FOURTH DIVISION
December 24, 2015

No. 1-13-0854

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. 06 CR 19612
	)	
PHYLLIS CARPENTER,	)	Honorable
	)	Arthur F. Hill,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction and sentence affirmed. Jury's verdict that defendant was guilty of first-degree murder despite defendant's insanity defense was not against manifest weight of evidence. Trial court did not err in denying defendant's self-defense instruction where defendant testified that she could not remember stabbing victim. Trial court did not err in responding to jury note regarding burden of proof for insanity defense, where it told jury that standard was proof by clear and convincing evidence and directed jury to instructions, which contained a more specific definition of clear and convincing evidence. State did not commit reversible error in its closing argument where it did not misstate trial evidence, improperly accuse defense expert of fabricating evidence, or make improper comments on self-defense. Defendant's 50-year sentence not excessive in light of nature of offense and deterrent effect of sentence.

¶ 2 Defendant Phyllis Carpenter, a 53-year-old woman, killed her neighbor, Benjamin Cole, stabbing him over 60 times. Carpenter said that Cole tried to sexually assault her while she was

visiting him and that, due to a medical condition that made it difficult for her to breathe while lying down, she thought she was going to die. Carpenter said that she lost consciousness and only came to after she had killed Cole. She said that she had no memory of her actions.

¶ 3 At trial, defendant presented an insanity defense. Specifically, she presented expert testimony that she had a dissociative episode that caused her to lose touch with reality during Cole's attempted assault and that left her with no memory of the incident. She also requested, but was denied, a jury instruction on self-defense. After expressing some confusion over the burdens of proof applicable to the case, the jury found defendant guilty of first-degree murder. The trial court sentenced defendant to 50 years' incarceration.

¶ 4 Defendant appeals, raising five issues: (1) that the jury's verdict was against the manifest weight of the evidence, which proved that she was incapable of appreciating the criminality of her actions at the time of the offense; (2) that the trial court erred in denying her request for a self-defense instruction where she testified that Cole tried to sexually assault her just before she killed him; (3) that the trial court erred in failing to address the jury's confusion over the definition of clear and convincing evidence; (4) that the State committed reversible error during its closing argument; and (5) that her 50-year sentence was excessive. For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Case-in-Chief

¶ 7 Ercell Kirk, the sister of the victim, Benjamin Cole, testified that, on August 2, 2006, she lived with Cole in a high-rise apartment building 6430 South Stony Island Avenue in Chicago. Kirk testified that defendant also lived in the building, and that she had seen defendant in her apartment with Cole before.

¶ 8 On the morning of August 2, 2006, Kirk was working as a lobby attendant for the building.

She returned to her and Cole's apartment sometime between 10 a.m. and 12 p.m. and noticed that her door was unlocked, even though she had locked it when she left for work. She entered the front hallway of her apartment, looked to her left into the kitchen, and saw blood "all over" the kitchen cabinets and on the floor. Kirk testified that she heard water running in her bathroom. Kirk called out to Cole, but he did not answer.

¶ 9 After hearing no response, Kirk went downstairs and ran into the building engineer, Christopher Davis. Kirk and Davis returned to her apartment. Davis entered Cole's bedroom and saw Cole lying sideways on the bed, covered in blood. Davis left the apartment and called 911.

¶ 10 Detective Danny Stover arrived at the scene shortly after 12 p.m. He spoke to Kirk, who told him that defendant was "an associate" of Cole's. Stover went to defendant's apartment, which was next door to Kirk and Cole's, and saw smeared blood on defendant's door, as well as a drop of blood on the floor outside the door. Davis opened the door of defendant's apartment for Stover.

¶ 11 Stover did not find anyone inside defendant's apartment. In the kitchen, he noticed blood on placemats and on a detergent bottle near the sink. He also saw blood on the handset of the telephone.

¶ 12 Patrick Bland, a driver that operated a business transporting patients to their medical appointments, testified that, around 12 p.m. on August 2, 2006, he went to 6430 South Stony Island to pick up defendant and drive her to her doctor's appointment. When Bland arrived, defendant was not waiting outside for him, so he called her to let her know he was there.

¶ 13 Defendant left the building carrying three grocery bags. Bland testified that defendant was sweating profusely. Bland said that the bags had things in them, but he could not see what they were.

¶ 14 As Bland drove defendant to her appointment, they made small talk. When they arrived at

defendant's doctor's office, defendant brought the bags with her into her doctor's office.

¶ 15 Dr. Sandy Gibson testified that she saw defendant around 1 p.m. on August 2, 2006. Gibson had been treating defendant for about three months as of that date. Gibson said that defendant had a long history of high blood pressure and claudication, a clogging of the leg arteries that caused defendant pain when she walked. Gibson discussed defendant's medical condition with her, including the possibility of defendant having surgery for her claudication, for about 10 minutes. Gibson did not have any problems understanding or communicating with defendant.

¶ 16 Gibson said that she noticed that defendant had some cuts on her hands. Defendant told Gibson that she had cut her hands falling down the stairs. Gibson referred defendant to another doctor in the building, who sutured the cuts.

¶ 17 Bland went back to Dr. Gibson's office to pick up defendant around 5 p.m. Defendant was not waiting for him outside, so Bland went to the window of the office and looked inside. He saw the grocery bags defendant had been carrying sitting in the waiting area of the office. Defendant then appeared, and Bland knocked on the window and told her to come outside.

¶ 18 Five to seven minutes after Bland knocked on the window, defendant emerged from the doctor's office carrying the grocery bags. Instead of going to Bland's car, however, she walked past his car toward a nearby restaurant. When she came back to the car moments later, she no longer had the bags. Bland asked her what had taken her so long, but defendant simply "offered [him] candy." Bland drove her back to her apartment building. On the way, they engaged in more small talk.

¶ 19 When Bland and defendant arrived back at 6430 South Stony Island, a fire truck and police cars were in front of the building. Defendant got out of Bland's car and went into the building.

¶ 20 Walter Curtis, another resident of the building, testified that he saw defendant in the

elevator of the building around 12 p.m. on August 2, 2006. He testified that she was jittery, sweating, and speaking quickly. She was carrying the grocery bags. Curtis again saw defendant in the elevator around 5 p.m. This time, she did not have the bags with her. Curtis asked defendant if she had heard what happened to Cole, and she said, "[W]ho killed him?"

¶ 21 Detective Stover testified that he was still in the building at 5:30 p.m., when he saw defendant emerge from the elevator. He said she appeared "quite agitated" and had "four fresh sutures" on her hands. Stover arrested defendant and brought her to the police station.

¶ 22 On August 4, 2006, the police went to the restaurant that Bland had seen defendant approach. They found the grocery bags that defendant had been carrying next to a dumpster. The bags contained three bloodstained kitchen knives, clothing, and various other items. Among the clothing was a black gown that, as defendant later testified, she wore during the stabbing.

¶ 23 DNA analyst Ryan Paulsen testified that he attempted to test two sections of fabric cut from the black gown. He could not test the first section because there was not enough DNA on it. When he tried to test the second section, "there was a malfunction in one of the instruments [he] was using that did not allow [him] to generate a profile." After the malfunction, he tried to obtain another DNA sample from the second section of the gown, but "there was not enough DNA remaining to generate a profile from that [section]." Paulsen then tried to test four additional parts of the gown, but "none of them had enough DNA to proceed." When asked why he could not get DNA from these samples, he said that the stains on the dress were "very faint" and "difficult to see with the naked eye." He further explained:

> "Sometimes if a sample is very dilute, it becomes hard to generate a profile from that sample. There is just not enough DNA left. Some materials just don't absorb liquid as well as others, so if there is a sheer material, sometimes it can be hard to remove DNA from

a sample like that as well.

Or if a sample has been exposed to environmental conditions, sometimes that can make it difficult to obtain DNA from that sample."

¶ 24 DNA testing showed that the knives recovered from the grocery bags had DNA that either matched defendant or could not be excluded as being from defendant or Cole. Blood on the kitchen floor of Cole's apartment matched Cole. Clippings of Cole's fingernails had a mixture of defendant's and Cole's DNA. Defendant's blood was on the comforter in Kirk's bedroom.

¶ 25 An autopsy showed that Cole had approximately 63 stab wounds to his neck, chest, and back. Two stabs fractured two of Cole's ribs, and others pierced his lungs and heart. The medical examiner who performed the autopsy testified that "significant force" would have been necessary to fracture Cole's ribs and pierce his lungs and heart.

¶ 26 B. Defendant's Case

¶ 27 Defendant testified that, at the time of the incident, she suffered from orthopnea, a condition that caused her to be short of breath when she lied down. At night, she had to sleep with three or four pillows to prop up her head. When she lied flat, it felt like she was suffocating.

¶ 28 Defendant testified that she had lived at 6430 South Stony Island with her husband. Her husband and Cole had been friends. After defendant's husband died, Cole made sexual advances toward her. At one point, Cole threatened to "kick [defendant's] ass" because he believed that she was dating a younger man.

¶ 29 On August 2, 2006, defendant called Cole and asked to borrow some cigarettes. She went to his apartment and smoked a cigarette with him. When they finished, she asked if she could have another, and Cole told her he had more on a table in his bedroom.

¶ 30 Defendant testified that she looked in the bedroom but did not find any cigarettes. She

turned around and saw Cole. Cole knocked her onto the bed.

¶ 31 Defendant testified that Cole straddled her between his knees, pinning her to the bed. Because of her orthopnea, she could not breathe while Cole was on top of her. Cole said that "he wanted to taste [her]." Defendant testified that she "thought [Cole] was going to kill [her]." She also said that she thought she was going to die because she could not breathe.

¶ 32 Defendant testified that the next thing she remembered, she was standing outside her building and heard the horn of Bland's van. She got into the van, which took her to her appointment with Dr. Gibson.

¶ 33 Defendant testified that she remembered getting stitches on her hands while at Dr. Gibson's office. But she did not remember telling Dr. Gibson that the cuts on her hand were caused by a fall down the stairs. She testified that she did not remember having the grocery bags with her, nor did she remember putting the grocery bags behind the dumpster.

¶ 34 Defendant testified that she remembered speaking with Curtis in the elevator after she returned from her doctor's appointment. She denied asking him who killed Cole. When she got off on her floor, defendant saw the police in her apartment. She was worried that something had happened to her daughter, who lived with defendant. Defendant told the police her name, and they arrested her.

¶ 35 Dr. Robert Heilbronner, a clinical neuropsychologist, testified for defendant as an expert in neuropsychology. Heilbronner reviewed the police reports, defendant's medical records from recent hospitalizations, witnesses' statements, and a DVD of defendant's interrogation at the police station. Heilbronner also met with defendant in person.

¶ 36 On reviewing defendant's medical records, Heilbronner learned that she had coronary and peripheral artery disease, that she had had "several" heart attacks, that she had undergone triple

bypass surgery, and that she had kidney problems. He also saw that her records showed that she had been diagnosed with orthopnea.

¶ 37 Heilbronner testified that defendant reported having "episodes" when she was young where "she would faint or she would lose consciousness, lose touch with reality in a sense." She told Heilbronner that "sometimes she wouldn't know where she was or she would wake up and come to after [the episodes] and not know what had happened." Heilbronner hypothesized that the "episodes" could have been "anything from seizures that were undiagnosed or something called dissociative *** episodes where the person *** kind of loses touch with reality, with conscious reality, for brief periods of time."

¶ 38 When Heilbronner spoke to defendant, she said that she had never been treated for any psychiatric or psychological condition. But she told him that, after her husband died, she became depressed and attempted to commit suicide by overdosing on pills.

¶ 39 Heilbronner testified that he administered several tests to defendant. He administered a test to evaluate whether defendant was malingering (*i.e.*, purposefully exaggerating or making up psychiatric symptoms in order to obtain some benefit). He said that there was no evidence of defendant "attempting to feign, malinger, [or] exaggerate any psychiatric problems or any types of problems with her thinking." He concluded that defendant was "clearly not malingering." He also testified that neuropsychology was the best discipline in order to evaluate whether someone had been malingering.

¶ 40 Heilbronner administered an intelligence quotient (IQ) test to defendant. Her full-scale IQ was 74, which, Heilbronner said, was between the "low average and extremely low range." He said that defendant's IQ score meant that she was "borderline impaired." Heilbronner specifically noted that her "learning and recall of *** stories, information, was severely impaired." Heilbronner said

that, in light of defendant's medical problems, he expected that her memory would be impaired. Heilbronner also tested defendant's anxiety level; she returned a score reflecting "some degree of heightened or severe anxiety."

¶ 41 In Heilbronner's opinion, defendant's diminished capacity was due to her cardiovascular and kidney problems, not because of emotional or psychological factors. According to Heilbronner, that would explain why defendant was able to complete her general educational development (GED) test and obtain an associate's degree in the past, but now had significant memory problems.

¶ 42 Heilbronner discussed Cole's death with defendant. Defendant told him that Cole and her husband had been friends, but that they had a falling out after Cole made advances toward defendant. Defendant told Heilbronner that, after her husband died, she would visit Cole, but she would never go there unless Kirk, Cole's sister, was also home.

¶ 43 Defendant described Cole's attempted sexual assault to Heilbronner in the same way that she described it at trial. She also told him that the first thing that she remembered afterward was the horn of Bland's van blowing, and that she had no memory of carrying any grocery bags with her to the doctor's office. Heilbronner testified that defendant said she did not remember getting stitches on her hands.

¶ 44 Heilbronner suspected that defendant had experienced a "dissociative state" on August 2, 2006. Heilbronner described a dissociative state as:

> "[A] clear sort of split, if you will, of being cut off from your current conscious awareness, you know, and it can cause things like amnesia where you have no recollection at all of what transpired for the *** previous minutes or hours in certain cases."

However, because Heilbronner was not a psychiatrist or forensic psychologist, he recommended

that defendant submit to further testing. He did not diagnose her with having experienced a dissociative state. He also clarified that he had no opinion on whether defendant was insane at the time of the offense.

¶ 45 On cross-examination, Heilbronner testified that he had been paid between $12,000 and $13,000 for his work on the case. He estimated that his total fee, including his testimony at trial, would be between $16,000 and $17,000. He said that, when he had testified in criminal cases, he had "always" testified for the defense. He said that he had testified in about eight or nine other criminal cases.

¶ 46 Dr. Henry Conroe, a board-certified forensic psychiatrist, testified that he was hired by the defense to evaluate defendant. Before meeting with defendant, Conroe reviewed the police records from the case, Heilbronner's report and test results, a DVD of defendant's five-hour interrogation by the police, and defendant's medical records.

¶ 47 When Conroe met with defendant, he performed a "mental status examination" consisting of two parts. In the first part, Conroe looked for the presence or absence of emotional symptoms. Conroe testified that defendant exhibited no symptoms of psychosis, but she showed signs of depression. Defendant told Conroe that her depression had worsened after the death of her brother in 2005 and the death of her husband in 2006. The second part of the test evaluated defendant's memory. She was able to say where and who she was. But her "immediate retention was moderately impaired." Specifically, Conroe asked defendant to remember four items and then asked her to repeat them 5 to 10 minutes later. Defendant could only repeat two of them.

¶ 48 Conroe testified that defendant had suffered from "very, very serious medical problems." He noted that she had severe high blood pressure and peripheral vascular disease, which "made it very difficult for her to walk more than half a block or [a] block without *** having claudication."

Conroe described claudication as pain, "like a Charlie horse." Conroe added that, in light of damage to defendant's blood vessels, it would have been possible that defendant had some kind of blockage in the blood vessels leading to her brain.

¶ 49 Defendant told Conroe that, when she was young, she had "episodes." She would feel lightheaded, sweat profusely, and ultimately "be found lying on the floor." Sometimes, defendant would urinate on herself during these episodes. Conroe testified that records from the Cook County jail hospital showed that these episodes had occurred as recently as 2012. Conroe also interviewed six of defendant's siblings and defendant's daughter. Her siblings confirmed that defendant used to experience the "episodes" she described.

¶ 50 Conroe also saw that defendant had a history of orthopnea. He described orthopnea as a condition wherein a "person with heart disease or pulmonary disease or blood vessel disease lies flat, that they become extremely short of breath." When they lie flat, their lungs fill with fluid and it feels "like being water-boarded." A person with orthopnea needs to sleep on several pillows to elevate his or her head.

¶ 51 Defendant also told Conroe that she had been sexually assaulted by a family friend named "Rail" when she was four years old. Defendant told Conroe that Rail, whom she described as a light-skinned man with bad teeth, pulled down her panties and tried to penetrate her with his penis. Defendant told her mother about the assault and, when her father later found out, he "severely beat Rail." Several of defendant's siblings also told Conroe that their father—whom they described as nonviolent—suddenly beat Rail one day, though they were unaware of the reason why. In fact, one of defendant's brothers told Conroe that he thought his father beat up Rail because Rail touched their mother. Defendant never received any mental-health treatment after that assault.

¶ 52 Defendant told Conroe that defendant's husband and Cole had been friends, but that Cole

made sexual advances toward her, which led to defendant's husband breaking off the friendship. She told him about the incident where Cole threatened to "kick [her] ass" for dating a younger man. She said that, after that incident, Cole's sexual advances stopped until August 2, 2006. She described the events of August 2, 2006 to Conroe in the same way that she described them to Heilbronner, and in the same way that she testified.

¶ 53 Conroe attributed defendant's inability to remember the stabbing to "dissociation, which happens after a severe emotional stress or trauma." Conroe elaborated that dissociation is "when *** there's a lack of the usual integration of memory, identity, consciousness and perception of the environment. *** What happens is that *** part of the mental processes *** split from normal consciousness." Conroe opined that, when defendant was struggling to breathe as Cole laid on top of her, "[s]he flipped to when she was *** being molested by *** Rail." He noted that Cole looked like Rail, in that he also had light skin and bad teeth. At that point, her "ability to make that memory [was] split apart from the way her brain [was] thinking." Thus, according to Conroe, defendant could not remember those few hours "because of the stress that she was under."

¶ 54 Conroe testified that dissociation can take many different forms. There may or may not be memory loss, a loss of consciousness, or an inability to identify oneself. According to Conroe, in every case of dissociation, "there's some mental function that's shifted to the side," such as memory, perception, identity, or consciousness.

¶ 55 Conroe believed that defendant's medical problems—her orthopnea and her cardiac problems—exacerbated the dissociation she experienced. Because she could not breathe and felt helpless while Cole held her down, "that made it more likely that she would *** dissociate."

¶ 56 Conroe noted that a person may not exhibit confusion and may be able to carry on with his or her normal routine after experiencing dissociation. According to Conroe, that explained

defendant's ability to attend her doctor's appointment and to converse normally with Bland and Dr. Gibson. Conroe recognized that defendant told Gibson that she had cut her hands on the stairs, but he said that he believed that she said this because "she didn't know what they were from [so] she just had to come up with some reason."

¶ 57 Conroe had reviewed the video of defendant's interrogation, and he testified that defendant's ability to answer the police's questions did not show that she had not dissociated during the offense. He reiterated that confusion was not necessary to show that a person had experienced dissociation. He thought that she appeared irritable and uncooperative during her interrogation because she did not know she had stabbed Cole and, consequently, she did not know why she had been arrested.

¶ 58 Conroe diagnosed defendant with dissociation not otherwise specified (NOS) and concluded that defendant was legally insane at the time of the offense. He said that, when defendant stabbed Cole, she was unable to appreciate the criminality of her behavior and lacked the substantial capacity to know right from wrong due to dissociation. Conroe based that conclusion on both defendant's dissociation and her apparent lack of a motive. He also noted that defendant appeared to have made little effort to clean up the blood she trailed throughout her apartment, that she carried the bags containing the knives and her bloody clothes in front of Bland and Dr. Gibson, and that she returned to her apartment without trying to flee. Conroe believed that these facts showed that she had no idea that something had happened, let alone that she had done something wrong. On cross-examination, Conroe conceded that defendant had never experienced a dissociative state as severe as the one he thought that she had on August 2, 2006.

¶ 59 Conroe acknowledged that defendant had carried the grocery bags with her after she had come out of her dissociative state, but that she said she had no memory of the bags. Conroe

testified that, once she came out of the dissociative state, she would have realized that she was carrying the bags and that she left them near the dumpster. These facts did not change his diagnosis.

¶ 60 On cross-examination, Conroe testified that he later learned that defendant had been using her deceased husband's pain medication. But he said he would not have diagnosed her with opiate abuse based on that fact, because her behavior did not meet the criteria for drug abuse. He clarified that, although she was taking it to alleviate her depression, she never showed any indication of being impaired by using his pain medication, she had not developed a dependence on it, and her family reported no signs of her having a drug problem. Conroe saw no signs that defendant had failed to fulfill her major obligations, had placed herself in a physically hazardous situation, had experienced legal problems, or had persistent interpersonal problems due to her drug use, one of which would have to be present to diagnose defendant with substance abuse.

¶ 61 Conroe also testified that his hourly fee was $295. He had billed the defense about $15,000 before his testimony at defendant's trial. He estimated that his fees would total over $18,000. His bills were paid through the Cook County public defender's office.

¶ 62 C. The State's Rebuttal Case

¶ 63 The State called three experts to rebut defendant's insanity defense. Dr. Sharon Coleman, a forensic psychologist, testified that she evaluated defendant in May 2009. Before meeting defendant, Coleman reviewed the police reports, defendant's video interrogation, defendant's medical records, and Heilbronner's and Conroe's evaluations.

¶ 64 Coleman met with defendant twice. In the first meeting, Coleman asked defendant about her past, including her medical, mental-health, substance-abuse, family, and educational histories. She also asked defendant to explain her version of the events of August 2, 2006.

¶ 65 At the second meeting, Coleman administered "an objective personality measure" to defendant to develop a psychological profile of defendant. Coleman said that the results of this test showed that defendant was an introvert who "tend[ed] to withdraw or alienate herself from other people." As a result, defendant experienced "periods of sadness or depression and anxiety symptoms." Coleman also believed that defendant had low self-esteem and a "poor self-concept." Finally, Coleman noted that defendant exhibited some symptoms of posttraumatic stress, some of which "were related to experiences that she noted from childhood."

¶ 66 Coleman testified that she did not do "an objective assessment of malingering." But, Coleman said, the test she gave defendant had "validity indicators" to show whether someone was distorting his or her responses. These indicators did not show that defendant had been distorting her answers. Coleman said, "[M]y observation of her in the clinical interview really was not suggestive of malingering."

¶ 67 Coleman diagnosed defendant with a panic disorder and with depressive disorder NOS. Coleman did not believe that defendant suffered from a mental illness that caused her to lack the capacity to appreciate the criminality of her conduct. Coleman did not diagnose defendant with opiate abuse.

¶ 68 In support of her diagnosis, Coleman stated that defendant's behavior on August 2, 2006 was organized and volitional. She added that there was "nothing impaired or bizarre about her behavior during that day." Coleman noted that defendant was able to make her doctor's appointment. The notes Dr. Gibson prepared during defendant's appointment showed that she was "alert and oriented." And defendant "responded appropriately" to police questioning. None of defendant's behavior appeared "delusional" or "psychotic" to Coleman.

¶ 69 Coleman was aware of dissociation. She did not believe that defendant was in a

dissociative state when she stabbed Cole. She disagreed with Dr. Conroe's diagnosis because defendant's behavior up until Cole's death was "very goal directed, clear, coherent, [and] organized." Coleman said that defendant's inability to remember what happened to Cole was "a blocked off piece that she says that she has no memory of."

¶ 70 Coleman did not believe that the episodes that defendant experienced as a child were dissociative states. Coleman thought that "they sounded very consistent with *** panic attacks or anxiety attacks."

¶ 71 Coleman testified that her hourly rate was $300 and that, before trial, she had billed the State approximately $3,000.

¶ 72 Dr. Fidel Echevarria, a psychiatrist, was assigned to evaluate defendant's sanity in July 2009. Echevarria testified that he had testified on behalf of both the State and the defense in other criminal cases. Before meeting with defendant, he reviewed the same documents as Dr. Coleman.

¶ 73 Echevarria testified that defendant told him she had taken opiates—her deceased husband's pain medication—on the morning of August 2, 2006. She said that she took both long-acting hydrocodone and immediate-release morphine pills. Echevarria opined that defendant met the criteria for opiate abuse because, in light of her "congestive heart failure" and orthopnea, taking "potentially lethal" medication without the supervision of a doctor was "physically dangerous." Echevarria also diagnosed defendant as having anxiety disorder NOS based on her describing symptoms of anxiety and panic attacks.

¶ 74 Echevarria opined that defendant was legally sane at the time of the offense. Echevarria testified that, in light of defendant's ability to make her doctor's appointment, to try to explain the injury on her hands to Dr. Gibson, and to respond to police questioning, she did not show any symptoms that she lacked the substantial capacity to understand what she was doing.

¶ 75 Echevarria did not believe that defendant had experienced dissociation on August 2, 2006. He thought that it was unlikely for a woman of defendant's age to have such severe dissociation for the first time. Echevarria said that he saw "no prior psychiatric history" that would lead him to believe that defendant had dissociated. Instead, Echevarria thought that the more likely explanation was either that defendant's use of opiates on the morning of August 2, 2006 caused her memory loss, or that she was lying about her memory loss.

¶ 76 On cross-examination, Echevarria testified that the typical side effect of morphine was sedation and the creation of a "euphoric state." After the morphine wears off, a person experiences a "crash" and depression. He acknowledged that morphine would not usually make someone violent.

¶ 77 Echevarria also noted that he "never had a sense in speaking with [defendant] that she was intentionally malingering." To the contrary, she appeared "very forward" with him.

¶ 78 Echevarria conceded that, after someone experiences dissociation, that person does not necessarily appear confused. He testified that someone, after coming out of a dissociative state, could remember his or her name and Social Security number, or tell a joke. But Echevarria also said that the mere fact that someone could not remember an event did not mean that that person would not be able to appreciate the criminality of his or her conduct.

¶ 79 Dr. Christofer Cooper, a forensic psychologist, evaluated defendant after Drs. Coleman and Echevarria. He reviewed the same records that they had before meeting with her. Cooper met with defendant three times before trial.

¶ 80 Cooper administered three tests to determine whether defendant was malingering. Based on the results of the first test, defendant "did not appear to be malingering." Defendant's score on the second test was "suggestive of malingering." And, on the final test, defendant's results were

invalid, but they showed "potential[ ] exaggeration" of her symptoms. Cooper said that one could "make an argument for a diagnosis of malingering based on her test scores." But Cooper "did not feel that such a diagnosis was warranted" in light of defendant's "clinical presentation and all the available records."

¶ 81 Cooper diagnosed defendant with depressive disorder NOS and with opiate abuse based her use of her deceased husband's pills. Cooper said that defendant told him that she would use the pills about every other day, and that her use depended on how she was feeling. She denied taking the pills on the day of the incident. Like Echevarria, Cooper believed that, due to defendant's significant health problems, her unsupervised use of opiates presented a physically hazardous situation to defendant that qualified her use as substance abuse.

¶ 82 Cooper did not believe that defendant suffered from any mental disease that would have rendered her legally insane at the time of Cole's death. He did not see enough evidence that defendant had experienced dissociation to diagnose her with dissociative disorder. Specifically, Cooper pointed to her lack of a history of mental illness or psychiatric treatment. And Cooper noted defendant's lack of psychotic symptoms on August 2, 2006, highlighting her ability to attend her appointment, to communicate with others including the police, to come up with an explanation for the cuts on her hands, and to dispose of the grocery bags containing evidence of the crime. According to Cooper, her disposal of the evidence "could be seen as a potential indication of understanding the criminality [of her conduct]."

¶ 83 On cross-examination, Cooper testified that he did not know whether defendant could remember the offense. He did "not necessarily" think that she was lying about her lack of memory. He testified that it was "possible" that she had "some psychological blocking of certain information." Cooper also suggested that it was possible that defendant chose "not to provide

certain information," or that her use of opiates affected her memory. Cooper declined to characterize the choice not to provide information as lying. But Cooper said that the possibility that defendant did not remember the incident did not necessarily mean that she was incapable of appreciating the criminality of her conduct at the time of the offense.

¶ 84 Defense counsel asked Cooper to define a dissociative episode and he responded, "Someone *** has a traumatic event and dissociates for a period of hours or a period of days in which they have a complete break from real[ity], and they have no, essentially have no recall of the incident." Cooper acknowledged that, once someone came out of a dissociative state, that person would not necessarily have amnesia, forget their name, or be incapable of going to a doctor's appointment.

¶ 85 D. Defendant's Surrebuttal Case

¶ 86 Defendant re-called Dr. Conroe, who had watched Drs. Coleman, Echevarria, and Cooper testify, to testify in surrebuttal. Conroe testified that none of defendant's family members, including her daughter who lived with her, told him that defendant exhibited signs of substance abuse, such as being intoxicated.

¶ 87 Conroe also rejected the notion that defendant was lying or malingering. He noted that none of Drs. Coleman, Echevarria, or Cooper affirmatively said that she was malingering. And, Conroe noted, defendant's account of August 2, 2006 was the same when she told it to each doctor.

¶ 88 Finally, Conroe testified that the explanation that defendant's "mind just won't let her go there" was the same thing as dissociation. Conroe added, "Her mind won't go there because of how stressful, how traumatic what [*sic*] happened in the apartment that day. *** That's dissociation."

¶ 89 E. Closing Arguments, Jury Instructions, Jury Deliberations, and Verdict

¶ 90 During a break in the trial, the court held a jury instruction conference outside the presence

of the jury. Defendant requested that, along with insanity, the jury be given an instruction on self-defense. Defense counsel argued that defendant's testimony that Cole tried to sexually assault her, that she could not breathe while Cole was on top of her, and that she thought she was going to die was sufficient evidence to warrant a self-defense instruction. The State responded that, in light of defendant's lack of memory of the event, there was no evidence that her stabbing of Cole took place at the time of his alleged attack on defendant. The State, noting the number of knives used and the fact that Cole's blood was found both in the bedroom and kitchen, argued that it was impossible to know the timing of the first knife wound, much less the other sixty-two, and thus there was no evidence that defendant acted in self-defense, as opposed to acting out of "revenge" or for some other reason.

¶ 91 The court declined to instruct the jury on self-defense. The court noted that, because defendant could not remember the incident, she could not testify as to whether she actually committed the murder in self-defense. The court also agreed with the State that there was no evidence as to when defendant stabbed Cole in relation to her last memory of him being on top of her.

¶ 92 Prior to closing arguments, the trial court told the jury that anything said in closing arguments should not be considered as evidence. The court added, "If you hear something in closing argument that was not borne out by the evidence, you should disregard that portion of the closing argument."

¶ 93 In its opening closing argument, the State argued that defendant's actions after the murder showed that she was not insane:

> "Take a look at the Defendant's actions, ladies and gentlemen, after she killed Benjamin Cole. She wiped the blood off her door. She changed her clothes, and she washed

down or wiped off or somehow tried to take the blood off that black dress, because you heard that the forensic scientists were not able to get any DNA, even though they could see stains.

And remember, Ercell Kirk told you, when she went in that apartment, she called out for her brother and she heard water running. That's the Defendant trying to clean herself up, get the blood off of herself."

¶ 94 During defense counsel's closing argument, she brought up the issue of self-defense:

"Are they telling you that [defendant] doesn't have the right to defend herself in that apartment? Is that what they're saying? Are they telling you that she should have laid there, on that bed, with [Cole] on top of her and suffocated to death? Is that what they're telling you?

Are they telling you that [defendant] should have laid there and let Ben do what he wanted to her? Let him have his way with her? Is that what they're saying?

Ladies and gentlemen, you know that's not right. You know that is absolutely wrong. [Defendant] had the right to defend herself that day. And, ladies and gentlemen, she fought for her life."

Then, counsel went on to argue that defendant's dissociative state explained the severity and number of stab wounds on Cole's body.

¶ 95 Later in her argument, defense counsel again brought up defendant's "right to protect herself," the State objected, and the trial court ordered a sidebar. Outside the presence of the jury, the State argued that defense counsel's mention of self-defense was improper because the jury would not be instructed on self-defense. The trial court sustained the State's objection but declined to tell the jury that they would not be receiving an instruction on self-defense.

¶ 96 In its rebuttal closing argument, the State attempted to undermine Dr. Conroe's credibility. Specifically, the State made note of the fees that Conroe had been paid:

"MS. ARMBRUST [Assistant State's Attorney]: And then, you have the doctor. Dr. Conroe, who's being paid over $18,000 to say that for some second, some small moment in time, there was a dissociative episode, and, therefore, that shows that the Defendant was insane? That's ridiculous.

Remember what Dr. Coleman—what Dr.—

MS. PARRIS [Defense Counsel]: Objection, Judge, to the ridiculous.

THE COURT: Objection is overruled. Please go forward.

* * *

MS. ARMBRUST: There is no evidence that the Defendant checked out that day, except Dr. Conroe's $18,000 diagnosis—

MS. PARRIS: Objection, Judge—

MS. ARMBRUST: —that he wants you to believe.

THE COURT: Ladies and gentlemen, you've heard the testimony. You've heard the evidence. If you hear something that was not borne out by the evidence, you should disregard that portion of the closing argument.

Please go forward."

The State argued that Dr. Heilbronner was less credible than its experts because Heilbronner had only ever testified for the defense in criminal cases, whereas "Dr. Cooper, Dr. Echevarria and Dr. Coleman *** testify for both sides. They just analyze facts and give their opinion and testify." Defense counsel objected to this comment, and the trial court overruled the objection.

¶ 97 The State also attacked Conroe's conclusions by saying that, although Conroe testified that

defendant had a dissociative episode, he then testified that "she was normal for the rest of the day" and that she "was fine when she went to see Dr. Gibson." Defense counsel objected to both of these comments on the basis that the State did not accurately recount Conroe's testimony. The trial court overruled the objections and told the jury to "remember[ ] the evidence, compar[e] it to the argument and disregard[ ] those things that don't support the argument."

¶ 98 The State also reiterated its argument that defendant had tried to wash the blood off of her dress after she stabbed Cole:

> "What did she do during the day? After the murder[ ], she tries to clean herself up. The clothing that she's wearing. That black slip, there clearly, when it's analyzed for DNA, there's blood indicated—
>
> MS. PARRIS: Objection—
>
> MS. ARMBRUST: —but it's too diluted—
>
> THE COURT: Please go forward. Your objection is overruled.
>
> Ladies and gentlemen, you heard the testimony. Use your collective recollection as to what the testimony and the evidence is. Please go forward.
>
> MS. ARMBRUST: The DNA analyst *** said this was too diluted, like it was washed off or wiped off. He cannot get any DNA evidence from that.
>
> MS. PARRIS: Judge, I object to that because I don't believe that was the testimony.
>
> THE COURT: Ladies and gentlemen, you've heard the testimony. Please rely on your recollection of the testimony. Please go forward."

¶ 99 While noting that "[n]o doctor diagnosed [defendant with] malingering," the State argued that "Dr. Cooper *** felt there was some overexaggerating [*sic*], but it's a big diagnosis to give, and he gave her the benefit of the doubt." Defense counsel objected to this comment, and the trial

court said, "Ladies and gentlemen, you heard the testimony. Rely on your recollection of that testimony and let's go forward."

¶ 100 Finally, the State told the jury that there was "only one victim in this case" and that defendant "was never defending herself from anyone." The State then said, "And you're not going to be instructed that she was justified in this case." Defense counsel objected, and the trial court said, "Ladies and gentlemen, you're going to get the jury instructions. You'll see them at that time."

¶ 101 The trial court instructed the jury that "[t]he burden of proof [was] on the Defendant to prove by clear and convincing evidence that the Defendant is not guilty by reason of insanity." The court also told the jury that "[t]he phrase 'clear and convincing evidence' means that degree of proof which, considering all the evidence in the case, producing the firm and abiding belief that it is highly probable that the proposition on which the Defendant has the burden of proof is true."

¶ 102 During its deliberations, the jury sent out two notes regarding defendant's burden of proof.[1] The first asked for the "difference between clear [and] convincing [and] beyond a reasonable doubt." After hearing arguments from the State and defense, the trial court responded, "In this case, you have been instructed in two different burdens of proof to make different decisions. 'Proof beyond a reasonable doubt' is a higher burden of proof than proof by 'clear and convincing evidence.' "

¶ 103 The jury's second note, which it sent out approximately two hours after the first, read:

> "We are divided on the question of the defendant's sanity at the time of the crime [and] do not anticipate unanimous agreement.
>
> In order to confirm we are interpreting our instructions correctly please affirm that

[1] The jury also sent out notes requesting to see certain exhibits used during trial, but those are not relevant to this appeal.

in order to come to a decision of not guilty by reason of insanity there must be absolutely no doubt that the defendant was insane at the time of the crime.

Conversely, if there is doubt we should be directed to find the defendant guilty."

¶ 104 The State argued that the jury should be told that they have been instructed on the law, and to keep deliberating. Defense counsel argued that, because the jury had posed a question of law, the court should answer it. Defense counsel said that the court should tell the jury that "absolutely *** no doubt is not the standard of proof," that clear and convincing evidence was the standard of proof, and that, "[i]f you do not believe she was insane at the time of the event, then you *** can find her guilty or not guilty of the murder."

¶ 105 The trial court said that, even though the jury instructions answered the jury's question, the court "ha[d] to say something" because it was "obvious they need[ed] help, in some way." The court noted that the jury's comment about "absolutely no doubt" was wrong because defendant's burden of proof was clear and convincing evidence. The court told the jury, "The Defendant's burden of proof for not guilty by reason of insanity is by clear and convincing evidence. You have your jury instructions. Please continue to deliberate." Approximately an hour and a half after the trial court sent back that response, the jury returned a verdict of guilty of first-degree murder.[2]

¶ 106 F. Sentencing

¶ 107 At sentencing, the State presented victim impact statements from Kirk and Cole's brother. Defendant's sister testified on her behalf and spoke about how defendant cared for her as they grew up together.

¶ 108 The State argued that the murder was especially brutal in light of the numerous stab

[2] The jury also found defendant not guilty of armed robbery, the only other charge prosecuted by the State.

wounds defendant inflicted on Cole. Defense counsel argued that it was Cole's attempt to sexually assault defendant that led to his murder. Counsel also noted defendant's lack of a criminal background, the incident of sexual abuse when she was a young child, and her history of psychological problems, including her failed suicide attempts in jail. Defense counsel concluded that the actual number of years to which defendant was sentenced "ma[de] no difference" because, "[w]hen th[e] Court denied the proper jury instructions, [defendant] *** was sentenced to die in prison."

¶ 109 The court noted that it had considered the evidence and arguments in aggravation and mitigation. The court highlighted the "very brutal" nature of the murder. It also said that it was "clear that [defendant], because of her age and her medical condition, is not in the best of circumstances to handle a long penitentiary sentence." And the court recognized her lack of a criminal background. While acknowledging that Cole may have attempted to assault defendant, the court said, "[H]ow many stab wounds does it take to defend yourself, and when does it cross the line to the area of rage or vengeance[?]" The court sentenced defendant to 50 years' incarceration.

¶ 110 II. ANALYSIS

¶ 111 A. Manifest Weight of the Evidence

¶ 112 Defendant's first argument is that the jury's verdict was against the manifest weight of the evidence, which, according to defendant, showed that defendant was insane at the time of the offense. The State argues that we should not upset the jury's verdict because it presented evidence showing that defendant was not insane at the time of the offense.

¶ 113 A person is considered legally insane—and thus not responsible for a criminal offense—where, at the time of the offense, he or she lacked the substantial capacity to appreciate

the criminality of his or her conduct as a result of a mental disease or defect. 720 ILCS 5/6-2(a) (West 2006). In order to be found not guilty by reason of insanity, a defendant must prove by clear and convincing evidence that he or she was insane at the time of the crime. 720 ILCS 5/6-2(e) (West 2006).

¶ 114 Whether a defendant was insane is a question of fact, and the jury's resolution of that question will not be overturned unless it was against the manifest weight of the evidence. *People v. Johnson*, 146 Ill. 2d 109, 128-29 (1991). When considering the question of the defendant's insanity, it is the jury's responsibility to assess the credibility of the witnesses—including expert witnesses—and determine the weight that should be given to their testimony. *People v. Tademy*, 2015 IL App (3d) 120741, ¶ 13. We may not reweigh the evidence and substitute our judgment for that of the jury. *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 20. But we will reverse a jury's determination on the issue of sanity if the opposite conclusion is clearly evident, or if the verdict is unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 115 Defendant argues that his experts, Drs. Heilbronner and Conroe, had the only logical explanation for her conduct. According to defendant, the fact that she stabbed Cole 63 times could only be explained by the fact that she experienced a dissociative episode, because she was too physically weak to have done so under normal circumstances. And, defendant alleges, the State's experts failed to explain how she could have stabbed Cole 63 times, ignored the criteria for opiate abuse in diagnosing her with opiate abuse, and ignored the fact that defendant's use of morphine on the day of the offense would make it less likely that she would be homicidal.

¶ 116 Defendant cites *People v. Wilhoite*, 228 Ill. App. 3d 12 (1991), in support of his claim that the State's evidence was insufficient. In *Wilhoite*, the defendant was charged with attempted murder after trying to throw her nine-year-old daughter out of the window of their eighth-floor

apartment. *Id.* at 14. The defendant had smoked marijuana shortly before the incident and, as she was trying to push her daughter out of the window, she said, " 'We have been saved and are going to heaven.' " *Id.* At the defendant's bench trial, the defense expert opined that the defendant suffered a brief psychotic reaction brought on by the extreme stress of learning that her boyfriend had molested her daughter. *Id.* at 15, 17. The defense expert noted that the defendant had told him that she spoke to God before the incident, and he told her to kill her children because the world was coming to an end. *Id.* at 18. The State's expert, on the other hand, opined that the defendant's behavior could be explained by her marijuana use and diagnosed her with marijuana abuse. *Id.* at 16. The trial court found that the defendant was sane at the time of the offense and found that it was " 'more logical' " that the defendant attempted to kill her daughter because she was under the influence of marijuana. *Id.* at 19.

¶ 117 On appeal, we held that the trial court's findings were against the manifest weight of the evidence. *Id.* at 28. We found that the State's expert's opinion "suffer[ed] from many foundational flaws which fatally undermine[d] his opinion." *Id.* at 21. Specifically, we noted that the State's expert, despite diagnosing the defendant with marijuana abuse, failed to ask the defendant how much marijuana she smoked on the day of the offense and ignored several of the diagnostic criteria for marijuana abuse in the Diagnostic Statistical Manual (DSM) III. *Id.* at 21-23. We also highlighted that the symptoms of marijuana use did not account for the defendant's delusion of talking to God at the time of the offense. *Id.* at 24. We also found the defense expert's opinion to be more accurate, as he interviewed the defendant closer to the incident—the best time to determine whether she had a psychotic event—and reviewed additional reports from doctors who had interviewed the defendant. *Id.* at 27. Finally, we noted that the trial court's findings did not reflect a determination that the State's expert was more credible than the defense expert; it seemed that the

trial court simply " 'drew different conclusions than [the experts] did.' " *Id.* at 28 (quoting *People v. Arndt*, 86 Ill. App. 3d 744, 749 (1980)). That was because the trial court found that the frequency of the defendant's marijuana use caused her to hallucinate, but the State's expert did not rely on the frequency of the defendant's use in making his diagnosis; he focused solely "on the single episode of cannabis intoxication." *Id.* at 28.

¶ 118 Admittedly, *Wilhoite* bears some resemblance to this case. Like the defendant in *Wilhoite*, defendant here claimed that she suffered a brief break from reality at the time of the offense. And like the State's experts in *Wilhoite*, two of the State's experts in this case diagnosed defendant with substance abuse.

¶ 119 But this case is distinct from *Wilhoite* in several critical ways. First, at the time *Wilhoite* was decided, the insanity statute only required the defendant to prove his or her insanity by a preponderance of the evidence. *Id.* at 19-20 (citing Ill. Rev. Stat. 1987, ch. 38, par. 6-2(e)). Thus, the defendant only had to show that it was " ' more likely than not that [s]he was insane when [s]he committed the offenses charged.' " *Wilhoite*, 228 Ill. App. 3d at 20 (quoting *People v. Moore*, 147 Ill. App. 3d 881, 886 (1986)). Here, defendant was required to prove her insanity by clear and convincing evidence. 720 ILCS 5/6-2(e) (West 2006). Thus, defendant did not simply have to show that it was more likely than not that she was insane, she had to present enough evidence to create "the firm and abiding belief that it [was] highly probable that" she was insane. Illinois Pattern Jury Instructions, Criminal, No. 419 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 4.19). *Wilhoite*'s applicability to this case is questionable in light of the higher evidentiary burden defendant faced.

¶ 120 Second, unlike the State's expert's opinion in *Wilhoite*, the State's experts' opinions in this case did not suffer from foundational deficiencies. Drs. Echevarria and Cooper, the two doctors

who diagnosed defendant with opiate abuse, did not ignore the criteria of the DSM-IV in making their diagnoses. To the contrary, they both testified that, in light of defendant's severe cardiac and pulmonary problems, her use of opiates was a hazard to her health, and that using drugs in a physically hazardous way is a criterion for a diagnosis of substance abuse in the DSM-IV. Additionally, unlike the State's expert in *Wilhoite*, each of the State's experts in this case reviewed the same information as defendant's experts. While they interviewed defendant later than defendant's experts, there was no evidence that the best time to diagnose dissociative disorder is close to the time an individual suffers a dissociative episode. To the contrary, Dr. Conroe opined that, when an individual suffers a dissociative episode, they can show no symptoms of it immediately after the dissociation ends.

¶ 121 Defendant argues that Echevarria and Cooper's diagnoses make no sense because defendant's use of opiates on the day of the offense would sedate her rather than make her act homicidally. Defendant misinterprets their testimony. Unlike the expert in *Wilhoite*, who said that the defendant attempted to murder her daughter because she was high on marijuana, the State's experts in this case did not attribute defendant's actions to her use of opiates. Instead, they simply testified that her use of opiates may have explained her claim of *memory loss* at the time of the incident.

¶ 122 Third, *Wilhoite* was a bench trial where the trial court's findings showed that it did not appropriately consider the expert opinions that it heard. This case was a jury trial. We have no findings from the jury that demonstrate that it incorrectly interpreted the evidence presented.

¶ 123 The jury's verdict was not against the manifest weight of the evidence. The jury could have concluded that defendant did not suffer a dissociative episode based on her purposeful conduct after the murder. After the murder, defendant changed her clothes and attempted to dispose of her

bloody dress and the murder weapons. She told Dr. Gibson that she had cut her hands when she fell down the stairs, which the jury could rationally interpret as a willful attempt to cover up her involvement in the murder, and which would run counter to the notion that defendant had killed Cole during a dissociative episode.

¶ 124 We recognize that, despite the fact that none of the State's experts diagnosed defendant with malingering, they could not fully explain her claimed memory loss at the time of the offense. But Dr. Conroe did not offer a fully satisfactory explanation for defendant's behavior, either. He testified that defendant's dissociative episode ended when she was standing outside her apartment building, going to the van that took her to her doctor's appointment. Yet defendant testified that she did not remember carrying the grocery bags containing the murder weapons or disposing of them, nor did she remember telling Dr. Gibson that the cuts on her hands were caused by a fall on the stairs—all of which occurred *after* the dissociative episode diagnosed by Dr. Conroe would have ceased, and her memory should have been restored.

¶ 125 Moreover, the jury was not required to believe that defendant suffered any memory loss at all. Both Drs. Cooper and Echevarria suggested that it was possible that defendant was lying about her memory loss. The jury could reasonably accept that testimony, especially in light of the evidence that defendant tried to dispose of the murder weapons and her blood-stained clothing, and that, as we just noted, she claimed not to recall events that, based on Conroe's diagnosis of the dissociative episode, she should have been able to remember.

¶ 126 Ultimately, it was for the jury to assess the deficiencies in the expert testimony and weigh it against the other evidence in the case. Based on the evidence contained in the record, we cannot say that the opposite conclusion—that defendant was insane at the time of the murder—was clearly evident. Even if we were to believe that dissociation was likely the cause of defendant's

actions, that would not be enough to upset the jury's verdict. In light of the deference we owe to the jury as the trier of fact, we affirm its verdict.

¶ 127 B. Self-Defense Instruction

¶ 128 Defendant's second argument is that the trial court erred in failing to instruct the jury on self-defense, where defendant testified that Cole attempted to sexually assault her and, as he lay on top of her, she was suffocating due to her orthopnea. The State contends that the trial court did not err because defendant testified that she could not remember stabbing Cole and, therefore, she could not testify that she acted in self-defense.

¶ 129 A trial court has discretion in deciding whether to give a jury instruction. *People v. Jones*, 219 Ill. 2d 1, 31 (2006). The court's failure to give an instruction constitutes an abuse of discretion where there is some evidence to support giving the instruction. *Id.* "Very slight evidence upon a given theory of a case will justify the giving of an instruction." *People v. Jones*, 175 Ill. 2d 126, 132 (1997). In deciding whether the evidence supports an instruction, the trial court should not weigh the evidence presented at trial; it should simply determine whether there is some evidence supporting the instruction. *Id.*

¶ 130 In order to be entitled to a self-defense instruction, defendant was required to present very slight evidence that would satisfy the six elements of self-defense: (1) that unlawful force was threatened against her; (2) that she was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that she actually and subjectively believed a danger existed that required the use of force applied; and (6) that her beliefs were objectively reasonable. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995).

¶ 131 In this case, the trial court denied defendant's request for a self-defense instruction because she could not testify about the circumstances surrounding her stabbing of Cole. While defendant

testified that she could not breathe while Cole was holding her down on his bed, she could not remember anything that occurred in Cole's apartment after that. Rather, she said that the next thing she remembered was standing outside and getting in the van for her doctor's appointment.

¶ 132 The State cites *People v. Lahori,* 13 Ill. App. 3d 572, 578 (1973), where we held that the defendant was not entitled to a self-defense instruction because his testimony that "he could not remember whether or not he had shot the deceased" was insufficient to warrant a self-defense instruction. In *Lahori*, the State's evidence showed that the defendant shot his wife during an argument. *Id.* at 574. The defendant testified that, during the argument, his wife hit him with a broom, he passed out, and, when he came to, she had been shot. *Id.* at 576. On appeal, we held that defendant was not entitled to a jury instruction because his testimony that he could not remember what happened was "inconsistent with a proper claim of self-defense," as such a claim "requires *** that [the] defendant had admitted the killing as the basis for a reasonable belief that the exertion of such force was necessary." *Id.* at 577-578. Subsequent cases have relied on this principle from *Lahori*. See, *e.g.*, *People v. Lewis*, 2015 IL App (1st) 122411, ¶¶ 57-58; *People v. Salas*, 2011 IL App (1st) 091880, ¶ 84; *People v. Chatman*, 381 Ill. App. 3d 890, 897-98 (2008).

¶ 133 Like *Lahori*, in this case, defendant testified that she could not remember stabbing Cole. Thus, she could not testify that she used force against him, let alone that she used force in response to Cole's attempt to sexually assault her. As the trial court noted in denying the instruction, there was no way to tell when defendant stabbed Cole during the incident. She stabbed him with three different knives in different parts of the body, including the neck, chest, back, abdomen, and arm. No evidence established the timing of these wounds such that defendant could argue that they were made in response to a threat of force. She could have stabbed him while he was still on top of her, or she could have stabbed him at some other point when she no longer felt that he posed a threat to

her. In fact, the evidence showed that a significant amount of Cole's blood was left in the kitchen—whether by Cole himself or defendant trailing it into the kitchen—which suggests that the incident was not confined to the bedroom, where defendant said she feared she was dying. While defendant was only required to present very slight evidence to show that she acted in self-defense, there was no evidence whatsoever as to when or where the stabbing occurred, or any of the other circumstances surrounding the stabbing. Thus, there was insufficient evidence to support a self-defense instruction.

¶ 134 Defendant argues that it was not necessary that she remembered stabbing Cole in order for her to obtain a self-defense instruction, citing *People v. Peery*, 11 Ill. App. 3d 730 (1973). In *Peery*, the defendant was convicted of killing his wife. *Id.* at 731. The defendant testified that, while he was arguing with his wife in the kitchen, she threatened to kill him, reached into the sink, and struck him on the head with a heavy object. *Id.* at 733. He said that the next thing he remembered was walking home. *Id.* We held that "the defendant's trial testimony, if believed by the jury, was sufficient to create an issue of fact as to whether he acted under a sudden and intense passion resulting from a serious provocation as defined in the [voluntary-manslaughter] statute." *Id.* at 734.

¶ 135 *Peery* is distinguishable. Unlike this case, *Peery* dealt with the offense of voluntary manslaughter, *i.e.*, murder committed in response to a serious provocation.[3] *People v. Smith*, 124 Ill. App. 3d 720, 722-23 (1984). In order to justify an instruction on a lesser-mitigated offense like voluntary manslaughter, the defendant must only show that there was a mitigating factor that would reduce the charge from murder to voluntary manslaughter. See *id.* at 723 ("In order for a

[3] Since *Peery* was decided, the voluntary manslaughter statute has been repealed and largely incorporated into the second-degree murder statute, which now includes a murder committed in response to serious provocation. *People v. Jeffries*, 164 Ill. 2d 104, 111-12 (1995).

defendant to be entitled to an instruction on [voluntary manslaughter], he must present some evidence that he was provoked into a sudden and intense passion or acted under the mistaken belief of self-defense."). Thus, when the defendant in *Peery* testified that his wife struck him, he presented enough evidence to suggest that the murder was committed in response to serious provocation. Here, however, defendant attempted to raise self-defense, which is an affirmative defense, not a lesser-mitigated offense like voluntary manslaughter. And in order to raise self-defense, defendant was required to present some evidence of each of the six elements of self-defense, including the element requiring that defendant used force in response to Cole's threat of sexual assault. No evidence at trial showed that defendant stabbed Cole in response to his attempted sexual assault, because defendant could not remember stabbing Cole at all. Thus, unlike the defendant in *Peery*, who needed only to present evidence of a single mitigating factor, defendant cannot show that there was evidence to support each of the elements of self-defense.

¶ 136 Moreover, the fact that defendant inflicted more than 60 stab wounds on Cole supports the trial court's decision to deny defendant a self-defense instruction. Stabbing Cole more than 60 times was not a reasonable response to the threat he posed. Defendant mutilated Cole's throat, pierced his vital organs, fractured two of his ribs, and stabbed him in various parts of his body, including multiple times in his back. We see no way that the jury could have concluded that this use of force was an objectively reasonable response to Cole's attempt to sexually assault defendant. See *People v. Woods*, 81 Ill. 2d 537, 543 (1980) ("The right of self-defense does not justify an act of retaliation or revenge."); *People v. Nolan*, 214 Ill. App. 3d 488, 496 (1991) (defendant not entitled to self-defense instruction where response to perceived threat unreasonable; defendant stabbed victim in response to pulling hair).

¶ 137 Defendant acknowledges the number of wounds she inflicted but argues that a self-defense instruction should have been given, because the jury could have found that she acted in self-defense when she initially stabbed Cole and that her subsequent stabbings were a product of her insanity. We see no basis for drawing this line in the evidence. Defendant's testimony was that she did not remember inflicting *any* of the stab wounds. She did not testify that she stabbed Cole once in order to defend herself, then lost her memory. The evidence did not make a division between the initial stab wounds and the other dozens of stab wounds that would have permitted the jury to adopt both defenses. Defendant may not cobble together the State's evidence of the stabbing with her own testimony that she feared for her life, without defendant admitting that she stabbed him, *and* that she did so *because* she feared for her life. See *Lewis*, 2015 IL App (1st) 122411, ¶ 65 (where defendant did not admit to shooting victim or that he did so out of fear for his life, defendant "may not combine the State's evidence of the defendant's act with his own testimony that he was in fear of his safety to raise the issue of self-defense" (internal quotation marks omitted)); see also *People v. Dukes*, 19 Ill. 2d 532, 539-40 (1960) (defendant not entitled to self-defense instruction where victim testified that, unprovoked, defendant aimed gun at him, and defendant testified that victim brandished gun but defendant intended only to scare victim). Thus, while it is conceivable to cobble together evidence that would show that some of the stab wounds were made in self-defense while others were made while defendant was insane, there is no evidence whatsoever to support that theory. The trial court did not abuse its discretion in denying defendant a self-defense instruction.

¶ 138 We also add that, even had the trial court erred in denying the instruction, that error would be harmless. "[I]nstructional errors are deemed harmless if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed." *People v. Washington*,

2012 IL 110283, ¶ 60. No rational trier of fact could have concluded that more than 60 stab wounds was a proportional response to the threat of harm Cole presented, or that all of these wounds were inflicted in response to a reasonable fear of being sexually assaulted. See, *e.g.*, *Lewis*, 2015 IL App (1st) 122411, ¶ 70 (any error in denying self-defense instruction harmless where defendant shot the victim "multiple times" and it was "clear that defendant could not have reasonably continued to fear death or great bodily harm after [the victim] was disabled").

¶ 139 C. Answer to Jury's Question

¶ 140 Next, defendant contends that the trial court erred in failing to clarify the jury's confusion about defendant's burden of proving her insanity. Defendant argues that the jury's final note indicated that it had misinterpreted defendant's burden, requiring that she prove her insanity beyond any doubt. The State contends that the trial court appropriately responded to the jury's question by informing the jurors that defendant's burden of proof was proof by clear and convincing evidence and telling them to consult their instructions.

¶ 141 We review a trial court's response to a jury's question for an abuse of discretion. *People v. Reid*, 136 Ill. 2d 27, 38-39 (1990). An abuse of discretion will be found only where the trial court's decision is arbitrary, fanciful, or so unreasonable that no reasonable person would take the view adopted by the trial court. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009).

¶ 142 The trial court has a duty to respond to the jury when it " 'has raised an explicit question on a point of law,' " even if the trial court properly instructed the jury. *Reid*, 136 Ill. 2d at 39 (quoting *People v. Jackson*, 89 Ill. App. 3d 461, 479 (1980)). But a trial court may, in its discretion, decline to answer a jury question where the jury instructions are readily understandable and sufficient to explain the law, further instructions would serve no useful purpose, further instruction would potentially mislead the jury, or the jury's question involves a question of fact. *Reid*, 136 Ill. 2d at

39. The court may also decline to answer if the answer would cause the court to express an opinion that would probably direct a verdict one way or the other. *Id.*

¶ 143 Here, the jury expressed confusion over defendant's burden of proving her insanity. Specifically, the jury asked the trial court to "confirm" that the jurors had correctly interpreted the instructions as requiring that there had to be "absolutely no doubt" that defendant was insane in order for the jury to return a verdict of not guilty by reason of insanity. We agree with defendant that this question raised a pure issue of law to which the trial court was obliged to respond. The jury clearly demonstrated that it had misinterpreted the burden of proof by requiring that defendant's case leave "absolutely no doubt" as to her insanity. The trial court also recognized the necessity of responding to the issue, stating that the court "ha[d] to say something" and that it was "obvious [the jurors] need[ed] help, in some way."

¶ 144 But we disagree with defendant that the trial court's response was improper. The trial court did not decline to answer the jury's question, leaving the jurors with the mistaken impression that they had correctly read the instructions. Instead, the trial court reminded them that defendant's burden of proof on her insanity defense was proof by clear and convincing evidence and directed them back to their jury instructions. Those instructions included IPI Criminal 4th No. 4.19, which defined "clear and convincing evidence" as "that degree of proof which, considering all the evidence in the case, produces the firm and abiding belief that it is *highly probable* that the proposition on which the defendant has the burden of proof is true." (Emphasis added.) This instruction clearly did *not* say that defendant had to establish her sanity beyond all doubt. And, in response to an earlier note, the trial court had made clear that defendant's burden of proof was lower than proof beyond a reasonable doubt. Taking these instructions together, the jury was told that defendant only had to show that it was highly probable that she was insane, and that she did

not need to prove that she was insane beyond a reasonable doubt, let alone absolutely *all* doubt. We cannot imagine clearer guidance on defendant's burden of proof. We cannot say that the trial court abused its discretion in its response to the jury's note.

¶ 145 Defendant maintains that the trial court's response was inadequate because IPI Criminal 4th No. 4.19 and the other instructions in the case are what created the jury's confusion in the first place. According to defendant, merely referring back to the jury instructions could not have cleared up the jury's confusion. Defendant cites *People v. Oden*, 261 Ill. App. 3d 41 (1994), and *People v. Brouder*, 168 Ill. App. 3d 938 (1988), in support of his argument.

¶ 146 In *Oden*, where the defendant was convicted of gun possession, the State claimed at trial that the defendant actually possessed the weapon; the State did not pursue a theory of constructive possession. *Oden*, 261 Ill. App. 3d at 42, 47. Yet the jury sent out a note asking for clarification on the concept of possession that suggested that they were considering the possibility that the defendant constructively possessed the weapon. *Id.* at 45. The trial court told the jury to rely on the instructions it had been given. *Id.* On appeal, we held that the trial court erred in not clarifying that constructive possession was not an issue even though the jury instructions were "accurate and complete." *Id.* at 47. That was because the jury's question "clearly demonstrate[d] that the juror were confused with respect to the legal theory of the State's case," and the trial court had a duty to attempt to resolve that confusion. *Id.*

¶ 147 Similarly, in *Brouder*, we held that the trial court erred in refusing to give the jury an instruction on the definition of the word "knowingly" where it repeatedly asked for one. (Internal quotation marks omitted.) *Brouder*, 168 Ill. App. 3d at 946-48. We noted that the trial court had a duty to try to clarify the jury's confusion, even if the jury had been given proper instructions. *Id.* at 947.

¶ 148 While we agree with defendant that *Oden* and *Brouder* stand for the proposition that a trial court must attempt to clarify a jury's confusion on a point of law even when the instructions cover that point of law, the trial court did so in this case. Unlike the trial courts in *Oden* and *Brouder*, the trial court in this case did not simply tell the jury to consult its instructions. The court reminded the jury that defendant's burden was proof by clear and convincing evidence. It told the jury that defendant's burden was lower than the State's burden of proving his guilt beyond a reasonable doubt. And it told the jury to look to its instructions, which included a more specific definition of clear and convincing evidence. We cannot say that the trial court neglected its duty to resolve the jury's confusion, or that the trial court's responses were unreasonable or arbitrary.

¶ 149 D. Closing Arguments

¶ 150 Defendant's final contention of trial error is that the State made improper arguments that affected the fairness of his trial. Defendant's challenges fall into three categories. First, she contends that the State misstated the evidence in several ways. Second, she contends that the State improperly disparaged her expert witnesses and claimed that they fabricated their testimony. Third, she claims that the State improperly commented on the issue of self-defense in defiance of the trial court's ruling not to discuss self-defense. We discuss each of these categories of error below. As we explain more fully below, we do not agree with defendant's claims.

¶ 151 The parties disagree about the proper standard of review. There appears to be a conflict among Illinois Supreme Court cases regarding the correct standard for reviewing a prosecutor's remarks during argument. *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 32. The decisions in *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), and *People v. Sims*, 192 Ill. 2d 592, 615 (2000), suggest that we should review this issue *de novo*. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993), suggests that we should review this issue for an abuse of discretion. We need not take a position in

this case, as defendant's claims fail under either standard.

¶ 152 Prosecutors have a great deal of latitude during closing argument and may comment upon and draw reasonable inferences from the evidence presented. *Hudson*, 157 Ill. 2d at 441. But they may not argue assumptions or facts not contained in the record. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). When reviewing alleged impropriety in the State's closing arguments, we view the arguments in their entirety and consider the challenged remarks in context. *Id.*

¶ 153 Prosecutorial misconduct in closing argument warrants a new trial if the improper remarks were a material factor in the conviction. *People v. Linscott*, 142 Ill. 2d 22, 28 (1991). In other words, we will find reversible error "only if *** the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142 (2009).

¶ 154 1. Misstating the Evidence

¶ 155 Defendant first argues that the State misstated the evidence by arguing that, after the murder, she "trie[d] to clean herself up" and that the DNA on her bloody dress "was too diluted, like it was washed off or wiped off." Defendant notes that Ryan Paulsen, the State's DNA analyst, said that he could not get DNA off of one of the fabric samples from the dress because his equipment malfunctioned, not because it had been washed off.

¶ 156 While there was no direct evidence that defendant attempted to clean the blood off of her dress, such an argument could be reasonably inferred from the evidence. Kirk testified that she heard water running when she first went into her apartment. A bloodstain was found on a bottle of liquid soap in defendant's apartment. And while Paulsen did not testify that the bloodstains had been, in fact, diluted by an attempt to wash them out, he offered dilution as a possible reason for his inability to obtain more DNA from the dress. The State did not err in making this argument.

¶ 157 Next, defendant argues that the State misstated Dr. Cooper's testimony by arguing that she exhibited "some overexaggerating [*sic*]" during the malingering test Cooper administered, and that Cooper "gave her the benefit of the doubt" because malingering is "a big diagnosis to give." As to the State's comments about defendant's exaggeration, that comment was supported by the evidence: Cooper testified that defendant exhibited some "potential[ ] exaggeration" of her symptoms. And although Cooper never expressly testified that he gave defendant the benefit of the doubt, he said that, despite defendant exhibiting some signs of malingering, he chose not to diagnose her with malingering because of defendant's "clinical presentation and all the available records." In other words, despite some doubt, Cooper elected not to diagnose defendant with malingering. The State's use of the phrase "the benefit of the doubt" was not an unreasonable inference. Notably, elsewhere in the closing argument, the State conceded that no doctor had diagnosed defendant with malingering.

¶ 158 Defendant also claims that the State misstated its experts' testimony when it argued that, whereas Dr. Heilbronner only testified for the defense in criminal cases, the State's experts had testified for both the State and the defense in other criminal cases. Defendant points out that only Dr. Echevarria testified that he had served as an expert for both the State and the defense. While we agree that the State's argument inaccurately reflected the evidence, this misstatement did not prejudice defendant. It was an isolated comment in the context of otherwise lengthy arguments. See *People v. Woods*, 2011 IL App (1st) 091959, ¶ 42 (fact that improper comments are isolated in lengthy argument is "a significant factor" in finding no prejudice). And the trial court instructed the jury before, during, and after closing arguments to disregard any arguments they heard that did not comport with the evidence. See *People v. Nielson*, 187 Ill. 2d 271, 297 (1999) ("Prejudice is *** less likely where *** the trial court properly instructs the jury on the purpose of closing

argument."); *People v. Medrano*, 271 Ill. App. 3d 97, 106 (1995) (prejudicial effect of improper closing arguments "can be cured when the trial court subsequently instructs the jury that closing arguments are not evidence and should be disregarded if any argument is not based upon the evidence"). In fact, the jury received this instruction more than 10 times. Thus, this comment likely had no effect on defendant's trial.

¶ 159 Finally, defendant claims that the State misconstrued Dr. Conroe's testimony by saying that Conroe testified that defendant "was normal for the rest of the day" and was "fine when she went to see Dr. Gibson" after the murder. The State did not misconstrue Conroe's testimony. He testified that, after the dissociative episode occurred, it was not necessary that defendant exhibit any confusion or lingering symptoms. That was how Conroe was able to maintain his diagnosis in light of defendant's normal behavior. We see no impropriety in the State's argument that Conroe believed that defendant could act normally after a dissociative episode.

¶ 160 2. Suggestions of Fabrication

¶ 161 Defendant next argues that the State improperly argued that Drs. Heilbronner and Conroe fabricated their testimony in exchange for money. " 'It is blatantly improper to suggest that the defense is fabricated, as such accusations serve no purpose other than to prejudice the jury.' " *People v. Slabaugh*, 323 Ill. App. 3d 723, 729 (2001) (quoting *People v. Aguirre*, 291 Ill. App. 3d 1028, 1035 (1997)). But the credibility of an expert witness is a proper subject for closing argument, so long as the argument is based on the evidence or inferences drawn from it. *People v. Alvidrez*, 2014 IL App (1st) 121740, ¶ 31. Consequently, "it is not improper *per se* to comment on the compensation a witness may receive, so long as such compensation is in evidence or may be inferred from the evidence." *People v. Coulter*, 230 Ill. App. 3d 209, 219 (1992).

¶ 162 Defendant takes issue with the State's argument that Dr. Conroe had been "paid over

$18,000 to say that" defendant suffered a dissociative episode and its characterization of Conroe's diagnosis as an "$18,000 diagnosis." We see no impropriety in either comment. The State's comments were based directly on Conroe's testimony on the amount of fees he had collected, and would collect, from his work on defendant's case. It was not improper for the State to argue that the jury should find Conroe less credible because he had been paid. The State did not say that Conroe had fabricated his diagnosis. It simply relied on the amount of Conroe's fees, which was supported by Conroe's testimony, to suggest his possible bias.

¶ 163 Although the State suggested that Conroe was biased by highlighting his fees, the entire point of attacking a witness's credibility in closing argument is to suggest to the jury that the witness's testimony might not be true. A witness's bias is unquestionably a proper area of argument. See *People v. Perryman*, 80 Ill. App. 3d 204, 206 (1980) ("Any bias which the witness may arguably have to falsely testify in favor of the defendant [citations] may be presented to the jury during closing argument for the credibility of the witness is always an issue to be resolved by the trier of fact."). The State did not cross the line into improper argument by using inflammatory terms to refer to Dr. Conroe (see *Alvidrez*, 2014 IL App (1st) 121740, ¶ 31 (State referred to defense expert as " 'snake oil' " salesman, " 'professional witness,' " and " 'hired gun' ")), or directly accusing Conroe of fabricating his testimony. See *id.* (State said defense expert was " 'making things up' "); *People v. Camden*, 219 Ill. App. 3d 124, 140 (1991) (improper for State to say that defense expert " 'create[d]' " insanity defense)).

¶ 164 Finally, defendant claims that the prosecutors improperly injected their personal opinions into their closing arguments by calling Conroe's diagnosis "ridiculous." During closing arguments, prosecutors may not express their personal opinions on the evidence. *People v. Woolley*, 178 Ill. 2d 175, 209 (1997). But that is not what occurred here. Characterizing Conroe's testimony as

"ridiculous" is not the same as the prosecutor telling the jury what his or her personal beliefs are about the evidence in the case. And "numerous cases have upheld the use of the term 'ridiculous' in closing arguments as acceptable commentary on the defense theory or the defendant's testimony." *People v. Robinson*, 391 Ill. App. 3d 822, 841 (2009) (collecting cases). We see no error in the State's arguments regarding defendant's experts.

¶ 165 3. Comments on Self-Defense

¶ 166 Defendant next challenges the State's comment that the jury would not be receiving an instruction on self-defense. Defendant claims that the State violated the court's admonition not to tell the jury that it would not be instructed on self-defense.

¶ 167 Defendant misconstrues the trial court's ruling. In defense counsel's closing argument, she argued that defendant was defending herself. The State objected, and the trial court, at a sidebar, told defense counsel to avoid arguing self-defense. The State asked the trial court to tell the jury it would not be instructed on self-defense, and the court said that *it* would not do so. The trial court never ruled that the State could not tell the jury that it would not be instructed on self-defense.

¶ 168 And any comments about the absence of a self-defense instruction were not improper because they were invited by defense counsel. See *Glasper*, 234 Ill. 2d at 204 ("Statements [in closing arguments] will not be held improper if they were provoked or invited by the defense counsel's argument."). Defense counsel first brought up the issue of self-defense in her closing argument, even though she knew that the jury would not be instructed on self-defense. The prosecutor's response to this comment was simply an attempt to avoid having the jury consider a defense that was not properly before it. We find no error here.

¶ 169 E. Excessive Sentence

¶ 170 Defendant's final contention is that her 50-year sentence was excessive. Defendant claims that the length of her sentence does not properly account for her lack of a criminal history, her mental and physical health problems, and the fact that the murder was precipitated by Cole's attempt to sexually assault her. The State claims that the trial court considered these factors before imposing its sentence,

¶ 171 The trial court has broad discretion in imposing a sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is better-positioned to evaluate factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, and age. *Id.* Thus, we will not substitute our judgment for the trial court's simply because we would weigh the sentencing factors differently than the trial court. *Id.* But a trial court's discretion in sentencing is not without limits. *Id.* We will reduce a sentence imposed within statutory limits where it constitutes an abuse of discretion, *i.e.*, where the sentence greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 210.

¶ 172 The sentencing range for defendant was 20 to 60 years' incarceration. 730 ILCS 5/5-8-1(a)(1)(A) (West 2006). Defendant's 50-year sentence falls in that range, albeit near the upper limit. In imposing the sentence, the trial court stressed the brutal nature of the murder—the fact that defendant stabbed Cole approximately 63 times—and the importance of the deterrent effect of the sentence. Both of these are proper factors to consider in aggravation. See 730 ILCS 5/5-5-3.2(a)(1), (7) (West 2006) (listing as aggravating factors "defendant's conduct caused *** serious harm" and "the sentence is necessary to deter others from committing the same crime").

¶ 173 Moreover, the record shows that the trial court considered the factors that defendant claims it failed to appreciate. The trial court expressly noted defendant's lack of criminal history, age, declining health, and lack of memory about the incident. And the trial court highlighted the fact

that Cole attempted to sexually assault her, but noted that defendant's actions went beyond an attempt to defend herself and extended into revenge. Ultimately, the trial court concluded that these factors did not significantly mitigate the seriousness of defendant's crime. We do not find this conclusion to be unreasonable or arbitrary. The trial court did not abuse its discretion in sentencing defendant.

¶ 174 III. CONCLUSION

¶ 175 For the reasons stated above, we affirm defendant's conviction and sentence.

¶ 176 Affirmed.