

FIFTH DIVISION
April 26, 2013

No. 1-10-3224

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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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 6019
)	
ROOSEVELT BAGGETT,)	Honorable
)	Thomas Joseph Hennelly,
Defendant-Appellant.)	Judge Presiding.

ORDER

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

¶ 1 *HELD:* Trial court properly allowed use of defendant's testimony from his first trial as impeachment evidence in second trial when the trial court held a retrospective fitness hearing and determined that defendant was fit at the time of the prior testimony; trial court's decision to disallow additional evidence of decedent's violent nature was not an abuse of discretion; defendant's 20-year maximum sentence for second-degree murder of his stepfather was not an abuse of discretion.

¶ 2 This appeal arises from defendant Roosevelt Baggett's conviction for second degree murder of his stepfather, George Paul Baggett, and his subsequent 20-year prison sentence following a bench trial. On appeal, he contends that: 1) the trial court improperly allowed the State to impeach him with his testimony from his prior jury trial; 2) the trial court committed reversible error by not allowing defendant to present additional information of the decedent's violent behavior towards him; and 3) his 20-year prison term is excessive. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The evidence presented at trial established that on February 7, 2005, defendant was 26 years old and lived at 1629 North Mobile in Chicago with his mother, Aletha Baggett, his stepfather, the decedent, and other family members. Decedent had married Aletha when defendant was eight months old. Defendant considered decedent his father, having only learned otherwise a few years prior.

¶ 5 At approximately 7:00 a.m. on that date, the defendant, while home alone with decedent in the basement of their home, stabbed decedent in the neck and chest with a steak knife, penetrating his heart, during an altercation. After the stabbing, defendant left decedent on the floor of the basement, went to his grandmother's house and talked to some relatives before returning home and calling police. He was then arrested.

¶ 6 Prior to his jury trial held in November 2006, the trial court heard a motion *in limine* to determine the admissibility of evidence of the decedent's violent behavior and character pursuant to *People v. Lynch*, 104 Ill.2 d 194 (1984). Specifically, defendant sought to introduce evidence

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of three incidents involving defendant and the decedent. The trial court excluded two of the incidents, both of which occurred in 1995, based on its interpretation of *People v. Ellis*, 187 Ill. App. 3d 295 (1989), and its conclusion that they were irrelevant. The trial court allowed evidence of a 2004 incident, which was subsequently testified to by defendant and his mother at the bench trial.

¶ 7 Also prior to the jury trial, Dr. Dawna Gutzmann, a psychiatrist, evaluated defendant in March 2006. She opined that he was fit to stand trial and that he was sane at the time of the offense.

¶ 8 At the jury trial, defendant testified in his own defense. He testified that he went to the basement of the family home to shower and got into an argument with decedent over taxes. When defendant refused to provide his social security number, decedent became angry, stood up, and they began fighting. There was a knife present, which defendant picked up first, and they struggled for control of it. Defendant gained control of the knife and stabbed decedent, leaving him to die on the basement floor. Defendant left the family home and walked a few blocks to his grandmother's home, where he confessed to killing decedent. After his grandmother and uncle urged him to turn himself in, defendant reluctantly returned home and called the police.

¶ 9 When the police arrived, they found decedent's body lying on the basement floor in a pool of blood. They also recovered a steak knife with a bent blade splattered with decedent's blood and some of defendant's clothes lying in a pile stained with decedent's blood. The decedent's body had 11 external injuries, including stab wounds to the heart and to the area behind an earlobe. There were also "incised" wounds, which the medical examiner characterized as

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defensive wounds.

¶ 10 While defendant testified on direct examination, the court held a sidebar conference. During the sidebar, defense counsel, speaking as "an officer of the court," and not "an advocate," observed that defendant was becoming "increasingly depressed" and "[catatonic]-like." He further informed the court that defendant had refused to put on his clothes earlier in the day. The trial court responded by saying that defendant was answering questions, although somewhat slowly, and that he did put on his clothes.

¶ 11 The jury trial resulted in a hung jury and a mistrial. Following the jury trial, the initial trial judge recused himself and the case was transferred to another judge. Defendant's attorney also withdrew, and the public defender's office was appointed to represent him.

¶ 12 In November 2007, one year after his first trial, Dr. Gutzmann re-evaluated defendant and determined that he was not fit for trial. Subsequently, at a hearing in December 2007, the parties stipulated to Dr. Gutzmann's opinion, and the trial court found defendant unfit and ordered that he be transferred to Chester Hospital for in-patient treatment.

¶ 13 At Chester, defendant was medicated with anti-psychotics and after a few months, doctors concluded that he was fit with medication and the case was set for trial.

¶ 14 However, prior to trial, defense counsel requested that the court conduct a retrospective hearing regarding defendant's fitness at the time he testified in the initial trial on November 30, 2006. Defense counsel argued that if defendant was unfit when he testified at the first trial, then his testimony would not be admissible for any purpose. Counsel stated that he would be filing a motion for a retrospective hearing based on Dr. Gutzmann's 2008 report wherein she changed her

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original opinion that defendant was fit at the first trial. Defense counsel also requested a second opinion as to defendant's fitness, which was subsequently prepared by Dr. Segovia Kulik, who opined that defendant was fit at the first trial. The State argued that his fitness would not affect admissibility for impeachment purposes. To resolve the issue, the trial court bifurcated the issues and first conducted a retrospective fitness hearing to make a determination as to defendant's fitness at the first trial before determining whether the testimony was admissible for impeachment purposes at defendant's second trial. A hearing was held and the trial court found that defendant was fit when he testified in November 2006.

¶ 15 Defendant's second trial was a bench trial, held in April 2010. The presiding judge at the bench trial ruled that it would not disturb the previous *Lynch* ruling, and defendant and his mother were allowed to testify concerning the 2004 incident of decedent's violent nature.

¶ 16 Regarding the decedent's history of violent behavior towards defendant, according to defendant and his mother, one night decedent came home while defendant and his mother were sitting at the kitchen table. Decedent had been drinking and an argument ensued. Decedent "jumped" away from the table, retrieved a gun and pointed it at defendant. They both left, but decedent later called the police and sought an order of protection against defendant.

¶ 17 A police officer testifying in rebuttal for the State said that when he talked to defendant's mother, she never mentioned decedent pulling out a gun and that she told him that defendant was going to kill decedent.

¶ 18 During the bench trial, defendant's testimony was impeached in several instances with his testimony from the first trial. On direct examination, defendant testified that decedent slapped

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him and picked up the knife after defendant pushed him away; however, on cross-examination, defendant admitted that he previously testified that they touched one another simultaneously and that he picked up the knife first. Defendant also admitted on cross-examination that he previously testified that decedent had not done anything with the knife when he grabbed it. Further, defendant testified on direct examination that he stabbed decedent in the neck while he was standing, but was impeached with his prior testimony that he stabbed decedent in the neck after he had fallen to the ground. Also on cross-examination, defendant stated that he sat for two to three minutes, unsure if decedent was still breathing or conscious, in contrast to his prior testimony where he testified that decedent was still breathing when he was lying on the floor.

¶ 19 Following the bench trial, defendant was convicted of second degree murder based on the trial court's finding that defendant unreasonably believed he needed to act in self-defense. The trial court subsequently sentenced defendant to 20 years' imprisonment and this timely appeal followed.

¶ 20 ANALYSIS

¶ 21 Defendant's Impeachment with Prior Testimony

¶ 22 Defendant first contends that the trial court violated his due process rights by allowing the State to impeach him with his testimony from a prior trial when he was unfit at the time of the testimony. Specifically, defendant argues that: (1) the trial court's finding that he was fit at the time of the prior trial was against the manifest weight of the evidence; (2) because he was unfit at the prior trial, the testimony was inadmissible at his subsequent trial, even for impeachment purposes; and (3) the admission of the prior testimony prejudiced him and his

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conviction should be reversed and a new trial granted. He contends that testimony given while he was unfit is unreliable and inadmissible, like any involuntary statement.

¶ 23 In response, the State argues that there was no legal basis to exclude defendant's prior testimony. Specifically, the State contends that under well-established legal jurisprudence, even if a defendant suffers a deficient mental condition, some sort of coercive State action is a necessary predicate in deeming a statement to be involuntary, and since no coercive State action induced defendant to testify on his own behalf at his first trial, fit or unfit, there is no legal basis to find that such statements were involuntary and precluded from use at a future trial. The State cites *Colorado v. Connelly*, 479 U.S. 157, 107 S. Ct. 515 (1986) and *People v. Hall*, 195 Ill. 2d 1 (2000), to support this contention.

¶ 24 Due process prohibits prosecuting or sentencing a defendant who is not competent to stand trial. *People v. Lucas*, 388 Ill. App. 3d 721, 726 (2009). Fitness speaks only to a person's ability to function within the context of trial and not to competence in other areas. *Lucas*, 388 Ill. App. 3d at 726.

¶ 25 In Illinois, a defendant is presumed fit to stand trial, to plead and to be sentenced. *People v. Steppan*, 322 Ill. App. 3d 620, 628 (2001). A trial court has a duty to order a fitness hearing whenever there exists a *bona fide* doubt as to the defendant's ability to understand the charges against him and to participate in his defense. *Steppan*, 322 Ill. App. 3d at 628, (citing *People v. Kinkead*, 168 Ill. 2d 394, 407 (1995)). A defendant has the initial burden of raising a *bona fide* doubt as to his fitness; once a *bona fide* doubt is created, the burden then shifts to the State to prove him fit. 725 ILCS 5/104-11 (West 2008); *People v. Johnson*, 191 Ill. 2d 257, 271 (2000).

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Whether a *bona fide* doubt of defendant's fitness has arisen is generally a matter within the trial court's discretion. *Steppan*, 322 Ill. App. 3d at 628. A defendant may be competent to participate at trial even though his mind is otherwise unsound. *Steppan*, 322 Ill. App. 3d at 629. Moreover, the mere existence of a mental disturbance or an instance of psychiatric treatment is insufficient to create a *bona fide* doubt of a defendant's fitness. *People v. Itani*, 383 Ill. App. 3d 954, 970 (2008).

¶ 26 The parties disagree about the nature of the proceedings held below. However, we find that the hearing was a retrospective fitness hearing which the trial court held to determine defendant's fitness at his first trial in 2006 prior to determining the admissibility of defendant's testimony for impeachment purposes at the second trial.

¶ 27 Retroactive fitness hearings that were once considered improper are now the norm. *People v. Melka*, 319 Ill. App. 3d 431, 436 (2000), (citing *People v. Mitchell*, 189 Ill. 2d 312, 339 (2000)). A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. 725 ILCS 5/104-10 (West 2008). Once the fitness question is raised, the burden falls on the State to establish a defendant's fitness by a preponderance of the evidence. 725 ILCS 5/104-11(c) (West 2008).

¶ 28 When the evidence is controverted, the ultimate issue is for the trial court, not the experts, to decide, and the credibility and weight to be given psychiatric testimony are for the trier of fact. *People v. Baugh*, 358 Ill. App. 3d 718, 732 (2005). In *Baugh*, this court found that Dr. Gutzmann's subsequent opinion that defendant was unfit was at odds with the defendant's self-

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reported ability to assist counsel and with her own observations regarding defendant's cooperative nature, coherent mental abilities, and intact memory and concentration. *Baugh*, 358 Ill. App. 3d at 733. A trial court is not required to accept the opinions of psychiatrists in determining fitness; instead the court should assess the credibility and weight of the expert's testimony as well as independently analyze and evaluate the factual basis for that opinion. *Lucas*, 388 Ill. App. 3d at 728.

¶ 29 The trial court's ruling on the issue of fitness will be reversed only if it is against the manifest weight of the evidence. *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). A finding is against the manifest weight of the evidence if it is not based on the evidence presented. *Lucas*, 388 Ill. App. 3d at 726.

¶ 30 In this case, defendant had been found fit for his first trial by Dr. Gutzmann, then subsequently found unfit when it was time to proceed with the second trial. During the restorative period, Dr. Gutzmann changed her original opinion as to defendant's fitness and opined that he was unfit at the jury trial held in November 2006. A second opinion was procured from Dr. Segovia Kulik, who opined that defendant was in fact fit for his first trial. After reviewing both doctors' reports and testimony, the joint exhibits provided by the attorneys, defendant's testimony at the jury trial, and Judge Sacks' conduct at the jury trial, the trial court noted that defendant was cognizant at all times as to what was taking place during the trial, he responded to questions, recalled prior testimony, tried to inject something he felt was not appropriate, corrected his attorney and the state's attorney on several occasions, and continually injected his self-defense claim in his testimony. The trial court found that, overall, defendant's

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behavior was indicative of a mind that was processing information and acting appropriately. The court ruled that defendant's mind was alive, active, working and fit at the time of the jury trial and that defendant was able to assist in his defense and understood the proceedings. The trial court ultimately found defendant to be fit when he testified at his first trial on November 30, 2006.

¶ 31 We find that the trial court properly determined that defendant was fit when he testified in his first trial in November 2006 and that such finding was not against the manifest weight of the evidence. The trial court may consider the following factors when making a fitness determination:

- "(1) The defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process;
- (2) The defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel;
- (3) The defendant's social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes." 725 ILCS 5/104-16(b) (West 2008).

¶ 32 Here, the record clearly indicates that the trial court considered all of the statutory factors in detail, as well as considered both doctors' testimony in making its determination that defendant

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was in fact fit when he testified at the first trial.

¶ 33 Defendant contends that the trial court improperly shifted the burden of proof from the State at the retrospective hearing. We agree. Defendant has the burden of raising a *bona fide* doubt as to his fitness before the burden shifts to the State to prove him fit. 725 ILCS 5/104-11(c) (West 2008); *People v. Mahaffey*, 166 Ill. 2d 1, 18 (1995). There was an implicit finding of *bona fide* doubt as to defendant's fitness at his first trial because the trial court held a retrospective fitness hearing. See *People v. Jamison*, 197 Ill. 2d 135, 152 (2001) (statutory scheme requires a fitness hearing only when a *bona fide* doubt of defendant's fitness is demonstrated). Thus, the burden should have shifted to the State. Therefore, the trial judge incorrectly stated that defendant had the burden of proof in the retrospective proceeding, even though both parties incorrectly agreed.

¶ 34 As our supreme court noted in *People v. Bilyew*, 73 Ill. 2d 294, 300-01 (1978), "the statutory allocation of the burden of proof becomes significant in a given case only when the evidence is so nicely balanced that neither fitness nor unfitness is established by a preponderance of the evidence. In such a case, the determination must be adverse to the party bearing the burden." The *Bilyew* court then noted that the United States Court of Appeals for the Third Circuit said in *United States v. DiGilio*, 538 F. 2d 972, 988 (1976):

" 'Allocation of the burden of proof will be significant, in theory at least, only in the rare case when, assuming the evidence is weighed by the preponderance of evidence standard, the conflicting evidence is in equipoise in the mind of the fact finder. At that

point the triability of a defendant will depend on where the burden of proof is placed. To put the question another way, what we are determining is a rule of law, of due process dimensions, that a defendant, about whom the evidence of competency to stand trial is in equipoise, should or should not be tried.' "

¶ 35 Although we find that the trial court erred in stating that it was defendant's burden at the beginning of the hearing, we find that defendant was not harmed by the error. Our supreme court has stated "[w]here the record below did not contain any specific indication that the burden of proof had been a factor in the trial court's determination, but on the contrary was wholly consistent with and gave substantial support to the conclusion that defendant had been found fit by a preponderance of the evidence, vacation of the trial court's determination [would be] improper." *People v. Tamayo*, 73 Ill. 2d 304, 309 (1978); see also *Bilyew*, 73 Ill. 2d at 301. Here, the trial court continually noted that the primary issue was whether defendant was able to assist in his defense and understand the nature of the proceedings. In answering the question in the affirmative, the trial court reviewed defendant's trial testimony from the first trial, both doctors' retrospective opinions concerning defendant's fitness, Dr. Gutzmann's initial fitness finding from 2006, and live testimony from both doctors at the retrospective fitness hearing. The trial court concluded that the transcript showed:

"that defendant was in full possession of his faculties, he was able to cooperate with his counsel, even at times where his counsel was not phrasing questions artfully and not asking questions that the

defendant thought was appropriate. But in any event, I find that his mind was alive and active and working and fit at the time of the trial. * * * I think a reading of the transcripts incorporated with Judge Sack's comments during the transcripts, and the opinions of the doctors, I think that he was. And for all those reasons, I find that the defendant was fit when he testified on November the 30th of 2006 before Judge Sacks, and that's my finding."

¶ 36 It is clear that this is not a case where the evidence is balanced; it is clear that the trial court clearly found that the evidence amply supported a finding of fitness. We therefore find that the burden of proof was not a factor in the trial court's determination of defendant's fitness and that such determination of fitness was supported by a preponderance of the evidence. We conclude that such fitness finding was not against the manifest weight of the evidence.

¶ 37 Having concluded that the trial court's decision that defendant was fit at his first trial was not against the manifest weight of the evidence, we turn our attention to the determination of whether his testimony at the first trial was properly used by the State for impeachment purposes at the second trial. We find that it was.

¶ 38 The general rule is a defendant's earlier trial testimony is admissible against him for impeachment purposes at a later trial. *Harrison v. United States*, 392 U.S. 219, 222, 88 S. Ct. 2008, 2010 (1968); *People v. Wilkerson*, 123 Ill. App. 3d 527, 536 (1984). In permitting testimony from the first trial to be used in the subsequent trial it is assumed the defendant voluntarily availed himself of his right to testify at his first trial. *People v. Moore*, 19 Ill. App. 3d

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334, 342 (1974); *People v. Duncan*, 173 Ill. App. 3d 554, 558 (1988). See also *People v. Gross*, 166 Ill. App. 3d 413, 418 (1988) (when a defendant testifies in support of a motion to suppress evidence, his testimony may be used by the State for impeachment purposes if the defendant chooses to testify at trial). In the second trial, defendant is free to explain any discrepancies between his current testimony and his earlier testimony. *Wilkerson*, 123 Ill. App. 3d at 536.

¶ 39 Here, the State was allowed to impeach defendant at his second trial with his earlier trial testimony, which is permitted by the United States Supreme Court. *Harrison*, 392 U.S. at 222, 88 S. Ct. at 2010. Defendant seeks to create an exception to this rule by arguing that his prior trial testimony should have been excluded because he was unfit. Although we affirm the trial court's finding that defendant was fit at the time of his prior testimony, we note that our supreme court has previously held that even testimony which has been stricken as incompetent in one proceeding may still be used to impeach the witness at a later proceeding. *People v. Turner*, 265 Ill. 594, 602 (1914); see also *People v. Rush*, 65 Ill. App. 3d 596, 601-02 (1978).

¶ 40 It has already been concluded that defendant was fit for trial at the first trial when he testified. As such, it follows then, based on the above established precedence, that such testimony was available to the State for impeachment purposes should defendant choose to testify in the subsequent trial, which is what happened here. There was no error in allowing defendant's prior testimony to be used for impeachment, and defendant's claim is without merit.

¶ 41 Evidence of Decedent's Violent Behavior

¶ 42 Defendant next contends that the trial court committed reversible error by not allowing him to introduce additional evidence of the decedent's violent behavior towards him. Defendant

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contends that the evidence was relevant to his claim of self-defense because it demonstrated defendant's knowledge of the decedent's violent tendencies and helped demonstrate the reasonableness of his decision to defend himself. He further contends that the trial court disallowed such evidence in contradiction to the Illinois Supreme Court's decision in *People v. Lynch*, 104 Ill. 2d 194 (1984).

¶ 43 Defendant proffered three incidents of the decedent's violent behavior for the proposition of showing how the decedent's long-standing violent tendencies affected defendant's perceptions of and reactions to his behavior. One incident was allowed and two were stricken as irrelevant. Defendant contends that this evidence was necessary to show the reasonableness of his belief that he needed to use deadly force to defend himself and the date of the incidents was more relevant, not less relevant to his defense.

¶ 44 The two incidents that were excluded are as follows: in the spring of 1995, decedent chased George, defendant's half-brother and the decedent's son, around the house with a shotgun and threatened to kill him after George struck decedent. George ran onto the roof and decedent had to be restrained by family and neighbors so that he would not shoot George. Decedent also pulled the shotgun on defendant and for several days after chasing and threatening George, told defendant and his siblings that he would shoot and kill the next person who dared lift a hand against him. In the second incident, which occurred in September 1995, decedent pulled a gun on defendant and his mother after he came home and found that dinner was not prepared. Decedent pointed and cocked the gun in defendant's face and told defendant that he would kill him he tried to help his mother. In excluding the two incidents, the trial court concluded that

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they would not be probative because they occurred roughly 10 years prior to the incident.

¶ 45 In *Lynch*, our Supreme Court held that "when the theory of self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor." *Lynch*, 104 Ill. 2d at 200. *Lynch* further held that a self-defense theory can be demonstrated by evidence of the victim's aggressive and violent character in one or both of these circumstances: (1) where the defendant claims that his own knowledge of the victim's violent tendencies affected the defendant's perceptions and reactions to the victim's behavior; or (2) to support the defendant's version of the facts when conflicting accounts are offered as to what happened between the defendant and the victim. *Lynch*, 104 Ill. 2d at 199-200. To be admissible under either theory, the evidence must be relevant to the victim's violent character. *People v. Cook*, 352 Ill. App. 3d 108, 127 (2004).

¶ 46 However, it is within the trial court's discretion to determine whether evidence is relevant and admissible and its decision will not be overturned absent a clear abuse of discretion resulting in manifest prejudice to defendant. *People v. Hawkins*, 296 Ill. App. 3d 830, 835 (1998). It is the correctness of the trial court's judgment, not its rationale, which is the subject of appellate review. *People v. Rodriguez*, 187 Ill. App. 3d 484, 489 (1989). As such, we may sustain the judgment on any ground appearing in the record, regardless of whether the trial court's reasoning was incorrect or whether that ground was relied upon by the trial court. *Rodriguez*, 187 Ill. App. 3d at 489.

¶ 47 In the case at bar, the trial court allowed substantial testimony demonstrating the decedent's violent behavior towards defendant. Although we find that the trial court could have

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included the other proffered evidence of decedent's past violent acts, the exclusion of the additional evidence was not prejudicial to defendant because defendant was able to present the same or substantially the same evidence during the trial to show that decedent had always been violent and aggressive towards him as well as to show defendant's state of mind and belief that the decedent was probably armed at the time of the stabbing. We agree that evidence of the decedent's violence towards other family members, albeit that such incidents occurred in defendant's presence, was irrelevant. Therefore, we conclude that the trial court did not abuse its discretion in disallowing the proffered evidence, and even if it were error, such error was harmless.

¶ 48 Excessive Sentence

¶ 49 Finally, defendant contends that his 20-year prison term, the maximum sentence available, was excessive in light of his severe mental illness and his one prior, minor conviction.

¶ 50 Defendant was convicted of second-degree murder, a class one felony. 720 ILCS 5/9-2 (West 2008). Second-degree murder has a possible sentencing range of 4 to 20 years' imprisonment. 730 ILCS 5/5-4.5-30(a) (West 2008). A trial court may consider a number of factors to fashion an appropriate sentence, including the nature of the crime, protection of the public, deterrence, punishment, and defendant's youth, rehabilitative prospects, credibility, demeanor and character. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight attributed to each factor in aggravation or mitigation in sentencing depends on the particular circumstances of each case. *Kolzow*, 301 Ill. App. 3d at 8.

¶ 51 When a defendant challenges his sentence on appeal, we generally defer to the trial court's

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judgment because it had the opportunity to observe the proceedings and is, therefore, in a better position than a reviewing court. *People v. Toney*, 2011 IL App (1st) 090933, ¶ 60. We will not substitute our judgment for that of the trial court merely because we would have weighed the sentencing factors differently. *Toney*, 2011 IL App (1st) 090933, ¶ 60. As such, we review the trial court's sentencing determination under an abuse of discretion standard and will reverse a sentence that is within the statutory limits only if it varies with " 'the spirit and purpose of the law' " or is " 'manifestly disproportionate to the nature of the offense.' " *Toney*, 2011 IL App (1st) 090933, ¶ 60, (quoting *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000)).

¶ 52 Based on a review of the record, we cannot say that defendant's 20-year sentence was excessive. At the sentencing hearing, the trial court indicated that it had considered the testimony presented at trial, the pre-sentence investigation report, including corrections, the evidence offered in aggravation and mitigation, the statutory factors in aggravation and mitigation, the financial impact of incarceration, the arguments by counsel and the victim impact statement. The court noted that it was clear that defendant and his father did not get along and it festered over the years and came to a head on the day of the stabbing, which is why the court found defendant guilty of the lesser crime. In terms of sentencing, however, the court indicated that it focused on what defendant did after the stabbing, that is he watched him die on the basement floor and did nothing. The court specifically noted that defendant changed clothes, went to visit relatives, had a cup of coffee, and discussed the incident the entire time decedent lay on the floor "oozing the last drops of blood on the basement floor." Although defendant did return, call the police and turn himself in, the court noted that it was long after anything at all

could have been done for decedent. Further, the court stated:

"Now, I do realize you have a mental situation, you probably were in a state of confusion when that happened, but I do not condone or understand how you could not have done something after an act of violence that you performed on your father to do something for his benefit which you didn't do, and to me that speaks volumes of your character. * * * I think given the nature of what occurred and what you did afterwards I think the appropriate sentence in this case is the maximum and the Court is going to sentence you to that. * * *"

¶ 53 Although defendant's criminal history contains evidence of only one crime, "the seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors." *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). Here, the second-degree murder was quite serious. We find that the trial court gave proper weight to aggravation and mitigation factors, as well as to the nature of the crime itself and the circumstances surrounding it. When a trial judge sentences a defendant to a term of imprisonment within the statutory range, we will not disturb that sentence absent an abuse of discretion. *People v. Foster*, 322 Ill. App. 3d 780, 786 (2000). We cannot conclude that defendant's maximum sentence was an abuse of discretion.

¶ 54 CONCLUSION

¶ 55 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 56 Affirmed.

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