SECOND DIVISION
May 13, 2014

No. 1-12-0865

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. 08 CR 08702
	)	
JULIUS FLOURNOY,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

Held: We affirm the circuit court's finding that defendant was fit to stand trial with medication; and its finding that defendant was guilty, but mentally ill, because they are not against the manifest weight of the evidence. We also hold the circuit court did not abuse its discretion in sentencing defendant.

¶ 1 Defendant Julius Flournoy raised the affirmative defense of insanity, which the circuit court rejected finding him mentally ill, fit to stand trial with medication, and guilty of two counts of attempted murder, four counts of aggravated battery, and two counts of home invasion. He

was sentenced to 25 years' imprisonment for each count of attempted murder, to be served consecutively; and 15 years' imprisonment for each count of home invasion, to run concurrently with his sentences for attempted murder.

¶ 2 Defendant raises the following issues for our review: (1) whether the circuit court's finding that he was fit to stand trial with medication was against the manifest weight of the evidence; (2) whether the circuit court's finding that he was guilty, but mentally ill, was against the manifest weight of the evidence; and (3) whether the circuit court abused its discretion in sentencing him. [1] We affirm the circuit court's finding that defendant was fit to stand trial with medication; and its finding that defendant was guilty, but mentally ill, because they are not against the manifest weight of the evidence. We also hold the circuit court did not abuse its discretion in sentencing defendant.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on October 24, 2011. Defendant timely filed his notice of appeal on November 10, 2011. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 Before trial, two psychologists and a psychiatrist evaluated defendant to determine his fitness to stand trial. Dr. Catherine Wilson, a clinical psychologist hired by the defense, found defendant unfit to stand trial, but noted defendant could become fit with an appropriate course of

1 In his brief, defendant lists the issues in a different order than presented here. We have listed the issues presented in the above order because it is consistent with the timeline of the proceedings.

treatment, within one year. Dr. Christopher J. Cooper, a clinical psychologist, and Dr. Roni L. Seltzberg, a forensic psychiatrist, both of forensic clinical services of the circuit court of Cook County, examined defendant pursuant to court order. Dr. Cooper found defendant fit to stand trial. Dr. Seltzberg found defendant unfit, but noted he could become fit within one year with appropriate treatment. Before defendant's fitness hearing, however, Dr. Seltzberg, determined that defendant had become fit to stand trial with medication.

¶ 7 On November 20, 2009, the circuit court conducted a fitness hearing. At the beginning of the hearing, the Assistant Public Defender (APD) informed the court that defense expert Dr. Wilson had found defendant fit to stand trial with medication in her most recent evaluation. The parties waived opening statements and stipulated that Dr. Cooper would be qualified to testify as an expert in the field of clinical psychology. Based on his October 29, 2009, examination of defendant, Dr. Cooper opined that defendant was fit to stand trial. Dr. Cooper found defendant was not manifesting symptoms of a mental condition that would preclude his fitness at that time; he was cognizant of the charges pending against him; he was familiar with the roles of various courtroom personnel; he demonstrated an adequate understanding of the nature and purpose of the proceedings; and he was capable of assisting counsel in his defense. The medical records indicated defendant was on psychotropic medications. Dr. Cooper referred defendant for evaluation by a staff psychiatrist because of his course of treatment.

¶ 8 The parties further stipulated that Dr. Seltzberg, if called to testify, would be qualified as an expert in the field of forensic psychiatry. She met and evaluated defendant on November 10, 2009. Based on defendant's medical records and her clinical examination, she opined that defendant was then fit to stand trial with medication. Defendant was prescribed Sertraline and Doxepin, which are antidepressant agents, and Risperdal, which is an antipsychotic agent and

Hydroxyzine, which is an antianxiety agent. There were no indications of any clinically significant adverse effects from those medications on his cognitive functioning, behavior or fitness for trial. During her evaluation, Dr. Seltzberg observed that defendant was able to demonstrate an adequate understanding of the nature of the charges against him, and the purpose of the proceedings. She concluded defendant was capable of assisting in his defense.

¶ 9 The evidence at trial showed that in April 2008, defendant traveled to his old neighborhood to walk the streets. He decided to rob someone, and found an apartment building he could easily enter. He knocked on the door of a garden unit; no one answered. He entered the unit through a window. Inside the apartment, he saw two people, Evan Faassen and Amber Aslin, sleeping in one of the bedrooms. He found a knife in the kitchen and began stabbing Faassen and Aslin. Both Faassen and Aslin testified they awoke to defendant stabbing them. Faassen fought back, despite his injuries. Hearing the commotion, a third occupant of the apartment, Frank Paull, came to their aid. Paull helped Faassen prevent defendant from escaping the apartment building. Paull testified he "threw [defendant] down to the ground" where defendant "just kind of laid there in, like, the fetal position kind of on his side." Paull stood "around making sure [defendant] wasn't going anywhere and kind of blocking the door." Defendant remained in the fetal position until the police arrived. Paull noticed defendant wearing one of his shirts. Peter Engert, a neighbor, went to the courtyard after hearing a loud noise and saw defendant "kind of laying back propped up on his elbow" and not moving. Defendant admitted to Engert that he stabbed the victims. The police found defendant in the courtyard of the apartment building.

¶ 10 Faassen and Aslin described the physical injuries they sustained. Faassen's injuries included: 8 stab wounds to his neck, shoulders, and face; a tracheostomy placed in his throat to help him breath for a month; and punctured vocal chords, which caused permanent damage.

Aslin sustained stab wounds to her face, neck, and shoulder, including "a very deep wound" near her spinal cord "that broke the transverse process" of one of her vertebrae.

¶ 11 Two police officers testified to statements defendant made to them after being taken into custody. Defendant told Officer Wolinski that his plan was to kill the victims and take their home because he was homeless. Detective Naughton testified defendant told him he was homeless, that he walked around the apartment, checked the bedroom, and saw two people sleeping. He then sat down on the couch, and put on a shirt he found in the apartment. Defendant thought about what he should do for at least 30 minutes. He went to the kitchen and got a knife. Detective Naughton testified defendant told him that he "wanted to kill the people and take their stuff and stay in their apartment." Defendant did not realize that a third person was in the apartment. Defendant told both Detective Naughton and Officer Wolinski that he would have killed the victims had he not been stopped. At the conclusion of the State's case-in-chief, defendant moved for a directed finding, which the circuit court denied.

¶ 12 Dr. Wilson testified on defendant's behalf as an expert in the area of forensic and clinical psychology. She estimated she had performed 1,860 evaluations in the past and testified "about 200 times during the course of 14 years." Dr. Wilson explained that her most common evaluations were for fitness to stand trial, understanding of rights, and jurisdiction based on age. Although she performed sanity evaluations, she had never testified in juvenile court based on one of her evaluations. On cross-examination on the issue of her expertise, Dr. Wilson testified she had evaluated "[t]wo or three" adults for sanity, but had never testified as to her findings in court.

¶ 13 Dr. Wilson evaluated defendant for fitness in September of 2008. She reviewed various records provided to her. She testified defendant's school records showed his grade point average "precipitously dropped" from 3.08 on a 4.0 scale in the 9th grade to 0.29 by the end of

10th grade. When defendant was in jail awaiting trial in October 2008, a psychiatrist noted he had been talking to himself and that the psychiatrist saw symptoms of other psychiatric disorders. Defendant received a "rule out diagnosis," which Dr. Wilson explained was when a person "meets some criteria of a specific diagnosis but not enough to concisely or decisively make that diagnosis." He received several diagnoses at that time, including bipolar disorder and psychotic disorder. Defendant was not given antipsychotic medication at that time.

¶ 14 Defendant's mother told Dr. Wilson that defendant's behavior had changed around age 17. His hygiene and appearance deteriorated and he appeared agitated. Dr. Wilson concluded, based on defendant's mother's observations and the psychotic symptoms defendant later showed, that defendant's mental illness started at age 17. When asked whether this was a common occurrence, Dr. Wilson testified "17 is a little young to develop schizophrenia or psychotic disorder, but it is within the range where it occurs." Dr. Wilson testified adolescents deal with the onset of mental illness differently than adults because they have less understanding of what is happening, they are not knowledgeable about different types of illnesses, and they are experiencing many bodily changes. Dr. Wilson also testified that "studies of the brain show that impulse control, rational thinking, anticipation of consequences, that those skills do not become fully developed until 18 or 19." She added that adolescents do not have the rational abilities of an adult.

¶ 15 Dr. Wilson performed two tests on defendant: the Minnesota Multiphasic Personality Inventory (MMPI) and the Rorschach. She used the adolescent version of the MMPI test because defendant was still living at home, was not supporting himself, and was enrolled in school despite not attending. The MMPI test results "indicated that he either couldn't understand the questions, he couldn't read the questions or he was confused." The MMPI test

results, "[i]n combination with all the other information and other testing, suggested *** he had a mental illness which included psychosis." The Rorschach test indicated defendant "appeared to be psychotic."

¶ 16 Dr. Wilson interviewed defendant three times. Concerning his fitness, Dr. Wilson testified defendant "was confused about the role of the various" courtroom personnel and that defendant believed the purpose of the proceedings "was to convince the judge that he could be successful in the future." Dr. Wilson quoted defendant, stating defendant told her that he was expecting that he be put " ' in a place where they help you find your own apartment, get your checks, go to the library, get a lot of career plans.' " Defendant indicated that he thought his story would be interesting to journalists as an example of a success story. Defendant told Dr. Wilson he was afraid to tell his counsel the truth because his attorney would tell his mother. Dr. Wilson diagnosed defendant with psychotic disorder not otherwise specified and opined he was unfit to stand trial in the summer of 2009. Dr. Wilson acknowledged defendant had been restored to fitness when placed on Risperdal, an antipsychotic drug.

¶ 17 Dr. Wilson testified that for her sanity evaluation of defendant, she reviewed defendant's records from forensic clinical services which she had not previously seen, including a psychiatric summary, a psychological summary, and test data from a psychologist. She also interviewed defendant again. She testified defendant "was oriented" and understood who she was and where he was during the interview. She did not think defendant was on antipsychotic medication during this interview. She noticed defendant's speech was "circumstantial" which she described as when a "person talks around and around a subject *** [a]nd *** there's often no understandable connection between one sentence and another." She had difficulty speaking with defendant because he contradicted himself.

¶ 18 Dr. Wilson testified defendant described the attack to her as follows. He was in the neighborhood because he lived there as a child, he would be happy if they moved back to the area, and he was thinking about living in an apartment. He explained he saw an open window and entered it. He put a shirt on that he found in the apartment. Defendant told her if he killed the people in the apartment, he would have a place to stay. He did not run away because he was in shock and he was not used to all of the blood on his clothes. He thought the police would let him go home. He wanted to be independent and start a new life. He did not care about other people's feelings. Dr. Wilson testified defendant "felt that nobody mattered but him." Defendant did not know that he could be criminally charged for his actions. Dr. Wilson opined that defendant was insane. She based her conclusion on defendant's mental deterioration, lack of hygiene, social isolation, precipitous drop in grades, strange behavior, and his psychotic condition when she evaluated him. She noted that "it seems unlikely *** that someone would precipitously become psychotic when they were jailed."

¶ 19 On cross-examination, Dr. Wilson testified that the last time she interviewed defendant, on May 21, 2009, she was still evaluating defendant for both fitness and sanity. She answered "[y]es" when asked "basically, all of your data from that report for sanity, which is a year later, is based on all your old stuff plus a few extra reports that you have had the opportunity to review." Dr. Wilson testified defendant told her: " '[a]t the time I know it was wrong.' " She disagreed that the results from the MMPI test were inconclusive. Defendant told her he had used cannabis and possibly crystal methamphetamine, and that he had smoked one marijuana cigarette almost 24 hours before the crime. Defendant's drug use, however, did not factor into her sanity opinion because defendant was not intoxicated at the time of the attack. Defendant told her that when he went to the victims' apartment, he assumed no one was home because no one answered.

Dr. Wilson agreed the fact that defendant did not flee from the scene of the crime contributed to her opinion. When asked whether defendant did not flee because of "the fact that there were two individuals out there who had tackled him and stopped him," Dr. Wilson answered "[t]here was no reason why [he] couldn't have gotten up and run again."

¶ 20 On redirect examination, Dr. Wilson testified that marijuana use is more likely to lead to passive, rather than violent behavior. She explained that she analyzes how a defendant acts at the crime scene when making a sanity determination. She noted that the reports she read reported that many of the witnesses saw defendant just sitting at the crime scene.

¶ 21 In rebuttal, the State called Dr. Seltzberg, who testified as an expert in the field of forensic psychiatry. She estimated she had testified as to a defendant's sanity "[m]aybe around two hundred" times. She met with defendant on August 26, 2009, to determine his fitness to stand trial. Before meeting defendant, she reviewed court orders, police reports, oral statements attributed to defendant, witness statements, his criminal history report, and his medical prescriptions. Relevant here, she also reviewed a report titled " 'Anger and Rage Evaluation' on [defendant] that was prepared by James Dugo, Ph.D. on April 5, 2008;" a June 15, 2009, psychological evaluation prepared by Katherine Wilson Sidey; a July 7, 2009, psychosocial history provided by defendant's mother; and psychological summaries from Dr. Cooper dated June 25 and July 14th, 2009. After her August 26, 2009, interview with defendant, Dr. Seltzberg opined defendant "was not mentally fit to stand trial at that time due to what [she] believed was the onset of a possible psychotic mental disorder of form and thought, content."

¶ 22 On November 10, 2009, Dr. Seltzberg re-examined defendant for fitness. She reviewed her previous report and defendant's updated medication profile which indicated defendant was prescribed Sertraline, a low dose of an anti-depressant; Doxepin, an anti-depressant; in addition

to Risperdal and Hydroxyzine. She also reviewed a new psychological summary by Dr. Cooper, who had seen defendant on October 29, 2009, and found him fit for trial. Dr. Cooper had administered the adult MMPI test and a test for malingering. Dr. Seltzberg reviewed Dr. Wilson's June 2009 report on defendant's fitness in which Dr. Wilson found defendant unfit for trial. After the November 10, 2009, interview, Dr. Seltzberg opined defendant was fit to stand trial. She changed her opinion of defendant's fitness because defendant "had been on medication for a longer period of time, and that helped whatever thought disorder might have been impairing his ability to assist counsel previously."

¶ 23 In July of 2010, Dr. Seltzberg evaluated defendant for sanity. In addition to the information she had previously reviewed, she reviewed updated records from Cermak Health Services which had "various notations of some bizarre or psychotic behaviors or thought processes towards the end of 2008." During a July 28, 2010, interview, defendant gave his account of the incident, which Dr. Seltzberg testified to as follows. Defendant told her his mother had yelled at him that day, but he could not remember why. He left his house with ten dollars and his backpack. He took the bus, and later a train to his old neighborhood. He was hungry because he only had a bag of chips to eat and had only four dollars left on him after paying for transportation and the chips. He decided to rob someone. For two hours, he walked around the building to see if he could easily enter it. He noticed the basement windows would be easy to enter and he would not have to climb up anything. Defendant knocked on the door, "very slightly," to see if anyone would answer. He told Dr. Seltzberg that had someone answered, "he would not have gone in because he wasn't strong enough to overpower anyone." He had formulated "a Plan A," which was "just to rob the house;" and "Plan B," which was to kill the people inside the apartment. Defendant added that it was getting dark outside, it was

cold, and he was angry at his mother. Defendant entered the living room through the basement window. He found a shirt that he then put on because it was nicer than the shirt he was wearing. Dr. Seltzberg noted defendant had, on a prior occasion, told her that he put the shirt on: "because it was, *** cool, fashionable, to look different at the scene of the crime;" it showed he "meant business when he came through that door;" and because "the victims were *** going to experience something very unfortunate."

¶ 24 Defendant told Dr. Seltzberg he did not see anyone inside the apartment at first, but that he heard some kind of fan like noise coming from the bedroom. He backed himself into a wall to look inside the bedroom where he saw two people. He tiptoed around the apartment and walked to the kitchen. Defendant had originally picked up a hammer and a hatchet he found on the living room floor, but he felt they were too heavy to use or carry. In the kitchen, he found the sharpest knife he could find. Dr. Seltzberg testified "he had then decided to stab them so he could look around the house some more" and stay in the apartment for the night or maybe longer. He also told Dr. Seltzberg he decided to kill the people because it was getting cold outside. He stabbed the woman first, because she was weaker. He stabbed her in the neck because he felt it was the weakest point on her body. He thought he stabbed her three times. Defendant told her he then stabbed the man in the head and chest, but that the man fought back and pushed him into the kitchen. He wanted to escape, and went out the back door, but the man he stabbed and another man followed him. The other man tackled him to the ground. Dr. Seltzberg testified defendant "said that he was really tired at that point because he had been hurt by being tackled, and he was exhausted from the fighting." He was not surprised that the police arrived because he was covered in blood.

¶ 25 Defendant told Dr. Seltzberg his actions were selfish, and "explained that it was a *** biblical moment, that it was from God, that he was thinking it and it was all in Jesus Christ's timing; that he had a sense of doing it, but, because it was cold, God told him that he needed money to smoke marijuana." Dr. Seltzberg stressed that although defendant indicated God told him to get money for marijuana, "[t]here was no command hallucination to go in the house; no command hallucination to kill anyone." She explained that "a command hallucination is when the voice actually tells them to do something." Dr. Seltzberg testified that defendant informed her that he did hear voices at some point in time, but not at the time of the incident.

¶ 26 Dr. Seltzberg found defendant had a psychotic mental disorder in addition to substance abuse problems. She looked at defendant's behavior before the incident to see if a pattern emerged. She noticed that there were a number of reports indicating substance abuse, specifically alcohol and marijuana, and possibly methamphetamines. Dr. Seltzberg explained "those substances can exacerbate or bring out, especially in a young person, any underlying psychotic mental disorder." She also referenced a simple battery involving three young girls that occurred several months prior to the incident. Dr. Seltzberg testified a different doctor had seen defendant 15 days before the incident, and "basically said, nice young man" and that "[h]e has some anger issues and should have six ***anger management classes; but didn't find anything psychotic, or any significant mood disturbances." Dr. Seltzberg found this to be important as it showed defendant was functioning prior to the incident.

¶ 27 Dr. Seltzberg opined that although defendant did have a psychotic mental disorder, he was legally sane at the time of the attack. She found the following factors instructive in coming to her conclusion: (i) defendant's substance abuse; (ii) the circumstances of the simple battery he had been charged with before the incident; (iii) that defendant had a rational motive to enter and

stay at the apartment because he did not have money to return home and he was still angry with his mother; (iv) that he had two plans prior to entering the apartment, which showed he organized his thoughts; (v) that he spent around two hours looking for an apartment with easy access, which she explained "is fairly rational, in the sense of trying to enter someplace that you know you don't belong;" (vi) that defendant recognized he needed a place to stay, which she characterized as a "fairly rational motive;" (vii) that he knocked on the door to determine if anyone was home, and that he would have left had someone answered, which showed defendant was aware and appreciated the danger of entering the apartment; (viii) that defendant admitted to the victims' neighbor that he caused the blood that was on him, which indicated he knew and was aware his acts caused bloodshed; (ix) that defendant admitted he did the wrong thing and was selfish; (x) that defendant wanted to escape, but got too tired to fight back and was unable to escape which showed appreciation for his actions; (xi) that defendant tiptoed around the apartment, which showed defendant was "avoiding detection, which is an important factor in his appreciation of the wrongfulness of his act;" (xii) that defendant "used a weapon of opportunity and ease;" (xiii) that defendant "knew the victims were real people and that he had been thinking how he would be able to best overcome them;" (xiv) that defendant knew his conduct was criminal, which shows he appreciated the criminality of his acts; (xv) that defendant knew the police were coming and the consequences of his actions; (xvi) that he expected punishment from the police and courts as a result of his actions which showed he appreciated the criminality of his conduct; (xvii) that defendant had been in jail with the general jail population without being referred to psychiatric services; (xviii) that he had been seen by a psychologist 15 days before the incident "who found no diagnosis and only recommended *** anger management" classes; (xix) and that a report from Dr. Patel, one month prior to the incident, found defendant to be "well

adjusted" without indicating any psychotic or major mood disturbances. Dr. Seltzberg also reviewed Dr. Wilson's opinion that defendant was unfit, but disagreed with her. Dr. Seltzberg reasoned "I don't believe that [Dr. Wilson] had fully looked at all the information."

¶ 28 On cross-examination, Dr. Seltzberg testified that in August of 2009, she did report that defendant had reported voices in his head, but explained that "hearing voices in one's head as opposed to one's ears sometimes indicates the more likelihood that it is drug induced or some other injury-induced type of hallucination, as opposed to hallucinations from a psychotic mental disorder." She also noted defendant "perhaps had been developing more of the psychotic symptoms during this incarceration." She explained defendant's voices, when he experiences them, are "likely due to a psychotic mental illness." She agreed that when she spoke to defendant about the incident, he told her he felt like he was in a movie playing the "lead cast." He indicated that he usually played the good role, but that this time he was going to play the bad one. In explaining his actions, defendant told her, at various times, that it was his destiny. Dr. Seltzberg agreed that defendant had interviewed inconsistently with various examiners.

¶ 29 The circuit court found the State proved defendant guilty beyond a reasonable doubt. The court rejected defendant's affirmative defense of insanity, and found defendant guilty, but mentally ill. The court chose to rely on Dr. Seltzberg's opinion. The court found Dr. Seltzberg's "extensive experience," and her "in-depth examinations of defendant" persuasive. The court noted Dr. Wilson had limited experience testifying to adult insanity, compared with Dr. Seltzberg, who had testified to adult sanity numerous times. The court further noted that Dr. Seltzberg "methodically" laid out her analysis and "established at least 18 points" supporting her conclusion that defendant was sane at the time of the attack.

¶ 30 At the sentencing hearing, the State presented impact statements from the victims and members of their families. Defendant presented letters written by three family members. In sentencing defendant, the court noted the "emotional and psychological scars that everyone has endured and will endure" because of defendant's actions. The court stated that it considered defendant's background, family, schooling, recent diagnosis and onset of mental illness, substance abuse, lack of criminal background, and factors in mitigation. The court also stressed the "devastating nature of the attack" which occurred while the victims were sleeping, and the need to protect society from defendant. The court sentenced defendant to 25 years in prison for the attempted murder of Evan Faassen and 25 years in prison for the attempted murder of Amber Aslin, with the sentences to run consecutively, based on the severity of the victims' injuries. The court did not impose a sentence on the home invasion or aggravated battery counts.

¶ 31 On January 3, 2012, defendant filed a motion to reconsider his sentence arguing his sentence is excessive. At the hearing on the motion, the court considered another letter submitted on defendant's behalf that informed the court of defendant's ties to the community and help that he would receive in the community. The circuit court denied defendant's motion to reconsider. On March 1, 2012, the court vacated the aggravated battery counts and sentenced defendant to 15 years in prison for each home invasion count to run concurrent with defendant's sentence for the two attempted murder convictions. Defendant again motioned the court to reconsider his sentence, which the circuit court denied. Defendant timely appealed.

¶ 32 ANALYSIS

¶ 33 Defendant argues the circuit court denied him his right to a fair trial because it allowed his fitness hearing to proceed by way of stipulation. According to defendant, the court made no independent determinations regarding his fitness to stand trial. The State argues the circuit

court did not commit error because it was actively involved in the fitness hearing; it reviewed detailed stipulations, asked for clarification of those stipulations, and independently reached its decision regarding defendant's fitness.

¶ 34 Prosecution of a defendant who is not competent to stand trial violates due process. *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). A defendant's fitness to plead, stand trial, or be sentenced is presumed and a defendant will only be deemed unfit if, "because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2008). A defendant may be fit to stand trial despite an otherwise unsound mind because "[f]itness speaks only to a person's ability to function within the context of a trial." *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). "When a bona fide doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further." 725 ILCS 5/104-11(a) (West 2008). "When a bona fide doubt of the defendant's fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State." 725 ILCS 5/104-11(c) (West 2008). A ruling on defendant's fitness will only be reversed if it is against the manifest weight of the evidence. *People v. Cortes*, 181 Ill. 2d 249, 276-77 (1998). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. DeLeon*, 227 Ill. 2d 322, 332 (2008).

¶ 35 The circuit court did not err in finding defendant fit to stand trial with medication. At the beginning of the hearing, defense counsel indicated to the court that the clinical psychologist hired by the defense, Dr. Wilson, found defendant fit to stand trial with medication. The parties agreed to stipulations from Dr. Cooper and Dr. Seltzberg providing that, had they testified, they

would have opined defendant was fit to stand trial with medication. Defendant did not present any evidence at the hearing to show he was not fit to stand trial. Based on the record, we cannot say that the circuit court's finding was against the manifest weight of the evidence where all of the evidence reached the same conclusion, that defendant was fit for trial with medication.

¶ 36 Defendant argues that the circuit court failed to make any independent determinations regarding his fitness because the hearing proceeded by way of stipulation, relying principally on *People v. Greene*, 102 Ill. App. 3d 639 (1981). The defendant in *Greene* had previously been found unfit by the circuit court after a fitness hearing. *Id.* at 640. Eleven months later, the defendant was reexamined by two psychiatrists, both whom concluded the defendant had become fit for trial. *Id.* at 640-41. At the subsequent fitness hearing, however, there was no formal introduction of evidence, and defense counsel agreed to the State's offer "to stipulate to the findings of the two psychiatrists as contained in the reports and stipulate to the fact that the defendant is fit for trial." *Id.* at 641. The circuit court found defendant fit for trial. *Id.* A panel of this court reversed and remanded the matter for a new hearing, holding "[a] judicial determination of fitness cannot be based upon mere stipulation to the existence of psychiatric conclusions." *Id.* The *Greene* court reasoned that "[d]efendant's prior adjudication of unfitness raises the presumption that the condition of unfitness remains." *Id.* The *Greene* court noted that there was "no affirmative showing in the record below that the trial court exercised discretion in finding Greene fit to stand trial." *Id.* at 643.

¶ 37 Our supreme court, in *People v. Lewis*, 103 Ill. 2d 111 (1984), distinguished *Greene* on the basis of the substance of the stipulations at issue. The defendants, in *Lewis*, a consolidated matter, had each been found unfit for trial by the circuit court, but then later found to be restored to fitness. *Id.* at 113. In each case, the defendants' fitness had been found to be restored based

on stipulations outlining the proposed testimony of two psychiatrists who had examined the defendants. *Id.* at 113-14. Our supreme court affirmed the circuit court's finding that the defendants' fitness was restored. *Id.* at 115-16. Specifically, our supreme court reasoned:

> "In *Greene* defense counsel stipulated to ' the findings of the two psychiatrists as contained in the reports and *** to the fact that the defendant is fit to stand trial.' [Citation.] Here, however, it was stipulated that, if called to testify, qualified psychiatrists who had examined defendants would testify that in their opinions the defendant was mentally fit to stand trial.
>
> The stipulations were not to the fact of fitness, but to the opinion testimony which would have been given by the psychiatrists. Upon considering these stipulations and personally observing defendants, the circuit court could find defendants fit, seek more information, or find the evidence insufficient to support a finding of restoration of fitness." *Id.* at 116.

¶ 38 In the case at bar, we hold the stipulations at issue are similar to those found in *Lewis* rather than the stipulation entered into in *Greene.* As in *Lewis*, the stipulation here was not to the fact of fitness but was to what the opinion testimony of Dr. Cooper and Dr. Seltzberg would have been had they testified. The stipulation detailed each doctors' opinion on why defendant was fit for trial, and was not merely a stipulation to each doctors' conclusion regarding defendant's fitness. *Greene* is also distinguishable to the case at bar because defendant here was never adjudicated unfit. The defendant in *Greene* had been previously found to be unfit for trial by the circuit court. In this case, defendant had not been found unfit by the circuit court in a

prior fitness hearing. As such, the presumption of unfitness, as discussed in *Greene*, is not applicable here as defendant was never found by the circuit court to be unfit for trial. *Greene*, 102 Ill. App. 3d at 641 ("Defendant's prior adjudication of unfitness raises the presumption that the condition of unfitness remains."). The facts in *Greene* are distinguishable to the case at bar.

¶ 39 Defendant next argues the circuit court erred when it rejected his affirmative defense of insanity and found him guilty, but mentally ill. Defendant acknowledges the court rejected Dr. Wilson's opinion in favor of Dr. Seltzberg's, but argues Dr. Seltzberg failed to consider information contrary to her opinion, failed to review psychological reports rendered shortly before the attack, and failed to interview witnesses with firsthand knowledge of defendant's thoughts and behavior from the time of the crime. The State disputes defendant's contention that Dr. Seltzberg failed to consider information contrary to her opinion. The State points out that defendant is not challenging that the State proved him guilty beyond a reasonable doubt. Rather, defendant only challenges whether he proved insanity by clear and convincing evidence.

¶ 40 Section 6-2 of the Criminal Code of 1961 (Code) addresses the affirmative defense of insanity. 720 ILCS 5/6-2 (West 2008); *People v. Kando*, 397 Ill. App. 3d 165, 193 (2009) ("The defense of insanity is an affirmative one ***."). "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6-2(a) (West 2008). A defendant, however, may be found guilty but mentally ill where the defendant, although not insane, was suffering from a mental illness. 720 ILCS 5/6-2(c) (West 2008). The verdict of guilty, but mentally ill does not relieve the defendant of criminal responsibility. *People v. Urdiales*, 225 Ill. 2d 354, 428 (2007). The defendant has the burden of proving, by clear and convincing evidence, that he is not guilty by reason of insanity. 720 ILCS 5/6-2(e)

(West 2008). The State, however, still must prove beyond a reasonable doubt each of the elements of the offenses charged. 720 ILCS 5/6-2(e) (West 2008). The State may rely solely on the facts in evidence, and any inferences drawn from those facts, without presenting expert testimony regarding defendant's sanity. *Kando*, 397 Ill. App. 3d at 196.

¶ 41 It is the role of the trier of fact to determine the weight and credibility of psychiatric testimony. *Urdiales*, 225 Ill. 2d at 431. The trier of fact is not obligated to accept the opinion of an expert. *Id.* The trier of fact may accept one opinion over another, or accept or reject certain sections of an expert's opinion. *People v. Baker*, 253 Ill. App. 3d 15, 27 (1993). "In fact, '[e]ven if several competent experts concur in their opinion and no opposing expert testimony is offered, it is still within the province of the trier of fact to weigh the credibility of the expert evidence and to decide the issue *** in light of all of the facts and circumstances of the case ***.' " *Urdiales*, 225 Ill. 2d at 431 (quoting *In re Glanville*, 139 Ill. 2d 242, 251 (1990)). Factors courts have held to be relevant in determining sanity include, but are not limited to: "[l]ay opinions *** if based on observations made shortly before or after the occurrence of the crime;" and whether defendant had "a plan for the crime and methods to prevent detection." *Baker*, 253 Ill. App. 3d at 28. "The question of defendant's sanity and mental illness are questions of fact, and the fact finder's determination on these issues will not be disturbed unless contrary to the manifest weight of the evidence." *Kando*, 397 Ill. App. 3d at 194.

¶ 42 We hold the circuit court's finding that defendant was guilty, but mentally ill is not against the manifest weight of the evidence. Here, defendant presented the expert testimony of Dr. Wilson while the State presented the expert testimony of Dr. Seltzberg. Defendant's argument is basically an attack on the weight and credibility of Dr. Seltzberg's testimony. We remind defendant that it is not our role as a reviewing court to determine the weight and

credibility to be given to psychiatric testimony nor does the circuit court have to accept the opinion of an expert. *Urdiales*, 225 Ill. 2d at 431. With that being said, we agree with the circuit court's finding that Dr. Seltzberg's examination of defendant was "in-depth" and that she had "extensive experience." Dr. Seltzberg testified to the method, reasons, and facts supporting her opinion and noted that she had previously testified on 200 of her sanity evaluations. Dr. Wilson, on the other hand, had never testified as to an adult criminal defendant's sanity and had only evaluated "two or three" adults for sanity. Dr. Seltzberg listed numerous factors that led to her conclusion, including that defendant had a plan for the crime and attempted to escape. After reviewing the record, we cannot say that the circuit court's reliance on Dr. Seltzberg's testimony over Dr. Wilson's testimony is against the manifest weight of the evidence.

¶ 43 Defendant's final contention is that the circuit court abused its discretion when it sentenced him because it failed to adequately consider the mitigating factors of his age, lack of criminal record, and recent onset of mental illness. The State responds that defendant's sentence is appropriate because the circuit court properly considered all the factors in mitigation and aggravation and imposed a sentence within the statutory range.

¶ 44 The Illinois Constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. A court of review does have the power to reduce a defendant's sentence if the circuit court abused its discretion or if the sentence is unlawful. Ill. S. Ct. Rs. 615(b)(1), (b)(4); *People v. Jones*, 168 Ill. 2d 367, 378 (1995). If a sentence is within the statutory limits, a court of review will not alter that sentence unless the trial court abused its discretion. *People v. Coleman*, 166 Ill. 2d 247, 258 (1995). Our supreme court has warned that "the power to reduce a sentence should be exercised 'cautiously and sparingly.' " *Jones*,

168 Ill. 2d at 378 (quoting *People v. O'Neal*, 125 Ill. 2d 291, 300 (1988)). "There is a strong presumption that a trial court has considered any evidence of mitigation brought before it." *People v. Trimble*, 220 Ill. App. 3d 338, 355-56 (1991). A sentencing decision is given "substantial deference" because the sentencing court, " having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36. A reviewing court "must proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *People v. Fern*, 189 Ill. 2d 48, 53 (1999).

¶ 45 We initially note that defendant does not contest that his sentence is unlawful or outside the permissible sentencing range. Rather, his argument is that his sentence is excessive based on his age, lack of criminal record, and recent onset of mental illness. Our review of the record, however, shows the circuit court specifically cited defendant's background, age, recent mental illness, and lack of criminal record in announcing the sentence. The circuit court also, however, mentioned the severity of the attack and the danger defendant poses to society. Defendant is essentially asking this court to reweigh the factors in aggravation and mitigation, which we are not prepared to do. See *Fern*, 189 Ill. 2d at 53. Our review of the record shows the circuit court did consider the mitigating factors of defendant's age, lack of criminal record, and recent onset of mental illness; in addition to the factors in aggravation, in crafting an appropriate sentence. Accordingly, the circuit court did not abuse its discretion in sentencing defendant.

¶ 46 CONCLUSION

¶ 47 The judgment of the circuit court of Cook County is affirmed.

¶ 48 Affirmed.