

2012 IL App (1st) 110321-U

SIXTH DIVISION
September 28, 2012

No. 1-11-0321

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 13423
)	
ELLEN GIL,)	Honorable Colleen McSweeney-Moore,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Lampkin and Justice Garcia concurred in the judgment of the court.

ORDER

¶ 1 **Held:** (1) The trial court's decision to exclude evidence of the victim's prior acts of violence was not an abuse of discretion. (2) Denial of the defendant's request to have the jury view the entire videotape of her interview with police was not an abuse of discretion. (3) The trial court did not abuse its discretion when it sentenced the defendant to 20 years' imprisonment.

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¶ 2 Defendant Ellen Gil was charged by indictment with first degree murder in connection with the stabbing death of her former husband, Edward Gil, (the victim). The jury found her guilty of second degree murder, and she was sentenced to a term of 20 years' imprisonment in the Department of Corrections. On appeal, defendant Gil contends that: (1) the trial court erred when it excluded evidence of prior acts of abuse by the victim; (2) the trial court erred when it denied her request to play the videotape of her interview with police in its entirety; and (3) her 20-year sentence violated the proportionate penalties clause of the Illinois Constitution.

¶ 3 For the reasons stated below, we affirm defendant Gil's conviction and sentence for second degree murder. The pertinent facts are set forth below.

¶ 4 **BACKGROUND**

¶ 5 The victim and defendant Gil were married in 1973, and had three children. The couple separated in 1977, and subsequently were divorced. They lived together off and on between 1978 and 2006. In 2007, defendant Gil lost her job and was again living with the victim at the time of his death. It was undisputed that the victim died from stab wounds inflicted by defendant Gil. Defendant Gil did not deny stabbing the victim but maintained she acted in self-defense.

¶ 6 **PRETRIAL PROCEEDINGS**

¶ 7 In support of the claim of self-defense, defense counsel filed motions *in limine* to allow into evidence the victim's prior convictions for battery, acts of abuse against other individuals and acts of abuse against defendant Gil, supported by a written offer of proof. Except for an incident in 2007, the alleged incidents took place between 1973 and 1982. In compliance with the trial court's order for specific information detailing the alleged incidents of abuse, defense

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counsel submitted a supplementary offer of proof in which he outlined the testimony defendant Gil's two sisters and their husbands proposed to give as to the acts of abuse committed by the victim against defendant Gil or other individuals that they witnessed. These alleged incidents occurred between 1973 and 1986.

¶ 8 Following arguments by the parties, the trial court ruled that the prior abusive acts of the victim of which defendant Gil was unaware were not admissible. The trial court further ruled that, except for the 2007 incident and the evidence that her sister observed bruises on defendant Gil after she was arrested, the alleged incidents of abusive behavior by the victim against defendant Gil were too remote to be admitted as evidence.

¶ 9 TRIAL

¶ 10 For the State

¶ 11 Summit Detective Robert Mase testified as follows. In the early morning hours of May 26, 2007, Detective Mase responded to the report that a woman had called 911, stating that she had stabbed her husband. The detective proceeded to an apartment on Archer Avenue in Summit, Illinois. Arriving at the apartment, he knocked on the open door and announced his office. The detective could hear running water, and a female voice responded that she was "back here." He proceeded to the kitchen where he observed defendant Gil washing a large kitchen knife. At the detective's request, she put the knife down and sat at the dining room table.

¶ 12 Detective Mase then looked into the bedroom area and observed the victim's body on the edge of the bed; there was a large amount of blood on his body and on the bedding. The victim was unresponsive. Learning that the victim was defendant Gil's former husband, the detective

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asked her what had happened to him. Defendant Gil replied, " 'He is dead. He pissed me off, so I stabbed him.' " At her request, the detective allowed defendant Gil to smoke a cigarette. He observed no obvious injuries on defendant Gil. On cross-examination, Detective Mase acknowledged that he could not determine where the victim was when the stab wounds were inflicted. He further acknowledged that he did not examine defendant Gil for injuries.

¶ 13 Michelle Mrozek testified as follows. In May 2007, Ms. Mrozek worked as a bartender at the Town Tap Bar in Summit. The victim lived in a nearby apartment building and was a patron of the Town Tap. Ms. Mrozek had known him for about year and half, and they had become friends. She had known defendant Gil for about a year; the victim had introduced them. Defendant Gil told Ms. Mrozek that the victim was allowing her to stay with him because she lost her job and her insurance.

¶ 14 On May 25, 2007, the victim came into the Town Tap at 6:30 p.m. and ordered a beer. Defendant Gil arrived at 7 p.m. and had a Baileys on the rocks. Later, while the victim and defendant Gil were dancing, Ms. Mrozek heard them arguing about the victim's ex-wife, Joyce. Defendant Gil appeared upset and wanted to know why Joyce was calling the victim. He explained that Joyce just wanted someone to talk to because she had cancer. The argument ended, and the couple continued drinking until 11 p.m., when they left the bar together. Ms. Mrozek recalled that defendant Gil had six Baileys on the rocks, and the victim had eight beers.

¶ 15 At 11:30 p.m., defendant Gil returned to the Town Tap alone and threw a \$20 bill on the bar stating, " 'Give me a drink on the bastard's money.' " She had another Baileys on the rocks and took out the victim's cell phone. Defendant Gil wanted Ms. Mrozek to help her locate

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Joyce's telephone number, but Ms. Mrozek refused. After a while, defendant Gil began playing pool and having fun. She had one more Baileys on the rocks. At 1:40 a.m., Ms. Mrozek told defendant Gil that it would soon be closing time. When defendant Gil said she had forgotten her key, Ms. Mrozek offered to let defendant Gill spend the night at Ms. Mrozek's or to drive her to her sister's or her daughter's residence. Defendant Gil replied, " 'No. I'll wake that son of a bitch up.' " On cross-examination, Ms. Mrozek testified that defendant Gil usually drank shots of Jack Daniels with a coke, not Baileys.

¶ 16 Dr. Joseph Lawrence Cogan, Cook County assistant medical examiner, testified as follows. The victim sustained five stab wounds to the torso: one to the left upper chest, one to the left side of the abdomen, and three in the abdomen just about the belly button. Four of the five wounds were lethal on their own. The doctor found no defensive wounds, signifying that the victim was incapacitated in some way at the time he was stabbed. Doctor Cogan concluded that the manner of the victim's death was homicide, resulting from multiple stab wounds. On cross-examination, Dr. Cogan acknowledged that if the victim had been holding on to someone at the time he was stabbed, he would not have any defensive wounds. The doctor could not tell in what order the stab wounds were inflicted.

¶ 17 After the State rested its case, defense counsel made a motion for a directed verdict. The trial court denied the motion.

¶ 18 For the Defendant

¶ 19 Defendant Gil testified on her own behalf as follows. After a five-year marriage and three children, the victim and she were divorced but periodically lived together. The victim left the

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area and married a woman named Joyce; they were later divorced. The victim contacted defendant Gil on a regular basis, even while he was married to Joyce. In 2007, defendant Gil lost her job, and the victim agreed that she could move in with him. The victim and she were not romantically involved. She was not angry that he was involved with other women.

¶ 20 Defendant Gil moved in with the victim in March 2007. Sometime in April or May 2007, the victim, who had been drinking, struck her with his open hand. She hit him back, and he stopped. However, the incident scared her, and she called the police. The police came, but no report was made. Defendant Gil left the apartment. She was then hospitalized for 11 days but for reasons unrelated to the victim. Upon her release from the hospital, the couple's daughter, Tina, drove defendant Gil back to the victim's apartment. She did not believe that the victim would strike her again. However, after talking to him, she believed that he would.

¶ 21 Early in the evening of May 25, 2007, the victim telephoned and asked defendant Gil to meet him at the Town Tap. Defendant Gil's memory of the events occurring after she arrived at the Town Tap was vague; some events she had no recollection of at all. When she arrived, she had a Baileys on the rocks and played dice with the victim and another man. She remembered playing the jukebox but did not remember having an argument with the victim. Defendant Gil did remember that, in addition to the five or six Baileys on the rocks she consumed, the victim and she had shots of Jack Daniels and Tequila. Around 11:30 p.m., defendant Gil and the victim left the Town Tap together; the victim brought a six-pack of beer back to the apartment.

¶ 22 Defendant Gil recalled entering the apartment and hanging up her sweatshirt; she did not remember the victim yelling at her or that she argued with him. She then returned to the Town

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Tap alone. Going there alone was unusual for her, though she would leave the apartment after an argument with the victim. Defendant Gil did not really remember being at the Town Tap but did remember having a couple of drinks and playing the jukebox. She also remembered talking to Ms. Mrozek but did not remember having the victim's cell phone or trying to find a telephone number for Joyce stored in it. Defendant Gil could easily have accessed Joyce's telephone number without using the victim's cell phone. When she left the Town Tap around 1:30 a.m, she might have said that she was going to wake "the son-of-bitch up."

¶ 23 When defendant Gil arrived back at the apartment, she did not have her keys and rang the doorbell. The victim let her into the apartment; as he followed her into the apartment, he struck the back of her head, causing her to hit the refrigerator and fall to the floor. The victim came at her and began striking her. Defendant Gil began to cry and begged the victim to stop. The victim swore at her and continued to strike her. She did not recall the victim placing his hands on her neck, but later, she had fingertip-shaped marks on her neck, and her neck was sore.

¶ 24 Defendant Gil thought the victim was going to kill her. While she remembered standing up in the kitchen, she did not remember where the knife came from or which of them had it first. She did not remember where in the apartment the stabbing took place or actually stabbing the victim; she knew he was stabbed because there was blood on his legs. Defendant Gil did not remember how many times she stabbed the victim; she thought she had stabbed him only once in the leg. The victim had continued to strike her until she stabbed him.

¶ 25 The victim was on the bed when defendant Gil first saw the blood. She immediately called 911 because the victim was an alcoholic and had very thin blood. She believed the victim

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was still alive. Defendant Gil did not remember the police coming to the apartment and talking to her. At the police station the following day, her attorney took pictures showing the bruises she sustained to the upper part of her left arm and her neck.

¶ 26 Defendant Gil remembered being interviewed by police and that the interview was videotaped. She was sad when the police told her that the victim was dead. At the time of the stabbing, defendant Gil was angry at the victim for striking her, but she was also afraid he was going to kill her. She stabbed the victim only to make him stop striking her.

¶ 27 On cross-examination, defendant Gil testified that, although they slept in the same bed, the victim and she did not have a romantic or sexual relationship. Defendant Gil denied that she had a "selective" memory of the events before and after the victim was stabbed. She did not remember telling the police that she was upset because Joyce had been telephoning the victim. She did not recall anything she told the police after the stabbing. Defendant Gil acknowledged that she had reviewed the videotape of her interview with Summit detectives but that it had not refreshed her recollection of her statements to them.

¶ 28 Over the objection of defense counsel, the prosecutor used portions of the videotape to refresh defendant Gil's recollection. Defendant Gil remembered telling Summit Detective Long that she did not want the victim to talk to Joyce, but she still did not recall throwing down the \$20-bill and saying she wanted a drink on "the bastard's money." She now remembered looking for Joyce's telephone number. Defendant Gil did not recall exactly what else she told the detective.

¶ 29 After being shown another portion of her videotaped interview, defendant Gil

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remembered telling Detective Long that the victim was not a heavy drinker. She might have told the detective that, in the 2007 incident prior to the stabbing, she had been drinking and poured beer over the victim, but that was not what happened; the victim struck her first. While she acknowledged striking the victim, she denied telling the detective she started the fight.

Defendant Gil remembered telling Detective Long that she warned the victim that she would stab him if he struck her again. She also told him that she stabbed the victim one time.

¶ 30 Defendant Gil could not tell how long the victim beat her; it was more than five minutes and could have been 20 minutes. She was struck all over her upper body. Defendant Gil did not remember getting the knife. The victim was between the kitchen and the bedroom when she stabbed him. She was certain the victim was standing in front of her when she stabbed him. She acknowledged telling Detective Long that the victim was seated on the bed when she grabbed the knife, but she did not remember telling him that she stabbed the victim while he was on the bed. Defendant Gil did not think she told the police that the victim had beaten her prior to her stabbing him, and she was unsure whether she told them she feared for her life. Defendant Gil denied that she cleaned up the blood or that she waited until the victim was dead before she called 911.

¶ 31 Linda McHugh, one of defendant Gil's sisters, testified as follows. The victim had been married to defendant Gil. She described the victim as 6 feet tall in height and weighing 165 pounds. At the time of the incident, defendant Gil was 5'3" tall and weighed 102 pounds. The witness visited defendant Gil at the jail six days after her arrest and observed bruises on her neck and arms.

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¶ 32 Betty Johnson, another of defendant Gil's sisters, testified as follows. Ms. Johnson was employed at a law firm in Chicago. She knew the victim from his marriage to defendant Gil. Ms. Johnson also visited defendant Gil at the jail six days after her arrest and observed bruises on her arms and some on her neck in the shape of fingertips. Defendant Gil showed her a bump on the back of her head.

¶ 33 Rebuttal

¶ 34 Michael Long, a lieutenant and detective with the Summit police department, testified as follows. On May 26, 2007, he interviewed defendant Gil at the Hickory Hills police department; the Summit police department did not have videotaping equipment. Defendant Gil never told him that she was afraid that the victim was going to kill her or that he beat her with his fists for 20 minutes. Detective Long did not observe any injuries to defendant Gil that would indicate that she had been beaten for 20 minutes. On cross-examination, Detective Long acknowledged that he did not examine defendant Gil for injuries.

¶ 35 Following closing arguments and jury deliberations, the jury found defendant Gil guilty of second degree murder. Defendant Gil's motion for a new trial was denied.

¶ 36 Sentencing

¶ 37 At the sentencing hearing, the parties presented their respective arguments in aggravation and mitigation. In aggravation, the prosecutor read a letter from Tina Gil, expressing the impact of losing both her father and her mother.

¶ 38 In mitigation, Ms. Johnson testified that while growing up, defendant Gil was over-protected by their mother, but she accepted that physical and mental abuse were a part of life.

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Defendant Gil married the victim right after high school. From the beginning of their marriage, the victim abused her mentally and physically. Despite the efforts of her family members, defendant Gil could not see the victim for what he was. Even after they divorced, the victim continued to control her, convincing her that he was the only one that really loved her.

Defendant Gil was left with no sense of self-worth and was just going through the motions of living.

¶ 39 Norma Ritter testified that she was a friend of defendant Gil's and her family. She described that, in addition to her own three daughters, defendant Gil raised the victim's daughter, whose own mother could not care for her, treating her as one of her own children. Defendant Gil had never been involved in any criminal acts before; she was a sensitive person in a very volatile relationship.

¶ 40 Ms. McHugh testified that she was employed at a law school in Chicago. Despite the abuse she experienced over 30 years, defendant Gil loved the victim but was also afraid of him. The victim was a violent person; he had served time in jail for beating his own mother. Ms. McHugh had witnessed the 30 years of physical and mental abuse inflicted on defendant Gil by the victim. Defendant Gil protected her children by making sure that they never witnessed the abuse the victim inflicted on her. Defendant Gil was a person always willing to help others; while incarcerated, she shared her books and paper with the other inmates and helped them to make cards to send to their children and loved ones. Ms. McHugh further testified that defendant Gil had significant health problems; she had only one kidney, she had undergone triple bypass surgery, and suffered two heart attacks thereafter. She required daily medication. Finally, Ms.

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McHugh believed that defendant Gil was not a threat to anyone.

¶ 41 In making her sentencing recommendation, the prosecutor noted that the jury found defendant Gil guilty of second degree murder and that she had no criminal record. However, based on defendant Gil's actions and statements, both prior to and after the victim's death, as well as the brutality of the stabbing, the prosecutor requested a sentence of 20 years' imprisonment, the maximum sentence for second degree murder. In response, defense counsel stressed that defendant Gil was 55 years of age, had health problems and was unlikely to re-offend. He requested a sentence of seven years.

¶ 42 Defendant Gil addressed the trial court stating that she never wanted to harm the victim; she loved him and that she would regret what had happened for the rest of her life. She was overcome with fear and pain the night the victim died. Defendant Gil requested that the court show her mercy and allow her to return to her family.

¶ 43 In imposing the sentence in this case, the trial court addressed the allegations of 30 years of abuse, pointing out that there were no hospital records and no evidence that defendant Gil ever sought counseling to support the allegations of abuse by the victim. The court found it difficult to believe that with both of her sisters working in the legal community, defendant Gil never took advantage of the resources available for dealing with domestic violence and continually found herself in the same situation. The court then noted that defendant Gil's appearance had changed since her arrest. Rather than the "bleached blond hair and the tight jeans and the bad mouth," defendant Gil now was attempting to appear older than her age. The court further found defendant Gil's memory lapses were neither reasonable nor believable.

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¶ 44 The trial court expressed its belief that defendant Gil had been shown leniency when the jury found her guilty of second degree murder. Based on the circumstances of the victim's death, the court further believed that "there is certainly an element here of your own vigilante justice for the years of abuse that you served at the hands of your long ago ex-husband," and sentenced defendant Gil to 20 years' imprisonment.

¶ 45 Defendant Gil's motion for reconsideration of sentence was denied. This appeal followed.

ANALYSIS

¶ 46 I. Exclusion of Prior Acts of Abuse

¶ 47 Defendant Gil contends that the trial court erred when it refused to admit testimony of the prior acts of abuse inflicted on her by the victim. She argues that, as a result, the jury was left with the impression that her fear of the victim was irrational and therefore, it determined that her belief that she needed to act in self-defense was unreasonable.

¶ 48 A. *Standard of Review*

¶ 49 We review a trial court's determination as to the relevancy and admissibility of evidence of prior bad acts of the victim for an abuse of discretion. *People v. Salcedo*, 2011 IL App (1st) 083148, ¶ 41. The trial court's decision will not be reversed absent a clear abuse of discretion. *Salcedo*, 2011 IL App (1st) 083148, ¶ 41. A trial court abuses its discretion in excluding evidence only where the trial court's ruling is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 50

B. Discussion

¶ 51 Where self-defense is properly raised, evidence of the victim's aggressive and violent behavior is relevant for two purposes: (1) to demonstrate the defendant's knowledge of the victim's tendencies that affected both his perception and his reaction to the victim's behavior; and (2) to show who was the aggressor where there are conflicting accounts of what happened.

People v. Lynch, 104 Ill. 2d 194, 200-01 (1984). In this case, defendant Gil and the victim were alone at the time of the stabbing; therefore, the second purpose does not apply in this case. See *People v. Morgan*, 197 Ill. 2d 404, 457 (2001) (second purpose under *Lynch* did not apply where all the accounts of the circumstances of the victims' deaths were based upon the defendant's statements and testimony).

¶ 52 Initially, we find very little evidence to support defendant Gil's claim of self-defense. See *People v. Nunn*, 357 Ill. App. 3d 625, 631 (2005) (in determining whether error occurred in excluding the *Lynch* evidence, the court first addressed whether the defendant was entitled to introduce such evidence). The victim was unarmed, and while defendant Gil was bruised, her injuries did not comport with her testimony that, prior to the stabbing, she was beaten for as long as 20 minutes by the victim. When the police arrived, she told Officer Mase that she stabbed the victim because he " 'pissed me off,' " not because he had beaten her or that she was in fear of her life.

¶ 53 Moreover, we agree with the trial court that the evidence sought to be introduced under *Lynch* was too far removed in time from the stabbing of the victim to be relevant. "Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence

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to the determination of an action either more or less probable than it would be without the evidence." *Morgan*, 197 Ill. 2d at 455-56. Evidence may be rejected on relevancy grounds if the evidence is remote, speculative or uncertain. *Morgan*, 197 Ill. 2d at 456. In *Morgan*, the supreme court agreed with the trial court's exclusion of evidence of prior abuse. The trial court found that a nexus between the alleged abuse and the defendant's claim of self-defense was remote at best where there was a span of 20 to 25 years between the time the defendant's mother was allegedly abused by the victim and the abuse to which the defendant testified. See *Morgan*, 197 Ill. 2d at 454, 457-58; see also *People v. Figueroa*, 381 Ill. App. 3d 828, 846 (2008) (remoteness was a relevant factor in determining whether evidence submitted pursuant to *Lynch* had a reliable foundation for admissibility).

¶ 54 Likewise in this case, the trial court excluded evidence of the incidents of alleged abuse occurring 20 to 30 years before defendant Gil stabbed the victim. The court did allow defendant Gil to testify as to the incident that occurred a month prior to the victim's stabbing, and permitted her sisters to testify as to the bruising they observed on her after her arrest.

¶ 55 We conclude that the trial court's determination that the incidents of abuse from 20 to 30 years prior to defendant Gil's stabbing of the victim were too remote in time to be relevant was neither arbitrary, fanciful, or so unreasonable that no reasonable person would take the trial court's view. Therefore, the trial court did not abuse its discretion in excluding the evidence of those prior incidents.

¶ 56

II. Videotape

¶ 57 Defendant Gil contends that the trial court erred when it denied her request to let the jury

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view the entire videotape of her interview with Summit detectives.

¶ 58 *A. Standard of Review*

¶ 59 We review the trial court's decision on the admissibility of a film for an abuse of discretion. *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 32 (2008).

¶ 60 *B. Discussion*

¶ 61 Defendant Gil argues that, under the doctrine of completeness, once the State played portions of the videotape for the jury, she was entitled to have the jury view the entire videotape. Under the rule of completeness, "if one party introduces part of an utterance or writing the opposing party may introduce the remainder or so much thereof as is required to place that part originally offered in proper context so that a correct and true meaning is conveyed to the jury." *People v. Williams*, 109 Ill. 2d 327, 334 (1985) (quoting *Lawson v. G.D. Searle & Co.*, 64 Ill. 2d 543, 556 (1976)).

¶ 62 Defendant Gil failed to include the videotape in the record on appeal. A defendant claiming he was unable to prove his case because the trial court improperly barred evidence must provide the reviewing court with an adequate offer of proof as to what the excluded evidence would have been. *People v. Pelo*, 404 Ill. App. 3d 839, 875 (2010). An offer of proof is sufficiently specific "if it adequately shows the court what the evidence would be, allowing a court of review to assess the prejudice allegedly inuring from the exclusion." *Jones*, 381 Ill. App. 3d at 33 (quoting *People v. Wallace*, 331 Ill. App. 3d 822, 831 (2002)). An offer of proof must demonstrate to both the trial court and the reviewing court the admissibility of the excluded evidence. *Jones*, 381 Ill. App. 3d at 33 (where videotape was absent from the record on appeal

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and the offer of proof did not describe the plaintiff's activities and the circumstances under which they were performed, the reviewing court could not determine whether its exclusion was proper).

¶ 63 In the present case, after listening to defense counsel's arguments for playing the videotape in its entirety, the trial court addressed defense counsel and the prosecutor as follows:

"I have never seen the video or the transcript of the video, so you two are talking about something I don't know anything about."

As the trial court was unfamiliar with the contents of the videotape, defense counsel's claims as to what the videotape would show were insufficient for a determination as to whether the jury would be misled by defendant Gil's answers on cross-examination unless the entire videotape was shown. Lacking the videotape, this court is equally unable to make a determination whether defendant Gil suffered prejudice as a result of the trial court's refusal to allow the entire videotape to be played for the jury.

¶ 64 Even if we were to consider the substance of defendant Gil's claim, the trial court did not abuse its discretion. The right to bring out all of a conversation is not absolute but is dependant upon the relevancy of the additional parts of the conversation the party wishes to introduce.

Williams, 109 Ill. 2d at 335. Where the defendant's credibility was at issue, his demeanor and inflections in speaking had a relevance independent of his actual words. *Williams*, 109 Ill.2d at 337. Compare *People v. Rios*, 145 Ill. App. 3d 571, 581 (1986) (tape recording had no independent relevance where the speaker's tone of voice was not at issue, distinguishing *Williams*).

¶ 65 On redirect examination, defense counsel used the transcript of the interview to place

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defendant Gil's interview answers in the proper context. She explained that she told the detective that the victim was seated on the bed because that is where he was when she saw the blood. She did not remember sitting on the bed and arguing with the victim that night. Contrary to the prosecutor's cross-examination suggesting she was only struck once, she remembered telling police that she did not know how many times the victim struck her and that she did tell police she just wanted the victim to stop striking her.

¶ 66 Unlike the defendant in *Williams*, defendant Gil's demeanor and vocal inflections had no independent relevance. Defense counsel was permitted to clarify the context of defendant Gil's statements to Detective Long. Since the trial court's ruling allowed defense counsel to utilize the relevant portions of defendant Gil's statement, the denial of defendant Gil's request to play the entire videotape was not an abuse of discretion.

¶ 67 III. Sentence

¶ 68 Defendant Gil contends that the 20-year sentence she received violated the proportionate penalties clause of the Illinois Constitution. Section 11 provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the object of restoring the offender to useful citizenship." Ill. Const. 1970, art I, §11.

¶ 69 A. *Standard of Review*

¶ 70 Where a defendant challenges a particular sentence as being disproportionate to the nature of the crime, the reviewing court will not disturb the sentence absent an abuse of discretion.

People v. Hindson, 301 Ill. App. 3d 466, 479 (1998).

¶ 71

B. Discussion

¶ 72 Second degree murder is a Class 1 felony (720 ILCS 5/9-2(d) (West 2006)). The applicable sentencing range is 4 to 20 years' imprisonment (730 ILCS 5/5-8-1(a)(1.5) (West 2006)). Defendant Gil's 20-year sentence was within the statutory limits. A sentence within the statutory limits will not be disturbed unless it is greatly disproportionate to the nature of the offence. *People v. Cotton*, 393 Ill. App. 3d 237, 266 (2009).

¶ 73 In devising a sentence within the statutory limits and proportionate to the nature of the offense, a trial court must balance the retributive and rehabilitation purposes of punishment. To that end, the trial court considers all of the factors in mitigation and aggravation, including, the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education, as well as the nature and circumstances of the crime and of the defendant's conduct in its commission. *People v. Calhoun*, 404 Ill. App. 3d 362, 385 (2010).

¶ 74 In *Calhoun*, this court held that the trial court abused its discretion when it sentenced the defendant to 60 years for first degree murder. We found that in imposing the maximum term for first degree murder, the trial court failed to give due recognition to the evidence of the extreme provocation causing the defendant to commit the murder, i.e., her belief that the victim sexually molested her infant daughter, and that there was very little likelihood that the defendant would be a recidivist. In remanding for a new sentencing hearing, this court expressed the view that the minimum sentence for first degree murder was the appropriate sentence. See *Calhoun*, 404 Ill. App. 3d at 386-90.

¶ 75 Relying on *Calhoun*, defendant Gil argues that the trial court's reference to defendant Gil's killing of the victim as "vigilante justice" was improper. In *Calhoun*, this court pointed out that the defendant's "vigilante justice" had to be considered in light of the provocation prompting it. *Calhoun*, 404 Ill. App. 3d at 387-88. The strong provocation motivating the defendant in *Calhoun* is missing from this case. Here, the trial court correctly considered that over the long period of alleged abuse, defendant Gil kept returning to live with the victim and never attempted to obtain help for the abuse. Instead, she chose to take matters into her own hands and killed the victim.

¶ 76 Defendant Gil argues that the trial court failed to give proper recognition to the mitigating factors such as her age, her lack of a criminal record and that for 30 years, she had been abused by the victim. Instead, the trial court focused on the following aggravating factors: the nature of the offense, her attempt to appear older, and her failure to seek help for the abuse she experienced.

¶ 77 There is a presumption that the trial court properly considered all mitigating factors and rehabilitative potential before it, and it is the defendant's burden to affirmatively show to the contrary. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). In sentencing defendant Gil, the trial court stated that it had considered the factors in aggravation and mitigation, the presentence report, the testimony of the witnesses and of defendant Gil. The trial court is not required to set forth each sentencing factor and assign a value to it. *Brazziel*, 406 Ill. App. 3d at 434. We will not substitute our judgment for that of the trial court merely because we would weigh the sentencing factors differently. *People v. Johnson*, 347 Ill. App. 3d 570, 574 (2004).

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¶ 78 This court has held that the seriousness of the offense is the most important factor, and the defendant's rehabilitation potential need not be given greater weight. *Brazziel*, 406 Ill. App. 3d at 435; *Cotton*, 393 Ill. App. 3d at 267. The evidence established that defendant Gil killed the unarmed victim by stabbing him five times. Four of the five wounds, individually, could have resulted in death. When the police responded to her 911 call, defendant Gil told Detective Mase that she had stabbed the victim because he "pissed her off."

¶ 79 We disagree that the trial court blamed defendant Gil for not seeking help for the abuse she suffered. Rather, in light of the evidence, the trial court rejected the defense's attempt to portray her as the victim in this case. While defendant Gil claimed to have been abused by the victim for over 30 years, the vast majority of incidents of alleged abuse occurred 20 to 30 years prior to the victim's death. Moreover, there was no evidence that defendant Gil was hospitalized as a result of the abuse or that she sought counseling or help of any kind, even though she had the support of her family. Despite her claims of abuse, in 2007, it was defendant Gil who asked the victim if she could move in with him. In the 2007 incident prior to the stabbing, she claimed that victim struck her; again, she returned to live with him. On the night of the stabbing, when Ms. Mrozek offered her a place to stay or to drive her to the home of a family member, she declined, stating " 'No. I will wake that son of a bitch up.' " Finally, even if the trial court's comment on the change in defendant Gil's appearance since her arrest reflected its reliance on an improper sentencing factor, we are satisfied that the court's perception that defendant Gil altered her appearance was not a significant factor in the court's decision to impose the maximum sentence. See *Cotton*, 393 Ill. App. 3d at 266.

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¶ 80 It is the responsibility of the trial court to balance rehabilitative potential and the seriousness of the offense. *Cotton*, 393 Ill. App. 3d at 267. Based on the record, we conclude that the trial court properly balanced defendant Gil's rehabilitative potential and the seriousness of the offense. Therefore, the trial court did not abuse its discretion in sentencing defendant Gil to 20 years' imprisonment.

¶ 81

CONCLUSION

¶ 82 Defendant Gil's conviction and 20-year sentence for second degree murder are affirmed.

¶ 83 Affirmed.

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