

No. 1-13-0704

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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. 08 CR 18525
	)	
TIMOTHY EASLEY,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Delort concurred in the judgment.

**ORDER**

*Held:* We affirmed defendant's convictions of aggravated criminal sexual assault and first-degree murder, holding: (1) the State proved defendant guilty beyond a reasonable doubt; (2) the trial court did not abuse its discretion in refusing to admit evidence that a third person confessed to the victim's murder, and in admitting evidence of other offenses committed by defendant; (3) any error in admitting the victim's diary into evidence was harmless; (4) the trial court committed no abuse of discretion during sentencing; (5) the statutory scheme under which defendant was tried as an adult does not violate the eighth amendment or the due process clause; and (6) the State's remarks during closing arguments did not constitute reversible error.

¶ 1 A jury convicted defendant, Timothy Easley, of the aggravated criminal sexual assault and first-degree murder of the victim, B.G. The trial court sentenced defendant to 50 years' imprisonment for the first-degree murder conviction and a consecutive term of 25 years' imprisonment for the aggravated criminal sexual assault conviction. On appeal, defendant

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contends: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred by refusing to admit evidence that a third person confessed to B.G.'s murder; (3) the trial court erred by admitting evidence of other offenses committed by defendant; (4) the trial court erred by admitting B.G.'s diary into evidence and by tendering a single diary entry to the jury during deliberations; (5) the trial court abused its discretion in sentencing him to a total of 75 years' imprisonment; (6) the statutory scheme under which he was tried as an adult violates the eighth amendment and due process; and (7) the State made improper remarks during closing argument. We affirm.

¶ 2 At trial, Patricia G. testified B.G. was her daughter and that they lived in Sauk Village in April 2008. B.G. was 15-years old in April 2008, and Patricia told her she was not allowed to date until she was 16-years old. On April 2, 2008, Patricia arrived home from work between 10:30 p.m. and 11 p.m. and discovered that B.G. was not there. Patricia "panicked" because B.G. was supposed to be home, and she called the police. An officer came to her house and spoke with Patricia. The next morning, a detective came to her house and Patricia allowed him to enter B.G.'s bedroom. The detective took B.G.'s diary from her bedroom. Patricia identified B.G.'s diary during examination by the State.

¶ 3 Nalicia Livingston testified she was best friends with B.G. and that they went to middle school and high school together. Defendant also went to their high school. In April 2008, Ms. Livingston and B.G. were sophomores in high school, and defendant was a 17-year-old junior. In December 2007, B.G. and defendant were dating. They dated for two or three months and then broke up because B.G. refused to have sex with defendant. B.G. felt sad about the breakup.

¶ 4 Ms. Livingston testified she spoke with B.G. after school on April 2, 2008, and B.G. stated she planned on having sex with defendant later that night at his house. Ms. Livingston

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told B.G. that it was a bad idea and she should not have sex with defendant. The next morning, April 3, 2008, Ms. Livingston went to school and learned that B.G. was missing. Ms. Livingston approached defendant later that morning, while still at school, and asked him if he had seen B.G. on April 2. Defendant acted "very giggly and careless about the situation" and told her that he and B.G. had walked around Sauk Village on April 2, after which he walked her back home. Later that day, Ms. Livingston approached defendant again and asked him whether he and B.G. engaged in sex on April 2. Defendant laughed and said no. The next day, April 4, Ms. Livingston approached defendant at school and asked him again about what he and B.G. had done on April 2, and where they had gone and "[w]hat happened." Defendant told her he had taken B.G. to Rickover Junior High School on April 2 and left her there.

¶ 5 B.G.'s diary was admitted into evidence and a photocopy of her entry from February 12, 2008, was tendered to the jury. In the February 12 entry, B.G. wrote that defendant hated her guts, that she should have paid more attention to him, and she prayed he would not leave her. She asked why she was so ugly, asserted she would do anything to have a boy love her, and wondered why defendant was still going out with her. She prayed for somebody to love and care for her. She wrote that she did not feel defendant cares for her, but she wanted to believe he did.

¶ 6 Detective Michael Davitt testified he was employed by the Sauk Village police department in April 2008. An initial report of a missing girl, B.G., was made on April 2, 2008. The temperature on the night of April 2, 2008, was 40 degrees. On April 4, 2008, Detective Davitt coordinated a grid search of a marsh field with a creek running through the middle near Rickover Junior High School. Fire Officer Ricardo Johnson notified Detective Davitt on April 4, 2008, that the body of a young girl (B.G.) had been found in the creek. Some items of clothing had been found 100 feet north of the body. Specifically, a white sock was recovered on

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the ground, along with a pair of gym shoes, one with the heel facing up and the other with the heel facing down, and a pair of blue jeans with a pair of underwear sticking out of the right front pants pocket. Another sock was wrapped up inside the jeans.

¶ 7 Detective Davitt testified that B.G. lived at 22116 Brookwood Drive in Sauk Village, while defendant lived at 270 Mallard Drive in Sauk Village. B.G. lived east of the creek in which her body was found, while defendant lived over one mile north of the creek. Someone walking from defendant's house to B.G.'s house could walk southbound on Torrence Avenue and, thereafter, use a walking path running through the field where B.G. was found to access 223rd Street in order to get to Brookwood Drive.

¶ 8 Consistent with Detective Davitt's testimony, Ricardo Johnson, a Sauk Village fire officer in April 2008, testified that on April 4, 2008, he found B.G.'s body lying in a creek off of 223rd Street in Sauk Village, near Rickover Junior High School. B.G. was found east of the walking path connecting 223rd Street and Torrence Avenue. She was wearing only a jacket and two shirts.

¶ 9 The parties stipulated that Dr. Kendall Crowns would testify he was an assistant medical examiner employed by the office of the Cook County Medical Examiner on April 5, 2008 and, on that date, he performed a postmortem examination on the body of B.G., took and sealed biological samples, including a vaginal swab and fingernail clippings, and sent those samples to the Illinois State Police Crime Lab for analysis. In his report, which was admitted into evidence, Dr. Crowns found: multiple faint red bruises and abrasions on B.G.'s right forehead; two lacerations on her right cheek, two slanting abrasions on her right chin; a horizontal abrasion on the right top of her neck; a slanting abrasion on her right neck; a surrounding purple bruise on the left side of her neck; a slanting purple/red bruise on the base of her neck; a curvilinear purple/red

bruise on the base of her neck; and an abrasion on her vaginal canal. Internally, Dr. Crowns found hemorrhages on: the right thyrohyoid muscle; right mylohyoid muscle; posterior cricoarytenoid muscle; and right parietal temporal region of B.G.'s scalp. From this, Dr. Crowns concluded that B.G. died of strangulation and that the manner of death was a homicide.

¶ 10 The parties also stipulated that William Anselme, a forensic scientist with the Illinois State Police and expert in the field of biology, would testify he received a vaginal swab from B.G. from which he identified human semen but observed no sperm. Additionally, Mr. Anselme examined B.G.'s pants and underwear that were recovered from the crime scene but did not detect any semen on them.

¶ 11 The parties stipulated that David Turngren, a forensic scientist with the Illinois State Police and expert in the field of DNA comparison and identification, would testify he received a vaginal swab from B.G., from which he identified a single male DNA profile. Mr. Turngren also analyzed a buccal swab from defendant from which he developed a DNA profile. Mr. Turngren also received fingernail clippings from B.G. from which he was unable to extract DNA.

¶ 12 The parties stipulated that Kathy Sullivan, a forensic scientist with the Illinois State Police and expert in the field of DNA comparison and identification, would testify she received nail clippings from B.G.'s right hand from which she extracted a multiple source mixture of three male DNA haplotypes. There was no testimony regarding whether any of the three male DNA haplotypes found in B.G.'s nail clippings matched defendant, nor was there any testimony as to how long those three male DNA haplotypes had remained under B.G.'s fingernails, *i.e.*, whether they were there even before B.G.'s sexual assault and murder.

¶ 13 Mr. Turngren testified at trial that he developed a DNA profile from a vaginal swab of B.G., and another DNA profile from a buccal standard from defendant. He compared the

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profiles and found that the single-source human male DNA profile identified in B.G.'s vaginal swab matched the DNA profile of defendant at all 14 comparison locations. Based on known frequencies of those DNA types, the male DNA profile would be expected to occur in 1 in 6 quintillion African-American, 1 in 63 quintillion Hispanic, or 1 in 91 quintillion white unrelated individuals.

¶ 14 The remainder of the State's case was other-crimes evidence as testified to by Catherine Kulakowski. Prior to trial, the State moved to allow a high school classmate of defendant's, Catherine Kulakowski, to testify about two instances occurring six weeks before B.G.'s murder in which defendant twice reacted violently when Ms. Kulakowski turned down his sexual overtures. The State argued that a pertinent issue at trial would be whether defendant forcibly sexually penetrated B.G., and that Ms. Kulakowski's testimony was relevant and admissible to show defendant's intent and lack of an innocent frame of mind at the time of B.G.'s sexual assault. The trial court granted the State's motion. At the same time, the trial court denied the State's motion to admit evidence of prior sexual assaults defendant committed against his foster siblings when he was 12- and 13-years of age pursuant to section 115-7.3 of the Code of Criminal Procedure (725 ILCS 5/115-7.3 (West 2012)).

¶ 15 Catherine Kulakowski testified at trial that in February 2008, she was a junior in high school and shared a physical education and a science class with defendant, who was a friend of hers. Once during their physical education class, defendant approached Ms. Kulakowski and told her he wanted more than just friendship, "hinting more towards sex." Ms. Kulakowski told him no. Defendant then "got violent" and grabbed both of her arms as she tried to walk away, resulting in bruising on both arms. On another occasion, during science class, defendant told Ms. Kulakowski she "was going to be with him and that was the final decision on it." Defendant

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told her that "being with him was-entailed sex." Ms. Kulakowski told him no. Defendant then "got angry, slammed his chair down and [swiped] all the books off the desk." The teacher sent defendant out of the classroom to calm down, and moved Ms. Kulakowski's desk closer to the teacher's desk.

¶ 16 The trial court subsequently instructed the jury to consider Ms. Kulakowski's testimony only as evidence of "the defendant's intent" and for "lack of innocent frame of mind."

¶ 17 Following all the evidence, closing arguments were held. The State argued its theory that on April 2, 2008, B.G. met with defendant to have sex with him, but she changed her mind, after which he became angry and sexually assaulted her in the marsh field. B.G. tried to run away, and then defendant killed her. During defense closing arguments, defendant argued that he and B.G. had consensual sex at his house on April 2, 2008, after which he dropped her off near Rickover Junior High School. As B.G. was walking home through the marsh field, an unknown assailant or assailants sexually assaulted and murdered her.

¶ 18 The jury convicted defendant of first-degree murder and aggravated criminal sexual assault. The trial court sentenced defendant to 50 years' imprisonment for the first-degree murder conviction and a consecutive 25-year term of imprisonment for the aggravated criminal sexual assault conviction. Defendant appeals.

¶ 19 First, defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated criminal sexual assault and first-degree murder. In reviewing the sufficiency of the evidence, the relevant inquiry 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. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005). It is the province of the trier of fact to assess the credibility of the witnesses, determine

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the weight to be given their testimony, resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *Id.*

¶ 20 To convict defendant of aggravated criminal sexual assault, the State was required to prove that, while committing a criminal sexual assault, he caused bodily harm to B.G. 720 ILCS 5/11-1.30(a)(2) (West 2012). Defendant commits criminal sexual assault when he commits an act of sexual penetration and uses force or threat of force. 720 ILCS 5/11-1.20 (West 2012). The term "sexual penetration" means any contact, however slight, between defendant's sex organ and B.G.'s sex organ. 720 ILCS 5/11-0.1 (West 2012).

¶ 21 To convict defendant of first-degree murder, the State was required to prove that, without lawful justification, defendant performed acts causing B.G.'s death and: (1) either intended to kill or do great bodily harm to B.G., or knew such acts would cause B.G.'s death; or (2) knew such acts created a strong probability of death or great bodily harm to B.G.; or (3) he was attempting or committing a forcible felony other than second degree murder. 720 ILCS 5/9-1(a) (West 2012).

¶ 22 Defendant argues that the State failed to prove him guilty of either aggravated criminal sexual assault or first-degree murder where: (1) defendant did not confess to sexually assaulting or killing B.G.; (2) no persons witnessed defendant sexually assaulting and/or killing B.G.; (3) B.G.'s fingernails had three male DNA haplotypes, and no evidence was presented connecting any of them to defendant; and (4) no evidence was presented that defendant sustained any wounds such as scratches or bruises, "which one could reasonably expect would result had B.G. been in a fight for her life" with defendant. Defendant notes the State's theory at trial that B.G. ran away from defendant after he sexually assaulted her in the marsh field, and then he caught her and strangled her to death and left her body in the creek; defendant contends this theory is

untenable, as the evidence at trial established that on April 2, 2008, (the last time she was seen alive) B.G. told her best friend Ms. Livingston that she was going to defendant's house to *voluntarily* engage in sexual relations with him. Given that B.G. was voluntarily coming to the comfort of defendant's house to have sex with him, defendant argues it makes no sense that he would subsequently assault her outside in a marsh field in 40-degree weather and then kill her. Rather, defendant argues that B.G.'s statement to Ms. Livingston (and the presence of defendant's semen inside B.G.'s vagina) establishes that defendant and B.G. engaged in consensual sex at defendant's home, after which defendant took her to Rickover Junior High School and left her there so she could walk home. Defendant posits that B.G. was then sexually assaulted and strangled to death by one or more unknown assailants while she was taking a shortcut home, specifically, while she was walking through the marsh field on the path connecting 223rd Street to Torrence Avenue.

¶ 23 While defendant's theory regarding B.G.'s death is *possible*, "the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). For the reasons that follow, viewing all the evidence in the light most favorable to the prosecution, we find that any rational trier of fact could have found defendant guilty of the aggravated criminal sexual assault and first-degree murder of B.G.

¶ 24 Initially, we note that the evidence linking defendant to B.G.'s sexual assault and murder was circumstantial, not direct. Circumstantial evidence is the proof of certain facts and circumstances from which the jury may infer other connected facts that usually and reasonably follow from human experience. *In re Gregory G.*, 396 Ill. App. 3d 923, 929 (2009). The sole limitation on the use of circumstantial evidence is that the inferences drawn from the evidence

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must be reasonable. *Id.* Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crimes charged. *Id.* The jury need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id.* Rather, it is sufficient if all the circumstantial evidence taken together satisfies the jury beyond a reasonable doubt of defendant's guilt. *Id.*

¶ 25 The circumstantial evidence of defendant's guilt is as follows: defendant and B.G. had previously dated and broken up because B.G. had been unwilling to have sex with defendant; in her diary entry from February 12, 2008, B.G. lamented that she did not feel defendant truly cared for her; on April 2, 2008, B.G. told Ms. Livingston she was going to defendant's house to have sex with him; on April 4, 2008, B.G. was found dead in a creek in a marsh field near Rickover Junior High School, about a mile from defendant's house; B.G. had been strangled to death, and there was evidence she had been subjected to a violent physical, sexual attack, as her body showed multiple bruises, abrasions and lacerations on her forehead, cheek, chin, and neck as well as an abrasion on her vaginal canal; defendant was the last known person to see B.G. alive, as he admitted to Ms. Livingston that he had seen B.G. on April 2, before she was sexually assaulted and murdered and left in the creek; defendant's semen was found inside B.G.'s vagina; and the day after B.G. went missing, defendant lied to Ms. Livingston when he denied having had sex with B.G. on April 2, and he also gave inconsistent accounts of where he had last seen B.G., first stating he had walked B.G. all the way home, and later stating he left her at Rickover Junior High School. Defendant's multiple false exculpatory statements were probative of his consciousness of guilt. *People v. Milka*, 336 Ill. App. 3d 206, 227 (2003), *aff'd*, 211 Ill. 2d 150 (2004).

¶ 26 Further, the State presented evidence of other crimes committed by defendant, which the trial court ruled could be used to prove defendant's intent and lack of innocent frame of mind at the time of the sexual assault. Specifically, Ms. Kulakowski testified that in February 2008 she shared two high school classes with defendant, who she characterized as a friend. During one of the classes, defendant told Ms. Kulakowski he wanted to be more than just friends with her, and he hinted about their having sex. When Ms. Kulakowski said no, defendant grabbed both her arms, resulting in bruises on both arms. On another occasion, during a different class, defendant told Ms. Kulakowski she was going to "be with him and that was the final decision on it" and that they would have sex. Ms. Kulakowski again said no, causing defendant to angrily slam his chair down and swipe all the books off his desk.

¶ 27 As discussed, the State's theory at trial was that after initially agreeing to have sex with defendant, B.G. changed her mind, enraging him and causing him to sexually assault her and then strangle her to death when she tried to run away. Defendant's theory at trial was that he and B.G. engaged in consensual sex, after which some unknown assailant or assailants sexually assaulted and killed her. Ms. Kulakowski's testimony supported the State's theory regarding defendant's intent and state of mind at the time of B.G.'s sexual encounter, as the jury could have viewed Ms. Kulakowski's testimony as showing that defendant believed he was entitled to have sex with whomever he considered his girlfriend and that any violation of this "right" required a violent and physical response. Ms. Kulakowski's testimony was further circumstantial evidence of defendant's guilt in the sexual assault of B.G.

¶ 28 The jury could have reasonably inferred from all the circumstantial evidence that defendant, B.G.'s former boyfriend who was the last known person to see her alive and whose semen was found in her vagina, who gave multiple false exculpatory statements regarding his

last known encounter with B.G., and who had previously acted violently to a female who rebuffed his sexual advances, was B.G.'s assailant. Viewing all the circumstantial evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that defendant committed aggravated criminal sexual assault and first-degree murder against B.G.

¶ 29 Defendant's reliance on *People v. Davis*, 278 Ill. App. 3d 532 (1996), is misplaced. *Davis* was convicted of murdering his ex-wife. *Id.* at 533. The murder weapon, a handgun, had been owned by *Davis*. *Id.* at 540. In reversing the defendant's conviction, this court found that the State did not rebut the testimony that the defendant last saw the handgun four years before the murder. *Id.* This court further held that the State's circumstantial evidence that the defendant had the opportunity to commit the murder was speculative and insufficient to sustain his conviction, where there was "no evidence of any kind" placing the defendant at or near the crime scene when the victim was killed. *Id.* at 541. Finally, this court rejected the State's argument that the fact the defendant's divorce case was pending on petition for leave to appeal to the Illinois Supreme Court established a reasonable inference of motive to murder. *Id.* at 544.

¶ 30 In contrast to *Davis*, the circumstantial evidence here (recounted earlier in this order and which we need not repeat) was such that the jury could reasonably infer that defendant was at the crime scene and committed the sexual assault and murder of B.G. Accordingly, we will not disturb the jury's verdict.

¶ 31 Next, defendant contends the trial court erred by denying his pretrial motion to admit evidence that a third person confessed to B.G.'s murder. In the motion, defendant alleged that on April 4, 2008, B.G.'s body was located in a creek at 223rd Street and Torrence Avenue. She was nude from the waist down and wearing a winter coat and a shirt. On April 5, 2008, Dr.

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Crowns performed an autopsy on B.G.'s body and determined she had been sexually assaulted based on abrasions on her vagina and contusions on her face. Dr. Crowns also noted linear impressions on B.G.'s neck and determined she had been strangled by hand.

¶ 32 Defendant alleged that on April 4, 2008, 19-year-old Phillip Lopez worked all day at his job at UPS and then drove to a friend's house party at or around 223rd Street and Torrence Avenue. On his way to the party on April 4, Mr. Lopez noticed that the creek area near 223rd Street and Torrence Avenue was "lit up" with bright lights. He later learned that B.G.'s body had been found in the lit-up area.

¶ 33 Defendant alleged that Najee James showed up at the party while Mr. Lopez was there. Mr. Lopez and Mr. James knew each other and had occasionally talked. Mr. James told Mr. Lopez and others at the party that he had "committed murder on a girl, a young girl, over there where the place was all lit up." Mr. James said that he had tried to take money from the girl's purse, and when she resisted, he choked her with a belt and accidentally killed her. He and a friend then threw the girl's body into the creek.

¶ 34 Defendant alleged that Mr. Lopez saw Mr. James again the next day, April 5, 2008. Mr. James was acting nervously and he asked Mr. Lopez questions regarding the methods police officers use to catch murderers. Mr. James was trying to figure out ways to cover up the murder. After talking with Mr. James on April 5, 2008, Mr. Lopez went to the police and informed them of Mr. James' confession. Defendant did not allege on what day Mr. Lopez spoke with the police.

¶ 35 Defendant alleged that on June 9, 2008, Mr. James was interrogated by police and released. The police never took a DNA sample from Mr. James to test against the DNA found on B.G.

¶ 36 Defendant argued in his motion that Mr. James' confession to Mr. Lopez was sufficiently trustworthy that it should be admitted into evidence as an exception to the hearsay rule pursuant to *Chambers v. Mississippi*, 410 U.S. 284 (1973) (discussed later in this order). The State filed a response, arguing that there is no objective indicia that the statement was ever made, where Mr. James denied making the statement and where Mr. Lopez did not go to the police and tell them of Mr. James' confession "until nearly two months after the alleged statement" and after the news media had reported the killing. The State noted that Mr. Lopez's account of Mr. James' confession to strangling B.G. was similar to news coverage from as early as April 8 which reported that B.G.'s dead body had been found strangled in a creek near 223rd Street and Torrence Avenue. The State further noted that details withheld from the press, such that B.G.'s body was naked from the waist down, and that she had been sexually assaulted, were not contained in Mr. James' statement as reported by Mr. Lopez. Also, whereas Dr. Crowns determined that B.G. had been strangled by hand, Mr. Lopez's account of Mr. James' statement wrongly indicated that B.G. had been strangled by a belt. Additionally, unlike Mr. Lopez's account of Mr. James' statement, there is no objective indicia that B.G. had a purse on her when she was murdered. Finally, the State noted, "police developed an alibi witness for Najee James for the evening of the murder."

¶ 37 On August 18, 2010, Mr. Lopez gave an evidence deposition. In that deposition, Mr. Lopez testified he was currently a private first class in the United States Army, soon to be deployed to Iraq. Consistently with the allegations in defendant's motion, Mr. Lopez testified to attending a house party at 223rd Street and Torrence Avenue on April 4, 2008, which Mr. James also attended. Mr. Lopez "knew of" Mr. James for "[m]aybe a month" and they had "occasionally talked." At the party, Mr. James told Mr. Lopez and four or five other people that

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he had tried to take money from a young girl's purse, and when she resisted, he choked her with a belt and accidentally killed her. He and a friend then threw the girl's body into a creek.

¶ 38 Mr. Lopez testified that at the time of Mr. James' confession on April 4, he thought Mr. James was just "blowing smoke" and was not being truthful about having killed a young girl. Mr. Lopez had previously heard Mr. James "talk about this stuff all the time" and so Mr. Lopez "just didn't really buy it." Mr. Lopez noted that Mr. James liked to exaggerate to make himself "seem bigger."

¶ 39 Mr. Lopez testified he and Mr. James remained at the party overnight. The next day, April 5, 2008, Mr. James was acting nervously and he asked Mr. Lopez questions regarding the methods police officers use to catch murderers. Mr. James was trying to "figure out ways like to cover himself up and stuff like that." Mr. Lopez told Mr. James that if he committed murder, he "might not want to leave fingerprints or like your name or address." Mr. Lopez testified he still was not taking Mr. James seriously.

¶ 40 Mr. Lopez testified that on April 6, 2008, his family told him about B.G.'s murder, and then his dad convinced Mr. Lopez to report Mr. James to the police that day. Mr. Lopez did not remember talking to the police on any other date.

¶ 41 The trial court held a hearing on defendant's motion on March 15, 2011, at which the parties reiterated their arguments for and against the admission of Mr. James' purported confession to Mr. Lopez. Defendant argued that Mr. James' confession to Mr. Lopez was sufficiently trustworthy that it should be admitted under *Chambers*. During the argument, the trial court specifically asked defense counsel about the exact date Mr. Lopez told the police of Mr. James' confession; defense counsel responded, "I don't know exactly, but it was, I think, a few weeks after this all occurred."

¶ 42 The State again argued that there "is absolutely no objective indicia of reliability that this statement ever took place" where Mr. James denied confessing and where Mr. Lopez's account of Mr. James' confession only related facts that had already been reported in the news and incorrectly indicated B.G. had been strangled with a belt when in fact the medical examiner found she had been strangled by hand. The State also noted, without elaboration, that "the police were able to develop an alibi witness for [Mr. James] on the night of the crime." Finally, the State noted that Mr. Lopez did not report Mr. James' statement to the police until May 25, 2008, nearly two months after B.G.'s murder; defense counsel did not make any arguments disagreeing with the State's assertion that Mr. Lopez first told the police about Mr. James' statement on May 25, 2008. Nor did defense counsel disagree that Mr. James had denied confessing and that the police had developed an alibi witness for him.

¶ 43 The trial court denied defendant's motion to admit evidence of Mr. James' confession to Mr. Lopez. On appeal, defendant contends that, under *Chambers*, Mr. James' confession should have been admitted.

¶ 44 "Generally an extrajudicial declaration not under oath, by the declarant, that he, and not the defendant on trial, committed the crime is inadmissible as hearsay though the declaration is against the declarant's penal interest. [Citations.] Such declarations may, however, be admitted where justice requires." *People v. Bowel*, 111 Ill. 2d 58, 66 (1986). The United States Supreme Court has held that where there are sufficient indicia of trustworthiness of such an extrajudicial statement, a declaration may be admissible under the statement-against-penal-interest exception to the hearsay rule. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). *Chambers* identified four factors to help determine the trustworthiness of a hearsay statement: (1) whether the statement was spontaneously made to a close acquaintance shortly after the crime occurred; (2)

whether the statement is corroborated by other evidence; (3) whether the statement is self-incriminating and against the declarant's interests; and (4) whether there was adequate opportunity for cross-examination of the declarant. *Chambers*, 410 U.S. at 300-01.

¶ 45 "The *Chambers* factors are merely guidelines to admissibility rather than hard and fast requirements; the presence of all four factors is not a condition of admissibility. [Citations.] Rather, the question to be considered in deciding the admissibility of such an extrajudicial statement is whether it was made under circumstances which provide "considerable assurance" of its reliability by objective indicia of trustworthiness. [Citation.]" *People v. Tenney*, 205 Ill. 2d 411, 435 (2002) (quoting *People v. Thomas*, 171 Ill. 2d 207, 216 (1996)).

¶ 46 We employ the abuse of discretion standard of review when reviewing the trial court's decision as to whether to admit a hearsay statement. *Bowel*, 111 Ill. 2d at 68.

¶ 47 In its written decision denying defendant's motion, the trial court examined the four *Chambers* factors. With respect to the first factor, that the statement was made spontaneously to a close acquaintance shortly after the crime occurred, the trial court noted, "the statement allegedly made by Najee James was in fact made shortly after the crime occurred but the facts do not show that Najee James and Phillip Lopez were close acquaintances which would ensure a close trusting relationship." The trial court found it "[h]ard to believe that a person \*\*\* is going to confide the commission of a crime of murder to, at best, an acquaintance."

¶ 48 With respect to the second factor, whether the statement is corroborated by other evidence, the trial court found no such corroboration. The trial court found that Mr. Lopez waited seven weeks, until May 25, 2008, before reporting Mr. James' statement to the police, during which time the news media had reported a general description of B.G.'s murder. Mr. Lopez's account of Mr. James' statement mirrored the news media accounts and offered no new

information. Further, Mr. Lopez's account of Mr. James' statement failed to note pertinent information that had not been released to the media, specifically, that B.G. had been sexually assaulted and that when her body was found, she was naked from the waist down. The trial court found that "[s]omeone that had committed the murder would have known those particulars, and not generalities that were reported in the newspaper." Mr. Lopez's account of Mr. James' statement was also factually inaccurate with regard to B.G.'s cause of death, as Mr. Lopez recounted Mr. James' assertion that he had strangled B.G. with a belt, which was contrary to the medical examiner's finding that B.G. had been strangled by hand. Accordingly, the trial court concluded "the corroboration required under *Chambers* is not met."

¶ 49 With respect to the third factor, whether the statement is self-incriminating and against the declarant's interest, the trial court found that "[i]n order for this requirement to be met, the Court would have to be satisfied that in fact a statement by a third party had been made." The trial court further found that, based on the totality of the circumstances, "there is not sufficient indicia of reliability that a statement was ever made." In reaching this conclusion, the trial court noted Mr. James' denial that he made the statement, the lack of corroboration for the statement, plus the establishment of an alibi for Mr. James at the time the crime was committed. Accordingly, the trial court found "the third requirement was not met."

¶ 50 With respect to the fourth factor, whether there was adequate opportunity for cross-examination of the declarant, the trial court found "this element was not met since [Mr. James'] statement was allegedly made at a party" and he subsequently denied ever making the statement. Although somewhat unclear, the trial court apparently found that since the statement was not made under oath, and because Mr. James denied ever making the statement, the opportunity for effective cross-examination did not exist.

¶ 51 The trial court concluded:

"[A]lthough it is not necessary that all elements under *Chambers* must be met, and that these elements are not exclusive, the courts have set a standard under the totality of circumstances that the declaration must be made under circumstances that provide considerable assurances of reliability by 'objective indicia of trustworthiness.' Here, this Court believes that the defense has not been able to meet that standard and therefore the motion to allow [t]hird party [c]onfession by Najee James to the [m]urder of [B.G.] is denied."

¶ 52 In finding Mr. James' alleged statement to Mr. Lopez to be insufficiently trustworthy to merit admission under *Chambers*, the trial court's written ruling reflects careful consideration of the *Chambers* factors and all the circumstances surrounding the declaration. We find the trial court committed no abuse of discretion in denying defendant's motion.

¶ 53 Defendant argues, though, that the trial court erred in finding under the fourth *Chambers* factor that Mr. James' denial of ever making the statement precluded any effective cross-examination of him. Defendant cites *People v. Garcia-Cordova*, 2011 IL App (2d) 070550-B, which held that where a witness physically appears at trial and is able and willing to answer questions on cross-examination, the confrontation clause is satisfied. *Id.* ¶¶ 68-69. Defendant argues there is no evidence that Mr. James was unavailable to physically appear at trial and answer questions regarding his alleged statement and, as such, that the trial court erred in finding the fourth *Chambers* factor satisfied.

¶ 54 However, even if the trial court erred in finding Mr. James unavailable for cross-examination, we would not reverse the denial of defendant's motion. The *Chambers* factors are mere guidelines to admissibility, and the relevant question is whether the statement was made

under circumstances providing considerable assurance of its reliability by objective indicia of trustworthiness. *Tenney*, 205 Ill. 2d at 435. The trial court here carefully considered all the circumstances surrounding the making of the alleged statement, noting that: Mr. James and Mr. Lopez were mere acquaintances, making it unlikely Mr. James would confide to Mr. Lopez that he had committed murder; Mr. Lopez waited seven weeks before going to the police, and his recitation of Mr. James' statement mirrored media accounts of the murder, failed to include pertinent information not released to the media, and contradicted the medical examiner's findings; there was no corroboration of Mr. James' statement; and no objective indicia that the statement was ever made. Based on these findings, the trial court did not abuse its discretion in ruling that Mr. James' alleged statement to Mr. Lopez was not sufficiently reliable to merit admission under *Chambers*.

¶ 55 Next, defendant contends the trial court erred by admitting the other-crimes evidence, specifically, Catherine Kulakowski's testimony regarding how defendant had twice responded violently when she refused his sexual advances on two different occasions. Evidence of other crimes or bad acts committed by a defendant is inadmissible when relevant only to establish that defendant has a propensity to commit crimes. *People v. Hansen*, 313 Ill. App. 3d 491, 500 (2000). However, such evidence may be admitted if it is relevant for any other purpose, such as to establish motive, intent, identity, absence of mistake or accident, the existence of a common plan or design, or *modus operandi*. *Id.*; see also Ill. R. Evid. 404 (b) (eff. Jan. 1, 2011). The decision as to whether to admit evidence of other crimes or bad acts lies within the trial court's sound discretion, which we will not reverse absent a clear abuse of that discretion. *Hansen*, 313 Ill. App. 3d at 491. When evidence of another crime is offered, there must be some similarity

between the other crime and the crime charged to ensure it is not being used to establish criminal propensity. *People v. Harris*, 297 Ill. App. 3d 1073, 1086 (1998).

¶ 56 The trial court admitted Ms. Kulakowski's testimony about defendant's prior bad acts against her to show defendant's intent and his lack of an innocent frame of mind at the time of B.G.'s sexual assault.

¶ 57 On appeal, defendant makes no argument that defendant's bad acts against Ms. Kulakowski and the crime charged here are not sufficiently similar. Rather, defendant's argument is that his intent and lack of an innocent frame of mind were never at issue, as there was no dispute that B.G. was *intentionally* assaulted; the only dispute was whether defendant was the perpetrator. Defendant contends that his prior bad acts against Ms. Kulakowski were not probative on any disputed issue, and thus the trial court erred in admitting this evidence.

¶ 58 Defendant's argument is unavailing. We have previously held that where, as here, defendant was accused of aggravated criminal sexual assault and did not testify at trial but asserted the defense theory that the victim consented to have sexual intercourse with him, other-crimes evidence may be admissible to show defendant did not act with an innocent intent. *Id.* In the present case, the State's theory at trial was that B.G. initially agreed to have sex with defendant, then changed her mind, enraging him and causing him to sexually assault her and then strangle her to death when she tried to run away, whereas the defense theory was that defendant engaged in consensual sex with B.G., after which she was sexually assaulted and murdered by one or more assailants. Ms. Kulakowski's testimony regarding defendant's prior bad acts supported the State's theory regarding defendant's intent and state of mind at the time of his sexual encounter with B.G., and refuted the defense theory they engaged in consensual sex, as the jury could have viewed Ms. Kulakowski's testimony as showing that defendant believed he

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was entitled to have sex with whomever he considered his girlfriend and that any violation of this "right" required a violent and physical response. Accordingly, the trial court committed no abuse of discretion in admitting Ms. Kulakowski's testimony.

¶ 59 Next, defendant contends the trial court erred by admitting B.G.'s diary into evidence. Defendant argues the diary was inadmissible hearsay. At trial, defendant made only a general objection to the admission into evidence of the diary and did not make a specific hearsay objection. A general objection raises only the question of relevance and results in the forfeiture of the hearsay issue. *People v. Villanueva*, 382 Ill. App. 3d 301, 304-05 (2008).

¶ 60 Even if the issue had been preserved for review, we would find no reversible error. Hearsay is generally inadmissible and is defined as an out-of-court statement offered to prove the truth of the matter asserted therein. *People v. Banks*, 237 Ill. 2d 154, 180 (2010). We apply an abuse-of-discretion standard when reviewing the trial court's decision regarding the admission of hearsay. *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 20.

¶ 61 No witness read the diary entries into evidence or testified to their content. The only diary entry that was tendered to the jury during deliberations was the February 12, 2008, entry. As to the diary entries other than the February 12 entry, their admission into evidence necessarily did not prejudice defendant as the jury never saw or heard of them.

¶ 62 As to the February 12 entry, any error in its admission was harmless. The February 12 entry showed a dating relationship between B.G. and defendant, detailed her belief that she was physically unattractive, and indicated she still loved defendant even though she questioned whether he had similar feelings for her. The February 12 entry was largely cumulative to Ms. Livingston's testimony that B.G. and defendant had previously dated and broken up, that B.G. was sad about the breakup, and that B.G. still thought enough of defendant that she intended to

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go to his house on April 2, 2008, to have sex with him. Accordingly, any error in the admission of the February 12 entry was harmless. See *People v. Campbell*, 2015 IL App (1st) 131196, ¶ 37 (improper admission of hearsay is harmless where it is merely cumulative to properly-admitted evidence).

¶ 63 Defendant contends the trial court also erred by granting the State's request to send a photocopy of only the February 12 entry to the jury during deliberations rather than the entire diary. Defendant cites Illinois Rule of Evidence 106, which states:

"When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

Ill. R. Evid. 106 (eff. Jan. 1, 2011).

Defendant also cites the common-law completeness doctrine, which allows for the admission into evidence of the remainder of a writing, where necessary, to prevent the jury from being misled. *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 45.

¶ 64 Defendant forfeited review by failing to request that the remainder of the diary be tendered to the jury based on Rule 106 or the completeness doctrine. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 65 Even if the issue had not been forfeited, we would find no prejudicial error in the failure to tender the remainder of B.G.'s diary to the jury along with the February 12 entry. In addition to the February 12 entry tendered to the jury, the diary contained entries on August 27, 28, and 29, 2007, and February 15 and 19, 2008. The August 27, 2007, entry was only a single, short paragraph relating that B.G. had had a good day, and had worn an outfit that drew a lot of attention from "the boys." The August 28, 2007, entry was an even shorter paragraph giving a

brief description of her school day, with no mention of defendant. The August 29, 2007, entry was a longer paragraph describing the boys she liked and who liked her (none of them defendant), and also described some girls she liked and some she disliked. The February 15, 2008, and February 19, 2008, entries were only a total of three sentences indicating they were good days; no mention was made of defendant in those entries. The diary contains an undated page, subsequent to the brief February 19, 2008, entry, stating that B.G. had just found out that defendant was "talking about" her hair to a girl she does not like and that she was going to break up with him. Finally, the diary contains three pages of algebra equations, a three-page discussion of the Shakespearean play *Othello*, some doodles, a brief prayer for "strength to keep on pushin' even when times get rough," and a list of her friends. Any error in the trial court's failure to send these diary entries to the jury along with the February 12 entry was harmless where they either did not relate to defendant or were cumulative to Ms. Livingston's testimony and would not have affected the outcome of the case. *People v. McClanahan*, 191 Ill. 2d 127, 139 (2000).

¶ 66 Next, defendant contends the trial court erred by admitting Ms. Livingston's testimony that after dating for about three months, B.G. and defendant broke up because B.G. refused to have sex with him. Defendant argues that Ms. Livingston's testimony violated the rape-shield statute.

¶ 67 Defendant forfeited review by failing to raise this objection at trial. *Enoch*, 122 Ill. 2d at 186.

¶ 68 Even if the issue had not been forfeited, we would find no prejudicial error. The rape-shield statute provides in pertinent part that in an aggravated criminal sexual assault case, evidence regarding the "prior sexual activity or the reputation of the alleged victim" is

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inadmissible except when offered by defendant to establish consent or when it is constitutionally required to be admitted. 725 ILCS 5/115-7(a) (West 2012). "The purpose of the rape-shield statute 'is to prevent the defendant from harassing and humiliating the complaining witness with evidence of either her reputation for chastity or specific acts of sexual conduct with persons other than [the] defendant.' " *People v. Johnson*, 2014 IL App (2d) 121004, ¶ 42 (quoting *People v. Summers*, 353 Ill. App. 3d 367, 373 (2004)). "[T]he rape-shield statute does not bar all evidence of past sexual activity, only evidence of past sexual activity that is not relevant to the charges at issue." *Johnson*, 2014 IL App (2d) 121004, ¶ 43. "The true question is always one of relevancy." *People v. Hill*, 289 Ill. App. 3d 859, 864 (1997). Evidentiary rulings made pursuant to the rape-shield statute are reviewed for an abuse of discretion. *Johnson*, 2014 IL App (2d) 121004, ¶ 42.

¶ 69 In the present case, the State asked Ms. Livingston why B.G. and defendant broke up after three months of dating, and Ms. Livingston testified, "Because he wanted to have sex with her, and she wasn't ready for it." The trial court overruled defendant's hearsay objection because Ms. Livingston's testimony was only offered to give "the impression of what [B.G.] was feeling at that time" and thus fell within the state-of-mind exception to the hearsay rule. As Ms. Livingston's limited testimony was offered by the State to show B.G.'s state of mind, was not used to harass or humiliate B.G., and did not disclose B.G.'s general reputation for chastity or specific acts of sexual conduct with persons other than defendant, we find no violation of the rape-shield statute in this instance.

¶ 70 Next, defendant contends the State made improper remarks during closing arguments. Prosecutors are given wide latitude when making closing arguments. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). During closing arguments, the State may comment on the evidence presented

and draw reasonable inferences therefrom. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). The State may attack a defendant's theory of defense and may respond to any statements by defense counsel inviting a response. *People v. Doyle*, 328 Ill. App. 3d 1, 12 (2002).

¶ 71 On review, we consider challenged remarks in the context of the entire record as a whole, in particular the closing arguments of both sides. *People v. Williams*, 313 Ill. App. 3d 849, 863 (2000). Reversal based on closing argument is warranted only if a prosecutor made improper remarks that engendered "substantial prejudice," that is, if the remarks constituted a material factor in defendant's conviction. *Wheeler*, 226 Ill. 2d at 123.

¶ 72 The appropriate standard of review for closing arguments is unclear. In *Wheeler*, our supreme court applied a *de novo* standard of review to the issue of prosecutorial statements during closing arguments. *Id.* at 121. However, in *Wheeler*, the supreme court also cited with favor its decision in *People v. Blue*, 189 Ill. 2d 99 (2000), which applied an abuse of discretion standard. *Wheeler*, 226 Ill. 2d at 128. We need not resolve the issue of the proper standard of review in the present case, as our holding would be the same under either standard.

¶ 73 Initially, we note that defendant forfeited review of several of the comments made by the prosecutor during closing arguments by failing to object to them at trial. *Enoch*, 122 Ill. 2d at 186. Defendant argues for plain-error review. The plain-error doctrine allows a reviewing court to consider unpreserved errors under two circumstances. *People v. Herron*, 215 Ill. 2d 167, 178 (2005). First, when the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider the error to preclude an argument that an innocent person was wrongly convicted. *Id.* Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a

reviewing court may consider the error to preserve the integrity of the judicial process. *Id.* at 179.

¶ 74 Defendant has failed to satisfy the first prong of the plain-error doctrine, as we have already discussed the sufficiency of the evidence against defendant and find that it was not closely balanced. As to the second prong, we note that "[e]rror under the second prong of plain error analysis has been equated with structural error." *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 78. "Structural errors have been recognized in only a limited class of cases including: a complete denial of counsel; trial before a biased judge; racial discrimination in the selection of a grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction." *Id.* However, "[e]rror in closing argument does not fall into the type of error recognized as structural." *Id.* Thus, defendant has not demonstrated plain error with respect to this issue.

¶ 75 We proceed to address the prosecutor's comments during closing arguments that were objected to and preserved for review.

¶ 76 First, defendant contends the prosecutor misstated the evidence when he argued that defendant has a "history of violence with women" and a "history of being aggressive with women he wants to become his girlfriend." At trial, defense counsel objected, stating that the trial evidence only established defendant's history of violence against one woman, Ms. Kulakowski, not multiple women. The trial court overruled the objection. We find no prejudicial error, where the prosecutor subsequently spoke of defendant's prior violence against Ms. Kulakowski, and made no intimations that he had attacked any other women.

¶ 77 Next, defendant contends the prosecutor misstated the evidence by arguing that B.G. could not have had consensual sex with defendant at his house and thereafter walked a mile and

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a half to the shortcut path because "[i]f she walked after having sex, a mile and a half, would you think there might be some discharge?" After defendant's objection was overruled, the prosecutor continued: "Not anything. No semen in the pants or in the underwear." The prosecutor's comment was reasonably based on the evidence and was not error, where the parties stipulated at trial that forensic scientist William Anselme examined B.G.'s pants and underwear and did not detect any semen.

¶ 78 Next, defendant contends the prosecutor violated the rape-shield statute by arguing that B.G. was a virgin. Specifically, over defense counsel's objection, the prosecutor stated: "When you are 15-years-old, that's not how your life should end. That's not how your first date should end. That's not how your first sexual experience should end, but you shouldn't come up against this guy who won't take no."

¶ 79 Defendant cites *People v. Carlson*, 278 Ill. App. 3d 515 (1996), in which the State admitted it violated the rape-shield statute by introducing evidence and arguing during closing that the victim was a virgin before she was attacked. *Id.* at 523. This court held that the issue was forfeited and that there was no plain error where the evidence was not closely balanced and defendant was not deprived of a fair trial. *Id.* at 523-24.

¶ 80 We agree with defendant that the State erred in referencing B.G.'s virginity; however, we do not find that this single, isolated comment by the State substantially prejudiced defendant and constituted a material factor in his conviction such that it constituted reversible error. *Wheeler*, 226 Ill. 2d at 123.

¶ 81 Next, defendant contends the prosecutor "mocked the defense and inflamed the passions of the jury" by arguing, over defense counsel's objection: "Was it reasonable that three people had their hands around [B.G.'s] throat? Is that reasonable? It's not reasonable. Disregard it."

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The State's comment was made during rebuttal argument in response to defense counsel's argument: "We don't know what happened in that open field. We don't know what happened. We don't know if one guy got her. We don't know if two guys got her. We don't know if three guys got her." Defense counsel then argued that "if she's accosted in that field and struggling for her life, she's not going to lay there and take it," and then pointed to the evidence that three male haplotypes were found under B.G.'s fingernails. The State's comment during rebuttal argument regarding the unlikelihood that B.G. was strangled by three people was a proper response to defense counsel's argument that up to three unidentified persons could have strangled B.G.; we find no error.

¶ 82 Next, defendant contends the prosecutor make an inflammatory comment when he stated that defendant had "ripped open" B.G.'s vagina. The trial court cured any error by sustaining defense counsel's objection to this comment and instructing the jury that closing arguments were not evidence. *People v. Hampton*, 387 Ill. App. 3d 206, 225 (2008).

¶ 83 Next, defendant (who was 17-years old at the time of B.G.'s death) contends the statutory scheme under which he was convicted as an adult, specifically, the exclusive-jurisdiction provision of the Juvenile Court Act (705 ILCS 405/5-120 (West 2012)), and the automatic transfer statute (705 ILCS 405/5-130 (West 2012)), violates the eighth amendment and procedural and substantive due process principles in light of recent United States Supreme Court cases. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); and *Miller v. Alabama*, \_ U.S. \_, 132 S. Ct. 2455 (2012). We disagree, as defendant's eighth amendment and due process challenges to the exclusive jurisdiction provision of the Juvenile Court Act and the automatic transfer statute based on *Roper*, *Graham* and *Miller* have been thoroughly analyzed and rejected by the Illinois appellate and supreme courts. See *People v.*

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*Patterson*, 2014 IL 115102; *People v. Harmon*, 2013 IL App (2d) 120439; and *People v. Salas*, 2011 IL App (1st) 091880.

¶ 84 Next, defendant contends his sentence was excessive. The trial court has broad discretionary powers in choosing the appropriate sentence defendant should receive. *People v. Jones*, 168 Ill. 2d 367, 373 (1995). A reasoned judgment as to the proper sentence to be imposed must be based on the particular circumstances of each individual case and depends on many factors, including defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment must be equally weighed." *People v. Jones*, 295 Ill. App. 3d 444, 455 (1998). There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and the court is presumed to have considered evidence presented in mitigation. *People v. Partin*, 156 Ill. App. 3d 365, 373 (1987). A reviewing court gives substantial deference to the trial court's sentencing decision and will not modify a defendant's sentence absent an abuse of discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 85 During the sentencing hearing, the State called the Village of Country Club Hills Chief of Police Mark Scott, who testified that in 2002, he investigated defendant (then 12-years old) for sexually assaulting three foster siblings. Chief Scott testified that the three foster siblings, two females and a male, told of multiple sexual assaults by defendant over approximately a 1½ year period. The foster siblings did not testify at the sentencing hearing, and the details of the alleged sexual assaults were not disclosed.

¶ 86 The State then published victim impact statements. The State rested in aggravation. The defense offered no witnesses in mitigation.

¶ 87 During arguments, the State noted that in *Miller v. Alabama*, \_ U.S. \_\_, 132 S. Ct. 2455 (2012), the United States Supreme Court held that mandatory terms of life imprisonment for 17-year-old defendants are unconstitutional, but that the trial court retained the discretion to sentence defendant to natural life imprisonment after balancing the factors in aggravation and mitigation. The State argued that defendant was eligible for a natural life sentence because he killed the victim during a forcible felony (an aggravated criminal sexual assault) and that he should be so sentenced. In the event the trial court did not sentence defendant to natural life imprisonment, the State argued that he should be sentenced to 50 years' imprisonment on the murder conviction and to a consecutive 50 years' imprisonment on the aggravated criminal sexual assault conviction. In support of its argument, the State noted the victim impact testimony as well as Officer Scott's testimony regarding defendant's prior sexual assaults of his three foster siblings, and Catherine Kulakowski's trial testimony regarding defendant's violent reactions when she turned down his sexual overtures. The State further noted in aggravation that defendant's conduct caused or threatened serious harm, that the proposed sentence was necessary to deter others, and that defendant "can't be out in civilized society to walk amongst" other people.

¶ 88 Defense counsel argued that defendant's young age is mitigation, that he was never adjudicated delinquent based on his alleged sexual assaults of his foster siblings, and that the only evidence of defendant's sexual encounter with B.G. is that it was a consensual act.

¶ 89 The trial court asked defendant whether he wanted to say anything in allocution, and defendant shook his head no.

¶ 90 In rendering its sentence, the trial court noted that it had read the presentence report. The presentence report indicated that defendant has "no Juvenile Court record" and no prior convictions. The trial court recited the presentence report's summary of defendant's family background, including that: his mother was killed in a drive-by shooting when he was less than one-year old; he never knew his father; he grew up in foster care and was eventually adopted by Ethel Smith Easley, with whom he has had a good relationship; he tried alcohol a couple of times and marijuana once; he worked at a staffing agency in Aurora in the summer of 2007; he was currently single with no children; and he attended an alternative high school while in jail and received his diploma in 2010. The trial court then noted the "horrific" nature of the crime, as well as Officer Scott's testimony regarding defendant's prior sexual assaults of his three foster siblings, and Catherine Kulakowski's trial testimony regarding defendant's violent responses when she resisted his sexual overtures. The trial court stated that a lengthy sentence was necessary to deter others from committing similar crimes and noted defendant's failure to say anything in allocution. In mitigation, the trial court noted defendant's young age and acknowledged the United States Supreme Court's decision in *Miller*, that a mandatory term of life imprisonment for a 17-year-old defendant is unconstitutional. The trial court then sentenced defendant to 50 years' imprisonment for the first-degree murder conviction and a consecutive term of 25 years' imprisonment for the aggravated criminal sexual assault conviction.

¶ 91 Defendant contends on appeal that his sentence is a *de facto* life sentence and violates *Miller*. In *Miller*, the United States Supreme Court held that the eighth amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Miller*, \_ U.S. \_, 132 S. Ct. at 2469. In so holding, the Supreme Court stated:

"Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. [Citations.] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." *Miller*, \_ U.S. \_, 132 S. Ct. at 2468.

¶ 92 Here, defendant's convictions did not subject him to a mandatory term of life in prison without parole; rather, the statutory range of imprisonment for a defendant convicted of first-degree murder is 20 to 60 years (730 ILCS 5/5-4.5-20 (West 2012)), and the statutory range of imprisonment for a defendant convicted of aggravated sexual assault is 6 to 30 years' imprisonment. See 720 ILCS 5/11-1.30(d)(1) (West 2012); 730 ILCS 5/5-4.5-25 (West 2012). The sentences were required to be served consecutively. See 730 ILCS 5/5-8-4(d)(1) (West 2012). In sentencing defendant, the trial court read the presentence report and reviewed the aggravating and mitigating factors, expressly considering defendant's age and his family and home environment and the circumstances of the homicide offense, as required under *Miller*. Defendant's sentence fell within the statutory range and did not constitute an abuse of discretion or a violation of *Miller*.

¶ 93 Defendant argues that the trial court improperly considered his prior sexual assaults against his foster siblings, and his violent response to Catherine Kulakowski's rejection of his sexual advances, during sentencing. Defendant argues he was never adjudicated delinquent as a result of those incidents. However, our supreme court has recognized that evidence of unadjudicated prior criminal conduct is admissible at a sentencing hearing if it is "relevant, reliable, and subject to cross-examination." *People v. Thomas*, 137 Ill. 2d 500, 547 (1990). In so holding, the supreme court noted that the purpose of a sentencing hearing is "to examine the defendant's character and to decide what punishment is appropriate" which requires "an inquiry into defendant's propensity to commit another crime." *Id.* In the present case, Officer Scott testified at the sentencing hearing, and was subject to cross-examination, regarding defendant's sexual assaults against his foster siblings; Catherine Kulakowski testified at defendant's trial regarding defendant's violent reactions when she twice turned down his sexual advances. The trial court committed no error during the sentencing hearing in considering their testimony.

¶ 94 Defendant also argues that the trial court erred by expressly considering the fact that he did not give a statement in allocution. Defendant cites in support *People v. Byrd*, 139 Ill. App. 3d 859 (1986), which held that the trial court cannot impose a more severe sentence simply because defendant refuses to abandon his claim of innocence. *Id.* at 866. Defendant forfeited review by failing to object at the sentencing hearing and by failing to raise the issue in his post-sentencing motion. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (Holding that "to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). Further, defendant makes no argument for plain-error review.

¶ 95 For all the foregoing reasons, we affirm the circuit court.

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¶ 96 Affirmed.