



defendant's youth, potential for rehabilitation, need for mental health treatment, and his family support. For the reasons that follow, we affirm.

¶ 3 On December 27, 2009, the defendant was arrested as a suspect in the murder of Tyra Whittaker. The defendant was in custody for approximately 2½ to 3 hours before being interviewed. Beginning at 12:29 a.m. on December 28, 2009, Detective James Jones and Detective Ortega interviewed the defendant at the Cahokia police department. The interview lasted approximately two hours. The defendant was crying as he entered the room, and the interview began with the detectives offering the defendant water and trying to calm him down by coaching him through his breathing. The defendant held his head in his hands and tried to put his head on the desk. The detectives encouraged the defendant to sit up both verbally and by physically touching his shoulders. The defendant indicated that he was trying to calm down and work with the detectives. After approximately 15 minutes, the defendant became more responsive and agreed that he was not under the influence of drugs and that the detectives were being nice to him. Detective Jones then slowly articulated the defendant's *Miranda* rights to him and presented him with a *Miranda* rights form. The defendant indicated that he understood each right as it was read to him and initialed next to each statement. The defendant agreed that he could read and write and acknowledged that he understood that the interview was being recorded. Over the next half hour, however, the defendant was mostly unresponsive to the detectives' questioning. Occasionally, the defendant responded to a question by stating that he did not know what happened. Approximately 1 hour and 30 minutes into the interview, in response to Detective Jones's indication that the police knew what had happened between the victim and the defendant, the defendant told the officers that he had "blanked out" during the time in question. A few minutes later, however, the defendant began giving details regarding Whittaker's murder. The defendant remained coherent and responsive to the detectives' questioning for the

remainder of the interview.

¶ 4 Prior to trial, defense counsel filed a motion to suppress the defendant's confession, arguing that the statement was involuntary because the defendant was mentally and emotionally unfit to undergo interrogation, and the detectives played on his instability to overcome his will to remain silent. The circuit court reviewed the video of the interrogation, and a hearing was held on October 29, 2010. The court stated that it had considered the totality of the circumstances, including the physical contact by the interrogators, but found no indication that the defendant was in fear of his interrogators' actions. The court also considered the defendant's age of 19 at the time of the interrogation, his less than high school education but ability to read and write, his knowledge of his constitutional rights before the questioning, his emotional instability and its effect on his ability to be attentive and not be distracted, and the two-hour duration of the questioning. The court noted:

"The court has considered the defendant's entire interrogation. The court noted specifically that the defendant was able to give coherent and direct responses, in spite of the sobbing, to some basic questions like his name, how tall are you, his age, and that's an indication to the court that the defendant was coherent and in control and not totally out of touch with what was happening.

Also important to the court was the defendant's actions after the end of the interrogation, where the court would have expected the defendant, based upon the emotion displayed to be completely drained, and the court would also have expected that there would be a continuation of the emotional display at the end of the interrogation, however the defendant was perfectly composed, coherent, and able to comply with the request of officers who came to handcuff him and to remove him from the interrogation room.

This is an indication to the court that maybe the emotional display was not as

genuine as the defendant would like the court to believe."

The court denied the motion to suppress the statement.

¶ 5 The defendant first argues that the circuit court erred in denying his motion to suppress his confession because it was involuntary. Where a defendant challenges the admissibility of a confession through a motion to suppress, the State bears the burden of proving that the confession was voluntary by a preponderance of the evidence. *People v Gilliam*, 172 Ill. 2d 484, 501 (1996). When a reviewing court is determining whether a circuit court has properly ruled on a motion to suppress, findings of fact and credibility determinations made by the circuit court are afforded great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). We review *de novo*, however, the ultimate question posed by the legal challenge to the circuit court's ruling on the motion. *Id.*

¶ 6 The defendant argues that his confession was involuntary and therefore inadmissible, as the circumstances demonstrate that his statement was coerced because of the nature of the interrogation, his youth and inexperience with the police, and that his mental illness and emotional state increased his susceptibility to coercion.

¶ 7 Admitting an involuntary confession into evidence violates the fifth amendment of the United States Constitution (U.S. Const., amend. V) and article I, section 10, of the Illinois Constitution (Ill. Const. 1970, art. I, § 10). *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005).

The ultimate test of the voluntariness of a confession is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort or whether the defendant's will was overcome at the time he confessed. *People v. Gonzalez*, 351 Ill. App. 3d 192, 200-01 (2004). To determine whether the defendant's confession was voluntary, we consider the totality of the circumstances, including the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and

interrogation; the duration of the interrogation; the presence of *Miranda* warnings; the presence of any physical or mental abuse; and the legality and duration of the detention. *Nicholas*, 218 Ill. 2d at 118. No one factor is considered dispositive of voluntariness. *Gonzalez*, 351 Ill. App. 3d at 201.

¶ 8 We begin by noting that the trial court made a detailed and appropriate inquiry into the relevant factors before concluding that the State had proven, by a preponderance of the evidence, that the confession was voluntary. As the hearing excerpt above indicates, the trial judge explicitly laid out the circumstances that the court considered and the rationale for the court's conclusion on the facts. From our review of the record, we find that the trial judge's factual determinations were not against the manifest weight of the evidence.

¶ 9 Thus, our *de novo* review will take into consideration the totality of the following circumstances: the defendant was a young adult at 19 years old; he had less than high school education but the ability to read, write, and hold employment; due to Detective Jones's meticulous explanation, he had knowledge of his constitutional rights but proceeded to waive them by initialing on the *Miranda* waiver form; he was questioned for two hours, which occurred relatively quickly after his arrest; his emotional display tapered off as the interview progressed; he had the ability to give coherent and direct responses when he did respond to questions; and the physical contact with the detectives did not appear to frighten or intimidate the defendant. Further, we find that though the defendant was relatively young and had no previous experience with the police, the tone of the interview appeared conversational, even conciliatory at times, and that the detectives did not subject the defendant to any mental or physical abuse. Based on the totality of these circumstances, we find that the defendant's will was not overborne at the time of his confession. Although cognizant of defense counsel's concerns regarding the dangers of an unlawfully obtained confession, we agree that the factual circumstances support the trial court's conclusion. Accordingly, we find that the

motion to suppress his confession was properly denied.

¶ 10 The defendant also argues that his sentence should be reduced, as the circuit court abused its discretion during sentencing given his youth, potential for rehabilitation, the availability of his family's support, and his need for mental health treatment. The defendant contends that the trial court placed too much emphasis on its aggravating-factor consideration of deterrence (730 ILCS 5/5-5-3.2(a)(7) (West 2010)) and the "violent nature of the offense."

¶ 11 The defendant's sentencing hearing was held on June 2, 2011. The prosecution argued for a 40-year sentence. The State acknowledged that the defendant was found guilty but mentally ill, and that the expert in forensic psychiatry, Dr. John Rabun, indicated that the defendant did suffer from depression that could have impaired his judgment. However, the State argued that the evidence at trial demonstrated that the defendant knew his act was wrong, and his sentence should serve as a deterrent for others committing these types of crimes because the murder was a particularly brutal incident of domestic violence against an unarmed victim. The defendant's counsel argued for a 22-year sentence, based on the defendant's mental illness, youth, and lack of criminal history. The court stated that the factors in aggravation were the violent nature of the offense and the need to deter others from similar conduct. In mitigation, the court noted that the defendant was mentally ill, as verified by the findings of doctors and the jury's verdict, and also that the defendant had no prior criminal history. The trial court went on to discuss the perils and burdens of domestic violence in the community and the need to deter such behavior "in whatever fashion that can be accomplished." The trial court, in consideration of these factors, sentenced the defendant to 32 years' imprisonment.

¶ 12 Pursuant to the Unified Code of Corrections, a person convicted of first-degree murder shall be sentenced to a term of imprisonment not less than 20 years and not more than 60 years. 730 ILCS 5/5-4.5-20(a) (West 2010).

¶ 13 Within the statutory range established by the legislature, the trial court is charged with fashioning a sentence based on the particular circumstances of the individual's case, including the nature of the offense and the character of the defendant. *People v. Fern*, 189 Ill. 2d 48, 53, 55 (1999). The most important factor for the court to consider is the seriousness of the offense. *People v. Flores*, 404 Ill. App. 3d 155, 159 (2010). However, 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. *Fern*, 189 Ill. 2d at 54. This is because the trial court is in the best position to observe the defendant and consider the relevant factors, whereas a reviewing court must rely on a "cold record." *Id.* at 53. Thus, the trial court has broad discretion in sentencing a defendant, and its decision will not be disturbed absent an abuse of that discretion. *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981).

¶ 14 In the instant case, we cannot say that the circuit court abused its discretion in sentencing the defendant to 32 years' imprisonment, a term well within the statutory range. The defendant contends that the trial court inappropriately placed too much emphasis on the aggravating factors, namely, the violent nature of the offense, and too little on the mitigating factors, such as his lack of criminal history. However, the trial court was in the best position to evaluate the facts of this case, and a reviewing court must not substitute its judgment for that of the trial court "merely because it would have weighed the factors differently." *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Further, a review of the record demonstrates that the court indeed considered the factors that the defendant presents to this court. The defendant committed a very serious and violent offense, and the weight that the trial court gave this consideration, along with the need to deter domestic violence in the community, is not at variance with the sentence imposed. We therefore find that the trial court did not abuse its discretion in fashioning the defendant's sentence.

¶ 15 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 16 Affirmed.