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2012 IL App (3d) 110015-U

Order filed September 24, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-11-0015
	)	Circuit No. 07-CF-1926
	)	
GILBERT KNOWLES,	)	Honorable
	)	Richard C. Schoenstedt,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Lytton and Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) The defendant was proven guilty beyond a reasonable doubt; (2) the trial court did not abuse its discretion in allowing the State to present evidence of prior physical abuse; and (3) the defendant's sentence was not an abuse of discretion.

¶ 2 The defendant, Gilbert Knowles, was convicted of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2006)) and sentenced to 52 years' imprisonment. On appeal, the defendant argues that: (1) the State did not prove his guilt beyond a reasonable doubt; (2) the trial court abused its discretion in allowing the State to present evidence that the victim had been physically

abused on prior occasions; and (3) his sentence is excessive. We affirm.

¶ 3

### FACTS

¶ 4 On October 7, 2007, the defendant was charged by indictment with two counts of first degree murder. On December 18, 2009, the State filed a motion *in limine* to admit other-acts evidence. The State sought to admit evidence of prior abuse to the victim. Prior to the bench trial, the parties presented arguments on the State's motion. The court deferred ruling on the other-acts evidence until "the point in time in which they need to be made during trial."

¶ 5 At the trial, Julie Miller testified that she was the mother of the victim, Devin, and in 2007 she lived in a home in Joliet with Devin, his two sisters, and the defendant. In 2007, Devin was two years old. Around Easter 2007, Devin was allegedly hit in the side of the head with a toy, and Miller took him to the hospital. A second hospital visit occurred when the defendant reported that Devin fell out of his crib and bumped his head. On three other occasions, Devin suffered noticeable injuries that did not require a hospital visit. After one of Devin's injuries, the defendant purportedly warned Miller not to take Devin to the hospital because "it always seems like [Devin is] hurt and they're going to take [Miller's] children from [her]." Miller never saw the defendant strike Devin.

¶ 6 On September 17, 2007, the children stayed with Bryan Owens, Devin's father, during the day. Around 8 p.m., Bryan's father, Mark Owens, returned the children to Miller's home. Miller fed the children a snack of leftover chicken and macaroni and cheese before she put them to bed around 9:30 p.m. At that time, she did not notice that Devin had any injuries or that he acted unusual.

¶ 7 After the children were in bed, Miller received a telephone call from the defendant, who

asked if she would drive his brother to Morris. Miller agreed and left her home shortly after the defendant returned. Miller came home around 3 a.m. and went to bed. At 8 a.m., Miller was awakened by her oldest daughter, who could not find Devin. Miller discovered Devin wedged between his bed and the wall. Miller grabbed him and called 911. After calling 911, she called the defendant, who responded that he would be right home. Miller noted that her daughters were unharmed.

¶ 8 Bryan testified that he was Devin's father. In the fall of 2006, he lived with Miller and Devin in a house in Joliet. By January 2007, the defendant also had moved into the house. Around the same time, Bryan and Miller separated, and Bryan moved out.

¶ 9 Prior to Bryan's move-out date, he did not think that Devin was accident-prone, and he never saw Devin fall down and hurt his face, fall out of his crib, or fall down the stairs. However, after Easter 2007, he noticed that Devin would have injuries every couple of weeks. Bryan noted that Devin's injuries subsided for a period when the defendant had moved out of Miller's house; however, when the defendant moved back into Miller's home the injuries became more severe.

¶ 10 On September 17, 2007, Bryan spent the day with Devin and his two sisters. Bryan did not notice that Devin acted unusual or had any injuries. Bryan's father, Mark, brought the children to Miller's house on the night of the incident, and he, too, did not notice anything unusual about Devin.

¶ 11 Dr. John Denton testified that he was a forensic pathologist and that he had reviewed Devin's autopsy report. Denton stated that Devin died from cranial cerebral injuries that resulted from blunt trauma to the head. Denton noted that Devin also suffered at least 51 separate,

external injuries. Between 30 to 35 of the injuries were to Devin's head and face, approximately 6 to his chest and abdomen, and the remaining injuries were to his extremities. An autopsy photograph showed that Devin's frenulum, where the gum meets the inner and upper lip, was torn sideways and vertically. Denton opined that the likely cause was a blow to the mouth from something round, like a fist. Devin also suffered a broken jaw caused by severe force. Denton identified a cobblestone pattern on the back of Devin's head, which, in combination with the skull fracture running along the bottom of Devin's skull, was inflicted by severe force that was inconsistent with an accident. The autopsy revealed bruising on multiple areas along Devin's back, chest wall, and intestines. Denton testified that these injuries were caused by blunt trauma to the chest and blunt trauma or a punch to the abdomen. These injuries were inconsistent with falling down the stairs and would require greater force than a fall would impart. Devin's stomach contents indicated that he had died within three hours of eating.

¶ 12 Police Officer Jose Campos testified that on September 18, 2007, he retrieved a t-shirt and jeans in a wooded area near defendant's place of employment. Forensic scientist Lyle Boicken detected blood on the t-shirt. Forensic scientist David Turngren discovered deoxyribonucleic acid (DNA) on the t-shirt that matched the defendant's DNA, and he could not exclude Devin or Miller as DNA contributors to another part of the shirt.

¶ 13 The defendant began his case with Dr. John Plunkett. Plunkett testified that he was a medical doctor and that he had reviewed Devin's autopsy report. He agreed with the coroner's conclusion that Devin's death was the result of cranial cerebral injuries due to multiple blunt force traumas to the head. Plunkett opined that Devin died as a result of a beating, but he could not eliminate the possibility that Devin may have died from an accidental fall in the bathtub, or

as a result of positional asphyxia.

¶ 14 The defendant testified that he had observed unusual bruising on Devin before he moved into Miller's home. He noted that he saw Miller spank Devin and she had "meltdowns[.]" The defendant also remembered watching Miller grab the children by their arms and drag them into their rooms. On a few occasions, he confronted Miller about Devin's marks or bruises, but he denied telling Miller not to take Devin for medical treatment.

¶ 15 The defendant denied hurting Devin and stated that he and Devin were "buddies" and they were almost like father and son. However, he noted that Devin was injured on a few occasions while in his care. Devin slipped on the stairs and scraped his back, he slid down a slide and hit his face on a chair, and he burnt his back on a slide at the park. The defendant stated that Devin fell out of his crib or bed on two occasions, but he did not suffer any major injuries.

¶ 16 The defendant stated that on September 17, 2007, he went to a bar after work with his brother and Miller. Miller left the bar around 8 p.m. After drinking seven beers and doing a line of cocaine, the defendant did not feel that he should drive his brother home, and he called Miller to ask if she would drive. The defendant then returned home between 9:30 and 10 p.m. He met Miller as she was leaving their home to pick up his brother, and Miller told him that the children were in bed. The defendant got a beer from the refrigerator and went outside to smoke a cigarette. When he came in the house, he heard Devin crying, and he saw that Devin had a bloody nose. The defendant cleaned up the blood and comforted Devin until he was ready to go back to bed. Afterwards, the defendant had another beer and a cigarette, came back into the house, took a shower, and went to sleep. The next day the defendant got up and went to work

wearing the same t-shirt and pants he had worn on September 17.

¶ 17 Around 8 a.m., the defendant received a call from Miller about Devin, and he left work. On his way home, the defendant was stopped by Joliet police officers, who asked him to accompany them to the police station. The defendant agreed to follow the officers to the police station, where he was questioned.

¶ 18 Before closing arguments, the court addressed the State's motion *in limine*. At this point, defense counsel did not "object to the evidence of the prior bruising of the [victim] coming in \*\*\*, but [he did] object to it being characterized as other crimes evidence." The court admitted the evidence; however, it stated that it was ultimately up to the court, as trier of fact, to determine whether the evidence constituted abuse and whether the abuse was committed by the defendant.

¶ 19 The case proceeded to closing arguments, after which the court found the defendant guilty of two counts of first degree murder.

¶ 20 Before pronouncing the defendant's sentence, the court considered all of the evidence, including the defendant's presentence investigation. Although it noted that the defendant had a prior felony conviction, it was more than 10 years old, and the court referenced in mitigation that the defendant did not have a history of prior delinquency or criminal activity for a substantial period of time. The court concluded that an extended-term sentence was not appropriate, but a sentence at the higher end of the sentencing guidelines was necessary, and it sentenced the defendant to 52 years' imprisonment. The defendant appeals.

¶ 21

## ANALYSIS

¶ 22

### I. Sufficiency of the Evidence

¶ 23 The defendant argues that the State failed to prove his guilt beyond a reasonable doubt

because the evidence was entirely circumstantial.

¶ 24 When reviewing the sufficiency of the evidence, the relevant question is whether " 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 25 To prove a defendant guilty of first degree murder, the State must prove beyond a reasonable doubt that he killed an individual without lawful justification and he either intended to kill or do great bodily harm to that individual or knows that such acts will cause death to that individual. 720 ILCS 5/9-1(a)(1) (West 2006). A conviction can be sustained upon circumstantial evidence, and guilt beyond a reasonable doubt does not mean that the fact finder must disregard the inferences that flow normally from the evidence before it. *People v. Patterson*, 217 Ill. 2d 407 (2005).

¶ 26 Here, the evidence was sufficient to convict the defendant of first degree murder. Denton and Plunkett opined that Devin's death was not accidental and Devin died from a beating. Testimony from Miller and the defendant indicated that the defendant was the only adult home with Devin between 9:30 p.m. and 3 a.m., the time period in which Devin died. A bloody shirt with incriminating DNA evidence was found hidden near the defendant's place of employment. We find that this evidence, viewed under the *Collins* standard, was sufficient to convict the defendant of first degree murder.

¶ 27 **II. Prior Abuse Evidence**

¶ 28 The defendant argues that the trial court abused its discretion in allowing the State to

present evidence that Devin had been physically abused on prior occasions when there was no evidence that the defendant had committed the prior abuse.

¶ 29 We review the admission of other-crimes evidence for an abuse of discretion. *People v. Thingvold*, 145 Ill. 2d 441 (1991).

¶ 30 Other-crimes evidence is generally inadmissible to show a defendant's propensity to commit crimes. *People v. Donoho*, 204 Ill. 2d 159 (2003); Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, it is admissible to prove intent, *modus operandi*, identity, motive, absence of mistake, and any material fact other than propensity that is relevant to the case. *People v. Illgen*, 145 Ill. 2d 353 (1991).

¶ 31 Initially, we note that the defendant has waived review of this issue. To preserve an issue for appellate review, a defendant must object to the issue at trial and raise the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176 (1988). Here, defense counsel stated that he did not object to the evidence of prior bruising, but he did object to it being characterized as other-crimes evidence. Therefore, we find that the defendant has waived review.

¶ 32 Alternatively, we find that the trial court did not improperly consider this evidence in its ruling. In a bench trial, the court is presumed to have considered only properly admitted evidence. *People v. Eddmonds*, 101 Ill. 2d 44 (1984). We note that the trial court made extensive factual findings in support of its decision, and it did not specifically mention the evidence at issue. We conclude that the defendant has not rebutted the presumption and the court did not abuse its discretion by improperly considering this evidence.

¶ 33 III. Sentence

¶ 34 The defendant contends that his 52-year sentence is excessive because the evidence at

trial was circumstantial, he did not have a significant criminal history, and the other factors relied upon by the court did not justify such a lengthy sentence.

¶ 35 A trial court has wide discretion in sentencing a criminal defendant, and we review the trial court's sentencing decision for an abuse of discretion. *People v. Sweeney*, 2012 IL App (3d) 100781. A trial court abuses its discretion where a defendant's sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205 (2010).

¶ 36 The applicable sentencing range for a conviction of first degree murder is not less than 20 years and not more than 60 years. 730 ILCS 5/5-8-1(a)(1)(a) (West 2006). A court may impose an extended-term sentence of 60 to 100 years' imprisonment when a defendant is convicted of a felony committed against a person under 12 years of age. 730 ILCS 5/5-5-3.2(b)(4)(i), 5-8-2(a)(1) (West 2006).

¶ 37 In the instant case, the defendant was extended-term eligible because of Devin's young age. Nevertheless, the court declined to impose an extended-term sentence. Although the court noted that the defendant had a prior felony conviction, it noted in mitigation that the defendant had led a law abiding life since his prior felony. However, the court felt, in an exercise of its discretion, that a sentence at the higher end of the sentencing range was necessary and sentenced the defendant to 52 years' imprisonment. That sentence, while at the high end of the nonextended range, was in the middle of the extended range. Given the brutal circumstances of the crime, we cannot say that the defendant's sentence was an abuse of discretion.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 40 Affirmed.