

No. 1-12-1167

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 08 CR 20588
)	
LAMAR COOPER,)	Honorable
)	Nicholas R. Ford
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Defendant is not entitled to reversal of his conviction for first degree murder due to the trial court's denial of his request for a jury instruction regarding second degree murder because the evidence showing that defendant knew that the victim was a police officer before he shot him was overwhelming and the result of the trial would not have been different had the jury been instructed as to second degree murder. The court did not err by failing to conduct a further inquiry into defendant's *pro se* claims of ineffective assistance of counsel because the claims were not related to matters outside the record and the court was able to resolve those claims absent further inquiry. The court erred by sentencing defendant to extended term sentences for possession of between 30 and 500 grams of cannabis with intent to deliver and possession of a controlled substance. The court did not abuse its discretion by sentencing defendant to a maximum term of 60 years' imprisonment for possession of between 15 and 100 grams of cocaine with intent to

deliver, as it was supported by substantial evidence in aggravation. The mittimus must be corrected to accurately reflect that defendant was convicted of possession of between 15 and 100 grams of cocaine with intent to deliver and possession of between 30 and 500 grams of cannabis with intent to deliver, rather than manufacturing or delivering those amounts of cocaine and cannabis. The mittimus must be corrected to accurately reflect that defendant was only convicted of one count of first degree murder.

¶ 2 Following a jury trial, defendant Lamar Cooper was found guilty of first degree murder, possession of between 15 and 100 grams of cocaine with intent to deliver, possession of between 30 and 500 grams of cannabis with intent to deliver, and possession of a controlled substance. Defendant was sentenced to natural life imprisonment for first degree murder and sentences of 60, 10, and 6 years' imprisonment on the drug charges, to run concurrently with his sentence for first degree murder. On appeal, defendant contends that the trial court erred by denying his request for a jury instruction on second degree murder and failing to conduct an adequate inquiry into his *pro se* post trial claim of ineffective assistance of counsel. Defendant also contends that the court erred by sentencing him to extended term sentences for possession of cannabis with intent to deliver and possession of a controlled substance and that his 60 year sentence for possession of cocaine with intent to deliver is excessive. For the reasons that follow, we affirm all of defendant's convictions and his sentences for first degree murder and possession of cocaine with intent to deliver. We also vacate defendant's sentences for possession of cannabis with intent to deliver and possession of a controlled substance and remand the matter for resentencing. We further direct the clerk of the circuit court to amend the mittimus so that it accurately reflects defendant's convictions.

¶ 3

BACKGROUND

¶ 4 Defendant was charged with various crimes in connection with a shooting that occurred on September 28, 2008, and resulted in the death of Chicago police officer Nathaniel Taylor. At trial, Chicago police officer Lamornet Miller testified that he and Officer Taylor were partners

and members of the same team within the narcotics unit of the police department. The unit planned on executing a search warrant which had been obtained for defendant's house around 7 a.m. on September 28, 2008, shortly before defendant was expected to return home after having finished dealing drugs. The team wanted to arrest defendant outside of his house because they knew that there were dogs and children inside.

¶ 5 Officer Miller testified that he arrived at defendant's house in an unmarked police vehicle around 5:15 a.m. on September 28, 2008, to conduct surveillance prior to the execution of the search warrant and noticed that Officer Taylor had already arrived in a separate unmarked police vehicle. Officers Miller and Taylor were both dressed in plainclothes and Officer Taylor was wearing blue jeans and a red shirt and had his police badge around his neck in an ID holder that was connected to a chain. Although it was dark outside, the area was well lit by streetlights and Officer Miller did not have any trouble seeing Officer Taylor and the events which subsequently transpired.

¶ 6 Officer Miller testified that defendant arrived around 5:30 a.m. and that Officer Taylor received permission from the sergeant in charge of the unit to detain defendant. Officer Miller exited his vehicle as Officer Taylor drove his vehicle to the rear of defendant's automobile and stopped just before a speed bump. As Officer Miller approached defendant's vehicle, Officer Taylor exited his vehicle, approached defendant while pointing a gun in his direction, identified himself as a police officer, and directed defendant to put his hands in the air. Defendant, who was seated in the driver's seat of his vehicle with the door open, turned toward Officer Taylor while nodding his head up and down. Officer Miller then heard two gunshots and saw a flash

which originated from inside defendant's vehicle. Officer Miller, who was about 10 to 12 feet away from defendant, fired ten gunshots at defendant, striking him nine times. Officer Miller went to Officer Taylor, who was on the ground, and called his sergeant, telling him to call an ambulance. A police vehicle arrived shortly thereafter and the officer who exited the automobile told Officer Miller to lower his weapon and identify himself. Officer Miller then pulled out his badge and identified himself.

¶ 7 Chicago police Sergeant Ralph Wilson testified that he was driving in the area of the shooting around 5:30 a.m. when he heard eight to ten gunshots and drove to the area from which the gunshots originated. When Sergeant Wilson arrived, he saw one man standing in the street with a gun and one man lying in the street. Sergeant Wilson approached the man standing in the street and told him to lower his weapon. The man showed Sergeant Wilson his badge, identified himself as Officer Miller, and told him that his partner and the offender had been shot. Officer Taylor was lying on his back and had his police badge hanging from a metal chain around his neck. Sergeant Wilson testified that the area was lit by streetlamps and that he could "see up and down the street."

¶ 8 Chicago police officer Johnny Christian testified that he was part of the same narcotics unit team as Officer Taylor and Officer Miller. Around 5:30 a.m., Officer Taylor informed the team that defendant had returned home and a decision was made to detain defendant before he entered his residence. Shortly thereafter, while the team was on its way to defendant's house, Officer Miller reported that shots had been fired and that Officer Taylor had been hit. When Officer Christian arrived at the scene, he saw that Officer Taylor had his police badge hanging

from a chain around his neck.

¶ 9 Chicago police officer Cynthia Duarte testified that she was part of the same narcotics unit team and that an investigation of defendant's house was conducted prior to the shooting and that it revealed that defendant had mounted cameras on his house, encircled the house with a high wooden fence, and may have had dogs. Officer Duarte also testified that it looked like defendant had made an effort to secure and protect his house. Officer Duarte arrived at the scene following the shooting and saw that Officer Taylor had his police badge hanging from a chain around his neck.

¶ 10 Chicago police detective Luke Connolly testified that he arrived at the scene shortly after the shooting occurred and that the area was lit by "good artificial lighting." Detective Connolly testified that the area was lit by two city streetlights about 40 feet to the north and the south, an "exceptionally bright" porch light across the street, and a third streetlight in an alley about 60 or 70 feet away.

¶ 11 John Pape testified that he was the paramedic who treated defendant after the shooting and that he discovered two small bags of a hard white substance in defendant's mouth. The State subsequently presented evidence showing that the bags found in defendant's mouth contained 0.6 grams of cocaine and that defendant was carrying \$215 in cash when he was shot.

¶ 12 Chicago police sergeant Godfrey Cronin testified that he led a search of defendant's house later that morning and discovered a small bedroom that had been converted into a kennel for two Rottweiler dogs, numerous security cameras on the exterior of the house, and a hidden compartment in the basement. The search also uncovered a bowie knife, two hollowed-out

books, a fully loaded revolver that was kept in one of the hollowed-out books, sandwich bags and Ziploc baggies that Sergeant Cronin believed were used to hold crack cocaine and other narcotics, a cutting agent used to cut cocaine and heroin, two small scales, a vacuum sealed bag containing 43.5 grams of cannabis, radios, two scanners, two safety deposit box keys, \$3,660 in cash, a crossbow, two arrows, a bulletproof vest, a vacuum sealing machine, a bag containing 60.4 grams of cocaine, a jacket with a loaded handgun in the pocket, a sap,¹ an ammunition pouch, and bullets. On cross-examination, Sergeant Cronin stated that the security cameras and weapons were not unusual security precautions for a drug dealer.

¶ 13 Chicago police officer Thomas Roper testified that the safety deposit box keys found in defendant's house were for two safety deposit boxes that were owned by defendant and his wife. Officer Roper also testified that a search of the boxes revealed \$260,000 in cash.

¶ 14 Following the close of the State's case-in-chief, defense counsel informed the court that he had spoken with defendant about the defense strategy and that defendant had decided not to testify. The court then advised defendant of his right to testify on his own behalf and that the decision as to whether to testify was left entirely up to him. Defendant told the court that he understood that the decision of whether to testify was up to him and that he had decided not to testify of his own free will. The court found that defendant's decision not to testify was made knowingly and voluntarily after defendant had discussed the matter with his attorneys and was not the product of coercion.

¹ Sergeant Cronin explained that a sap was a lead object that could be cupped into a person's hand to deliver a harder punch.

¶ 15 Robert Tiberi testified for the defense that he was the paramedic who attended to Officer Taylor at the scene of the shooting and that he did not remember seeing a police badge around Officer Taylor's neck while he treated him. On cross-examination, Tiberi stated that he was not focused on Officer Taylor's clothing while he was treating him.

¶ 16 During the jury instruction conference, defense counsel requested instructions on self defense and second degree murder, arguing that they were warranted because defendant's mental state could be inferred from circumstantial evidence and that the jury could infer that defendant subjectively believed that he shot Officer Taylor in self defense from the evidence presented at trial. In doing so, defense counsel referenced the evidence showing that it was dark outside when the shooting occurred and that Officer Taylor was wearing civilian clothing and Tiberi's testimony that he did not see a badge around Officer Taylor's neck. The court denied the request, finding that there was no evidence showing that defendant shot Officer Taylor in self defense.

¶ 17 Based on the evidence presented at trial, the jury found defendant guilty of first degree murder, possession of a controlled substance with intent to deliver, possession of cannabis with intent to deliver, and possession of a controlled substance. The jury also found that, during the commission of the murder, defendant murdered a police officer who was performing his official duties, knew or should have known that the victim was a police officer, and discharged a firearm that proximately caused the death of another person.

¶ 18 At the sentencing hearing, Chicago police officer Ronald Simmons testified that around 9 p.m. on July 11, 1990, he was in an unmarked police vehicle with his partner when he stopped defendant and two other people. Officer Simmons announced that he was a police officer and

told the group that he wanted to talk to them. Defendant ran away, and Officer Simmons chased him while again announcing that he was a police officer. During the chase, defendant turned and fired three gunshots at Officer Simmons from about 40 feet away. Defendant was apprehended, charged with the attempted murder of Officer Simmons, pleaded guilty to that offense, and was sentenced to six years' imprisonment. The State also published victim impact statements from Monlade Gogins, the mother of Officer Taylor's child, and Patricia Semeniuk, Officer Taylor's sister. During argument in aggravation, the prosecutor pointed out that, in addition to his prior felony conviction for attempted murder, defendant had two prior felony convictions for burglary.

¶ 19 Following arguments in aggravation and mitigation, defendant was given the opportunity to make a statement in allocution. At that time, defendant stated:

"First, I would like to state from, from the very beginning of this case I was not afforded effective or competent counsel. And I have several but not all of many points that backs up this statement. I haven't seen any of my discovery material out of a thousand pages to review for myself or went over. I had no knowledge of this case. I was in the darkness. I was persuaded throughout the trial not to say anything in my behalf, even in writing.

Also, my lead counsel fell asleep several times during trial and had to be woke up by Mrs. Smith. Certain objections were not made during the trial about me remaining silent, not taking the stand, which is my right.

I was threatened to be pro se, to defend this case alone, which I have no knowledge of the law, if I was to do anything or to say anything in the closing

arguments or anything in my favor.

So these things but others that I don't have present with me at this moment cumulatively was ineffective and incompetent on behalf of my attorneys."

¶ 20 The court stated that, in determining defendant's sentence, it was going to consider the evidence presented at trial, the presentence investigation report, the evidence and arguments in aggravation and mitigation, the statutory factors of aggravation and mitigation, the financial impact of incarceration, the victim impact statements, and defendant's statements in allocution. Regarding defendant's statements, the court commented that "I watched these two attorneys litigate this case to the best of their abilities, as I have seen them litigate many, many other cases. And it reflects a sort of passing of the buck to them for the responsibility of an outcome which resulted from [defendant's] own conduct." The court then sentenced defendant to natural life imprisonment for first degree murder of a person he knew to be a police officer and for having discharged a firearm that proximately caused the death of another person, a maximum extended term 60-year sentence for possession of cocaine with the intent to deliver, a maximum extended term 10-year sentence for possession of cannabis with the intent to deliver, and a maximum extended term 6-year sentence for possession of a controlled substance. The court merged the two first degree murder convictions into one another and stated that defendant's sentences for his other convictions would run concurrently with the natural life sentence for murder.

¶ 21

ANALYSIS

¶ 22

I. Jury Instruction

¶ 23 Defendant contends that the trial court erred by denying his request for a second degree

murder jury instruction. The State responds that defendant was not entitled to an instruction on second degree murder because defendant did not present any evidence showing that he believed he was justified in using deadly force and that any error in failing to tender such an instruction was harmless.

¶ 24 A defendant is entitled to a jury instruction on any defense theory for which there is at least "slight" supporting evidence. *People v. Davis*, 213 Ill. 2d 459, 478 (2004). A defendant need not present evidence to support his theory of defense if the theory is supported by evidence presented by the State, and the court's role in deciding whether to instruct the jury on a defense theory is not to weigh the evidence but, rather, to determine whether there is some evidence to support that theory. *People v. Jones*, 175 Ill. 2d 126, 132 (1997). Thus, unless the evidence before the court is sufficiently clear and convincing to permit the court to find as a matter of law that the defense is unsupported, the issue of whether the defendant's theory of defense should relieve him of criminal liability must be determined by the jury with the proper instruction as to the applicable law. *Id.* A court's decision regarding whether there is sufficient evidence in the record to warrant giving the jury a particular instruction is a question of law and will be reviewed *de novo*. *People v. Washington*, 2012 IL 110283, ¶ 19.

¶ 25 Second degree murder is not a lesser included offense of first degree murder but, instead, is better described as a lesser mitigated offense of first degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 122 (1995). A defendant is guilty of second degree murder when he commits the offense of first degree murder while under the unreasonable belief that the circumstances justified the use of deadly force in self-defense. *People v. Blue*, 343 Ill. App. 3d 927, 936 (2003).

¶ 26 Defendant asserts that his trial strategy was to concede that he shot Officer Taylor and to argue that he should only be convicted of second degree murder because he subjectively believed that he was justified in shooting Officer Taylor to defend himself from an armed robbery and that he was entitled to a jury instruction on second degree murder because his theory of defense was supported by some evidence. In support, defendant cites to Officer Miller's testimony that it was dark outside and that Officer Taylor had his gun drawn and was not wearing a police uniform when the shooting occurred, Tiberi's testimony that he did not remember seeing a police badge around Officer Taylor's neck when he treated him after the shooting, and the evidence showing that defendant was a drug dealer who handled large amounts of cash and undertook extensive safety precautions to ensure that he was not robbed.

¶ 27 We determine that, regardless of whether the evidence cited by defendant was sufficient to warrant a jury instruction regarding second degree murder, defendant is not entitled to reversal of his first degree murder conviction because any error in denying his request for an instruction on second degree murder was harmless. The failure to tender a jury instruction will be deemed harmless "if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed." *Washington*, 2012 IL 110283, ¶ 60.

¶ 28 Officer Miller testified that Officer Taylor identified himself as a police officer and told defendant to put his hands in the air and that defendant nodded his head, turned toward Officer Taylor, and shot him. Officer Miller also testified that Officer Taylor's police badge was in an ID holder and hanging from a chain around his neck at the time, and Sergeant Wilson, Officer Christian, and Officer Duarte testified that they observed a police badge hanging from a chain

around Officer Taylor's neck when they saw him after the shooting. In addition, Tiberi stated on cross-examination that he was not focused on Officer Taylor's clothing while he treated Officer Taylor. Further, Officer Miller, Sergeant Wilson, and Detective Connolly testified that the area in which the shooting occurred was well lit by a number of streetlamps.

¶ 29 Thus, although the shooting occurred while it was dark outside and Tiberi testified that he did not remember seeing a police badge around Officer Taylor's neck, Tiberi admitted on cross-examination that he was not focused on Officer Taylor's clothing at that time and multiple witnesses testified that Officer Taylor's police badge hanging from a chain around his neck and that the area in which the shooting occurred was well lit by a number of streetlights. Moreover, even if the evidence did not conclusively establish that defendant saw Officer Taylor's badge, Officer Miller's testimony showed that Officer Taylor identified himself as a police officer prior to the shooting and that defendant acknowledged that identification by nodding his head before he turned toward Officer Taylor and shot him. As such, the evidence showing that defendant was aware that Officer Taylor was a police officer before he shot him was overwhelming and the result of the trial would not have been different had the jury been instructed as to second degree murder.

¶ 30 II. Ineffective Assistance of Counsel

¶ 31 Defendant contends that the court erred by failing to conduct an inquiry into the claims of ineffective assistance of counsel he raised during the sentencing hearing. The State responds that no inquiry was necessary because the court was able to dispose of defendant's claims on the basis of the court's own observations of the performance of the defense attorneys and the insufficiency

of defendant's allegations.

¶ 32 Newly appointed counsel is not automatically required every time a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel. *People v. Patrick*, 2011 IL 111666, ¶ 32. Rather, the court should examine the factual basis of the defendant's claim and, if the court determines that the claim lacks merit or only pertains to matters of trial strategy, then the court need not appoint new counsel. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.* at 78. During the court's evaluation of the defendant's claim, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted." *Id.* The court may base its evaluation on defense counsel's explanation of the facts and circumstances surrounding the defendant's claim, a discussion between the court and the defendant, and the court's knowledge of defense counsel's performance at trial and the facial insufficiency of the defendant's claim. *Id.* at 78-79. While a court's decision as to the merits of a defendant's *pro se* claims of ineffective assistance will not be reversed unless the decision is manifestly erroneous (*People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25), the issue of whether the court conducted an adequate inquiry into the claims constitutes a legal question that is reviewed *de novo* (*Moore*, 207 Ill. 2d at 75; *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011)).

¶ 33 The record shows that the court's evaluation of defendant's *pro se* claims of ineffective assistance of counsel was based entirely on its own observations of defense counsels' conduct, as

the court's only reference to those claims was its comment that it observed the attorneys "litigate the case to the best of their abilities." To the extent defendant asserts that the court's failure to conduct further inquiry requires remand because the court must always engage in some sort of colloquy with the defendant and his attorneys when evaluating a *pro se* ineffective assistance of counsel claim, we point out that our supreme court has imposed no such requirement. Instead, the court held that "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation *is permissible and usually necessary* in assessing what further action, if any, is warranted." (Emphasis added.) *Moore*, 207 Ill. 2d at 78. Further, this court has held that a defendant's *pro se* claims of ineffective assistance of counsel must meet some minimum requirements to warrant further inquiry by the trial court and that when the claims "are conclusory, misleading, or legally immaterial, or do not bring to the trial court's attention a colorable claim of ineffective assistance of counsel, the trial court may be excused from further inquiry." *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007). Thus, while a court may not ignore a defendant's claim of ineffective assistance of counsel and may usually be required to engage in some sort of discussion with the defendant and/or his attorneys, such further inquiry is not required in every case.

¶ 34 The State maintains that no further inquiry was necessary in this case because the court was able to determine that defendant's claims were meritless on the basis of its observation of the performance of his attorneys and the facial insufficiency of his claims. Defendant's first claim of ineffective assistance was based on his allegation that he was not given access to any discovery materials. Although an appellate court in this district has held that counsel's active concealment

of discovery materials requested by the defendant constitutes ineffective assistance (*People v. Smith*, 268 Ill. App. 3d 574, 579 (1994)), a defendant does not have a constitutional right to read discovery materials (*People v. Savage*, 361 Ill. App. 3d 750, 757 (2005)) and defendant in this case did not allege that he requested to see any discovery materials and only alleged that he was not shown any discovery materials. Thus, defendant's claim was legally immaterial and did not require further inquiry by the court.

¶ 35 Defendant's second claim of ineffective assistance was based on his allegation that one of his attorneys fell asleep several times during his trial. However, the court was able to evaluate the validity of defendant's claim without further inquiry, as the court was present during the trial proceedings and had the opportunity to observe the relevant attorney's conduct.

¶ 36 Defendant's final claim of ineffective assistance was based on his allegations that he was persuaded throughout trial not to say anything on his behalf and his attorneys failed to make any objections regarding his failure to testify. While the decision of whether to testify ultimately belongs to the defendant, that decision is generally made after consultation with defense counsel. *People v. Patrick*, 233 Ill. 2d 62, 70 (2009). In this case, defense counsel informed the court that he advised defendant not to testify and defendant verified that he understood that the decision of whether to testify was up to him and that he was deciding not to testify of his own free will. Thus, counsel was entitled to consult with defendant and advise him not to testify as a matter of trial strategy, and defendant did not allege that counsel engaged in any inappropriate conduct in advising him not to testify. As such, defendant's claim was conclusory and legally immaterial and did not require any further inquiry by the court, and we conclude that the court did not err by

failing to conduct a further inquiry into defendant's *pro se* claims of ineffective assistance of counsel because such inquiry was not necessary in this case.

¶ 37 In reaching that conclusion, we have considered *Vargas*, 409 Ill. App. 3d at 803, in which this court held that the trial court erred by failing to conduct a further inquiry into the defendant's *pro se* claims of ineffective assistance of counsel because those claims related to matters outside the record that were not readily ascertainable by the court absent further inquiry, and find it to be distinguishable from this case. Here, defendant's claims were not related to matters outside the record and could be disposed of on the record before the trial court because the claims were either legally immaterial or inconsistent with the court's observations of the attorneys' conduct. Although defendant maintains that he twice alluded to having additional information to support his ineffective assistance claims, the transcript of defendant's statements in allocution do not support that claim. Defendant stated in his statement of allocution that "I have several but not all of many points" that backed up his statement that he "was not afforded effective or competent counsel" and that "these things but others that I don't have present with me at this moment" show that he was deprived the effective assistance of counsel. Thus, while defendant indicated that he could raise other claims of ineffective assistance of counsel, he did not indicate that there were matters outside of the record that could have supported those claims that he did raise during his statement in allocution. To the extent defendant indicated that his attorneys were ineffective for other undisclosed reasons, such vague allegations of ineffective assistance are insufficient to require further inquiry by the trial court. *Bobo*, 375 Ill. App. 3d at 985.

¶ 38

III. Extended-Term Sentence

¶ 39 Defendant contends, and the State agrees, that the court erred by imposing extended-term sentences on his convictions for possession of cannabis with intent to deliver and possession of a controlled substance. When a defendant is sentenced to natural life imprisonment, the court may only impose an extended-term sentence on the next most serious offense of which the defendant was convicted. *People v. Terry*, 183 Ill. 2d 298, 305 (1998). Here, defendant was sentenced to natural life imprisonment for first degree murder and the next most serious offense of which he was convicted was possession of between 15 and 100 grams of cocaine with intent to deliver (720 ILCS 570-401(a)(2)(A) (West 2008)). As such, the court erred by sentencing defendant to extended-term sentences on his convictions for possession of cannabis with intent to deliver and possession of a controlled substance and we must vacate defendant's sentences for those offenses and remand the matter to the trial court for resentencing. In addition, as we are remanding for resentencing on the basis of the extended-term sentences imposed on defendant's convictions for possession of cannabis with intent to deliver and possession of a controlled substance, we need not address the State's additional claim that the court erred by imposing concurrent sentences, rather than consecutive sentences, as that issue may be resolved by the trial court on remand.

¶ 40 IV. Excessive Sentence

¶ 41 Defendant contends that the court abused its discretion by sentencing him to a maximum sentence of 60 years' imprisonment for possession of cocaine with intent to deliver. Defendant does not dispute that his sentence falls within the permissible statutory range, but asserts that it is excessive in light of the amount of cocaine he was found to have possessed.

¶ 42 When the sentence imposed by the trial court falls within the statutory range permissible

for the offense of which the defendant is convicted, a reviewing court may disturb that sentence only if the court has abused its discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). A sentence is excessive and the result of an abuse of discretion if it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). It is the province of the trial court to balance factors in aggravation and mitigation and make a reasoned decision as to the appropriate punishment (*People v. Streit*, 142 Ill. 2d 13, 21 (1991)), and it is not this court's prerogative to reweigh these factors and independently decide that the sentence is excessive (*People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010)).

¶ 43 Defendant asserts that a maximum sentence was excessive because he was convicted of having possessed between 15 and 100 grams of cocaine with intent to deliver but was only found to have possessed 60.4 grams of cocaine. The State responds that the court did not abuse its discretion when it imposed a maximum sentence because defendant did not present any evidence in mitigation and the State presented significant evidence in aggravation.

¶ 44 The record shows that defendant had two prior felony convictions for burglary and one prior felony conviction for attempted murder and that Officer Simmons testified regarding the attempted murder at the sentencing hearing. In addition, the State presented evidence at trial showing that defendant fortified his house and kept it stocked with numerous weapons. Thus, in light of defendant's criminal record, which included the attempted murder of a police officer, the absence of mitigating factors, and the evidence showing that defendant was capable and willing to defend his extensive drug dealing operation with force, we cannot say that the trial court

abused its discretion when it imposed a maximum sentence with regard to defendant's conviction for possession of 60.4 grams of cocaine with intent to deliver.

¶ 45 V. Mittimus

¶ 46 Defendant further contends, and the State agrees, that the mittimus contains errors which must be corrected. The mittimus must be amended to conform with the judgment when it does not accurately reflect the defendant's conviction. *People v. Pryor*, 372 Ill. App. 3d 422, 438 (2007).

¶ 47 Although defendant was convicted of possession of between 15 and 100 grams of cocaine with intent to deliver and possession of between 30 and 500 grams of cannabis with intent to deliver, the mittimus reflects that defendant was convicted of manufacturing or delivering those amounts of cocaine and cannabis. As such, we direct the clerk of the circuit court to amend the mittimus so that it accurately reflects that defendant was convicted of possession of between 15 and 100 grams of cocaine with intent to deliver and possession of between 30 and 500 grams of cannabis with intent to deliver.

¶ 48 In addition, although defendant was convicted of one count of first degree murder, the mittimus reflects that he was convicted of eight counts of first degree murder. As such we direct the clerk of the circuit court to amend the mittimus so that it accurately reflects that defendant was only convicted of the count of first degree murder set forth in count seven of the indictment, which alleged that, during the commission of the murder, defendant murdered a peace officer who was performing his official duties, knew or should have known that the victim was a police officer, and discharged a firearm that proximately caused the death of another person.

¶ 49

CONCLUSION

¶ 50 Accordingly, we affirm all of defendant's convictions and his sentences for first degree murder and possession of between 15 and 100 grams of cocaine with intent to deliver. We also vacate defendant's sentences for possession of between 30 and 500 grams of cannabis with intent to deliver and possession of a controlled substance and remand the matter for resentencing and a corrected mittimus.

¶ 51 Affirmed in part and vacated in part; cause remanded; mittimus corrected.