

No. 1-06-2148

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 02 CR 24831
	)	
TIM DANIEL,	)	Honorable
	)	Reginald Baker,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE STERBA delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

*HELD:* The evidence was sufficient to prove that defendant possessed the specific intent to kill the victims where defendant used a deadly weapon in a deadly manner and inflicted deep wounds on both victims. Defendant's convictions for armed violence violate the one-act, one-crime doctrine where they were based on the same physical acts of stabbing the two victims that were charged as the basis for his convictions for attempted murder. Finally, defendant's sentences were not excessive where the trial court considered the nature of the crimes as well as defendant's lack of criminal background, employment and educational history, and mental health issues, and imposed a term within the permissible statutory range.

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Following a bench trial, defendant Tim Daniel was convicted of two counts of attempted first degree murder and two counts of armed violence. Defendant was sentenced to consecutive terms of 60 and 30 years' imprisonment for his attempted first degree murder convictions, which were to run concurrently with sentences of 60 and 30 years' imprisonment for his convictions for armed violence. Defendant appealed, contending, among other things, that his due process rights were violated when the trial court failed to conduct an adequate fitness hearing. This court held that defendant's fitness hearing was deficient, and that the error was not harmless beyond a reasonable doubt. *People v. Daniel*, No. 1-06-2148 (2008) (unpublished order under Supreme Court Rule 23). As a result, we reversed the trial court's judgment, remanded the cause for a new hearing, and retained jurisdiction of the appeal pending the outcome of the fitness hearing. *Daniel*, No. 1-06-2148, order at 12-13. Following a fitness hearing on September 20, 2010, defendant was found fit for trial and, on January 28, 2011, the trial court ordered defendant's original sentences to stand.

In this appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he had the specific intent to kill either victim, that his two convictions for armed violence violate the one-act, one-crime doctrine, and that his sentence is excessive. For the reasons that follow, we affirm in part and vacate in part.

#### BACKGROUND

At trial, Joan Falaschetti testified that on the afternoon of September 3, 2002, she was shopping with her two daughters at the Jewel grocery store at 2500 Lincoln Highway in Olympia Fields, when she observed defendant, who looked dirty and was wearing a heavy coat even

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though it was close to 90 degrees outside, enter the store. Defendant proceeded to the kitchen utensils aisle and removed a knife from its packaging. Falaschetti ran to the pharmacy with her daughters and told the pharmacist to call security because a man was opening a knife. As Falaschetti entered the pharmacy area, she heard a scream. The pharmacist called 911, and Falaschetti described defendant over the phone. When the police arrived, Falaschetti was taken to a police car and identified defendant, who was seated inside, as the man she saw with the knife. Falaschetti subsequently identified defendant from a lineup at a police station.

Bernetta Braun-Tennant testified that about 4 p.m. on September 3, 2002, she was stabbed in the back and across her face while shopping at Jewel. She was 74 years old at the time, and did not see the attacker's face. Braun-Tennant was taken to the hospital, where she underwent surgery for the stab wounds to her back and face. On cross-examination, Braun-Tennant stated that the attacker came from behind her, and that she did not see him coming. She further stated that she had never met defendant prior to the incident.

Karen Matthys testified that about 4 p.m. on September 3, 2002, she was shopping at Jewel and saw defendant standing behind Braun-Tennant, who had a stunned look on her face. Matthys thought that defendant was stealing Braun-Tennant's purse and said something like "what do you think you're doing." Defendant lunged at Matthys, and she thought that he had hit her in the jaw, but later learned that she had been cut. Matthys shoved her shopping cart at defendant, who stumbled away and punched Martha Turnbo in the eye as he ran to the back of the store. Matthys realized that defendant did not punch her because there was blood everywhere and she was bleeding from her chin and mouth. A paramedic team arrived and provided her with

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emergency treatment, then took her to the hospital, where she underwent surgery on her face. On September 5, 2002, Matthys viewed a lineup at the police station and identified defendant as the offender. On cross-examination, Matthys stated that she had never met defendant prior to the incident.

Martha Turnbo testified that about 4 p.m. on September 3, 2002, she was shopping at Jewel and looking down at an item on the bottom shelf, when she heard a woman say “what are you doing.” Turnbo looked up and saw an overturned shopping cart and Matthys, who was bleeding from her mouth. Turnbo also saw defendant approaching her, and she screamed. Defendant punched Turnbo in the left eye, and she turned and put her hand over her eye. Turnbo did not see where defendant went. Prior to being taken to the hospital, Turnbo identified defendant from a police car as the person who had struck her. On September 5, 2002, Turnbo viewed a lineup at a police station and identified defendant as the man who punched her in the eye.

Julia Ziegler testified that about 4 p.m. on September 3, 2002, she was at the checkout line at Jewel when defendant went behind the register and tried to push past the shopping cart that was blocking his way. The cashier told defendant that he needed to walk around, and he pushed past the cart, punched the cashier in the face, and then walked out the store. After paying for her groceries, Ziegler noticed a paramedic crew and police officers running toward the back of the store, and saw a lot of blood in one of the aisles. Ziegler, who was an emergency room nurse, identified herself to a police officer and offered to help treat the victims. Ziegler helped treat Matthys and Turnbo because the medics were primarily treating Braun-Tennant, who was the

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most seriously injured. Ziegle bandaged the laceration on Matthys' face and applied ice to the swelling on Turnbo's eye. A second paramedic crew then arrived, and assumed treatment of Matthys and Turnbo. As Ziegle was leaving the store, she saw defendant sitting in a police car and told a police officer that he was the person who punched the cashier and ran out of the store. On September 5, 2002, Ziegle viewed a lineup at a police station and identified defendant.

Olympia Fields police detective James Keith testified that on September 3, 2002, he performed an evidence check at the Jewel and recovered a knife with an eight-inch blade from the floor of one of the aisles in the store. Detective Keith also found the packaging material for the knife on a counter in the same aisle.

Doctor Jeffrey Flagg testified that on September 3, 2002, he performed surgery on Braun-Tennant. Dr. Flagg assessed the wound on her face, which was about two-and-a-half centimeters deep and nine centimeters long, starting underneath her lip and going towards her ear. Dr. Flagg considered it to be a very large and deep wound that was contributing to her severe blood loss, and performed a complex closure of the wound. Dr. Flagg had been informed by the trauma service, which had closed Braun-Tennant's back wound before she arrived for surgery, that she had a pulsatile laceration to the suprascapular artery in her back. Dr. Flagg opined that the wound to her back was life threatening because she could have bled to death if it was not attended to in an expedient manner. He further opined that although the face wound was severe and contributed to the overall blood loss sustained by Braun-Tennant, it was not life threatening. Dr. Flagg also performed surgery on Matthys that day to repair a deep laceration to her chin that went down to the bone, but was not life threatening.

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On this evidence, the trial court found defendant guilty of two counts of attempted first degree murder, two counts of armed violence, two counts of aggravated battery of a senior citizen, and seven counts of aggravated battery. The court sentenced defendant to 60 years' imprisonment for the attempted murder of Braun-Tennant, and imposed a 30-year sentence for the attempted murder of Matthys, to run consecutively. The court also imposed sentences of 60 and 30 years' imprisonment for the armed violence convictions, to run concurrently with the sentences for attempted murder.

Defendant timely appealed, contending, among other things, that his due process rights were violated when the trial court failed to conduct an adequate fitness hearing. This court reversed the trial court's judgment, remanded the cause for a new fitness hearing, and retained jurisdiction of the appeal pending the outcome of the hearing. *People v. Daniel*, No. 1-06-2148, 12-13 (2008) (unpublished order under Supreme Court Rule 23). Following a fitness hearing on September 20, 2010, defendant was found fit for trial and, on January 28, 2011, the trial court ordered defendant's original sentences to stand. On February 22, 2011, this court granted a motion to stay the appellate proceedings pending a review of the supplemental record relating to the fitness hearing. On May 17, 2012, this court entered an order allowing the parties to file a joint status report. In the report, defendant indicated that he would not be filing a supplemental brief related to the fitness hearing, and that the remaining issues raised on direct appeal were ripe for adjudication.

#### ANALYSIS

We now address the remaining issues raised in defendant's direct appeal. Defendant first

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contends that the State failed to prove him guilty beyond a reasonable doubt of the attempted first degree murder of either Braun-Tennant or Matthys. Where defendant challenges the sufficiency of the evidence to sustain a conviction, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). This court will only reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

To prove defendant guilty of attempted first degree murder, the State must prove that he performed an act constituting a substantial step toward the commission of the murder and that he possessed the specific intent to kill. *People v. Brown*, 341 Ill. App. 3d 774, 781 (2003).

Defendant asserts that the State failed to prove beyond a reasonable doubt that he possessed the specific intent to kill either Braun-Tennant or Matthys.

Intent to kill is a state of mind that can rarely be proved by direct evidence. *People v. Williams*, 165 Ill. 2d 51, 64 (1995). As a result, it can be proved by surrounding circumstances such as the character of the assault and the nature and seriousness of the injury. *Williams*, 165 Ill. 2d at 64. The specific intent to kill may also be inferred from the possession and use of a deadly weapon and other relevant matters. *People v. Treadway*, 138 Ill. App. 3d 899, 902 (1985).

Viewed in the light most favorable to the State, the evidence shows that defendant

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grabbed a knife with an eight-inch blade from the kitchen utensils aisle of the Jewel and stabbed Braun-Tennant in her back and face, inflicting a life threatening pulsatile laceration to the suprascapular artery in her back and a large, deep wound to her face. Defendant then stabbed Matthys in the face, causing a deep laceration to her chin, and punched Turnbo in the eye before heading to the register and punching the cashier in the face on his way out of the store.

Defendant, citing *People v. Garrett*, 216 Ill. App. 3d 348 (1991), *People v. Jones*, 184 Ill. App. 3d 412 (1989), and *People v. Thomas*, 127 Ill. App. 2d 444 (1970), maintains that the evidence was insufficient to prove his specific intent to kill because he did not kill the victims despite having the opportunity to do so. Defendant further maintains that the victims' injuries were not life threatening, he did not use the knife in the deadliest manner possible, and the senselessness of the attacks indicates that he did not have a specific intent to kill the victims.

We conclude, however, that the trial court could have inferred a specific intent to kill by defendant because the State demonstrated that he voluntarily and willingly stabbed the victims in a way which has the natural tendency to kill them. *People v. Winters*, 151 Ill. App. 3d 402, 405 (1986). Defendant is not automatically exculpated by the fact that he did not kill the victims despite having an opportunity to do so, and if he intended to kill them when he stabbed them, it does not matter if he changed his mind afterwards. *People v. Parker*, 311 Ill. App. 3d 80, 90 (1999). The fact that defendant chose to flee, rather than inflict a fatal injury, does not negate the existence of an intent to kill. *Winters*, 151 Ill. App. 3d at 409.

Unlike the cases cited by defendant, where the attacker either did not use the weapon on the victim (*Garrett*, 216 Ill. App. 3d at 354), or did not use the weapon in a deadly manner

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(*Jones*, 184 Ill. App. 3d at 430; *Thomas*, 127 Ill. App. 2d at 447-48), defendant in this case used the knife, which had an eight-inch blade, in a deadly manner when he stabbed the victims in the face and upper back. *Winters*, 151 Ill. App. 3d at 408-09. In addition, in each of the cases cited by defendant the alleged attempted murder occurred as the attacker used violence to control the victims during the commission of another crime (*Garrett*, 216 Ill. App. 3d at 349 (armed robbery); *Jones*, 184 Ill. App. 3d at 415 (armed robbery and criminal sexual assault); *Thomas*, 127 Ill. App. 2d at 445 (rape)), whereas here there is no indication that defendant stabbed the victims in the execution of some larger plan.

The seriousness of the injuries sustained by Braun-Tennant and Matthys also supports an inference of defendant's intent to kill. The injuries suffered by a victim may be serious enough to support a conviction for attempted murder even if they are not life threatening. *Parker*, 311 Ill. App. 3d at 90-91. The victims in this case did not just sustain superficial scrapes and cuts, but deep stab wounds that required surgery. *Winters*, 151 Ill. App. 3d at 407. Dr. Flagg testified that the stab wound to Braun-Tennant's back could have caused her to bleed to death if it was not attended to in an expedient manner, and that the wound to her face was long and deep, and required a complex closure. He further testified that although the wound to Matthys' face was not life threatening, it was a deep wound that went down to her bone and required surgery. In addition, we note that the issue of whether the victims' injuries were actually life threatening is of little importance as defendant had no way of knowing whether the wounds he inflicted would be life threatening at the time of the attack. *People v. Scott*, 271 Ill. App. 3d 307, 311 (1994). For the reasons stated above, we conclude that the evidence was sufficient to prove that

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defendant possessed the specific intent to kill Braun-Tennant and Matthys and sustain his convictions for attempted first degree murder.

Defendant next contends, the State concedes, and we agree, that his two convictions for armed violence must be vacated because they were based on the same physical acts that were charged as the basis for his convictions for attempted murder. Although defendant failed to raise this issue in a written posttrial motion, his claim affects his substantial rights and is reviewed for plain error. *People v. Pearson*, 331 Ill. App. 3d 312, 321 (2002). The record shows that defendant's convictions for armed violence and attempted murder were based on the same acts of stabbing Braun-Tennant and Matthys. Since defendant may not be convicted of more than one offense arising from the same physical act, we vacate his convictions for armed violence. *People v. King*, 66 Ill. 2d 551, 566 (1977).

Finally, defendant contends that his sentences of 60 years' imprisonment for the attempted murder of Braun-Tennant and 30 years' imprisonment for the attempted murder of Matthys are excessive, and that this court should either reduce his sentences to more appropriate terms or remand the matter for a new sentencing hearing. Defendant does not dispute that the terms fall within the permissible statutory ranges, but asserts that the court failed to balance the seriousness of the offense with the objective of restoring him to useful citizenship. He claims that the court did not adequately consider that he had no prior convictions, completed high school and earned an associate's degree, and had been consistently employed for six years before his schizophrenia resulted in his homelessness and polysubstance abuse.

Where the sentence imposed by the trial court falls within the statutory range permissible

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for the offense of which defendant is convicted, a reviewing court may disturb that sentence only if the trial court has abused its discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). Such a sentence will be deemed excessive and the result of an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

The record shows that prior to entering its sentencing determination, the trial court considered defendant's lack of a criminal background, employment and educational history, and mental health issues. The court stated that defendant's mental health and lack of criminal history were mitigating factors, but that his crimes were unjustifiable. The court described the crimes as brutal, heinous, and flagrantly cruel, noted that one of the victims was over the age of 60, and stated that a sentence needed to be imposed which would deter others from committing such crimes.

It is the province of the trial court to balance factors in aggravation and mitigation and make a reasoned decision as to the appropriate punishment in each case. *People v. Streit*, 142 Ill. 2d 13, 21 (1991). It is not our prerogative to reweigh these factors and independently decide that the sentence is excessive. *People v. Coleman*, 166 Ill. 2d 247, 261-62 (1995). The record shows that the trial court considered proper aggravating and mitigating factors in making its sentencing determination, and imposed a term within the permissible statutory range. Under these circumstances, we conclude that the trial court did not abuse its discretion in sentencing defendant to terms of 60 and 30 years' imprisonment, and thus have no basis for modifying its decision. *People v. Almo*, 108 Ill. 2d 54, 70 (1985).

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Accordingly, we vacate defendant's two convictions for armed violence, and affirm the judgment of the circuit court of Cook County in all other respects.

Affirmed in part; vacated in part.