THIRD DIVISION
January 26, 2011

No. 1-09-0674

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. 04 CR 18541
VERNA COLBERT,	)	
	)	
	)	Honorable
Defendant-Appellant.	)	Vincent M. Gaughan,
	)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Neville concurred in the judgment.

ORDER

HELD: Defendant's handwritten statement was properly admitted into evidence because it was knowingly and intelligently made; the State proved defendant guilty of first degree murder beyond a reasonable doubt; defense counsel was not ineffective for failing to present evidence at trial about her physical and mental conditions during interrogation; the trial court did not abuse its discretion by allowing testimony that a witness was a judge at the time of trial; and defendant's 63-year sentence was not excessive when the jury found that the murder was brutal and heinous and when defendant was found eligible for the death penalty.

Following a jury trial, defendant Verna Colbert was convicted of first degree murder in the death of her two-year old son. Although she was found eligible for the death penalty because the victim was under the age of 12, and the murder was brutal and heinous and indicative of wanton cruelty, defendant was instead sentenced to an extended term of 63 years' imprisonment. On appeal, she contends: (1) her handwritten statement, which was involuntarily given, should have been suppressed because she was unable to knowingly and intelligently waive her *Miranda* rights due to her mental and physical conditions; (2) the State failed to prove her guilty of first degree murder beyond a reasonable doubt; (3) defense counsel was ineffective for failing to present evidence at trial about her physical and mental conditions during interrogation; (4) the trial court erred by allowing the State to elicit prejudicial testimony that a witness was a judge at the time of trial thereby attempting to bolster her credibility; and (5) defendant's sentence was excessive given mitigating factors regarding her upbringing, mental illness, drug addiction, and minimal criminal history. For the following reasons, we affirm.

BACKGROUND

Defendant was charged with the first degree murder of her two-year old son, Varrien, who died on July 3, 2004.

Pretrial Procedures

Defendant filed a motion to quash her arrest and a separate motion to suppress her statement. Prior to the proceedings for defendant's pretrial motions, a fitness hearing was held because defendant's fitness for trial had been questioned. Dr. Carl Wahlstrom, who testified for defendant, was qualified as an expert in forensic psychiatry. He stated he first met the defendant

on January 10, 2005. Prior to meeting defendant, he reviewed all of the reports generated by the Chicago Police Department, defendant's handwritten statement, and her Cermak Hospital records. When he subsequently interviewed defendant, Dr. Wahlstrom found her "quite impaired and unable to fully cooperate either with counsel or understand the proceedings," and concluded that she was unfit for trial. At the time, defendant was on four medications: two anti-depressants, Zoloft and Trazodone; the anti-psychotic Seroquel; and a sedating antihistamine. Dr. Wahlstrom diagnosed defendant as suffering from major depressive disorder with psychotic features, having a schizoaffective disorder depressed type and having a polysubstance dependence.

Dr. Peter Lourgos, a psychiatrist with Forensic Clinical Services, examined defendant and made similar findings. In February 2005, the trial court found defendant unfit for trial and sent her to a Department of Human Services (DHS) facility. In June 2005, DHS reported that defendant had been restored to fitness. Dr. Lourgos examined defendant and testified that she was fit to stand trial with medications (she was taking anti-depressant, anti-psychotic, and anti-anxiety medications). The court agreed with Dr. Lourgos. However, in February 2006, the trial court found defendant unfit again. About three months later, DHS reported that defendant was again fit to stand trial with medications, as did the trial court. The hearing on defendant's pretrial motions then commenced.

Defendant's motions to quash and suppress indicated that she was arrested on July 3, 2004, and she made a handwritten statement to the police on the evening of July 4, 2004, after spending the afternoon in Provident Hospital. The court first heard defendant's motion to quash her arrest.

The testimony at the hearing established that the police and paramedics were called to 7221 South Union Street at 4:30 a.m. on July 3, 2004, due to an unresponsive child at that location. Varrien's father, Alonzo Robinson, told police that defendant had brought Varrien there approximately 20 minutes earlier. After learning that defendant had gone to a nearby apartment, police arrested her there, where she was hiding in a closet and sweating profusely. Defendant told the police that she was under the influence of drugs. One of the arresting officers reported that she appeared intoxicated. The trial court denied the motion to quash her arrest, finding that the police had probable cause to arrest defendant.

The hearing then commenced on defendant's motion to suppress her handwritten statement. Defendant alleged that she was unable to knowingly, intelligently and voluntarily waive her *Miranda* rights because of her "physical, physiological, mental, educational, and/or psychological state." The motion also alleged that her statement was involuntary because of her mental and physical condition, she was threatened by a detective and promised that she would be taken to the hospital if she made a statement.

Dr. Wahlstrom testified for the defense. He stated that in determining whether defendant was competent to waive her *Miranda* rights and make a voluntary statement, he reviewed defendant's July 4, 2004, hospital records from Provident Hospital; her intake form from the jail; her statement; various police reports; and records from defendant's treatment by DHS after she was found unfit. Dr. Wahlstrom had also seen defendant approximately two months prior to his testimony for between 15 and 30 minutes. The hospital records indicated that defendant was admitted to the emergency room at approximately 12:20 p.m. and discharged later the same day at 5:50 p.m. Defendant had become ill during police questioning. The questioning was stopped

and defendant was taken to the hospital, where her chief complaint was vomiting blood due to heroin withdrawal. Defendant was also diagnosed with bladder and vaginal infections. By 4:30 p.m., she was sleeping after receiving intravenous fluids for dehydration and antibiotics. Defendant also received Clonidine for heroin effects, which had various side effects including drowsiness, fatigue, lethargy, sedation, and the likelihood of increasing the side effects of other drugs, such as anti-anxiety drugs, that cause drowsiness. She also received Ativan, which is used to produce sedation for people with anxiety disorders. Dr. Wahlstrom testified that the drugs, in combination with one another, "could affect attention, concentration, judgment, and free will to be able to step back and make decisions based on a drug free state." He further noted that upon returning to the police station following hospitalization, defendant changed her mind as to the type of statement she wanted to give (changing from videotaped to handwritten). Yet he found nothing in the statement indicating confusion other than the fact that she could not remember the names of the drugs that she had been given. Defendant's handwritten statement was taken at 8:59 p.m., about three hours after her discharge from the hospital. Dr. Wahlstrom stated the side effects of the drugs she received would have been drowsiness, possible confusion, and lethargy. He also took into consideration defendant's I.Q., which had been tested at 75, just above mild mental retardation. In Dr. Wahlstrom's opinion, defendant was unable to make a knowing and intelligent waiver of her *Miranda* rights and make a voluntary statement.

Testifying for the State, Youlanda Richards stated that she was an emergency room medical technician employed by Cermak Health Services at the Cook County Jail. Her job was to screen new prisoners for medical problems, and if necessary, refer them to a doctor or physician's assistant. On July 5, 2004, she performed the medical intake examination of

defendant, which included asking questions about her medical history. Defendant told Richards that she had no history of mental illness and that she did not use illegal substances, alcohol, methadone, or injection drugs. Richards saw no evidence of any condition that required further medical attention, and no evidence of drug withdrawal. Defendant also told Richards that she had not been recently hospitalized and was not on any medications.

The parties stipulated that if called to testify, Detective Steve Soria would state that on July 4, 2004, he witnessed an interview between defendant and Assistant State's Attorney (ASA) Jackie Portman, which occurred after defendant had returned to the police station from the hospital. He did not question defendant, did not threaten to beat her, and did not promise her medical treatment if she gave a statement to the ASA. He stated no threats or promises to defendant were made in his presence.

Detective David Evans testified that on July 3, 2004, at approximately 7 a.m., he and his partner, Detective Jones, were assigned to the investigation of Varrien's death. He met defendant at 7:10 a.m., introduced himself and advised her of her *Miranda* rights, which defendant stated that she understood. Defendant also stated that she would be willing to answer questions. The first conversation lasted about 20 minutes, during which defendant denied any involvement in Varrien's death. Defendant told Evans that Varrien was injured at a playground while in the care of a friend named Tanya. Evans spoke to defendant a second time, at approximately 11 a.m. on the same morning, when he again advised her of her *Miranda* rights. In the second conversation, defendant admitted to slapping, hitting and shaking Varrien. A third interview took place at approximately midnight on July 4, 2004. Prior to the third interview, the detectives looked for the witnesses whom defendant identified. During the third interview, the detectives confronted

defendant with the witnesses' statements. Defendant stated she did not believe them. Two of the witnesses, Tanya and "Nedabug," were still at the station. They were brought in, one at a time and in defendant's presence, to confirm what they told the detectives. Defendant was left alone for approximately 10 minutes before the detectives asked her if she wanted to talk again, to which she responded affirmatively. Later that morning, an ASA interviewed defendant in the detectives' presence. The ASA also advised defendant of her *Miranda* rights. The interview lasted until 3 a.m. At the conclusion of the interview, the ASA asked defendant how she would like to memorialize her statement. Defendant said she wanted to videotape it. Before videotaping could begin, however, defendant began to vomit. The detectives gave her some water and called an ambulance to take her to the hospital. Prior to vomiting, defendant had neither complained of being ill nor exhibited any signs of narcotics withdrawal.

Dr. Paula Willoughby-DeJesus examined defendant at approximately 12:20 p.m. on July 4, 2004. Defendant complained of vomiting with streaks of blood, nausea, diarrhea, and abdominal pain. Dr. DeJesus observed that defendant was restless. Defendant stated that she had not had heroin in a day and a half. Defendant's hands and body were shaking, although defendant ceased vomiting. Defendant's vital signs were normal. Aside from a slightly elevated blood pressure, Dr. DeJesus deemed defendant alert after questioning her to determine her orientation. Defendant reported no past medical or psychiatric history, no abuse while in custody, and no confusion. Indeed she provided the date of her last menstrual cycle. Dr. DeJesus saw no signs of mental illness or impairment, or physical symptoms other than those reported by defendant. She believed that defendant was suffering from acute to mild heroin withdrawal. To treat the withdrawal, defendant was given intravenous fluids, several medications and antibiotics.

Defendant fell asleep as the medications took effect, but was able to be roused. Dr. DeJesus testified that she would not expect defendant's medications to cause cognitive impairment and she did not see any signs of cognitive impairment or amnesia in defendant. She did indicate, however, that sedation was a side effect of some of the medications that defendant received and was more likely when combined with other medications that caused sedation. Dr. DeJesus said that the dosages of medication defendant received would last from two to six hours, and another medication could last for between 12 hours and seven days if continued.

At 5:45 p.m., Dr. DeJesus noted that defendant experienced no further vomiting and explained to defendant her discharge instructions, which defendant appeared to understand. Although she told defendant the names of her medications, Dr. DeJesus said that it was not uncommon for patients to be unable to remember the names of medications. Defendant did not sign the discharge orders because she was in police custody and not allowed to keep a copy of the order. Defendant was discharged at approximately 5:50 p.m. and taken back to the police station.

ASA Portman testified that sometime after midnight on July 4, 2004, she was asked by a detective to witness an interview with defendant, acting as a "prover." ASA Portman witnessed the detective giving defendant her *Miranda* warnings and she listened as defendant gave a statement. ASA Portman did not ask any questions at this time and subsequently left to continue interviewing other witnesses. At approximately 2 a.m., ASA Portman returned to talk to defendant. She introduced herself, explained that she was an ASA, and gave defendant *Miranda* warnings. Defendant indicated that she understood them and they talked about what happened to Varrien. At the conclusion of the conversation which lasted less than an hour, ASA Portman explained the different ways defendant could memorialize her statement. Defendant chose to

have her statement videotaped. While waiting for the videographer, ASA Portman asked defendant how she had been treated while in custody. Defendant responded that she had not been threatened or mistreated in any way, and no promises to elicit her testimony were made to her. When the videographer arrived, defendant stated that she did not feel well and needed to "spit up." ASA Portman passed her a garbage can and defendant began to vomit. ASA Portman went to tell the detectives what had occurred, and when they returned, defendant said that she felt a little better and wanted to continue. Shortly thereafter, however, defendant began to vomit again. ASA Portman and the detectives decided that defendant needed to go to the hospital.

Several hours later, when ASA Portman was off duty, she received a page from the felony review dispatcher telling her to call the Area One detectives. When she did, the detectives explained that defendant had requested to speak to ASA Portman and that she did not want to talk to anyone else. The previous detectives were off duty, so ASA Portman met with Detective Soria when she arrived at the station. At approximately 7 p.m. on July 4, 2004, ASA Portman spoke with defendant again, who greeted her and indicated that she did not want to talk to anyone else. ASA Portman reintroduced herself and again gave defendant *Miranda* warnings. When defendant acknowledged them and agreed to speak, ASA Portman asked how she was feeling. Defendant replied that she was feeling much better and was ready to talk. Defendant also stated that she had received medication for the vomiting, but did not remember what medication she received. Defendant did not appear to be disoriented or sedated, and did not complain about being disoriented or sedated. Defendant then told ASA Portman what happened to Varrien. Her account of the events was the same as during their previous conversation. ASA Portman asked defendant how she would like to memorialize the statement, again giving defendant various

options. Defendant opted to give a handwritten statement, explaining that she had thought about it at the hospital and decided she did not want to do a videotaped statement. ASA Portman then wrote down the story as defendant relayed it to her. When the statement was finished, she and defendant reviewed the statement line by line and defendant read the first two paragraphs aloud. ASA Portman then read the rest of the statement aloud, with defendant following along. Defendant was given the opportunity to make any corrections or changes that she wanted. Once the statement was completed, defendant signed the statement, along with the detective and ASA Portman.

In rebuttal, Carolena Bell testified for the defense that she was a registered nurse in the emergency room at Provident Hospital. On July 4, 2004, her job was to assess and treat patients. When defendant was brought into the emergency room, Bell recognized her as someone whom she knew from elementary school. Defendant came to Bell's station after having seen the triage nurse. Defendant was in police custody. According to Bell, defendant looked like she was on a controlled substance, was unkempt, and in disarray. Defendant was "kind of sluggish" with mild tremors. Bell took defendant's vital signs and started the intravenous fluids and medications ordered by the doctor. Defendant subsequently fell asleep. When she awoke, she was alert and oriented, with no neurological deficits.

The trial court denied defendant's motion to suppress her handwritten statement, finding that she was able to knowingly, intelligently and voluntarily waive her *Miranda* rights and that her statement was voluntary. The court also noted that Dr. Wahlstrom's testimony was given little weight because he was disorganized, unprepared, and had to review his file and notes while testifying. The case then proceeded to a jury trial.

Trial

Robinson, Varrien's father, testified that in July 2004, he had three children and Varrien was the youngest at two years old. Robinson had a previous relationship with defendant and they were still friends. Robinson had custody of Varrien, but there were no rules about defendant's visitation and she was allowed to see him whenever she wanted. On July 1, 2004, Robinson lived on 80th and Paulina Streets, and defendant lived on 71st and Lowe Streets. At approximately noon that day, he saw defendant standing in front of the Hendersons' house at the corner of 72nd and Union Streets. Varrien saw defendant and wanted to go and play. It was Robinson's birthday and he suggested that defendant take Varrien to the park so he could play. Defendant agreed, Robinson gave her some money, kissed her on the cheek and left. Varrien had no injuries when Robinson gave him to defendant and he was wearing new clothes. The next morning, he saw defendant and Varrien walking near 72nd and Lowe Streets. They were talking, Varrien appeared "okay," and defendant was holding his hand. The next time Robinson saw Varrien was the following morning, at approximately 3:30 or 4 a.m. Robinson was at the home of Ruby Evans, Varrien's godmother, located at 7221 South Union Street. There were a number of people there, as they had been celebrating Robinson's birthday. Robinson was in the living room, asleep in a chair. He woke up when defendant bumped into a board that was across the doorway. Defendant was holding Varrien in her arms and said that he was asleep. Defendant lay Varrien on the sofa, said she had forgotten one of his shoes, and left to retrieve it. She did not appear to be under the influence of any drugs at the time. A few minutes later, Robinson got up to use the bathroom. He noticed that Varrien was "laying wrong" and went to make him comfortable. Varrien's face was away from Robinson, so he turned his head. He saw that

Varrien had a black eye, one eye was open, his tongue was down in his throat, was cold to the touch, and he was not breathing. Robinson knew that Varrien was dead and he called the police and fire department.

In July 2004, Stanley McDade testified that he lived at 7142 South Union Street. He was locked out of his apartment on July 2, 2004, after returning from work and went to Johnny Ross' home at 7146 South Lowe Street when it started raining. He was still there at 10 p.m. At that time, he heard some "licks," slapping sounds, coming from a bedroom. He could hear it over the sound of the television and heard the same sound two more times. McDade did not hear any voices. He told Ross that he had to leave because "he couldn't take it no more."

Johnny Ross, a/k/a "Sarge," managed an apartment building at 7146 South Lowe Street. He knew defendant because one of her relatives rented an apartment in the building. He would occasionally see defendant with Varrien, either in the building or around the neighborhood. Ross saw defendant and Varrien in the building on the afternoon of July 2, 2004. Varrien seemed happy and Ross did not see any marks or bruises on him. He let them into his apartment and gave Varrien something to eat. Ross left them there while he went to collect rent and run errands. Ross and McDade returned to the apartment later and watched television in the kitchen. He initially testified that he did not hear any slapping noises, but was impeached with his grand jury testimony that he heard a slapping sound. At approximately 3 a.m. on July 3, 2004, Ross came home and saw one of Varrien's shoes. Shortly thereafter, a police officer rang the doorbell and asked him when he last saw defendant. He and the officer heard a noise and subsequently found defendant hiding in a bedroom closet. Detectives later returned and obtained Ross' consent to a search, which revealed a belt that did not belong to him.

Patrick O'Connell and his partner, Victor Zajac, were paramedics who answered the call of an unresponsive, unconscious patient at 7221 South Union Street at approximately 4:20 a.m on July 3, 2004. When they arrived, another paramedic from a fire department engine company was trying to ventilate a two year old child lying on a couch. O'Connell and Zajac took the child to the ambulance. The child's clothing was ragged, stained and wet. The child had bruising and lacerations all over his body and his head had lumps, contusions and discolorations, with active bleeding in some spots. The child's body was cold to the touch, discolored, and blood appeared to be pooling in his back. O'Connell determined that the child was dead and they took him to a local hospital. O'Connell further stated that based on the differences in the color and swelling of the bruises, he believed that they were caused at different times and were in different stages of healing. He was unable to say exactly when the bruises were inflicted.

Chicago police officer Jimmy Smith and his partner, Derrick Patterson, also responded to the call of an unresponsive child at 7221 South Union Street. The victim had already been placed in an ambulance when they arrived. After receiving information, the officers went to 7146 South Lowe Street to look for defendant. They went to Ross' apartment and he indicated that defendant was there. When the officers entered the apartment, Ross pointed them to the bedroom. He accompanied the officers to the bedroom. Once in the bedroom, Ross pointed to the closet. The officers found defendant in the closet in a fetal position, partially hidden under clothing. Defendant was arrested and Smith advised her of her *Miranda* rights. Before he finished, defendant began to speak, saying that on the previous night, the child had been with a person named Tanya, who had taken him to a playground between 7 and 9 p.m. that evening. When Tanya brought him back, he had a bump on his head and Tanya told her not to let him go

to sleep for fear of him not waking up. Varrien did fall asleep and defendant took him back to his father because she had something to do that morning. Smith stated that defendant volunteered this information before he told her why she was being arrested. Smith did not see any blood or other evidence of a crime scene in Ross' apartment.

During the follow up investigation, Detective Michael Bell testified that he recovered a black belt from the back bedroom of Ross' apartment which did not belong to Ross.

Former ASA Portman, who was a judge at the time of trial, testified similarly to her testimony from the suppression hearing. She testified that she had been sworn in as a judge approximately two weeks prior to defendant's trial. The trial court had previously denied defendant's motion *in limine* to preclude this testimony, noting that the jurors had been admonished during *voir dire* that they should not deem a witness any more or less credible because of the witness' profession. Portman further testified that she had been previously employed by the Cook County State's Attorney's Office and the Office of Professional Standards. On cross-examination, Portman testified that she had been elected as a judge with less than 10 years' experience as an attorney, in response to defense counsel's questioning of her experience for the position.

Portman read defendant's statement to the jury. In the statement, defendant stated that she picked up Varrien on July 1, 2004, from Ruby Evans' home. She and Varrien stayed at Ross' apartment on July 1 and 2, 2004. On July 2, 2004, she put Varrien to bed at 10 p.m. Defendant then went to the living room to smoke a "blunt" containing marijuana and cocaine. While she was smoking, she heard the television in the bedroom. She went into the bedroom and saw Varrien watching television. Defendant was mad that Varrien was not asleep, so she picked up a

belt and hit him with the buckle a couple of times on his body. When Varrien pulled away from her, she grabbed his arm and continued to hit him with the belt. Varrien continued to pull away. He fell and hit his head on a radio on a night stand. Defendant picked him up by his shirt collar and hit him with the belt buckle. She then let him go and he fell to the floor. Defendant told him to get up. Varrien lay with his body half on the bed, then he got back on the floor and crawled to the other side of the bed. Defendant again told him to get in the bed. Varrien got off of the floor and lay down on the bed. He moaned and groaned for about 10 minutes. She thought he fell asleep. Defendant then sat in a chair and began to smoke her blunt again. At some point, she "slammed" Varrien in the face, but could not remember exactly when. As she smoked the blunt, she saw Robinson drive past. She got up and went to the alley, looked across and saw Robinson's car parked by Evans' home. Defendant decided to take Varrien to his father because she wanted to get more drugs. She went back to the apartment and shook Varrien, but he did not respond. She was able to push him "real easily" and his body was limp. Defendant carried him into the bathroom and washed his face with a wet towel, but he did not wake up or respond. She carried him to Evans' home at approximately 4 a.m. The door was unlocked and she went into the living room. Robinson was asleep on the chair. Defendant lay Varrien down on a couch and covered him. She told Robinson that she had to go and get one of Varrien's shoes, and that she would return with it. Defendant left and went back to Ross' apartment. A short while later, the police arrived asking for her, so she ran and hid in the closet. Defendant thought the police were looking for her because she was on parole until July 25, 2004. She stated that she lied when she told the police that Varrien got hurt at the playground with one of her friends because she was scared. She further stated she did not call 911 because she did not think that Varrien was hurt,

but was only sleeping.

Once the statement was finished, Portman and defendant read it over. Defendant made and initialed corrections she felt were needed. Portman, defendant, and the detective then signed each page of the statement.

Portman was unable to remember if defendant told her that she used drugs other than the blunt that night. However, the parties stipulated that if called to testify, Detective Roland Jones would testify that during the interview with Portman at 2 a..m. on July 4, 2004, defendant said that she snorted heroin and started smoking a blunt containing marijuana and cocaine at 1 p.m. on July 2; she used two bags of heroin between 1 and 2 p.m. on that date; she snorted three more bags of heroin and smoked three bags of crack cocaine (two in a blunt, one in a cigarette) between 3 p.m. and midnight. Defendant stated that these were more drugs than she normally used.

Dr. Mitra Kalelkar, Assistant Chief Medical Examiner for Cook County, performed an autopsy of Varrien. She first noted that Varrien was well developed, well nourished, weighed 38 pounds and measured 33 inches in length. In her external exam, she noted that Varrien's body had multiple injuries on the head, neck, chest and abdomen, and on his upper and lower extremities. There was a cross-shaped abrasion on the left temporal area of his head and a large abrasion under his left eye. She compared the cross-shaped abrasion with the belt buckle brought in by the police, and she determined that they were consistent with one another. Varrien also had abrasions on the middle of his forehead, on the right side of his forehead, and over his left eyebrow. There were abrasions on the outer aspect of his right eye, as well as abrasions, a laceration, and extensive bruising behind the flap of his right ear. There was some faint bruising

behind his left ear. Abrasions on his neck were consistent with someone picking him up by the back of his shirt. Varrien's lips were also abraded, both on the outside and on the internal portions of his lip. She further reported an abrasion on his chin. Varrien's chest and abdomen had multiple bruises and small abrasions. On the left side of his abdomen, there was a bruise in a loop pattern consistent with having been caused by a belt. Moreover, she reported bruises in the right groin area, abrasions on his back, some scratch abrasions on his upper right arm, and extensive bruising on the forearm, wrist, and hand. Varrien also had extensive bruising on both thighs and lower legs.

After concluding the external exam, Dr. Kalelkar performed an internal exam. While examining Varrien's head, she found numerous hemorrhages beneath the scalp in the front, parietal, and temporal areas. She also found that the coverings of the brain were "congested," and there was blood in another membrane that covered the brain. There were extensive subdural hemorrhages on the left side, a significant amount of clotted blood, and hemorrhages around the optical nerves, which indicated blunt trauma and shaking. There was a contusion in both of his lungs, meaning that his lungs were bruised. Varrien had aspirated blood into both lungs. There was extensive bruising on Varrien's back and on his legs from the thighs to the ankles. Dr. Kalelkar testified that all appeared to be the same color, indicating that they had been inflicted about the same time, which would have been the time close to his death. He would have survived a few hours at most with the subdural hemorrhages he had suffered.

Dr. Werner Spitz testified as an expert in forensic pathology for the defense. He reviewed the autopsy report, the autopsy photos, an ambulance report, microscopic slides with tissue samples from the autopsy, police reports, and defendant's statement. Dr. Spitz could not

remember if he reviewed the handwritten statements of other witnesses, but said that the police report summarized those statements. Dr. Spitz was asked to determine the age of the bruises and injuries that were inflicted on Varrien. He stated that in his opinion, the injuries were of different ages. In his opinion, the direct cause of death was brain injury and brain swelling. He stated further that autopsy photos of the brain injury showed signs of healing, and had occurred seven to ten days before Varrien's death. Dr. Spitz concluded that the external facial injuries were consistent with a fall.

The defense rested. The jury was instructed on involuntary manslaughter. The trial court also gave the jury special verdict forms to determine whether the State had proved two extended-term factors, brutal and heinous conduct indicative of wanton cruelty and whether the victim was under 12 years of age. The jury found defendant guilty of first degree murder and found that the State proved the two extended-term factors.

The State sought the death penalty against defendant, who had waived her right to a sentencing jury prior to trial. The trial court found defendant eligible for the death penalty because the victim was under 12 years of age and because the murder was accompanied by brutal and heinous conduct. In aggravation, defendant had five prior drug convictions: four Class 4 felony convictions for possession of a controlled substance and a Class 3 felony conviction for possession of cannabis with intent to deliver. In mitigation, a social history report indicated that defendant was born in Oklahoma but moved to Chicago at the age of 11 because her father abused her mother daily. She lived with relatives in Chicago and said that she was sexually abused by an older half-brother on many occasions. Defendant dropped out of high school after the ninth grade and reported that she began to have night terrors and hallucinations at that time.

She also said that she began using alcohol and marijuana at age 12, heroin at age 18 or 19, and crack cocaine in the 1980s.

Dr. Walhstrom and Dr. Mary Lee diagnosed defendant with major depressive disorder with psychotic features. Dr. Lee also diagnosed defendant with post-traumatic stress disorder. Defendant had never been gainfully employed; she supported herself through prostitution and drug sales. She had seven children by different fathers and Varrien was the youngest. Defendant had her first child after dropping out of high school. Although there were numerous reports that defendant neglected her children, there were no reports of abuse.

The trial court chose not sentence defendant to death, but instead sentenced her to an extended term of 63 years' imprisonment. This timely appeal followed.

DISCUSSION

Defendant raises various issues on appeal. First, she contends her handwritten statement should have been suppressed because she was unable to knowingly and intelligently waive her *Miranda* rights because of her mental and physical conditions and her statement was made involuntarily. Second, she argues the State failed to prove her guilty of first degree murder beyond a reasonable doubt. Third, she claims defense counsel was ineffective for failing to present evidence at trial about her physical and mental conditions during interrogation. Fourth, she contends the trial court erred in denying her motion *in limine* to bar the State from eliciting prejudicial testimony that a witness was a judge at the time of trial. Lastly, she argues her sentence was excessive given the mitigating evidence presented.

Motion to Suppress Statement

Defendant first contends that her handwritten statement should have been suppressed

because she was unable to knowingly and intelligently waive her *Miranda* rights due to her mental and physical condition and her statement was involuntary. She further argues that her statement should have been suppressed because she had an I.Q. of only 75, was intoxicated when she was arrested, suffered from drug withdrawal during interrogation, was given sedating medications at the hospital to treat her withdrawal, and made numerous errors in her statement and during the jail intake examination. Examples of errors defendant made during the jail intake involved her answers to questions about the number of children she had, if she graduated from high school, and whether she was recently hospitalized or taken any medications.

In determining whether a confession was voluntary, we must consider the totality of the circumstances. *People v. Arroyo*, 328 Ill. App. 3d 277, 286 (2002). Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the questioning; and any physical or mental abuse by police, including the existence of threats or promises. *People v. Morales*, 329 Ill. App. 3d 97, 111 (2002). No single factor is dispositive. *Morales*, 329 Ill. App.3 d at 111. A statement is admissible if it has been made freely, voluntarily, without compulsion or inducement of any sort, and did not overcome the defendant's will when he confessed. *People v. Gilliam*, 172 Ill. 2d 484, 500 (1996); *People v. Rhodes*, 119 Ill. App. 3d 1002, 1008 (1983).

Review of a circuit court's ruling on a motion to suppress presents both questions of law and fact. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). Findings of fact and credibility determinations made by the circuit court are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *Richardson*, 234 Ill. 2d at 251. However, a

court reviews *de novo* the ultimate legal question posed by the challenge to the circuit court's ruling on the suppression motion. *Richardson*, 234 Ill. 2d at 251. Further, the reviewing court may consider evidence adduced at trial as well as at the suppression motion. *Richardson*, 234 Ill. 2d at 252.

The record reveals that defendant was 39 years old at the time of her arrest and her criminal history shows that she had several prior drug-related convictions. She had an I.Q. of 75. However, mental deficiency alone does not render an inculpatory statement involuntary, but is simply a factor that must be considered in the totality of the circumstances under which the defendant waived *Miranda* rights or made an inculpatory statement. *Richardson*, 234 Ill. 2d at 263. The record further reveals that at the time of her arrest, no one observed anything physically wrong with her, although defendant was sweating profusely. Defendant stated that she did not feel well and began to vomit several hours after the arrest. While defendant indicates on appeal that she was intoxicated when she was arrested, the record does not support this claim. The record does reveal that defendant indicated she had ingested multiple drugs at some point prior to Varrien's death, but there was no evidence that defendant was still under the influence of these drugs when she was questioned. To the contrary, the record shows that when defendant became ill, she was suffering from withdrawal symptoms of not having drugs, thus contradicting defendant's claim on appeal that she was intoxicated during questioning. The record further reveals that when defendant became ill, questioning had stopped and she was about to memorialize her previously-made inculpatory statement. As a further contradiction to defendant's claim of involuntariness, the record reveals that defendant specifically requested to speak only to ASA Portman in memorializing her statement, even after being told that ASA

Portman was off duty. Defendant gave ASA Portman the same account of the events surrounding Varrien's death on two occasions prior to the handwritten statement: during their first interview prior to defendant becoming ill and during their second interview after defendant was discharged from the hospital. The record reflects neither physical or mental abuse by the police, nor any promises or threats made to defendant in order to induce her to make an inculpatory statement. Dr. Wahlstrom's conclusions about the effects of the drugs defendant received while in the hospital were contradicted by the observations of defendant's treating physician, Dr. DeJesus and the medical technician during her jail intake, Richards. Where the evidence is conflicting, a court of review may not substitute its judgment for that of the trier of fact. *Rhodes*, 119 Ill. App. 3d at 1009-10. Here the trial court specifically found Dr. Wahlstrom's testimony not credible. Viewing the totality of the circumstances present in this case, defendant has not shown that her inculpatory handwritten statement was not intelligently, knowingly or voluntarily made. Accordingly, the trial court properly denied her motion to suppress.

Reasonable Doubt

Defendant also contends that the State failed to prove her guilty of first degree murder beyond a reasonable doubt. She argues that there were no eyewitnesses and no physical evidence recovered from Ross' apartment. She also argues that the State's theory was contradicted by the credible testimony of Dr. Spitz. Defendant further argues that her statement was unreliable based on her mental and physical condition, the coercive circumstances of her interrogation, and the inconsistencies between her statement and the physical evidence. We find defendant's contentions to be without merit.

When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Salinas*, 347 Ill. App. 3d 867, 880 (2004). The trier of fact has the duty to determine the credibility of witnesses and the weight to be given to their testimony, resolve conflicts in the evidence, and draw reasonable conclusions from the evidence. *Salinas*, 347 Ill. App. 3d at 880. It is not the function of this court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Clarke*, 391 Ill. App. 3d 596, 610 (2009). A criminal conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to defendant's guilt. *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007).

A person commits first degree murder when, without lawful justification and with the intent to kill, he or she performs the acts that cause the death of another. 720 ILS 5/9-1(a)(1) (West 2008); *People v. Rush*, 294 Ill. App. 3d 334, 338 (1998).

Viewing the evidence in the light most favorable to the State, we find that the evidence was sufficient to support defendant's conviction for first degree murder of a two year-old victim with brutal and heinous behavior. The evidence showed that Varrien was in good health and had no bruises when he left with defendant. However, when defendant brought Varrien back to Robinson, he was bruised and dead. The autopsy showed multiple injuries, from bruising to lacerations to head injuries, all over Varrien's body. As previously determined, defendant's statement was voluntarily given, so defendant's conclusion that this statement was unreliable lacks merit. Defendant described the same sequence of events twice before her statement was memorialized in writing. In that statement, defendant said that she beat Varrien with a belt

buckle several times, grabbed him by his shirt collar, dropped him on the floor, and slammed him in the face at some point because he was watching television instead of sleeping. She also stated that he hit his head on a radio on a night stand. McDade and Ross stated that they heard slapping noises coming from the bedroom while defendant was in there with Varrien. The police also recovered a belt from that bedroom, which Ross indicated did not belong to him. Dr. Kalelkar testified that some of Varrien's injuries were consistent with being hit with a belt and belt buckle. Furthermore, when she was arrested, defendant offered a statement concerning Varrien's injuries before the police had a chance to tell her the reason for the arrest. Moreover, the police found her hiding in a closet after Varrien was discovered dead. Although Dr. Spitz, defendant's expert, had a contrary theory of the cause of Varrien's death and the age of his injuries, it was the jury's province to determine the credibility of witnesses, to weigh their testimony, and resolve conflicts in the testimony. *People v. Fox*, 337 Ill. App. 3d 477, 481 (2003). The jury apparently resolved those conflicts against defendant. The evidence presented was more than sufficient to find defendant guilty of first degree murder beyond a reasonable doubt.

Ineffective Assistance of Counsel

Next, defendant contends that defense counsel was ineffective for failing to present evidence at trial about her physical and mental conditions during interrogation. She argues that "despite defense counsel's efforts to convince the jury that the statement was not reliable, counsel failed to present much of this evidence at trial." Defendant concludes that the failure to present this evidence was ineffective assistance because it would have strengthened counsel's arguments that her statement was unreliable. She further maintains that this error was prejudicial because the State's case was weak and her statement was a crucial piece of evidence.

A two-pronged test governs ineffective assistance of counsel claims. First, counsel's performance must fall below an objective standard of reasonableness. Second, there must be a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504, 525-27 (1984); *People v. Walker*, 255 Ill. App. 3d 10, 14 (1993).

The effective assistance of counsel refers to competent, not perfect, representation. *People v. Griffin*, 178 Ill. 2d 65, 91 (1997). A reviewing court will apply the test in light of all relevant circumstances and under a strong presumption of adequacy and reasonableness. *Walker*, 255 Ill. App. 3d at 14. This examination of counsel's representation does not include matters of judgment, discretion, or trial tactics or strategy. *Walker*, 255 Ill. App. 3d at 14-15. Moreover, a court may dispose of an ineffective assistance of counsel claim for lack of prejudice without reaching the deficiency analysis. *Walker*, 255 Ill. App. 3d at 15; see also *Albanese*, 104 Ill. 2d at 527.

In essence, defendant's argument is that defense counsel failed to reargue the evidence presented at the suppression hearing to the jury at trial. As indicated previously, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. As such, there is no reasonable probability that the outcome of the trial would have been different if counsel had presented evidence of her I.Q., the side effects of her medication or the omissions from the jail intake form. We conclude, therefore, that this argument is also without merit and defense counsel was not ineffective.

Prejudicial Testimony

Defendant further contends that the trial court erred by denying her motion *in limine* to

prevent the State from informing the jury that one of its witnesses, Jackie Portman, was currently employed as a circuit court judge at the time of trial. She argues that this statement improperly bolstered the witness' credibility and that the prejudicial effect of this testimony outweighed its probative value.

A motion *in limine* is addressed to trial court's inherent power to admit or exclude evidence. *People v. Jordan*, 205 Ill. App. 3d 116, 121 (1990). The court's decision to grant or deny the motion is within its discretion, and we will not reverse the decision on appeal unless there is a manifest abuse of that discretion. *People v. Kratovil*, 351 Ill. App. 3d 1023, 1033 (2004).

The facts presented here are identical to those considered in *Jordan*. In that case, the defendant filed a motion *in limine* to bar the State from informing the jury that one of its witnesses was currently employed as an associate circuit court judge. The trial court denied defendant's motion and defendant was subsequently convicted. *Jordan*, 205 Ill. App. 3d at 117. On appeal, defendant raised the same issue as the defendant in the current case, namely that the State improperly bolstered the witness' credibility. *Jordan*, 205 Ill. App. 3d at 117. The appellate court found that such information was relevant for the jury in determining the witness' credibility. *Jordan*, 205 Ill. App. 3d at 121. Additionally, the appellate court found that the State's emphasis on the judge's testimony during its closing argument was reasonable given the importance of the witness to the State. *Jordan*, 205 Ill. App. 3d at 123.

We reach the same result here. Portman, who took defendant's handwritten statement while she was employed as an ASA in 2004, had become a judge in December 2008, approximately 15 days prior to her testimony at trial. Portman was the only person who could

testify about the circumstances surrounding defendant's statement, including the fact that defendant recounted the same sequence of events three times to her. The record shows that the State confined its questioning regarding Portman's employment only to establish that she was no longer an ASA. Defense counsel cross-examined her in detail regarding her inexperience for her new position, the trial court instructed the jury that it was the sole arbiter of the credibility of witnesses, and that the jury should consider all of the evidence in light of its own experiences and observations in life. We find that the trial court did not abuse its discretion in allowing Portman to disclose her current occupation to the jury.

Excessive Sentencing

Finally, defendant contends that defendant's sentence was excessive given the mitigating evidence of her upbringing, mental illness, drug addiction, and minimal criminal history. We first note that defendant has forfeited review of this issue by failing to file a written motion to reconsider sentence (*People v. Reed*, 177 Ill. 2d 389, 393 (1997)) or make any allegations of plain error (*People v. Quintana*, 332 Ill. App. 3d 96, 108 (2002)).

Waiver aside, it is well established that the trial court has broad discretion in imposing sentence and the trial court's sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A reviewing court will not disturb that decision absent an abuse of discretion. *People v. Carter*, 272 Ill. App. 3d 809, 811 (1995).

Defendant's argument ignores the fact that she was found eligible for the death penalty by the trial court. Her death penalty eligibility was based on the fact that the victim was two years' old and the murder was accompanied by brutal and heinous behavior indicative of wanton cruelty. See 720 ILCS 5/9-1(b)(7) (West 2008). Thus, defendant was eligible for the death

penalty. However, the court found mitigating factors persuasive and as defendant was not eligible for mandatory natural life imprisonment, the court instead sentenced defendant to an extended term. See 730 ILCS 5/5-5-3.2(b)(2),(3)(i) (West 2008) (factors for imposing an extended term sentence). This sentence was proper as the factors for such an extended term sentence were present. See 730 ILCS 5/5-8-2 (West 2008) (no extended term sentence unless the factors found in section 5/5-5-3.2 are present). As such, defendant's contention is without merit and the trial court properly sentenced her to an extended-term sentence for first degree murder of a two-year old victim when the murder was accompanied by brutal and heinous behavior indicative of wanton cruelty.

CONCLUSION

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

Affirmed.