2014 IL App (2d) 130049-U
No. 2-13-0049
Order filed July 29, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JEFFREY R. SIELCK, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 10-CF-228 Honorable John T. Phillips, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel was not constitutionally ineffective for failing to raise the defense of insanity at defendant's trial on home invasion charges. Also, defendant's sentence of 14 years' imprisonment was not excessive given the gravity of the offense and other relevant considerations.

¶ 2 Defendant, Jeffrey Sielck, appeals his conviction for home invasion (720 ILCS 5/12-11(a)(2) (West 2008)). He contends that his trial counsel was constitutionally ineffective for failing to raise an insanity defense at trial. Alternatively, he claims that his 14-year sentence of imprisonment was excessive. We reject both contentions and affirm.

¶ 3 I. BACKGROUND

¶ 4 During the day on December 26, 2009, defendant dropped off his son Zachary at a birthday party in Wauconda. That evening, defendant and his son, Jeff Jr. (Jeff), went to the home of John and Karol Stevens. At some point beforehand, defendant had placed a metal sheet under the front of his shirt. What occurred at the Stevens' house when defendant and Jeff arrived was variously described at trial. Defendant and Jeff each emerged from the incident with multiple wounds. Defendant's injuries were particularly severe. A wound to his head destroyed his left eye, fractured his left orbital bone, and caused subdural hemorrhaging. Defendant also had damage to several internal organs, and his right arm was broken and bullets were lodged inside it. Defendant was transported to Advocate Lutheran General Hospital (Lutheran General) where he underwent exploratory abdominal surgery followed by a colostomy. Defendant also had reconstructive surgery on his orbital bone using a bone graft. Defendant remained at Lutheran General until his discharge on January 26, 2010. In February 2010, he was charged with two counts of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)). Both counts alleged that he wrongfully entered the Stevens' home and intentionally injured Karol Stevens.

¶ 5 In his ineffectiveness claim, which he brings for the first time on appeal, defendant cites several sources from which he believes trial counsel could have fashioned an insanity defense. Defendant cites: (1) several psychological evaluations of him by court-appointed psychologists; (2) the evidence at trial; and (3) his presentence investigation report (PSI report), which includes interviews with family members and friends as well as records of defendant's hospitalization after the incident and prior to his arrest. There is no dispute that the specific information defendants cites from the PSI report for his ineffectiveness claim was accessible to trial counsel when planning trial strategy. See *People v. Morris*, 335 Ill. App. 3d 70, 79 (2002) ("Attorneys have an obligation to explore all readily available sources of evidence that might benefit their

clients."). Consequently, the only question for our review is whether trial counsel should have realized from this information that an insanity defense was viable.

¶ 6 A. Pretrial Proceedings

¶ 7 On March 10, 2010, defendant's trial counsel reported to the court that he had a *bona fide* doubt of defendant's fitness to stand trial. Counsel moved for a fitness evaluation of defendant. The court granted the motion, and defendant was evaluated by Dr. Karen Chantry, a psychologist employed by Lake County. In her written report of March 31, 2010, Dr. Chantry concluded that defendant was fit to stand trial. She noted that, due to a gunshot wound to the head, defendant had suffered a period of cognitive impairment, namely delusional thinking, while hospitalized. Defendant saw several psychiatrists during that time. Defendant denied to Dr. Chantry that he had any mental health treatment prior to December 2009. Defendant also denied that he was currently delusional. Dr. Chantry found that defendant had no "significant mental deficits" but had "grandiose" thoughts and unrealistic expectations of others. She diagnosed defendant with a mood disorder NOS (with mild agitation) and narcissistic personality traits.

¶ 8 On May 7, 2010, defense counsel reported to the court that he again had doubts as to defendant's fitness. According to counsel, defendant claimed that there were dead bodies in the jail, that his own children were dead, and that he was going to be sworn in as Vice-President of the United States. Defendant also stated that hospital personnel wanted to give him a 100% blood transfusion rather than operate on his arm, and that he believed a police officer was impersonating him. The court addressed several questions to defendant and found no *bona fide* doubt of his fitness.

¶ 9 The following week, defense counsel reported that defendant was no longer speaking to him. Counsel also continued to insist that defendant was delusional. Counsel reiterated the

delusional statements he reported at the prior hearing, and also reported that defendant claimed to be meeting with the Federal Bureau of Investigation. In a colloquy with the court, defendant claimed that the transport guards had a difference of opinion with the physicians as to defendant's proper medical treatment. Defendant made a vague reference that the guards felt he was not "safe" in the hospital. The court ordered that defendant sit for another evaluation with Dr. Chantry.

¶ 10 In her report of May 21, 2010, Dr. Chantry observed that defendant appeared for the interview in shackles because he had threatened a jail guard. Dr. Chantry noted that jail records indicated that defendant became delusional during a one-week period in late April and early May 2010. On April 29, defendant became more withdrawn and was placed on suicide watch "due to comments he made about the surgery he was supposed to have." Defendant also claimed on that date that his children were dead. On April 30, defendant claimed that if he tapped his arm bracelet, he would be released from jail. On May 2, defendant accused a jail guard of being a Chinese spy and threatened to kill her. On May 3, defendant claimed there was a torture chamber in the jail. On May 9, defendant was removed from suicide watch because he was longer expressing delusional thoughts. Dr. Chantry noted that defendant had also been delusional during his stay at Lutheran General Hospital, claiming he was a federal marshal. At that time, his blood was tested to determine if a physical malady was causing this erratic behavior. The test was negative for infection or other medical condition. Dr. Chantry noted the possibility that defendant's delusions were caused by the trauma of his injuries. Dr. Chantry also said, however: "While unclear, given the information available to me, it does appear that [defendant] may have been delusional at the time of his arrest as well, and this would not account for the cause being related to the consequences of being shot."

¶ 11 Defendant told Dr. Chantry that he lacked a complete recollection of the evening of December 26, 2009. Defendant claimed he went to the wrong house to pick up his son. Defendant said to the woman who answered the door that he was there to pick up his son. The woman said " 'Oh,' " and disappeared into the house, leaving the door slightly ajar. After waiting for a short time, defendant pushed on the door and slipped, falling onto the threshold. Defendant acknowledged that he might have grabbed the woman as he fell, but he denied attempting to choke her.

¶ 12 Dr. Chantry reported that defendant did not express any delusional or bizarre thoughts when he sat for the May 2010 evaluation. Regarding the statements he made in late April and early May, defendant stated that he had merely dreamed that his children were dead. He also claimed that he was "just being sarcastic" when he called the jail guard a Chinese spy. Since there was no evidence that defendant was malingering when he made those odd statements, Dr. Chantry believed that defendant was in denial about his delusional period. According to Dr. Chantry, it was unclear whether defendant's delusions would recur, as his symptoms were not typical of a delusional disorder. She again diagnosed defendant with a mood disorder, but on this occasion added that he had "agitation and episodic delusional thinking." Dr. Chantry also added a diagnosis of "Brief Psychotic Disorder, With Marked Stressors, in Remission." She ruled out "Episodic Delirium Due to Medical Circumstances." Dr. Chantry opined that defendant currently was fit to stand trial.

¶ 13 On June 21, 2010, defense counsel notified the court that the defense was stipulating to defendant's fitness, but believed there were "some mental health issues." Counsel indicated that he had issued a subpoena to Lutheran General for records of defendant's hospitalization.

Counsel anticipated the records would be "useful for some mitigation purposes and [for] discussing this case with the State."

¶ 14 On October 21, 2010, defense counsel noted that he had received all pertinent records from Lutheran General. Counsel had discussed with defendant and his family the possibility of retaining an expert "to help with some mental health aspects of the case," but the family could not financially afford an expert. Counsel anticipated that, if negotiations with the State did not progress, the defense would file a petition for financial assistance so that it could retain an expert.

¶ 15 In November 2010, defendant filed a motion requesting appointment of a mental health expert. At the next court appearance, the assistant State's Attorney (ASA) stated:

> "I think at least the defendant would have an argument at trial of guilty but mentally ill. I think throughout the State is under the impression—we agree he is suffering from some mental illness. I think Dr. Chantry made some preliminary findings in her fitness evaluations but found him to be fit for trial. Judge, I do believe that the State is not contesting that mental illness is an issue in this case."

¶ 16 The parties proposed that the court appoint Dr. Chantry to perform a psychological evaluation of defendant. The court so ordered.

¶ 17 In her written evaluation of December 1, 2010, Dr. Chantry began by recounting defendant's background as provided by him. Defendant claimed that, when he was growing up, his father emotionally abused his mother. Defendant was married twice. He had no children with his first wife. His second wife was Linda, with whom he had three children including Jeff, who was with defendant during the December 26, 2009, incident at the Stevens' home. According to defendant, Linda had psychiatric problems and abused the children. Their divorce,

which was finalized in 2004, was very contentious, with a protracted custody dispute. Following the divorce, Linda was ordered not to have contact with the children.

¶ 18 Defendant provided his version of the events of December 26, 2009. This was an elaboration of the account he provided in his May 2010 fitness evaluation. He claimed that, earlier in the day, he was manually hauling heavy items. As he kept scraping his stomach with the objects, he placed a metal plate under the front of his shirt for protection. Defendant still had the plate underneath his shirt when he and Jeff went to pick up defendant's youngest son, Zachary, from a birthday party at a residence. Because of reduced visibility from falling snow, defendant went to the wrong residence. A woman answered the door, and defendant asked for Zachary. The woman stepped away from the doorway, and defendant presumed she was getting Zachary. When the woman did not return, defendant knocked on the door again. The door, which was not completely shut, opened when defendant knocked. Defendant slipped and fell into the house. He did recall if he fell onto anyone. Defendant then heard a series of "bangs," which were in fact gunfire. He and Jeff were both wounded by the gunfire.

¶ 19 Defendant reported that one of the bullets caused a concussion and bleeding on the brain. Consequently, he fell in and out of consciousness and was unable to distinguish reality from fantasy. He was treated at Lutheran General by several psychiatrists, but denied that he had ever received any mental health treatment before the December 2009 incident.

¶ 20 Dr. Chantry noted that defendant was less agitated and emotional than during his March and May 2010 fitness evaluations. She saw no current evidence of delusional thinking or other formal thought disorder. Defendant was orientated and rational. His level of intellectual functioning was average.

¶ 21 Dr Chantry administered a battery of psychological tests, which disclosed that defendant was of average intelligence, had difficulty dealing constructively with frustrating situations, was self-centered, and tended to project confidence and assuredness as a mask for feelings of inadequacy. Dr. Chantry diagnosed defendant with a cognitive disorder NOS, a personality disorder NOS (with primarily narcissistic and histrionic features), and traumatic brain injury due to a bullet wound. Dr. Chantry found that defendant was not currently in need of mental health treatment.

¶ 22 From December 2010 to October 2011, the case was continued for defendant to receive follow-up medical treatment for his bullet wounds. On October 31, 2011, defense counsel noted that if there were any additional medical issues, counsel would bring them to the court's attention. On November 23, 2011, the parties agreed to continue the matter to determine if Dr. Chantry "was going to provide additional testing."

¶ 23 At the next court appearance on December 2, 2011, the defense indicated that it wanted an "evaluation" done and was hoping to use Dr. Chantry, who was no longer employed by Lake County. The case was continued by agreement.

¶ 24 On December 12, 2011, the defense stated that it was still attempting to arrange evaluations with Dr. Chantry. The defense anticipated that "information" from the evaluations would be "useful in resolving the case." From December to March, 2012, the parties waited for Dr. Chantry to complete her evaluation. The defense noted that Dr. Chantry was "acting in a private capacity or as a defense witness or a potential defense expert." On May 8, 2012, the court inquired whether the defense had an expert witness. Defense counsel replied that the parties might have found "a solution to that."

¶ 25 There was no further mention on the record of Dr. Chantry or a defense expert witness. On July 18, 2012, the parties informed the court that the State had made a plea offer that was declined by defendant. On August 21, 2012, defendant waived his right to a jury, and a bench trial was scheduled for the following month.

¶ 26 B. Trial

¶ 27 On September 17, 2012, the day of trial, the defense filed an answer to discovery stating: "The Defendant is asserting the affirmative defense of Insanity in this matter *** and is relying upon the State's inability to meet their burden of proof in this matter." The defense anticipated calling defendant, defendant's mother, and Jeff in its case in chief.

¶ 28 The State waived its opening statement. The defense gave the following brief opening statement:

> "There was an incident that occurred at 327 Indian Ridge Trail in Wauconda, Lake County, Illinois, on December 26th of 2009, but we would submit to the Court that, after you hear all the evidence, you will agree that this was not something that was done knowingly, this was not something that was done intentionally; and it was an awful situation because [defendant] went to the wrong house to pick up his son, and then this—all of this occurred.
>
> So we believe at the conclusion of the case that you will not find him guilty of home invasion."

¶ 29 The State's first witnesses were John and Karol Stevens, who testified that, on the evening of December 26, 2009, they were inside their home at 327 Indian Ridge Trail in Wauconda. At 5:45 p.m., their front doorbell rang several times in rapid succession. Finding this unusual, John and Karol walked together down the front hall to the front door. Karol

reached the door first, and John stood behind her. Karol opened the door to see two men, one heavier than the other. John and Karol later identified the heavier one as defendant. Both heard one of the individuals say something. John identified the speaker as defendant (Karol did not say who spoke). Neither John nor Karol understood what was said. According to John, defendant smiled as he spoke and pulled a mask or scarf over his face. John told Karol to close the door. As she did so, she felt resistance from outside.

¶ 30 John and Karol then ran back down the hallway, Karol to call 911 and John to retrieve his handgun from the family room. The front door then burst open. Defendant ran inside and tackled Karol, who was closer to the door. Defendant began choking Karol as she screamed for John to help. Karol's breath was cut off as defendant continued to choke her. As John was rushing to retrieve his gun, he believed he heard someone yell, "This is for your brother." John ran back to the front hall. Defendant was still on top of Karol, choking and hitting her. John fired at the top of defendant's head. Defendant fell limp on top of Karol. John then saw a "shadow," which he presumed was the other man who had been on the porch. John fired twice in that direction, and this second person ran out of the house. As John began to push defendant off of Karol, he "sprang up" and grabbed Karol again, pulling her toward the front door. John fired several more shots at defendant, who then turned and fled through the front door. John denied that he continued to fire at defendant as he fled toward the door. After defendant ran out, John and Karol remained in the house and dialed 911.

¶ 31 John and Karol were shown police photographs of their home, taken shortly after the incident. Karol testified that, after she was tackled by defendant, her head came to rest near the door of the first-floor powder room—a point several feet inside the front door. John and Karol identified from the photographs what appeared to be bloodstains on the front porch, inside the

front entryway, and in the front hallway. Some of the stains are clearly several feet inside the home. John and Karol denied that the blood was there prior to the incident or that either one of them bled from the incident. Karol was shown police photographs of her head and neck taken after the incident. She identified cuts and bruises to those portions of her body.

¶ 32 Defense counsel cross-examined John and Karol on their perceptions of the emergency nature of the situation and, relatedly, on the reasonableness of John's use of potentially deadly force. John admitted on cross-examination that, though he believed defendant covered his face with a scarf or mask, he found no such item in his house after the incident.

¶ 33 Wauconda police officer Eric Schultz testified that, on December 26, 2009, at 5:54 p.m., he was dispatched to the Stevens' home in response to a report of shots fired. Upon arrival, Schultz was approached by Jeff, who was excited and crying. Jeff reported that his brother was being held hostage inside the house and that Jeff and defendant had been shot by the homeowner. Schultz observed defendant lying at the end of the driveway. He was bleeding heavily. Later, Schultz found a metal sheet under defendant's jacket.

¶ 34 Wauconda police detective Dustin Buffington testified that he interviewed Jeff on the night of December 26, 2009, after he was released from the hospital. Buffington asked Jeff how defendant had been acting recently. Jeff stated that defendant was normally talkative and jocular, but had not been so lately. During the day on December 26, defendant appeared agitated. At one point, defendant received a phone call, which appeared to make him more agitated. After the phone call, defendant told Jeff that the two of them were going to pick up Jeff's brother, Zachary. Zachary had been at a birthday party since earlier that day. Before defendant and Jeff left, defendant placed a metal sheet under his shirt. Jeff began to suspect that defendant believed something was wrong with Zachary. Defendant and Jeff then drove to a

house and parked on the street. Defendant audibly asked himself if it was the right house. Jeff did not know what was going on and was unable to get an answer from defendant. Defendant told Jeff that they would go to the door together and that when someone answered, Jeff should say that "he was with Officer Yost." Jeff presumed that defendant was referring to a man they knew from Boy Scouts. Defendant then put on a Boy Scout hat, and Jeff accompanied him to the door. A man and a woman answered, and defendant told them that he was there to pick up Zachary. According to Jeff, the couple looked surprised and guilty. The woman said there was no one there named Zachary, and closed the door. At this point, Jeff and defendant believed that Zachary was being held hostage inside the home. Defendant forced his way into the house and tackled the woman. He said to Jeff, " 'Go get your brother.' " The man who answered the door with the woman approached with a gun, firing at defendant and Jeff. Jeff ran out of the house and looked back to see defendant crawling through the doorway. Jeff later realized that he and defendant had gone to the wrong home to pick up Zachary.

¶ 35 Buffington identified a State's exhibit as the written statement that Jeff provided. At the close of the State's case, the statement was admitted as substantive evidence by stipulation of the parties.

¶ 36 Buffington testified that he spoke to defendant's father, Hank, on December 27. Hank reported that defendant had talked "nonsense" to him on December 26. Hank related that defendant had been attending court hearings with his ex-wife Linda. Hank presumed that defendant "had finally cracked under all the stresses that he had been under." Buffington also spoke to defendant's mother, Merle, who confirmed what Hank had said about defendant's level of stress. Merle felt that defendant "had trouble coping with a great deal of stress that was going on at that particular time."

¶ 37 Buffington testified that he interviewed defendant at Lutheran General on January 4 after he awoke from a coma. Defendant was awake and alert during the entire interview. Defendant stated that he worked at a metal company, but work was not going well because people were stealing his customers. During the day on December 26, 2009, defendant dropped off his son Zachary at a birthday party at Eva Wasaki's residence. Defendant knew Wasaki from Boy Scouts. That evening, defendant received a phone call telling him to pick up Zachary. Defendant did not know who phoned him. Defendant left with his oldest son Jeff to pick up Zachary. Initially, defendant claimed he went to Wasaki's house; later, he said he went next door to Wasaki's. When defendant and Jeff went to the door, a Mexican woman answered and said that Zachary was inside the house. The woman then shut the door. Defendant did not know the woman. At this point, Mike Yost walked out of the house and shot defendant. Earlier, defendant had put a metal plate under this shirt because he "figured" Yost would shoot him. Defendant did not have Jeff put on a metal plate because he did not believe that Yost would shoot him. Buffington testified that there is a sergeant with the Wauconda police named Mike Yost. Defendant said that, after he was shot, Jeff drove him home. Defendant then drove himself to the hospital.

¶ 38 Buffington asked defendant whether he was wearing a Boy Scout hat when he went to the residence and whether he directed Jeff to use a fake name. Defendant denied doing either.

¶ 39 Buffington stated that, when he told defendant that Mike Yost had not shot him, defendant "seemed confused for a moment" before reaffirming that Yost did shoot him and that Buffington was mistaken. Defendant also claimed that Mike Yost had said to meet him at Eric Anderson's house. Defendant had been the best man at Anderson's wedding. Defendant believed that Anderson was probably in the Marines. Defendant also said that his neighbor,

Peter Jablonski, "had approached him in the front yard but that Peter wouldn't help him." Defendant also mentioned Ziggy Jablonski, who he said was Peter's father.

¶ 40 Buffington testified that he mentioned the name Kimberly Mininni to defendant. Defendant said he did not want to speak about Mininni because she "lied about being Mike Yost's sister." Buffington also mentioned the Stevens', but defendant did not know them.

¶ 41 Following Buffington's testimony, Jeff's written statement to Buffington was admitted as substantive evidence by stipulation of the parties. The statement read:

> "It started as a normal day. Went through it normally until later this night. My dad has been under a lot of stress lately and hasn't been really saying anything. He told me 'We gotta go,' so instantly I got my coat and shoes and was waiting for him. Before we left he grabbed a metal plate and stuck it underneath his shirt in the front. We drove to the house and on the way I asked him questions like 'Where are we going?' and 'What's going on?' When we pulled up to the house he wasn't really sure it was the right house. He told me I had to use a fake name. He told me to say I was with Office Yost. We walked to the door and knocked. My dad said we are here to pick up Zack. The [*sic*] suddenly looked like criminals being caught for something and the man slammed the door before he closed it. My dad charged through it and held down the woman. My dad kept repeating ['G]et your brother.['] The man left and brought back a gun and started firing. First at my dad and then at me. As soon as I saw he was firing at me, I turned and ran to safety. When I looked back at the house I saw my dad crawling out on his belly. I ran to his side and tried to comfort him. A complete stranger started to approach us and ask if everything was alright. My dad shouted[,']I've been shot. Get an ambulance.['] I asked him to hurry and he called and said they were on thier [*sic*] way. My dad wanted

me to see if he had a gun. The cops showed up and got us to safety. They carried my dad to the back of a cop car to move him to an ambulance, and that's the last I saw of my dad tonight."

¶ 42 The State rested. Defendant moved for a directed finding of not guilty. The court denied the motion, and the defense presented its only witness, defendant.

¶ 43 Defendant testified that he had three teenage children: Jeff, Karen, and Zachary. In 2001, following an "acrimonious" divorce, defendant was given custody of the children. Defendant stated that his ex-wife had a mental illness and physically harmed the children. Defendant claimed that, to this day, his ex-wife continues to file "nuisance" motions against him.

¶ 44 Defendant testified that he was the former owner of Braz-Weld Metal Services, which did welding, braising, and assembly. Defendant was still owner of Braz-Weld on December 26, 2009. At about noon that day, he dropped off Zachary at a birthday party at the Reyes' residence at 307 Farmville Court in Wauconda. Afterward, defendant shoveled snow at his home. As the handle of his shovel was broken and sharp at the top, defendant protected his abdomen by placing a metal sheet "in his jacket." Defendant explained that metal sheets were also worn at Braz-Weld for protection. In the evening, Karen informed defendant that Zachary needed to be picked up. Defendant took Jeff with him to get Zachary because the three were going to a grocery store afterward. Defendant realized he was still wearing the metal plate, but left it because he would be away "only a few minutes" and had more shoveling to do at home. Defendant denied that he had the metal plate on because he was worried about being shot.

¶ 45 Defendant testified that, because the streets in the neighborhood were confusing and snowfall was affecting visibility, he went to the wrong house. Jeff and he went to the door, and a woman answered. Defendant mentioned that he was a friend of Eva (who lived next door to the

Reyes') and that he was there to pick up Zachary. The woman said, "Oh," and closed the door. Defendant presumed that the woman was going to get Zachary. Defendant waited for a while, and then knocked on the door again. As he was knocking, he slipped and fell against the door. The door gave way, and defendant landed on his chest with his body across the threshold of the door. Defendant's hand broke when it hit the stoop of the door. Defendant was inside the home from the chest up. Defendant testified that this was entirely an accident and that he never intended to enter the house even partially. Defendant denied that he went any farther into the house or made physical contact with any of the home's occupants.

¶ 46 Defendant stated that, as he rose to his knees, he heard two "pops." He stood and ran from the door. He heard more pops and looked back to see the flash of a gun. Defendant realized he had been shot. Defendant did not feel any pain when he heard the first two pops, and presumed he was not hit at that time. Defendant was about 10 to 12 feet away from the house when he was first hit. Defendant also saw Jeff get shot in the foot. Defendant tried to reach his truck, but collapsed. He faded in and out of consciousness.

¶ 47 Defendant testified that he remembered the ambulance staff telling him that he had attacked two people. He told them they were "nuts." Defendant also recalled speaking to Buffington at Lutheran General. Defendant was on medication at the time and informed Buffington of that fact. Defendant told Buffington not to trust what he was saying because he was barely conscious. Defendant recalled laughing when Buffington related that defendant had been blaming Mike Yost for his injuries.

¶ 48 Defendant acknowledged that Jeff stated to police that defendant had told him to mention Mike Yost when they went to the door of the house. Defendant explained that Mike Yost is a police officer whom defendant knew from their involvement in Boy Scouts. Defendant testified

that, on the way to pick up Zachary, he told Jeff that if he ever got in trouble again (Jeff had recently been in an altercation at school), he should tell the officers that he is a friend of Mike Yost.

¶ 49 Defendant also acknowledged that Jeff claimed to have believed at one point that Zachary was being held hostage inside the home. Defendant testified that he had no knowledge of any hostage situation.

¶ 50 Following defendant's testimony, defense counsel began his closing argument by asserting that "intent is a huge part of this case because you have to make a determination about what kind of intent [defendant] had when these incidents happened." Counsel focused on defendant's intent in going to the Stevens' home. Defendant did not go there, counsel argued, "because he was committing a crime or wanted to commit a crime." If defendant wanted to commit a crime, he would not have taken his son and put him in harm's way. Counsel suggested it was "a stretch to suggest that [defendant and Jeff] went there with anything other than the intent to pick up [Zachary]." Counsel continued with this theme:

> "[W]e focus on the intent, whatever intent you find we believe is not a criminal one. And to the extent that there is a limited authority doctrine that comes into play here, that you keep in mind that he did not have any intent to commit a criminal act within that dwelling. A battery occurred, but there was no criminal intent to commit a battery. There was no criminal intent to commit any crime inside of that house, and we believe-"

¶ 51 At this point, the trial court interrupted to inquire whether intent to commit a crime within the residence was an element of home invasion. In response, counsel clarified that his argument was based on the statutory element of entry that is knowing and without authority. See 720 ILCS 5/12-11(a)(2) (West 2008). Counsel recognized that, according to defendant's testimony, "he

did not get passed a certain point into the dwelling." Counsel "was not going to argue whether that constitutes entry or not because there is some other evidence that you heard about what happened inside that house." Counsel's argument, rather, was that if defendant did enter, "it was related to *** the concern he had for his son, not to commit a trespass, *** not to commit a home invasion." According to counsel, it was not "clear that [defendant] knowingly entered that house." Rather, defendant "did so only when it became apparent that his son was not coming out and that he had concern for his safety."

¶ 52 Counsel then diverted from this theme and made a series of other observations. First, counsel addressed the allegation of intentional injury to Karol Stevens. Counsel argued that, "while there may have been an injury, *** it was not intentionally caused, [but] was a byproduct of the misunderstanding and confusion that put these—this situation in motion."

¶ 53 Second, counsel noted that the police photographs of the Stevens' home showed no evidence of water in the front hallway, contrary to what one would expect if someone had entered from outside on a snowy evening. Third, counsel noted that the photographs showed more blood outside the house than inside. Fourth, counsel was critical of John Stevens for retrieving a gun rather than calling 911.

¶ 54 Counsel then returned to the theme of intent. Counsel asserted that, whatever physical evidence existed to support the Stevens' account of events, "it doesn't change what we believe to be a critical issue with respect to why it was that [defendant] went to that home, why it was that he passed the threshold, however much he did." Counsel noted that defendant and Jeff made no attempt to conceal their identities when they went to the Stevens' house. Counsel acknowledged that the manner in which, according to Jeff, Karol Stevens answered the door "may have caused

[defendant] to want to have a little bit more information before leaving." However, "at no time *** did the level rise to intentionally wanting to commit a criminal act against Mrs. Stevens."

¶ 55 In conclusion, counsel asked the court to find defendant not guilty of home invasion. Counsel suggested that the evidence would at most support a conviction for battery (but not aggravated battery) or criminal trespass to land.

¶ 56 Counsel did not formally invoke a defense of insanity or insinuate that defendant was mentally ill when he committed the offense. Counsel did reference defendant's mental condition during Buffington's interview, but only to suggest that defendant's statements should be weighed in light of the medication he was under during the interview.

¶ 57 In its closing argument, the State recognized that defendant apparently had substantial stress in his life at the time of the incident. The State suggested that it "doesn't matter" whether "th[e] stress of everything got to [defendant]." The State continued:

> "Perhaps if your Honor was thinking of the guilty but mentally ill finding, maybe that would be justified. We really haven't had much evidence about a diagnosis, and the defendant testified up there, answered all of the questions and didn't—didn't hear voices or see things that didn't appear to be there."

¶ 58 The trial court found defendant guilty of home invasion. The court commented:

> " 'The defendant really did not raise in his testimony any defense other than that he did not do what the Stevens['] said that he did because his testimony was, 'I didn't go into the house other than from my chest up to my head because I fell against the door and it opened and I went inside.' "

¶ 59 Later, the trial court reiterated: "So the defendant's version of this is he never went inside." The court found "absolutely credible" the Stevens' version of the events, which was that

defendant knowingly entered the home (without authority) and deliberately injured Karol. The court concluded with these remarks:

> "I don't find this case to have raised any lesser included offenses, and I regret, truly, that my finding in the case has to be that the defendant is guilty of the offenses of home invasion."

¶ 60 The court found that the two counts of home invasion merged for purposes of sentencing. The court set the case for sentencing and ordered a presentence investigation report.

¶ 61 C. Posttrial Proceedings

¶ 62 1. Motion for a New Trial

¶ 63 Defense counsel filed a motion for a new trial. Counsel asked the court to vacate the conviction for home invasion and enter a conviction for battery or criminal trespass to land. Counsel alternatively asked the court enter a finding of guilty but mentally ill on the home invasion charge. Counsel reasoned:

> "Clearly, the Defendant's testimony was in direct conflict with all other evidence adduced at trial and in direct conflict with what could generally be termed the 'facts' of the case. As was argued, this was not because the Defendant suffered from poor credibility, but rather is due to mental illness that the Defendant suffers from and has suffered from for many years. He simply cannot see events that occur as they occur but within the prism of what he incorrectly perceives to be the case. The Defendant does not appreciate the criminality of his conduct."

¶ 64 Defendant, who retained the same counsel for the posttrial motion, did not raise any complaint regarding counsel's performance at trial.

¶ 65 The trial court denied the motion without specifically commenting on the request for a finding of guilty but mentally ill.

¶ 66 2. The PSI Report

¶ 67 The PSI report was filed on October 29, 2012. The writer described defendant's turbulent personal life, including a failing business venture, deteriorating finances, continual litigation with his ex-wife Linda over custody of their children, and his struggle to raise the children on his own. The writer recounted what family members Jeff, Karen, Hank and Merle, and friend Kim Mininni, told authorities about defendant's conduct in the period prior to the offense. Jeff said that defendant, who was normally funny and jocular, recently became very quiet and kept to himself. Defendant "seemed agitated and was acting a little peculiar." Jeff observed defendant pace the house and unplug the phone and computer. Jeff surmised that defendant's mood change may have been related to his stress over his business and the custody litigation.

¶ 68 Karen reported that defendant had been tense and impatient. He was not sleeping well and was not listening when people spoke to him. For no apparent reason, he frequently unplugged the computer. Karen observed defendant speaking angrily on the phone on the day of the incident.

¶ 69 Hank said that defendant " 'sounded wacky' " and seemed paranoid when he spoke to him on the day of the incident. When Hank asked defendant what he was talking about, defendant replied, " 'You'll see, you'll see.' " Hank wondered whether defendant suffered a nervous breakdown from stress.

¶ 70 Merle also believed that defendant must have suffered a nervous breakdown from the stress of work, financial problems, and conflict with his ex-wife.

Mininni said she met defendant through Scouting several weeks before the incident and had regular contact with him. Defendant was usually " 'lighthearted, overly excited, and happy-go-lucky,' " but when she spoke to him in the early evening on December 26, 2009, his " 'tone and demeanor were [the] opposite' " and the conversation was " 'very disturbing.' " Defendant's "speech was slow and precise and he was a bit cold and accusatory towards her." Defendant claimed Mininni knew Mike Yost but had lied to defendant about it. (Mininni denied to authorities that she ever met Yost). Defendant claimed he was working with the Chinese on top-secret material that he could not disclose over the phone. He asked Mininni if she heard "clicking" on the phone line indicative of government wire tapping. Their conversation ended about 5:25 p.m. on December 26, and left her very disturbed. She attempted to call defendant later that evening to see if he was alright.

¶ 71 Also attached to the PSI report were records of defendant's inpatient treatment at Lutheran General from December 26, 2009, to January 26, 2010. The records indicate that, early in his hospitalization, defendant showed symptoms of schizophrenia and was intubated "due to altered mental status." Due to defendant's "florid psychosis," a family member had to consent to his surgery. Following surgery, defendant was monitored and medicated by psychiatric services for delirium. He was having hallucinations of people coming to his room. When defendant was extubated on January 3, he showed signs of confusion and was mistaking strangers for people he knew.

¶ 72 The hospital records contain regular psychiatric progress reports on defendant beginning January 6, 2010. The January 6 report describes defendant's "AMS" [altered mental status] as "likely delirium secondary to recent surgical procedures and pain medications." The report noted that "other diagnoses could not be completely ruled out at this point." For instance,

"[t]here is [a] possibility of underlying psychotic d/o, although it would be unusual to have new onset psychosis onset [*sic*] at this age and for it to present suddenly." Over the next several days, defendant's confusion fluctuated. He was confused about who had come to his room: he claimed, incorrectly, that his family members had not visited him. Defendant also claimed to have left the hospital for several weeks and returned.

¶ 73 On January 11, defendant underwent a neuropsychological evaluation. He told the evaluator that his ex-wife might have been involved in his injuries. Defendant "showed significant problems with working memory, sustained attention, and flexible attention, consistent with clearing delirium and probable concussion secondary to left front orbital injury." Qualifying the diagnosis of delirium, the evaluator noted that defendant "reportedly had some behavioral changes in the two weeks preceding his injury including some paranoia." The evaluator noted that defendant's subdural hemorrhage "ha[d] the potential to heighten any preexisting mood problems or behavioral disinhibition he may have already shown prior to the injury."

¶ 74 The psychiatric progress reports for the next several days noted overall improvement but still some instances of suspicion, paranoia, or delusional thinking. On January 16, defendant claimed that the person who shot him came into his room last night. Defendant was recommended for inpatient psychiatric treatment. His discharge report from the medical floor notes that "[i]n talking to his family, [defendant] may have also had some previously undiagnosed psychiatric issues." Defendant's admission form for the psychiatric floor reported that he believed he was a federal marshal and that the hospital staff were not legitimate.

¶ 75 A progress note from January 17 states that defendant was showing agitation, irritability, and paranoia, but that this improved throughout the day.

¶ 76 On January 18, defendant underwent a psychosocial assessment. The evaluator recounted defendant's mental health history during his time in the medical unit:

> "[Patient] was exhibiting MS changes while on the medical unit. [Patient] demonstrated some confusion, which apparently worsened in the evening hours. Demonstrated confusion was believing that he new [*sic*] strangers personally and unable to recall time line of recent events. Apparently, since admission, [patient's] confusion has improved. His confusion has been attributed to delirium related to the recent injuries and required treatments for stabilization.
>
> [Patient's] family reported [patient] acting strange for the two weeks prior to [patient's] admission. [Patient] was paranoid at the time of the incident ***.
>
> [Patient] and family deny [history of] and/or current symptoms of depression, mania, and anxiety, and/or psychosis."

The evaluator observed that defendant's thought processes were logical and linear during the interview. The evaluator diagnosed defendant with "Psychosis NOS."

¶ 77 In the progress note of January 18, defendant was observed to be suspicious but not as paranoid. The diagnosis remained "delirium secondary to recent surgical procedures and concussion." Defendant continued to suspect that his wife was responsible for his injuries. Defendant's sister reported him as saying that the police were in the hospital and "were arresting the other man."

¶ 78 The progress note from January 19 stated that defendant was less suspicious that day. His confusion was fluctuating, but this was expected given that his condition was "likely delirium secondary to concussion." As before, there was noted the "possibility of underlying

psychotic [disorder], although it would be unusual to have new onset psychosis onset [*sic*] at this age and for it to present suddenly."

¶ 79 On January 20, it was noted that defendant did not seem confused, disoriented, or paranoid. Defendant was to be monitored "for consistent clearing of delirium and absence of paranoid or agitated periods seen in past week."

¶ 80 From January 21 to January 26, the date of his discharge, defendant was monitored for clearing delirium, agitation, and paranoia. The January 26 discharge form notes that defendant claimed someone had been impersonating him for years, but defendant did not provide details. Defendant was discharged with instructions to follow up with therapists and psychiatrists. He was prescribed no medication.

¶ 81 The PSI writer arranged for defendant to sit for a psychological evaluation by Dr. Holly Hinton, a psychologist employed by Lake County. The evaluation occurred in October 2012. In her written report, Dr. Hinton related the account defendant gave her of the events of December 26, 2009. The account was in all major details identical to the version defendant gave Dr. Chantry in her evaluation of May 2010. As for her clinical observations, Dr. Hinton noted that defendant showed no evidence of a formal thought disorder, but his capacity for insight and judgment were fair to poor. Defendant denied any perceptual disturbances. He showed some evidence of paranoid thought content. His primary defenses were denial and minimization. Defendant's intelligence measured as average. A battery of psychological tests showed that defendant was optimistic and somewhat grandiose in his thinking, tended to deny his feelings of anger, and "present[ed] a façade of sociability, maturity, and self-assurance to hide the inadequacy and sterility he feels." Hinton's diagnostic conclusions were: "Axis I: 799.9

Deferred Diagnosis" and "Axis II: 301.9 Personality Disorder, NOS (Narcissistic, Histrionic and Obsessive Compulsive Traits)."

¶ 82 As for defendant's criminal history, the PSI writer noted that, in 1996, defendant was arrested for driving under the influence. He was given court supervision, which terminated satisfactorily. In 2008, defendant was fined for "Trans/Carry Alcohol/Driver." The writer gave the following account of his interview with defendant:

> "[Defendant] denied entering the Stevens' home; he expressed no understanding or empathy for how this experience may have impacted [the Stevens'], and made it clear that he believes he is the victim of an unjustified shooting. He explained his injuries at length, and he referred to Mr. Stevens (in a letter to this officer) as a 'maniac.' When asked about the offense, the defendant explained that it was snowing and 'you really couldn't see.' He accidentally went to the wrong street, and when he knocked on the door he thought he was at the Reyes residence (where his son Zach was). He did not give any explanation for his apparent belief that Zach was in some type of trouble or being held hostage, nor did he acknowledge that his actions at the Stevens' house were in any way excessive or extreme. As it has been nearly three years since this incident occurred, it doesn't seem likely that his stance on this event will change."

¶ 83 3. Sentencing

¶ 84 At sentencing, defense counsel stated that he still "believe[d] that [defendant] did not appreciate the criminality of his conduct at the time that this offense was committed or at anytime, even as he sits here before you today."

¶ 85 In his statement to the court, defendant claimed there was "a degree of misrepresentation due to the fact [he] had a brain concussion from the bullet wounds and from the baseball bat [he]

got hit with 40 feet from the house" (there was no mention of a baseball bat anywhere else in the record). Defendant could not "say who was there." He could not "tell you anything because [he] had [his] scout master's hat on the whole time." Defendant also mentioned the "blizzard conditions" on the night of the incident. Defendant could "feel for the Stevens' with their position on what they believed happened," but defendant "believe[d] also [his] position ha[d] been misconstrued due to my brain concussion." Defendant believed his family misinterpreted the evaluations done on him and concluded he was "crazy."

¶ 86 In imposing sentence, the trial court considered as a mitigating factor defendant's lack of a significant criminal history. The court considered as aggravating the fact that defendant's conduct "threatened serious harm to two individuals." The court also commented: "A caring father bringing his son into a situation like that I have to question and having him shot at the same time." The court observed that defendant had not taken responsibility for his actions, but did not consider this an aggravating factor because defendant's memory of the incident may have been affected by his brain injury. The court noted that none of the mental health evaluations done on defendant could "explain *** why what happened on that December night in fact took place." The court "ha[d] no idea" why the incident occurred, but specifically found no evidence that it was related to a "delusional episode" suffered by defendant. The court took into account the considerable stress defendant had in his personal life at the time of the incident, but found those circumstances did not excuse the offense. Finally, the court could not find that defendant was not likely to commit another offense. The court then said: "I hope in the Department of Corrections you are able to get some psychological treatment that is going to assist you in dealing with this as well."

¶ 87 The trial court sentenced defendant to a 14-year term of imprisonment. The court initially ordered that the sentence be served at 85%, but later vacated this requirement because there was no finding of great bodily harm to the victims.

¶ 88 Defendant filed this timely appeal.

¶ 89 II. ANALYSIS

¶ 90 A. Ineffective Assistance of Counsel

¶ 91 Defendant's first contention on appeal is that his trial counsel was ineffective for failing to raise and develop the defense of insanity. If that defense had been raised, defendant notes, the trial court would have had two additional adjudicatory options: (1) a finding of not guilty by reason of insanity; and (2) a finding of guilty but mentally ill. See 725 ILCS 5/115-3(c) (West 2008); *People v. Gosier*, 145 Ill. 2d 127, 142 (1991). According to defendant, a properly developed insanity defense would have yielded one of these results. We disagree.

¶ 92 We comment at the outset that this claim of ineffectiveness is raised for the first time on direct appeal from defendant's criminal conviction. The parties do not recognize it, but not all claims of ineffectiveness of trial counsel are suitable for review on direct appeal. See *People v. Burns*, 304 Ill.App.3d 1, 11 (1999) ("Where disposition of a defendant's ineffective assistance of counsel claim requires consideration of matters beyond the record on direct appeal, it is more appropriate that the defendant's contentions be addressed in a proceeding for postconviction relief, and the appellate court may properly decline to adjudicate the defendant's claim in his direct appeal from his criminal conviction."). Defendant does not base his ineffectiveness claim on any materials that are not part of the record. We do, however, lack any explanation from trial counsel himself as to why a defense of insanity was not raised at trial. We presume it was a conscious and deliberate decision, given that defense counsel explored defendant's mental health

thoroughly before trial and, on the morning of trial, gave notice of an intent to raise the defense. Since we have no direct evidence, we must ultimately make an inference as to counsel's rationale for omitting the defense. The parties appear not to have any objection to this course.

¶ 93 Claims of ineffective assistance of counsel are evaluated under the familiar standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984), which requires the defendant to demonstrate: (1) that counsel's performance fell below an objective standard of reasonableness; and (2) a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). Because a defendant must satisfy both prongs of this test, the failure to establish either prong is fatal to the claim. *Strickland*, 466 U.S. at 697; *People v. Clendinin*, 238 Ill. 2d 302, 317-18 (2010).

¶ 94 Before proceeding further, we address the State's assertion that defendant's ineffectiveness claim is misconceived because the defense of insanity was, in fact, raised at trial. The State points to the defense's answer to discovery, filed on the morning of trial, purporting to assert the defense of insanity. The State also asserts that the testimony elicited by defense counsel furthered the theory of insanity:

> "From start to finish, defense counsel questioned the witnesses with an aim toward showing both that defendant did not knowingly enter the Stevens' home or intentionally cause Karol Stevens' injury and also that defendant may have been insane or mentally ill. He did this in part by eliciting evidence regarding defendant's odd behavior and statements both before the charged incident and afterwards, while defendant was in the hospital recovering from gunshot wounds incurred as a result of the incident."

The State provides no citations for these assertions. The requirement of record citations to support factual assertions applies to appellee and appellant alike. See Ill. S. Ct. R. 341(i) (eff.

Feb. 6, 2013) (applying Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) to appellees' briefs). In any event, despite what defense counsel asserted in the discovery disclosure and what he elicited from the witnesses, counsel's opening statement and closing argument made no recognizable suggestion that defendant committed the crime while mentally ill. Not surprisingly, counsel's efforts, whatever their intention, did not suffice to notify the trial court that the defense of insanity was asserted. The court remarked that the only defense developed by defendant's testimony was that he never intended to, nor did, enter the Stevens' home, but inadvertently fell with his body athwart the threshold. If counsel had made it clear that he was raising the insanity defense and the trial court failed to recognize it, defendant would have an altogether different ground for appeal. On this record, however, it is clear that defense counsel did not raise the defense of insanity. We proceed, then, with our *Strickland* analysis.

¶ 95 Regarding the performance prong, counsel's action (or inaction) is judged using an objective standard of competence under prevailing professional norms. *Ramsey*, 239 Ill. 2d at 433. "To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy." *Id.* "As a result, counsel's strategic choices that are made after investigation of the law and the facts are virtually unassailable." *Id.* The choice of what defense(s) to present at trial falls within the realm of trial strategy. *Clendenin*, 238 Ill. 2d at 319; *People v. Morris*, 2013 IL App (1st) 110413, ¶ 74.

¶ 96 Defendant raises two main points under the performance prong, which we address in the following order. First, defendant contends that, since counsel evidently believed enough in the insanity defense to communicate, on the morning of trial, an intent to raise it, he should have followed through. We have no record of counsel's thought process, but we do know that he explored the issue of defendant's mental health for months prior to trial and had the insanity

defense in mind that morning. We infer that he deliberately chose, albeit at the eleventh hour, to forgo the insanity defense. Under *Strickland*, we accord that choice a strong presumption of soundness. Certainly, that decision was not unsound *merely* because it reversed a prior course of action. Trial attorneys must remain flexible and willing to alter strategy on the eve, and indeed in the midst, of trial.

¶ 97 Defendant, however, interprets counsel's decision, post trial, to request a finding of guilty but mentally ill as showing that counsel either (1) erroneously recalled that he raised the insanity defense at trial; or (2) misapprehended the law (that a finding of guilty but mentally ill is not permitted where the insanity defense is not raised (see *People v. Goiser*, 145 Ill. 2d 127, 142 (1991)). Again, we have ample reason to believe that counsel deliberately did not present an insanity defense at trial. Whether counsel may have forgotten or regretted that decision does not itself persuade us that the choice was outside the bounds of professional norms.

¶ 98 Second, defendant criticizes the defense theory presented at trial and claims that the merits of an insanity defense would have been apparent to any reasonably competent defense attorney. The sequence within this contention is correct. We look first at the defense actually presented, to determine if it met minimal constitutional standards. "Generally, counsel's choice of an appropriate defense is a matter of trial strategy or tactics not reviewable under the *Strickland* test, unless that choice is based upon a misapprehension of the law." *People v. Garmon*, 394 Ill. App. 3d 977, 987 (2009). "Misapprehension of a defense theory may be shown where evidence is presented in such a manner that the [finder of fact] is left with no choice but to convict defendant of the offenses charged ***." *Id.;* see also *People v. Wright*, 111 Ill. 2d 18, 27 (1986) ("Here counsel's decision not to raise a defense of intoxication or present the expert witness in support of that defense was attributable, it appears, to counsel's misapprehension of

the law and not to trial tactics or strategy."). For instance, in *People v. Manns*, 373 Ill. App. 3d 232 (2007), and *People v. Young*, 220 Ill. App. 3d 98 (1991), both cited by defendant to support his claim of ineffectiveness, the defendant claimed on appeal that his defense counsel was ineffective for failing to raise the defense of insanity at the defendant's discharge hearing. In *Young*, this court first looked at defense counsel's actual performance at the discharge hearing, specifically at the defense theory actually utilized. See *Young*, 220 Ill. App. 3d at 107-08. Only after determining that the defense theory was flawed (and indeed failed even meaningfully to test the State's case) did we examine the potential merits of an insanity defense. *Id.* Likewise in *Manns*, which relied extensively on *Young*, the Fourth District Appellate Court cited counsel's failure to conduct a meaningful testing of the State's evidence at the discharge hearing. See *Manns*, 373 Ill. App. 3d at 241.

¶ 99 Therefore, as in *Young* and *Manns*, our threshold concern is trial counsel's actual performance. Employing the standard from *Garman*, we determine whether the defense theory offered at trial was based on a legal misapprehension. See *Garman*, 394 Ill. App. 3d at 987.

¶ 100 Defendant claims there were two basic legal misconceptions in the defense theory at trial. First, he asserts that the limited-authority doctrine invoked by counsel was simply inapplicable to the facts developed at trial, because neither the State's nor the defense's version of events considered the possibility that defendant was an invitee of the Stevens'. See *People v. Godfrey*, 382 Ill. App. 3d 511, 514 (2008) ("[T]he limited authority doctrine *** deals with the limited nature of an invited person's authority to be in a dwelling"; therefore, the doctrine "applies only after a defendant is invited into or granted access to a dwelling."). Indeed, the accounts given by the Stevens' and by Jeff were that defendant stormed into the house uninvited, and defendant himself testified that his partial entry into the Stevens' home was uninvited *and* inadvertent.

¶ 101 Second, defendant asserts that counsel gave misplaced emphasis to defendant's intent in entering the Stevens' household. Counsel argued that, to whatever extent defendant entered the Stevens' house (and counsel expressly had no opinion on whether defendant's fall onto the threshold was a true entry), he did not commit home invasion because he had no intent to commit a crime therein when he entered. As defendant correctly observes, the entry itself must be knowing, but no proof is required of the intent behind the entry. See 720 ILCS 5/12-11 (a)(2) (West 2008) (a person commits home invasion when, *inter alia*, he "knowingly enters the dwelling of another"); *People v. Pavic*, 104 Ill. App. 3d 436, 448 (1982) ("By definition, *** home invasion does not require that a person have a felonious intent or intent to steal at the time he or she enters a dwelling without authority.") According to defendant, counsel disputed proof of a nonexistent element while failing to address the actual elements of the crime.

¶ 102 We need not determine whether these argumentative tacks by counsel were, indeed, legally misconceived, for these were not part of the defense theory that the trial court ultimately evaluated. While obviously cognizant of counsel's closing argument, the court found that the only theory actually advanced by defendant's testimony was he simply did not even enter the Stevens' home. This particular theory was contradicted by the accounts given by the Stevens' and by defendant's own son, Jeff, and also by the physical evidence suggesting that defendant was well inside the home when shot. While perhaps evidentially thin, this theory was not a legal misapprehension.

¶ 103 An illustrative contrast here is the defense theory put forward in *Young*. The defendant in *Young* was charged with armed violence, intimidation, and unlawful use of weapons. He was found unfit to stand trial, and ultimately a discharge hearing was held. At the hearing, the defendant's ex-wife and son testified that the defendant held them at the point of a shotgun while

demanding that the ex-wife write out a confession that she killed the defendant's mother (who in fact was alive). *Young*, 220 Ill. App. 3d at 102-03. Defense counsel cross-examined the ex-wife and son but presented no witnesses. Counsel's sole argument on guilt was that "because the intimidation charge depended on the use of the shotgun, the armed violence charge was an impermissible attempt to enhance defendant's actions to a Class X felony, as the armed violence charge rested on the same use of the shotgun." *Id.* at 104.

¶ 104 The court found that the State's evidence was sufficient to prove the defendant guilty beyond a reasonable doubt of the offense charged. On appeal, the defendant argued that his trial counsel was ineffective for failing to raise the insanity defense at the discharge hearing. This court agreed, finding that counsel provided inadequate representation at the discharge hearing and that an insanity defense would have had a reasonable probability of success. *Id.* at 107-09. On the competency issue, the court noted that defense counsel "put on no witnesses and engaged in minimal cross-examination or argument." *Id.* at 107. Moreover, "[s]uch cross-examination and argument as he made *** were almost entirely directed toward his theory that a conviction of armed violence would be an improper double enhancement of an intimidation conviction." *Id.* We found this theory "unsound as a matter of law." *Id.*

¶ 105 In distinction to *Young*, the theory that defendant advanced in his testimony was not legally unsound, though it was thoroughly contradicted by the State's proof.

¶ 106 More importantly, however, we are reluctant to hold counsel responsible for a defense theory that was evidently defendant's decision to present. While the choice of a defense theory is normally that of defense counsel (see *Clendenin*, 238 Ill. 2d at 319), here defendant and counsel were on divergent paths at trial. Defendant testified that he never entered the home but merely tripped at the threshold, while counsel in closing argument conceded the possibility that

defendant entered the home, and argued instead that, to whatever degree defendant's body was inside the building, he did not commit home invasion because he lacked the intent to commit a crime within the house. While we have no record of counsel's thought process in preparing for trial, we presume from the lack of defense cohesion at trial that counsel and defendant had differing views of how to defend the case. Defendant exercised his fundamental right to testify at trial (see *People v. Madej*, 177 Ill. 2d 116, 145 (1997)), electing to present in his testimony the account to which he had adhered in the months preceding the trial, namely in his evaluations by Dr. Chantry. Defendant makes no claim that counsel in any way influenced his decision to present his "no entry" theory to the trial court; on the contrary, counsel and defendant appear to have been divided on defense strategy. Consequently, defendant cannot now blame counsel for the infirmities of that theory. See *People v. Connery*, 296 Ill. App. 3d 384, 390 (1998) (where it was "logical" for the defendant to testify in his own defense, and where that decision in any case rested ultimately with the defendant, counsel was not incompetent in calling the defendant to testify).

¶ 107 Our inquiry could stop here, because we hold that the defense theory presented through defendant's testimony (which was the theory evaluated by the trial court) was not based on a legal misapprehension and, moreover, was defendant's free choice to present. Assuming *arguendo* that (1) trial counsel could be held responsible for the "no entry" defense, and (2) the defense was legally misconceived, we hold that counsel was not incompetent for failing to present an insanity defense.

¶ 108 At the outset, we note that defendant's consistent denial—in police interviews, psychological evaluations and his trial testimony—that he fulfilled the *actus reus* of home invasion is in considerable tension with his claim that counsel should have presented an insanity

defense. While it may not be ineffective assistance for defense counsel to present both a reasonable doubt and an insanity defense at trial, as those theoretically inconsistent defenses are in practice accepted in Illinois courts (see *People v. Whitehead*, 169 Ill. 2d 355, 383 (1996)), the converse is not true, and a reasonably competent attorney may decline to offer both defenses (see *People v. Wilson*, 191 Ill. 2d 363, 372 (2000) (trial counsel not ineffective for failing to present insanity defense, because, *inter alia*, "[e]xcept for his statements to the police, defendant continually and steadfastly denied participating in the crime"). As we have noted, there was already some lack of cohesion in the defense at trial, with defendant denying that he entered the Stevens' home and trial counsel declining to comment on whether he did or not. This does not mean, however, that counsel was obligated to add yet another layer, and perhaps even greater divergence, to the defense by pressing insanity as well.

¶ 109 Even if we set this consideration aside, we still would not find trial counsel incompetent. Certainly, defense counsel has "the obligation to independently investigate any possible defenses." *People v. Domagala*, 2013 IL 113688, ¶ 38. We do not, however, interpret defendant as claiming that defense counsel failed to investigate an insanity defense, nor could defendant reasonably so claim. Counsel spent months before trial inquiring into defendant's mental health. Counsel arranged two fitness evaluations and a comprehensive psychological evaluation. Counsel also requested records of defendant's hospitalization to determine what bearing defendant's mental health had on the case. Defendant identifies no piece of information that counsel failed to consider in determining the appropriate defense at trial. See *Young*, 220 Ill App. 3d at 109 ("Normally, a failure to investigate will not support a claim of ineffective assistance of counsel unless defendant on appeal can show with some specificity what additional evidence his trial counsel could have produced from the investigation."). Rather, defendant simply disagrees

with counsel's ultimate choice. However, counsel's selection of a defense theory after an informed winnowing process is "virtually unassailable." *Ramsey*, 239 Ill. 2d at 433; see also *People v. Smith*, 242 Ill. App. 3d 355, 565 (1993) ("Defense counsel's decision to rely on one theory of defense to the exclusion of other theories is generally a matter of trial strategy.").

¶ 110 The defense of insanity has these elements: "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). "When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity." 720 ILCS 5/6-2(e) (West 2008). "However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged ***." 720 ILCS 5/6-2(e) (West 2008). Insanity may be established entirely by the testimony of lay witnesses. *People v. Dwight*, 368 Ill. App. 3d 873, 880 (2006).

¶ 111 However, "[a] person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill." 720 ILCS 5/6-2(c) (West 2008). " '[M]ental illness' or 'mentally ill' means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior." 720 ILCS 5/6-2(d) (West 2008).

¶ 112 Defendant contends that the indicia of insanity known to counsel here was just as compelling as that in *Young* and *Manns*. First, we emphasize that, unlike in *Young* and *Manns*, we have not found counsel's performance at trial fundamentally deficient, but are simply

assuming so *arguendo*. After concluding that counsel's theory of the defense, if any, was fundamentally flawed, the court in each case determined that the facts known to counsel about the defendant's mental health would have suggested to a reasonably competent attorney that insanity was a viable defense. See *Manns*, 373 Ill. App. 3d at 241; *Young*, 220 Ill. App. 3d at 107-08.

¶ 113 In *Young*, the defendant was accused of holding his ex-wife and son at gunpoint and demanding that she confess in writing to killing the defendant's mother, who was in fact alive. The defendant was evaluated for fitness by a psychologist, who concluded that the defendant had a significant psychiatric disorder characterized by delusional thinking. *Young*, 220 Ill. App. 3d at 100. In a subsequent evaluation, a psychiatrist noted that the defendant had a history of psychiatric disorders and currently suffered from paranoid and persecutory delusions. *Id.* at 100-01. In later evaluations, the defendant was found to have a paranoid delusional disorder that appeared to be worsening. *Id.* at 101. In finding that it was objectively unreasonable for counsel not to argue insanity at the discharge hearing, this court cited the conclusions of the evaluators that the defendant "was suffering from paranoia and delusional thinking." *Id.* at 108. Noting that one of the evaluators found that the defendant's alleged conduct was " 'more in line with a person suffering persecutory delusions than a rational man,' " we said, "Indeed, it is hard to imagine why else defendant would have coerced his former wife at gunpoint into signing a 'confession' that she killed someone who was not dead." *Id.* at 108.

¶ 114 In *Manns*, the defendant entered a bank, approached a teller, and demanded money or he would shoot her. The teller could not see the defendant's hands but believed he had a gun. The defendant said he used to own the bank and that it was "taken from him." He demanded only $100 and deliberately left his identification card. *Manns*, 373 Ill. App. 3d at 236-37. As might

be anticipated, the police soon found and arrested the defendant. Over several months, the defendant had a total of six fitness evaluations by two different doctors. The evaluators noted that the defendant had a history of psychiatric admissions. The first evaluator, who first saw the defendant 22 days after the offense, diagnosed him with a thought disorder characterized by persecutory and grandiose delusions, hallucinations, and paranoia. The second evaluator diagnosed the defendant with schizo-affect disorder, bipolar type. At the various evaluations, defendant made delusional claims such as that he was a Hollywood actor, a lawyer, and a doctor, and that movies and songs he wrote had been stolen from him. He claimed to have originated the name for the bank he robbed and that the bank stole the name from him. *Id.* at 234-36. The appellate court concluded that the viability of an insanity should have been evident to counsel:

> "Based on the bizarre nature of the offense and defendant's psychological evaluations, his conduct was more in line with a person suffering persecutory delusions than a rational man. ***
>
> *** [T]he defendant's mental state just 22 days after the alleged offenses coupled with his history of mental illness and his bizarre conduct and statements on the day of the offense bespeak the merits of the defense." *Id.* at 241-42.

¶ 115 Both *Young* and *Manns* are readily distinguishable from the present case. First, unlike the defendants in those cases, defendant had no diagnosis of mental sickness or mental health treatment prior to the offense. Second, the defendants in *Young* and *Mann* were found unfit to stand trial and diagnosed with significant, debilitating mental pathologies that apparently persisted at the time of the discharge hearings. While defendant also exhibited substantial paranoia and delusions after his arrest, the psychiatric staff who treated him attributed those symptoms to his brain injury and associated treatment. The staff anticipated that the symptoms

would diminish, and they did. Defendant was thereafter evaluated four times: three times by Dr. Chantry and one time by Dr. Hinton. In both March and May 2009, Dr. Chantry diagnosed defendant with a mood disorder. In May 2009, she also diagnosed him with a brief psychotic disorder, which apparently was in reference to a delusional period in late April/early May 2010, which was no longer persisting when Dr. Chantry evaluated defendant in late May. In December 2010, Dr. Chantry diagnosed defendant with a cognitive disorder and a personality disorder but did not believe that defendant needed any mental health treatment. In October 2012, Dr. Hinton found defendant to have a personality disorder. Except for the period in late April/early May 2009, defendant no longer exhibited paranoid or delusional thinking.

¶ 116 We acknowledge, however, that defendant did show behavioral changes in the period prior to the offense. Normally energetic, jocular, and light-hearted, defendant became quiet, withdrawn, agitated, and irritable. His father, Hank, said that defendant acted " 'wacky,' " and his children noticed defendant unplugging his phones and computer. His family attributed his behavior to stress, and defendant's parents speculated that defendant suffered a nervous breakdown. Defendant's acquaintance Kimberly Mininni related that, on the day of the offense, defendant claimed to be working with the Chinese on top-secret material and was concerned about wiretaps. He also made a strange comment about Mike Yost. Jeff, recounting the events of December 26, 2009, stated that defendant told him to accompany him in their trunk, and, when they arrived at a house, told him to use a fake name. When defendant burst into the house, he told Jeff to get his brother.

¶ 117 This behavior certainly had aspects of delusion and paranoia, but such symptoms are not necessarily indicative of insanity. "[L]lay evidence of idiosyncratic or distorted behavior, irresponsible or bizarre conduct, unrealistic judgments, or the commission of atrocious crimes

does not alone justify a reasonable doubt of sanity." *People v. Uppole*, 97 Ill. App. 3d 72, 79 (1981). Defendant notes that, in her May 2010 evaluation, Dr. Chantry commented that defendant apparently had been delusional at the time of his arrest. However, even after defendant had a delusional period in late April/early May 2010, Dr. Chantry was reluctant to diagnose him with a delusional disorder, because his symptoms were not typical. The psychiatric staff at Lutheran General had diagnosed defendant with clearing delirium secondary to brain injury and associated treatment. The staff noted the possibility of an underlying psychotic disorder, but commented that new onset of psychosis is unusual in a person of defendant's age. Thus, not only is defendant unable to point to a specialist who concluded that he had a mental disorder at the time of the offense, defendant's pre-offense conduct did not necessarily manifest insanity.

¶ 118 Finally, the offenses in *Young* and *Manns* bore clear marks of delusional thinking; the defendant in *Young* used a gun to enforce a patently false belief that someone was dead, while the defendant in *Manns* had a clearly deranged complaint against the bank he robbed, and showed his commitment to that irrational belief by inviting arrest. In contrast, the offense in this case was not necessarily indicative of a mental disorder. Defendant was out that night to pick up his son; he went to the wrong house, but he did have reason to be at *a* house. John Stevens believed he heard one of the intruders say, "This is for your brother." Quite possibly, this corroborates Jeff's account that defendant appeared to believe that Zachary was being held hostage inside the Stevens' home. Evidently, defendant was mistaken, but mistake does not necessarily amount to delusion; defendant may simply have misinterpreted communications that evening and, perhaps because of the stress he was under, lost his judgment and his temper.

¶ 119 Moreover, even if the assault on the Stevens' home was seemingly random and inexplicable, it is undeniable that sane people commit senseless and destructive acts. See *People v. Lono*, 11 Ill. App. 3d 443, 447 (1973) (affirming the trial court's rejection of the defendant's insanity defense though the murder appeared to be "without motive or reason"). Defendant by all accounts had no history of such violence, but again, a sane man may one day decide to commit mayhem. Hence, the bizarre or even atrocious character of an offense does not of itself compel a finding that the defendant was not legally sane when he committed the crime. See *Uppole*, 97 Ill. App. 3d at 79; *People v. Martinez*, 86 Ill. App. 3d 486, 491 (1980); *People v. Meeker*, 86 Ill. App. 3d 162, 168 (1980).

¶ 120 Defendant cites *People v. Kando*, 397 Ill. App. 3d 165 (2009), where the appellate court reversed the trial court's finding, following a bench trial, that the defendant was guilty but mentally ill, and not insane. The court found that the defendant proved he was insane when he committed the offense. The court pointed to lay and expert testimony that the defendant, when he attacked the victim, was operating under the delusion that the assault was commanded by God. *Id.* at 204. In fact, the court noted, "no one proffered any alternative motive or reason for defendant's actions, other than this motive." *Id.* at 205-06.

¶ 121 Defendant represents *Kando* as "holding that the defendant was guilty by reason of insanity in part because there was no alternative motive for the defendant's actions other than a delusion." Defendant finds *Kando* pertinent because the attack on the Stevens had "no discernible motive." In *Kando*, however, there was positive evidence of delusion. *Kando* does stand for the proposition that, where there is simply no proof of motive, delusion must be presumed. As the case law recognizes, even a sane person may regard mayhem as an end in itself. See *Lono*, 11 Ill. App. 3d at 447.

¶ 122 Also, we note that evidence of criminal planning bears against a finding of insanity. See *People v. Gilmore*, 273 Ill. App. 3d 996, 1000 (1995). Defendant placed a metal sheet under his shirt before he drove to the home where the offense occurred. This was consistent with an awareness that his contemplated action posed a risk of bodily harm to himself.

¶ 123 Finally, we discuss *Dwight*, also cited by defendant. In *Dwight*, the appellate court reversed the defendant's conviction for armed robbery because the trial court erred in refusing to instruct the jury on the defense of insanity. The appellate court noted the "bizarre" facts of the offense. *Dwight*, 368 Ill. App. 3d at 881. On November 20, 2000, the defendant approached the victim in her parked car and asked for directions. After she provided the directions, he told her that he did not want to hurt her but she needed to give him " 'something.' " The victim asked the defendant what he wanted. He was initially evasive, but then said he wanted her to be his girlfriend and engage in a sex act. When she refused, he brandished a gun and demanded her cell phone, its charger, and her "picture time card" that she used for work. He wanted the latter because it had her picture on it. The defendant then said he wanted a kiss, and the victim refused. The defendant left. The victim also testified that, after she gave the defendant directions, he asked her what she had for him. She asked him what he meant. He inquired if she had money, and she said no. The defendant left without taking the victim's purse or credit cards. *Id.* at 875-76.

¶ 124 The appellate court also noted the behavior changes that defendant's girlfriend and mother observed in him in October 2000, the month previous to the offense. The appellate court summarized the evidence:

> "At or near the time of the crime, the defendant's behavior had changed markedly. His appearance became unkempt, not neat and clean as he had been. He spoke loudly and

> cursed a great deal. He was paranoid, anxious, and frantic. He was depressed. He watched TV in his car. He told members of his family the FBI was trying to kill him and the CIA was shooting at him. He said he was God—and hit a door until his fist bled." *Id.* at 881.

¶ 125 The trial court allowed medical evidence of the defendant's mental health while it reserved ruling on the defendant's request for an insanity defense. The evidence showed that the defendant was seen by a doctor in late October and early November 2000, and was, consequently, placed on work restriction due to situational anxiety. A psychiatrist who saw the defendant in January and February 2001 found him to have a progressively depressed mood, agitation, an angry, hostile affect, and paranoid delusional thinking. The psychiatrist diagnosed him with paranoid delusional disorder and major depression with recurring psychotic features. *Id.* at 876-77.

¶ 126 The defendant was seen by another psychiatrist, Dr. James Corcoran, in June 2003 and June 2004. Dr. Corcoran believed that the symptoms reported by the defendant's mother and girlfriend were consistent with bipolar manic depressive illness. The facts of the offense also corroborated Dr. Corcoran's belief because hypersexuality is a common symptom of untreated bipolar disorder. *Id.* at 876. Dr. Corcoran further noted that the defendant claimed an inability to recall the incident of November 20, 2000, which may also have indicated bipolar disorder. Dr. Corcoran opined that the defendant was suffering from "bipolar disorder, a severe psychiatric illness," at the time of the offense. However, Dr. Corcoran could not give an opinion as to the defendant's sanity at the time of the offense, because the defendant "could not say what was going on in his mind at the time of the incident." *Id.* at 877.

¶ 127 *Dwight* is markedly different than this case. There was a medical opinion in *Dwight* that the defendant had a mental disorder at the time of the offense. Here there was no medical opinion as to defendant's mental condition when he rushed into the Stevens' home and attacked Karol. Dr. Chantry speculated that defendant might have been delusional at that time, but psychiatric staff at Lutheran General believed that onset of new psychosis at defendant's age was unlikely. Although, as *Dwight* noted, insanity may be established by lay evidence alone (368 Ill. App. 3d at 880), the medical opinion was prominent in *Dwight*'s analysis. Consequently, we cannot read *Dwight* as governing in these facts.

¶ 128 Based on the foregoing, we hold that a reasonably competent attorney could have concluded that a finding of not guilty by reason of insanity was not a realistic possibility under the facts known to counsel. Defendant contends, however, that counsel should have raised an insanity defense if only to allow the possibility of a finding of guilty but mentally ill. S*ee People v. Adamcyk*, 259 Ill. App. 3d 670, 678 (1994) (a defendant cannot be found guilty but mentally ill unless he raises the defense of insanity). A person is "mentally ill" if "a substantial disorder of thought, mood, or behavior *** afflicted [him] at the time of the commission of the offense and *** impaired [his] judgment, but not to the extent that he [was] unable to appreciate the wrongfulness of his behavior." 720 ILCS 5/6-2(d) (West 2008). Defendant can identify no specialist who concluded that he suffered from a mental illness at the time of the offense. Defendant's family members, and his friend Kim Mininni, noted behavioral changes in defendant for a period leading up to the offense, and the family members attributed these changes to stress. Counsel could have reasonably concluded that even a finding of guilty but mentally ill was not a realistic possibility.

¶ 129 For the foregoing reasons, we hold that defendant has failed to meet the first prong of the *Strickland* standard, as he has identified no breach of reasonable professional judgment in trial counsel's decision not to present an insanity defense. For essentially the same reasons, we also hold that that an insanity defense would not have had a reasonable probability of success at trial. We do so by assuming what defendant does not demonstrate for us, namely that the data and opinions he cites from the record could have been presented in an admissible form at trial (this is yet another disadvantage that a defendant faces when presenting an ineffectiveness claim for the first time on direct review). Of course, since the failure to establish even one of the *Strickland* prongs defeats a claim of ineffectiveness (*Strickland*, 466 U.S. at 697), our holding on the competency prong is reason enough for us to reject the defendant's *Strickland* claim.

¶ 130 B. Sentence

¶ 131 Defendant's second contention on appeal is that his sentence of 14 years' imprisonment was excessive. We disagree.

¶ 132 The trial court has broad discretionary powers in fashioning a sentence, and its sentencing decision is entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is granted such deference because it is generally in a better position than the reviewing court to determine the appropriate sentence, weighing such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Id.* Home invasion is a class X felony (720 ILCS 5/12-11(c) (West 2008)) punishable by a prison term between 6 and 30 years (730 ILCS 5/5–4.5–25(a) (West 2008)). Defendant's sentence fell within this range. A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210. "The spirit and purpose of the law are promoted

when a sentence reflects the seriousness of the crime and gives adequate consideration to a defendant's rehabilitative potential." *People v. Colbert*, 2013 IL App (1st) 112935, ¶ 24.

¶ 133 Defendant's initial contention is that the trial court's imposition of a sentence more than twice as long as the statutory minimum is difficult to reconcile with its prior expression of "regret" at having to find defendant guilty of home invasion. We know of no emotional estoppel in the law; a trial court's sentence need not be in line with its prior expressions of emotion in the case. In any case, the court may not have been expressing personal regret, but rather general disappointment with a case in which a senseless act devastated so many lives.

¶ 134 Defendant also identifies several mitigating factors that he believes weigh against a sentence of this length. We note initially that defendant has not overcome, with respect to any of these factors, the presumption that the trial court considered them in fashioning the sentence. See *People v. Powell*, 2013 IL App (1st) 111654, ¶ 32 ("The presumption is that the trial court properly considered all mitigating factors before it, and the burden is on the defendant to show otherwise.").

¶ 135 First, defendant cites the issue of his mental health, which he claims is mitigating not only because it contributed to the offense, but also because his continued mental health issues will be exacerbated by a length prison sentence. The trial court, however, expressly noted that the many mental health evaluations in the case revealed no explanation for defendant's acts on the night of December 26, 2009. The trial court evidently was convinced that defendant's act, while senseless, was not influenced by a mental health condition. Presumably, this was partly why the court could not find that defendant was unlikely to commit another offense. The court did comment, at the conclusion of its remarks, that it hoped defendant would receive "psychological treatment" to "assist [him] in dealing with this as well." The court evidently was

not referring to any mental health condition that it believed influenced the offense. Rather, the court presumably was referring to any lingering manifestations of the mental disturbances defendant experienced while hospitalized and incarcerated.

¶ 136 As for the effect of incarceration on defendant's mental state, defendant identifies no span of prison time that would not have the impact he fears. The trial court had no choice under the sentencing laws but to impose a prison sentence.

¶ 137 Next, defendant claims that he has "medical issues that cannot be ignored." He identifies no such outstanding "issues," but rather simply lists the many injuries he received during the incident, and then suggests that he has been punished enough already. Defendant cites no authority for this contention, and therefore we do not consider it.

¶ 138 Defendant also notes his lack of a significant criminal history, his contribution to society through involvement with Scouting, and his good behavior while incarcerated. The trial court expressly noted defendant's insignificant criminal history, and we presume the court considered the other factors defendant mentions. The trial court was concerned above all with the gravity of the offense, noting that defendant evidently intended "serious harm" to the Stevens'. Indeed, without John's intervention, Karol may well have been killed. The court found the circumstances even more aggravating because defendant chose to bring along his son, exposing him to a potentially dangerous situation that indeed did result in harm to him.

¶ 139 Given the pertinent aggravating and mitigating factors, we find no abuse of discretion in the sentence of 14 years' imprisonment, which was still within the lower half of the sentencing range.

¶ 140 III. CONCLUSION

¶ 141 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 142 Affirmed.