New Year's Eve party. The defendant had plans to meet Sodaro on March 15, 2007. That same evening, Baldridge came over to help the victim prepare for a birthday party to be held at the house. Baldridge left around 7:15 or 7:20 p.m. After that, the victim went to Walgreens to buy duct tape. They planned to put away some of the Christmas decorations that were in the garage. As the victim packed items into plastic bins, the defendant tore off strips of duct tape for the victim to use. While they were in the garage, the defendant was texting and making plans to meet Sodaro. The victim was irritated by this because she wanted the defendant to stay and help her. When the defendant started to get ready to go out, the victim stated that she might stay at Baldridge's house that evening. When the defendant was done showering, she did not see the victim in the house and assumed that she was in the garage or over at her sister's house.

The defendant left to meet Sodaro around 8:45 p.m. They met in a restaurant parking lot and drove to a bowling alley together. The defendant drank beer and did some shots. Sodaro drove her home. The victim's van was in the driveway when they got home. The defendant said she was not concerned about bringing Sodaro home because the victim knew about the relationship. When they

went inside, she called out to the victim to let her know they were there. When there was no response, she assumed that the victim went to Baldridge's house. On Friday morning, the defendant woke up and began cleaning for the party. She called the victim around 10 a.m. but received no answer. Sodaro woke up around 9 or 10 a.m. and they watched television until the defendant received a call from Lawlor about the victim. The defendant saw that the victim's van was no longer in the driveway, and told him that the victim had gone to work. Lawlor told her that the victim was not at work.

Thereafter, the defendant said she called the victim's phone but did not get an answer. She then called Baldridge and the victim's mother. She did not mention anything about Sodaro because the victim's family did not know she and the victim had an open relationship. The defendant had Sodaro take her to her car, and then she returned to the Villa Park home. On the way back, she spotted the victim's white van a half block from home. She then called 911. She looked inside the van and saw that the victim's keys were in the ignition and her back pack was lying inside with papers strewn around the van. Thereafter the police and the victim's family started to arrive at the house. She allowed the police to search her house.

The defendant testified that she did not initially tell the police about Sodaro or the bowling outing because the victim's father was present. When she was confronted with the neighbor's statement that Sodaro's car was in the driveway, she lied to the police again because she was frightened. The defendant testified that she did not have a key to the trunk of the Mustang. The last time she had opened the trunk was the day she and the victim moved to Villa Park, when the defendant broke the key in the lock while moving a microwave oven.

The defendant further testified that when the police returned on March 17, she initially refused to let them search the house again because she had spoken with her father. Her father told her not to speak with anyone and to get a lawyer. However, when they explained that they needed to search in order to find the victim, she allowed the search despite her father's advice. On Sunday, March 18, the defendant told the police that Sodaro had spent the night from Thursday to Friday. The defendant testified that the fictional characters on MySpace were just a game and that Sodaro knew it was just a game. The defendant testified that she had always loved the victim and that their relationship was happy.

Following deliberation, the jury found the defendant guilty of first degree murder. The trial court denied the defendant's motion for a new trial. Following a sentencing hearing, the trial court sentenced the defendant to 50 years' imprisonment. The defendant did not file a motion to reconsider sentence but did file a timely notice of appeal.

The defendant's first contention on appeal is that the trial court abused its discretion in admitting the text and MySpace messages and finding that they were more probative than prejudicial. The defendant argues that the messages were not relevant to any motive to murder the victim, but served only to portray her as a liar and as an otherwise bad person. The defendant also argues that other witnesses testified that the defendant was engaged in a relationship with someone other than the victim, and the messages were therefore cumulative. The defendant requests that her conviction be reversed and that the case be remanded for a new trial.

Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court's 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 (2001).

Moreover, a reviewing court will not disturb a trial court's ruling on a motion *in limine* absent an abuse of discretion. *People v. Buck*, 361 Ill. App. 3d 923, 938 (2005). "Relevant evidence is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence." *Id.* Additionally, the State may introduce evidence that tends to show that an accused had a motive for killing the deceased because such evidence renders it more probable that the accused did kill the deceased. *Id.* Relevant evidence is admissible only if the probative value substantially outweighs any prejudicial effect. *People v. Lewis*, 165 Ill. 2d 305, 329 (1995). Evidence is prejudicial if it has an undue tendency to evoke a decision on an improper basis, such as sympathy, hatred, contempt, or horror. *Id.*

In the present case, we cannot say that the admission of the text or MySpace messages was an abuse of the trial court's discretion. The State sought to introduce the messages as evidence of the defendant's motive to kill the victim. The State's theory was that the defendant killed the victim for financial gain and to free herself to pursue her romantic interest in Sodaro. The State argued that the messages showed that an intense relationship existed between the defendant and Sodaro and that the defendant was willing to go to great lengths to obtain Sodaro's sympathy and affection. The defendant does not challenge that a proper foundation was laid for the admission of the messages, only that the content was more prejudicial than probative.

Our review of the messages indicates that the majority were relevant to establish a motive. The MySpace messages sent to Sodaro by the defendant attempted to create an image that the defendant was highly desirable and had many people vying for her affection. Many of the text messages were a direct statement by the defendant that she either loved, needed, or wanted Sodaro

and that she considered Sodaro to be her family. The messages showed that the defendant created many fictitious stories about her successes as both a New York and Villa Park fire fighter, about close relatives or friends that recently died, and about her own liver failure. The messages also showed that the defendant told Sodaro she wanted to buy a house for her. The trial court's determination that these messages were relevant to show the defendant's desire to garner Sodaro's admiration and affection was not unreasonable. Additionally, the trial court's determination that the fictitious stories corroborated the motive was not unreasonable. The fictitious stories demonstrated that the defendant often had excuses for not being immediately available to Sodaro and supported a determination that the defendant was attempting to conceal her relationships from the victim and Sodaro. The jury could reasonably infer from the messages that the defendant was unable to pursue her relationship with Sodaro unless her relationship with the victim terminated in some way. Accordingly, this evidence was relevant to establish motive. *Buck*, 361 Ill. App. 3d at 938. Finally, the prejudicial effect of the messages did not outweigh their probative value because the fictitious stories created by the defendant, although odd, were not so outrageous as to evoke a verdict on the basis of sympathy, hatred, contempt, or horror. *Lewis*, 165 Ill. 2d at 329.

The defendant argues that there was other evidence, such as Sodaro's testimony, that showed the defendant was engaged in a romantic relationship outside of her relationship with the victim and that the messages were therefore cumulative. We disagree. Sodaro did testify that she had a romantic relationship with the defendant. However, the full nature and extent of that relationship was shown only through the subject text messages and Sodaro's testimony concerning those text messages. Prior to the admission of the messages, the only other testimony was from the victim's family and the police. The testimony from the victim's family indicated that the defendant and the

victim were in a monogamous, committed relationship. Additionally, the testimony from the police showed that the defendant initially tried to conceal her relationship with Sodaro. Accordingly, the messages were not cumulative.

The defendant also argues that the messages do not demonstrate a motive because they do not show that either the victim or Sodaro was demanding that the defendant separate from the other. However, because Sodaro did not know that the defendant and the victim were a couple, she would have no reason to demand that they separate. Additionally, because the victim was unable to testify, we do not know if she was aware of the extent of the defendant's relationship with Sodaro. The jury was left to infer that determination from all the evidence presented, including the subject text and MySpace messages and the defendant's testimony that she and the victim had an "open relationship."

The defendant relies on *People v. Maounis*, 309 Ill. App. 3d 155 (1999) in arguing that the messages did not support a motive. In that case, Maounis was on trial for armed robbery. *Id.* at 156. A detective testified that at the time of the armed robbery, Maounis was spending time with a prostitute, consuming alcohol and smoking crack. *Id.* at 159. The prosecutor also elicited testimony from Maounis that he had been having trouble with his wife and had not spent Christmas with his family. *Id.* at 160. The reviewing court determined that the detective's testimony was improper because the State did not show that Maounis needed money to support any addictions (*Id.* at 159) and that Maounis's testimony was improper because whether he spent Christmas with his family was irrelevant to the armed robbery charge (*Id.* at 160).

In reliance on *Maounis*, the defendant argues that proof that the defendant told fictitious stories about being a firefighter, having a fatally ill brother, and having her own fatal illness was not probative but merely targeted her character. We find this argument and the defendant's reliance on

*Maounis* unpersuasive. Here, the subject messages showed a developing romantic relationship between the defendant and Sodaro and the lengths to which the defendant would go to win Sodaro’s affections. The messages also supported an inference that the defendant and the victim did not have an open relationship. In contrast to *Maounis*, the subject messages were not introduced solely to portray the defendant as a bad person or a liar; rather, such evidence was directly linked to the relationships at issue that may have provided a motive for the murder.

The defendant also relies on *People v. Hendricks*, 137 Ill. 2d 31 (1990). In that case, Hendricks was convicted of the murders of his wife and three children. *Id.* at 35. Hendricks owned and orthotics business and marketed his products via brochures that pictured models wearing his products. *Id.* at 36. The State introduced testimony from numerous models to attempt to establish an escalation of sexually improper conduct over time. *Id.* at 40. The State’s theory was that because the defendant belonged to a strict Christian denomination that forbade sexual impropriety or divorce, and because his improper behavior with the models demonstrated a desire to pursue extramarital relationships, the defendant concluded that the only solution to his problem was to kill his wife and children. *Id.* at 39.

Our supreme court found that the admission of the models’ testimony was an abuse of discretion. *Id.* at 54. The State had not presented the model’s testimony in the chronological order in which the defendant had worked with them, and, therefore failed to show an “escalation” of improper sexual behavior over time. *Id.* at 51-52. The court observed that the models’ testimony presented “no more than a haphazard series of encounters.” *Id.* at 52. Additionally, the State had not presented evidence that the defendant would be ostracized by his Christian community for his improper behavior or that the defendant was even worried about that possibility. *Id.* at 61. The court

determined that the testimony from the models was aimed at inflaming the jury's passions against the defendant (*Id.* at 55) and that the evidence about his religious practices and beliefs was thus irrelevant and highly prejudicial (*Id.* at 56). Accordingly, Hendrick's conviction was reversed and the matter was remanded for a new trial. *Id.* at 65.

The defendant's reliance on *Hendricks* is unpersuasive. In *Hendricks*, the State manipulated the evidence to create the illusion of escalating improper sexual behavior and did not support its theory that the defendant's religious beliefs would motivate him to commit murder. In the present case, the State did not manipulate the subject testimony and it undeniably showed that the defendant was developing a romantic relationship with Sodaro despite the defendant's relationship with the victim. Although the messages did not directly indicate that the defendant was contemplating murder, there was evidence that the defendant was trying to conceal her relationship with Sodaro and her relationship with the victim, and the State presented other evidence showing that the defendant stood to benefit financially from the victim's death.

Finally, the defendant argues that the quantity of the messages introduced was so voluminous that the combined effect could only have left the jury with the impression that the defendant was an outrageous liar and a terrible person. Nonetheless, even if the quantity of the messages somehow constituted error, such error would be harmless. An evidentiary issue is harmless when no reasonable probability existed that the jury would have acquitted the defendant absent the error. See *In re E.H.*, 224 Ill.2d 172, 180 (2006) (explaining that the harmless-error-review standard for evidentiary issues is the "reasonable probability" standard). Even if, for example, the messages concerning the defendant's fictitious life as a firefighter or her alleged liver cancer were excluded, no reasonable probability exists that the defendant would have been acquitted of the murder. The

duct tape on the plastic bag around the victim's head was torn from a roll of duct tape found in the defendant's garage, and the defendant's fingerprints were on that roll of duct tape. The defendant's finger and palm prints were on the plastic bag that was wrapped around the victim's head. The defendant's DNA was on the bandanas used to cover the victim's eyes and mouth. The defendant was at home with the victim during the time frame of the murder. The victim's body was in the trunk of the defendant's Mustang and the defendant's fingerprints were on the trunk. The defendant lied about not having keys to the trunk, about seeing the victim the next morning, and about being with Sodaro the night of the murder. The defendant stood to gain financially from the murder through joint bank accounts and life insurance policies. Accordingly, based on the overwhelming evidence against the defendant, the erroneous admission of any portion of the subject messages would be harmless error. *In re E.H.*, 224 Ill.2d at 180.

The defendant's second contention on appeal is that the trial court abused its discretion in sentencing her to 50 years' imprisonment in light of her nonviolent past. The defendant notes that she had no prior criminal history and no prior history of violence and further argues that the trial court failed to consider her potential for rehabilitation. The defendant acknowledges that she failed to file a motion to reconsider her sentence and that she therefore failed to preserve this sentencing issue for appeal. Nonetheless, she requests that we review this contention for plain error. In determining whether the defendant's sentence amounted to plain error, we must first determine whether error occurred. Without reversible error, there can be no plain error. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

A defendant convicted of first degree murder faces a sentence of between 20 and 60 years' imprisonment. 730 ILCS 5/5—4.5—20 (West 2008). When a sentence falls within the statutory

limits for the offense, it will not be disturbed unless the trial court abused its discretion. *People v. Chirchirillo*, 393 Ill. App. 3d 916, 927 (2009). A trial court abuses its discretion when the penalty imposed does not comport with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.*

In sentencing the defendant, the trial court stated that it had considered the factors in mitigation and aggravation as set forth in the statute (730 ILCS 5/5—5—3.1, 3.2 (West 2006)). The trial court noted, as a mitigating factor, that the defendant had no prior criminal history. The trial court noted, as factors in aggravation, that the sentence must serve as a deterrent and that the defendant had financial motives for the murder. The trial court determined that based on the defendant's lack of criminal history the maximum sentence was not appropriate and therefore sentenced the defendant to 50 years' imprisonment. Accordingly, the record establishes that the trial court considered proper aggravating and mitigating factors. It is not our prerogative to reweigh those factors and independently decide that the sentence is excessive. *People v. Coleman*, 166 Ill.2d 247, 261-62 (1995). We acknowledge that the trial court is required to consider the defendant's rehabilitative potential in imposing sentence. However "such consideration need not outweigh the seriousness of the offense or other aggravating factors." *People v. Brajcki*, 150 Ill. App. 3d 506, 515 (1986). As such, based on the seriousness of the offense and because the trial court considered proper sentencing factors and imposed a term within the statutory range, we find no abuse of discretion and thus no error. *People v. Almo*, 108 Ill.2d 54, 70 (1985).

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

No. 2—09—0799