NOTICE
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2013 IL App (5th) 120499-U

NO. 5-12-0499

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 09-CF-1882
	)	
TORRANCE T. ROGERS,	)	Honorable
	)	Richard L. Tognarelli,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Spomer and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved the defendant's guilt beyond a reasonable doubt; the defendant understandingly waived his right to a jury trial in open court; double jeopardy did not bar the State from prosecuting the defendant for first-degree murder; and the trial court did not err in prohibiting the defendant from challenging the factual basis underlying his prior guilty plea.

¶ 2 BACKGROUND

¶ 3 On February 6, 1999, Jodi Pinkas gave birth to her daughter, Taylor Pinkas. The defendant, Torrance T. Rogers, is Taylor's father.

¶ 4 On April 28, 1999, Taylor was left alone in the defendant's care while Jodi attended a night class. When Jodi returned home, the defendant told her to be quiet, because Taylor had just fallen asleep. When Jodi checked on Taylor, she discovered that Taylor was convulsing and experiencing difficulty breathing. The defendant told Jodi that Taylor had been crying all night and had cried herself to sleep. Taylor was taken to a local hospital but was soon transferred to Cardinal Glennon Children's Medical Center in St. Louis (Cardinal

Glennon), where she was diagnosed with retinal hemorrhaging, bleeding on the brain, partial blindness, and a possible subdural hematoma. Taylor had no external injuries. When questioned about what had happened while he had been alone with Taylor, the defendant admitted that he may have shaken her.

¶ 5 On April 29, 1999, in trial court case number 99-CF-901, the defendant was charged with aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 1998)). The charge alleged that the defendant knowingly caused great bodily harm to Taylor by shaking her and causing her severe head injury.

¶ 6 On December 13, 1999, the defendant entered a negotiated open plea of guilty to a reduced charge of attempted aggravated battery of a child (720 ILCS 5/8-4(a), 12-4.3(a) (West 1998)), which also alleged that the defendant had knowingly caused great bodily harm to Taylor by shaking her and causing her severe head injury. Pursuant to the terms of the plea agreement, sentencing on the defendant's conviction was postponed, and he was released on bond and ordered to comply with all directives given him by the Department of Children and Family Services (DCFS). He was also ordered to have no unsupervised contact with Taylor.

¶ 7 In May 2000, the trial court entered an order revoking the defendant's bond for failing to cooperate with DCFS and for assaulting Jodi in Taylor's presence. In November 2000, the defendant was arrested on the bond revocation following a traffic stop in East St. Louis. In March 2001, the cause proceeded to a sentencing hearing, where the State presented numerous witnesses in aggravation and argued, *inter alia*, that the defendant had "never showed any remorse about what he did to his own little girl." The trial court ultimately ordered the defendant to serve a 15-year term of imprisonment on his conviction. The defendant subsequently pursued a direct appeal, arguing that the sentence he received was excessive. In December 2002, this court issued an unpublished order affirming the trial

court's judgment. *People v. Rogers*, No. 5-02-0275 (2002) (unpublished order under Supreme Court Rule 23). We note that the order copiously detailed the facts surrounding the incident in question and the extent to which Taylor was rendered debilitated as a result of the defendant's conduct. See *id*. Instead of repeating them here, we will include the pertinent facts from the original proceedings when necessary.

¶ 8 On January 24, 2009, Taylor passed away at Cardinal Glennon. An autopsy prepared by the City of St. Louis Medical Examiner's Office concluded that the manner of death was homicide and that the cause of death was bronchopneumonia due to extensive cystic encephalomalacia resulting from traumatic brain injury. The cause of the brain injury was listed as "[b]lunt trauma at [the] hands of another." Taylor's death was further described as a delayed death resulting from child abuse. Among other things, the autopsy report included the following findings regarding Taylor's history:

> "[Taylor] was born a healthy full term infant on 2/06/1999. [Taylor] was discharged from the hospital in the care of her mother *** and her father, [the defendant]. On 4/2[8]/1999, [Taylor] was evaluated at Anderson Hospital in Maryville, IL, after being found unresponsive. [Taylor] was transferred to Cardinal Glennon *** for further specialized pediatric care. [Taylor] was diagnosed with a traumatic brain injury due to shaken baby syndrome. [Taylor] was described as neurologically devastated, with 5% brain function, cerebral palsy, secondary dystonia, seizures, blindness, hearing impaired, wheelchair bound, and gastrostomy tube placement. [Taylor's] father, [the defendant], was charged as the perpetrator for this event. [Taylor] was placed in the custody of her great aunt ***."

¶ 9 On August 6, 2009, in trial court case number 09-CF-1882, the defendant was indicted on one count of first-degree murder (720 ILCS 5/9-1(a)(2) (West 1998)). The indictment alleged that knowing that doing so created a strong probability of death or great bodily harm,

the defendant shook Taylor, causing severe head injury and "thereby causing [her] death." The record on appeal indicates that the defendant was arrested on the murder charge and taken into custody on December 12, 2009. The record further indicates that the defendant was on parole in trial court case number 99-CF-901 at the time.

¶ 10 On July 10, 2012, the cause proceeded to a bench trial, where the parties stipulated and admitted the report of Taylor's autopsy and a report submitted by defense expert Dr. Shaku Teas. In her report, Teas concluded that Taylor's "pneumonia and head injury (not necessarily due to trauma) are related[,] but the original diagnosis [of shaken baby syndrome] could very likely have been incorrect." The parties further stipulated the State's discovery in the present case, *i.e.*, trial court case number 09-CF-1882, and that the trial court take judicial notice of the file in case number 99-CF-901. The State also called Debra Dycus, Taylor's great-aunt who had "raised her for most of her life."

¶ 11 Dycus testified that as a result of Taylor's brain injury, Taylor had suffered numerous and severe physiological complications that had gotten progressively worse as she got older. Dycus further explained that Taylor had required extensive hospitalizations and treatments over the years and that her specialists "were surprised she had lived as long as she did." Notably, one of Taylor's problems was that her lungs did not function properly. Taylor received breathing treatments and "eventually ended up with a vest that actually shook her chest to keep her lungs clear of secretions." Dycus indicated that Taylor had frequent bouts of bronchopneumonia toward the end of her life and that she had been at the hospital receiving treatment for bronchopneumonia when she died. Dycus testified that the doctors had told her that Taylor had "died from the pneumonia complicated with all of her other medical issues."

¶ 12 During closing arguments, the State maintained that the only issue before the court was whether the injuries the defendant inflicted upon Taylor in 1999 had caused her death

in 2009. Referencing Taylor's autopsy report, the State argued that the medical evidence firmly established that the 1999 injuries had been caused by child abuse and had ultimately resulted in Taylor's delayed death. The State also noted that in addition to the autopsy itself, the autopsy report had been based on information obtained from Taylor's treating physicians at Cardinal Glennon, Dycus, and Miss Amy Wicks, from the National Foundation of Shaken Babies, who was "very familiar with the case."

¶ 13 In response, defense counsel suggested that although Taylor had unquestionably died of pneumonia, the pneumonia might not have been the result of her brain injury. Referencing Teas's report, counsel noted that healthy children often die of pneumonia and that the medical science regarding shaken baby syndrome had changed a great deal since 1999. While acknowledging that in 99-CF-901, the defendant had pleaded guilty to a charge alleging that he had shaken Taylor causing her severe head injury, counsel nevertheless argued, "[W]e still don't know exactly what happened to the child back in 1999." Counsel further argued that even assuming the defendant had been responsible for Taylor's injuries, he "had no intent or idea that anything like this could happen" and was thus guilty of involuntary manslaughter (720 ILCS 5/9-3(a) (West 1998)) rather than first-degree murder.

¶ 14 In rebuttal, the State pointed to numerous factual inaccuracies in Teas's report and asserted that she had relied on those inaccuracies when forming her opinions. The State further argued that Teas's report reflected her mistaken belief that shaken baby syndrome is not a "legitimate diagnosis" in cases where neck injuries are absent. Asserting that the medical evidence clearly established that Taylor's 1999 brain injury had left her susceptible to illnesses such as the pneumonia from which she died, the State argued that the defendant's conduct had proximately caused her death.

¶ 15 On July 19, 2012, the trial court entered a written order finding the defendant guilty of first-degree murder. In response to the defendant's contention that he never intended to

harm Taylor, the trial court observed that in 99-CF-901, that very claim had been rejected on direct appeal for being "directly at odds with [the defendant's] guilty plea." *Rogers*, No. 5-02-0275, at 12. The court further observed that "[e]ven without [the] defendant's admission in 99-CF-901," a culpable mental state supporting a first-degree murder conviction could "be reasonably inferred from the circumstances surrounding the incident." The court then determined that the medical evidence established that Taylor had died as a result of a traumatic brain injury, "which occurred nine years prior to her death." The court also noted that "[a]s a result of the violent shaking by [the] [d]efendant, Taylor [had] suffered a stroke, multiple seizures, brain damage, cerebral palsy, and blindness." Indicating that several of Teas's key findings were contrary to the evidence, the court rejected her alternative suggestions as to the possible cause of Taylor's death.

¶ 16 On October 11, 2012, the trial court sentenced the defendant to a 40-year term of imprisonment. The defendant subsequently filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 The defendant advances the following arguments on appeal: (1) the trial court's judgment finding him guilty of first-degree murder should be reversed because the State failed to prove his guilt beyond a reasonable doubt; (2) his waiver of his right to a jury trial was not made understandingly as required by law; (3) the State's murder prosecution violated his right to protection from double jeopardy; and (4) the trial court abused its discretion by prohibiting him from challenging the factual basis underlying his guilty plea in 99-CF-901. We will address each contention in turn.

¶ 19 Sufficiency of the Evidence

¶ 20 The defendant argues that his conviction should be reversed because there was insufficient evidence that he caused Taylor's 1999 injuries or that the injuries resulted in the pneumonia that later caused her death. The defendant alternatively maintains, "Even if the

element of causation [was] established, [he] cannot be guilty of murder because he did not possess the requisite mental state necessary for a murder conviction ***."

¶ 21 When reviewing the sufficiency of the evidence supporting a criminal conviction, it is not the function of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Rather, "[t]he relevant inquiry is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. Under this standard, a reviewing court "will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 22 "Proof of an offense requires proof of two concepts: first, that a crime occurred, or the *corpus delicti*, and second, that it was committed by the person charged." *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). "In a prosecution for murder, the *corpus delicti* consists of the fact of death and the fact that death was produced by a criminal agency." *Id*.

> "It has long been established that when the State has shown the existence, through the act of the accused, of a sufficient cause of death, the death is presumed to have resulted from such act, unless it can be shown that the death was caused by a supervening act disconnected from any act of the accused." *People v. Mars*, 2012 IL App (2d) 110695, ¶ 16.

"The courts in Illinois have repeatedly held that an intervening cause completely unrelated to the acts of the defendant does relieve a defendant of criminal liability." *People v. Brackett*, 117 Ill. 2d 170, 176 (1987). "The converse of this is also true: when criminal acts of the defendant have contributed to a person's death, the defendant may be found guilty of murder." *Id.*

¶ 23 The defendant suggests that there was insufficient evidence that the injuries Taylor

sustained in 1999 were the result of his criminal conduct. In trial court case number 99-CF-901, however, the defendant pled guilty to a charge that he knowingly caused great bodily harm to Taylor by shaking her and causing her severe head injury. The defendant's guilty plea constituted a "knowing admission of guilt of the criminal acts charged and all the material facts alleged in the charging instrument." *People v. Rhoades*, 323 Ill. App. 3d 644, 651 (2001). "A guilty plea ends the controversy and removes the prosecution's burden of proof, as it supplies both the evidence and the verdict." *Id*. Moreover, the defendant's plea was a judicial admission that he is now estopped from challenging. *People v. Goestenkors*, 278 Ill. App. 3d 144, 148-49 (1996). We thus reject the defendant's suggestion that there was insufficient evidence that he "actually committed" the acts that caused Taylor's brain injury. We also note that the defendant's guilty plea aside, the evidence was otherwise sufficient to allow a rational trier of fact to conclude that he was criminally culpable. See, *e.g.*, *People v. Swart*, 369 Ill. App. 3d 614, 634-35 (2006) (where the deceased infant had been diagnosed with shaken baby syndrome and had been in the defendant's care "immediately preceding her loss of consciousness," the evidence supported the jury's finding that the defendant had inflicted the injuries that resulted in the infant's death). The evidence before the trial court established that Taylor had been a healthy infant prior to sustaining her 1999 injuries, and it is undisputed that the defendant had been alone with Taylor when the injuries occurred. Taylor was diagnosed with shaken baby syndrome, and her autopsy concluded that her brain injury resulted from "[b]lunt trauma at [the] hands of another." The defendant admitted that he may have shaken Taylor. As we noted on direct appeal, the defendant "obviously shook the infant severely and repeatedly." *Rogers*, No. 5-02-0275, at 14.

¶ 24 The defendant next suggests that the trial court should have concluded that Taylor's pneumonia was a supervening act disconnected from any alleged act on his part. Noting that Teas's report indicated that she could not state with medical certainty that Taylor's death was

related to the injuries that she sustained in 1999, the defendant argues that the trial court failed to give his expert's findings "the necessary deference." We disagree.

> "The cause of death is a question of fact, which should be left to the trier of fact [citations]. It is for the trier of fact to evaluate the expert testimonies and weigh their relative worth in context. [Citation.] When the expert testimonies offer divergent conclusions, the [trier of fact] 'is entitled to believe one expert over the other' [citation] and is not required to search out a cause of death compatible with innocence [citation]." *People v. Sims*, 374 Ill. App. 3d 231, 251 (2007).

¶ 25 As previously noted, Teas's report concluded that Taylor's "pneumonia and head injury (not necessarily due to trauma) are related[,] but the original diagnosis [of shaken baby syndrome] could very likely have been incorrect." As the State maintains on appeal, however, Teas's findings are suspect, and she "conducted what could best be described as an incomplete record review." Teas noted in her report, for instance, that a "review of the CT scan report indicates that Taylor had subarachnoid hemorrhage and not subdural hemorrhage." But, in its written order, the trial court specifically found that "[t]here were at least four CT scans" and that all of them showed both subarachnoid hemorrhage and subdural hemorrhage. Teas also intimated that the intraventricular hemorrhaging that Taylor had exhibited could have been the result of premature birth. At the same time, however, Teas acknowledged that she had not "received all of the records from the original admission or the birth and antenatal records to evaluate the medical findings." Moreover, as the trial court noted in its written order, Taylor "was not born premature." Teas also asserted, *inter alia*, that since 1999, there had been "major changes in the literature on shaken baby syndrome" and that "[t]here is a great deal of controversy in the forensic and pediatric literature about whether 'shaking' " an infant can produce the symptoms of shaken baby syndrome "without causing severe neck injuries." Nevertheless, Taylor's autopsy report established that her

death was a "[c]hild abuse [d]elayed death" due to a "[t]raumatic brain injury" that resulted from "[b]lunt trauma at [the] hands of another." In its written order, the trial court adopted these findings and only referenced shaken baby syndrome when discussing Taylor's initial diagnosis and the opinions set forth in Teas's report. Thus, even assuming, *arguendo*, that Teas rightfully concluded that the original diagnosis of shaken baby syndrome had been incorrect, the trial court did not rely on that diagnosis when determining the cause of Taylor's death, so any resulting error was harmless. See *People v. Armstrong*, 395 Ill. App. 3d 606, 627 (2009) (finding that even if the evidence that the victim had been diagnosed with shaken baby syndrome was improperly admitted at the defendant's trial, the error was harmless where the pathologist who performed the victim's autopsy testified that the victim died from brain injuries resulting from blunt force trauma consistent with child abuse). In any event, the trier of fact "is free to disregard the testimony of any expert" (*People v. McGee*, 88 Ill. App. 3d 447, 453 (1980)), and "[i]t was well within the role of the trial court, as trier of fact, to reject Dr. Teas's medical opinion as unsupported by the evidence." *Armstrong*, 395 Ill. App. 3d at 628.

¶ 26 The defendant lastly contends that his conviction should be reversed because there was no evidence that he "knew his alleged acts *** created a strong probability of death or great bodily harm." As the trial court recognized, however, "an accused's knowledge and intent can be reasonably inferred from, and are often proved by, the circumstances surrounding the incident including the nature and degree of severity of the victim's injuries." *People v. Renteria*, 232 Ill. App. 3d 409, 416-17 (1992). "A defendant is presumed to intend the probable consequences of his acts, and great disparity in size and strength between the defendant and the victim, as well as the nature of the injuries, may be considered in this context." *People v. Rader*, 272 Ill. App. 3d 796, 803 (1995).

¶ 27 Here, on direct appeal, we noted that the defendant "was 6 feet 1 inch tall and weighed

190 pounds, while the victim was less than three months of age." *Rogers*, No. 5-02-0275, at 13. We further noted: "[I]n his statement in allocution, [the] defendant admitted that he knew that because he was a 190-pound man, his shaking of Taylor could kill her. Plus, he admitted that he shook the infant." *Id*. As previously indicated, Taylor's brain injury was so severe, she was declared "neurologically devastated." Under the circumstances, the trial court's finding that the defendant "intended or knew that his shaking Taylor would cause her to die [or] sustain great bodily harm or permanent disability" was entirely reasonable. See *People v. Coleman*, 311 Ill. App. 3d 467, 475 (2000); *People v. Ripley*, 291 Ill. App. 3d 565, 569 (1997); *Rader*, 272 Ill. App. 3d at 803-06; *Renteria*, 232 Ill. App. 3d at 416-18.

¶ 28 In its written order finding the defendant guilty of first-degree murder, the trial court observed as follows:

> "As a result of the violent shaking by [the] defendant, Taylor suffered a stroke, multiple seizures, brain damage, cerebral palsy, and blindness. The neurologist who examined her at Cardinal Glennon immediately after the incident in 1999 did not believe that Taylor would live through the night. She did survive for 9½ years, but this was nothing more than death delayed."

Viewing the evidence adduced at trial in the light most favorable to the State, the evidence overwhelmingly supported the trial court's verdict, and we accordingly reject the defendant's claims to the contrary.

¶ 29 Jury Trial Waiver

¶ 30 The defendant argues that his fundamental right to a jury trial was violated because his waiver of a jury trial was not made understandingly as required by law. In response, the State maintains that the record on appeal contradicts this claim. We agree with the State.

¶ 31 "The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions." *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). To protect this right, the

General Assembly enacted section 103-6 of the Code of Criminal Procedure of 1963, which in pertinent part provides as follows: "Every person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by [the] defendant in open court ***." 725 ILCS 5/103-6 (West 2012). Pursuant to section 115-1 of the Code of Criminal Procedure of 1963, a defendant's jury waiver must also be in writing. 725 ILCS 5/115-1 (West 2012).

¶ 32 Here, the defendant concedes that he executed a written jury waiver in open court but contends that it was not made understandingly. In support of this contention, the defendant suggests that his waiver should not be given "full weight" because his mental competency was "in question throughout" the proceedings below. The defendant also likens his situation to that addressed in *People v. Eyen*, 291 Ill. App. 3d 38 (1997).

¶ 33 The record indicates that the defendant was arrested and taken into custody on the first-degree murder charge filed in No. 09-CF-1882 on December 12, 2009. On January 19, 2010, the defendant filed a motion for a fitness examination alleging that there was a *bona fide* doubt as to his fitness to stand trial. See 725 ILCS 5/104-10 to 104-31 (West 2010). The motion specifically alleged that the Madison County jail had contacted defense counsel advising that the defendant had been suffering from mental problems and needed to be evaluated. The trial court subsequently granted the defendant's motion for a fitness examination and appointed Dr. Daniel Cuneo to evaluate the defendant.

¶ 34 On February 9, 2010, Cuneo filed an evaluation report regarding the defendant's mental status and fitness to stand trial. The evaluation report indicated that 10 days after he was taken into custody, the defendant had undergone a surgical procedure at St. Anthony's Health Center in Alton. The report further indicated that when the defendant returned to jail, he had exhibited unruly behavior due to his reaction to the postoperative pain medication that he had been prescribed. The report specifically noted that the defendant had "attributed his

behavior to the prescription pain medication." The report further noted that the defendant was no longer taking the medicine, however, and that his "[t]hought processes were logical and coherent." Noting that "[m]ild anxiety and distractibility were present," Cuneo diagnosed the defendant as suffering from "Adjustment Disorder With Depressed Mood (Provisional)" but concluded that the defendant's "mental illness" did not "substantially impair his ability to understand the nature and purpose of the proceedings against him and to assist in his own defense." Cuneo thus concluded that the defendant was fit to stand trial.

¶ 35 On July 10, 2012, prior to the commencement of the bench trial, defense counsel submitted the defendant's written waiver of his right to a jury trial in open court. The court then addressed the defendant as follows:

"THE COURT: All right *** I have in my hand a document entitled, Waiver Of Right To A Jury Trial. Did you discuss this document with your attorney before you signed it, sir?

[DEFENDANT]: Yes, sir.

[THE COURT]: How far did you go in school?

[DEFENDANT]: Eleventh grade.

[THE COURT]: All right. Can you read and write?

[DEFENDANT]: Yes, sir.

[THE COURT]: Have you any questions about the document, sir?

[DEFENDANT]: No, sir.

[THE COURT]: All right. You understand, sir, that you have a right to a jury trial, and with a jury trial you have twelve people. They're going to consider the facts and the evidence and make a judgment then based upon their review of the facts and the evidence.

By waiving that right, I'm going to be the only one that's going to hear those

facts, hear those arguments, and make that decision.

Do you understand that, sir?

[DEFENDANT]: Yes, sir.

[THE COURT]: Is anyone forcing you to waive your right to a jury trial?

[DEFENDANT]: No, sir.

[THE COURT]: Are you doing this freely and voluntarily, sir?

[DEFENDANT]: Yes, sir.

[THE COURT]: All right, the Court will accept your waiver. We will proceed with the [bench] trial at this time."

¶ 36 "Whether a jury waiver is valid cannot be determined by application of a precise formula, but rather turns on the particular facts and circumstances of each case." *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). "The defendant who challenges a jury waiver bears the burden of establishing that the waiver was invalid." *People v. Stokes*, 281 Ill. App. 3d 972, 977 (1996). "Whether a defendant validly waived his right to a jury trial is a question of law entitled to *de novo* review." *People v. Thornton*, 363 Ill. App. 3d 481, 485 (2006).

¶ 37 "A written waiver, as required by section 115-1 ***, is one means by which a defendant's intent may be established." *Bracey*, 213 Ill. 2d at 269. "However, adherence to this provision, while recommended, is not always dispositive of a valid waiver." *Id.* at 269-70. "Although a written jury trial waiver alone does not demonstrate the defendant's understanding, a signed written waiver lessens the probability that the waiver was not knowingly made." *People v. Lombardi*, 305 Ill. App. 3d 33, 39-40 (1999). "Further, a knowing oral waiver can be found where, in the accused's presence and without objection from the accused, defense counsel expressly advises the court of the accused's desire to proceed by a bench trial." *Id.* at 40. "The trial court is not required to explain to the defendant the consequences of his jury waiver," and "[a]lthough the preferred procedure is

for the trial court to advise the defendant of his right to trial by jury before the defendant waives this right in writing or in open court for the record, this procedure is not constitutionally required." *Stokes*, 281 Ill. App. 3d at 977.

¶ 38 Here, the trial court followed the "preferred procedure" of advising the defendant of his right to a jury trial before accepting his written waiver in open court. *Id.* Moreover, the court personally addressed the defendant regarding the consequences of his waiver. "It is the trial court's duty to ensure that a defendant's waiver of [his] right to a jury trial is made understandingly" (*People v. Hart*, 371 Ill. App. 3d 470, 472 (2007)), and in the present case, the record belies the defendant's contention that his jury trial waiver was not understandingly made.

¶ 39 As previously noted, the defendant likens his situation to that addressed in *People v. Eyen*, 291 Ill. App. 3d 38 (1997). The defendant's reliance on *Eyen*, however, is wholly misplaced. In *Eyen*, the defendant did not execute a written waiver of his right to a jury trial, and "the issue of jury waiver" was not discussed in his presence until after he had been tried and sentenced. *Eyen*, 291 Ill. App. 3d at 40-41. "Moreover, during such discussion, [the] defendant's counsel insisted that [the] defendant did *not* waive his right to a jury trial." (Emphasis in original.) *Id.* at 41. When reversing the defendant's conviction and remanding his cause for a new trial, the appellate court held that the lack of a written waiver aside, it could not "conclude that [the] defendant made a knowing and understanding oral waiver of his right to a jury trial in open court." *Id.* at 42.

¶ 40 We also reject the defendant's suggestion that his waiver of his right to a jury trial cannot be given "full weight" because his mental competency was "in question throughout" the proceedings below. This claim, too, is belied by the record.

¶ 41 As previously indicated, 10 days after he was taken into custody in 09-CF-1882, the defendant underwent surgery and was subsequently put on pain medication. When he

returned to jail, the defendant exhibited unruly behavior that ultimately led to defense counsel's filing of a motion for a fitness examination. When the defendant's fitness was later evaluated, it was determined that his unruly behavior had been the result of his reaction to the pain medication that he had been prescribed. In fact, the defendant, himself, "attributed his behavior to the prescription pain medication." The defendant was otherwise diagnosed with "Adjustment Disorder With Depressed Mood (Provisional)," but it was determined that the "mental illness" did not render him unfit to stand trial.

¶ 42 "Every defendant is presumed to be fit to stand trial, or to plead, and be sentenced." *People v. Jamison*, 197 Ill. 2d 135, 152 (2001). Here, other than the fact that his postoperative pain medication altered his behavior for a brief time following his arrest and detention in the present case, the defendant's fitness to stand trial was never in question. Moreover, "the record on appeal reveals no indication that the trial court, which was in a better position to observe and evaluate the defendant's conduct, perceived anything odd or irrational about the defendant's behavior raising a *bona fide* doubt of [his] fitness." *People v. Wiggins*, 312 Ill. App. 3d 1113, 1116 (2000).

¶ 43 Double Jeopardy

¶ 44 The defendant asserts that in light of his conviction in trial court case number 99-CF-901, his trial on the first-degree murder charge in the present case violated his constitutional right against double jeopardy. He thus maintains that "the judgment against him should be reversed and the first[-]degree murder charge dismissed."

¶ 45 The right to be free from double jeopardy is set forth in the fifth amendment to the United States Constitution, which states that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const., amend. V. The Illinois Constitution contains a similar provision. Ill. Const. 1970, art. I, § 0 ("No person shall be *** twice put in jeopardy for the same offense."). Nevertheless, "[i]n cases where double jeopardy might

otherwise be implicated, an exception exists where the State is unable to proceed on the more serious charge at the outset because the additional facts necessary to sustain that charge have not yet occurred." *People v. Carrillo*, 164 Ill. 2d 144, 148 (1995) (citing *Diaz v. United States*, 223 U.S. 442, 448-49 (1912)). Thus, in situations like that presented here, *i.e.*, where the victim of a violent crime languishes for years before dying from her injuries, the defendant can be prosecuted for the victim's murder notwithstanding that he had previously been found guilty of a lesser offense arising from the same criminal conduct. *Id*. at 146-50; see also *Garrett v. United States*, 471 U.S. 773, 791 (1985) (noting that under the *Diaz* rule, "an initial prosecution for assault and battery, followed by a prosecution for homicide when the victim eventually die[s] from injuries inflicted in the course of the assault," does not violate the double jeopardy clause because the two crimes are " 'distinct offenses both in law and in fact' " (quoting *Diaz*, 223 U.S. at 449)). We therefore reject the defendant's contention that the State's murder prosecution in the present case violated his right to protection from double jeopardy.

¶ 46 99-CF-901

¶ 47 The defendant lastly maintains that the trial court abused its discretion by prohibiting him from challenging the factual basis underlying his guilty plea in trial court case number 99-CF-901. Again, we disagree.

¶ 48 The record on appeal indicates that prior to trial, the trial court made an off-the-record ruling precluding the defendant from challenging the factual basis underlying his guilty plea in case number 99-CF-901. Although the reasoning behind the trial court's ruling is not entirely apparent from the record, "the trial court is presumed to know the law and apply it properly" (*People v. Howery*, 178 Ill. 2d 1, 32 (1997)), and we conclude that it did.

¶ 49 As previously stated, the defendant's guilty plea in 99-CF-901 constituted a "knowing admission of guilt of the criminal acts charged and all the material facts alleged in the

charging instrument." *Rhoades*, 323 Ill. App. 3d at 651. "A guilty plea ends the controversy and removes the prosecution's burden of proof, as it supplies both the evidence and the verdict." *Id*. More importantly, the defendant's guilty plea in 99-CF-901 was a judicial admission that he was subsequently estopped from challenging. *Goestenkors*, 278 Ill. App. 3d at 148-49.

¶ 50 "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent a finding that the court has abused its discretion, which may only be found where its ruling is arbitrary or unreasonable or where no reasonable person would take the same view." *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 43. Moreover, where a trial court's ruling is "legally correct," it is axiomatic that the court's ruling cannot constitute an abuse of discretion. *People v. Gomez*, 402 Ill. App. 3d 945, 960 (2010). "A judicial admission is binding upon the party making it and may not be controverted by other evidence." *People v. Feldman*, 409 Ill. App. 3d 1124, 1128 (2011). Here, the trial court ostensibly determined that the defendant's guilty plea in 99-CF-901 was such an admission, and we cannot conclude that the trial court's ruling was an abuse of discretion.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the defendant's conviction and sentence in trial court case number 09-CF-1882 are hereby affirmed.

¶ 53 Affirmed.