2014 IL App (1st) 123250-U

FIFTH DIVISION
December 5, 2014

No. 1-12-3250

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 174
	)	
DWAYNE JACKSON,	)	Honorable
	)	Kevin M. Sheehan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not abuse its discretion in denying an intent instruction in response to jury note, as jury asked fact-related question regarding premeditation, and any error was harmless where defendant relied on affirmative defense of insanity. Sentence of 35 years' imprisonment for first degree murder not excessive.

¶ 2 Following a jury trial, defendant Dwayne Jackson was convicted of first degree murder and sentenced to 35 years' imprisonment. On appeal, defendant contends that the trial court erred in denying his request to give the jury an instruction on intent in response to a jury note asking

about intent. He also contends that his sentence is excessive because of his mental health history, lack of recent felony convictions, and the court's consideration of factors inherent in the offense.

¶ 3 Defendant was charged with first degree murder for allegedly fatally stabbing Melvin Terry with a knife on or about November 30, 2010. The two counts alleged that defendant did so intentionally or knowingly, or knowing that his act created a strong probability of death or great bodily harm. *See* 720 ILCS 5/9-1(a)(1), (2) (West 2012).

¶ 4 On July 1, 2011, psychologist Dr. Michael Rabin sent a letter to defense counsel opining to a reasonable degree of scientific certainty that defendant was fit to stand trial with medication but was legally insane at the time of the charged offense because, due to "his active psychosis, his ability to comprehend the criminality of his alleged act was substantially impaired." Dr. Rabin found "clear indications that he was suffering from a mental disease at the time of the alleged offense." The letter was accompanied by Dr. Rabin's June 20, 2011, report of his forensic psychological evaluation of defendant.

¶ 5 A copy of Dr. Rabin's report was provided to the State, which on August 24, 2011, sought a behavioral clinical examination (BCX) of defendant for sanity. The court ordered its forensic clinical services (FCS) to conduct the BCX.

¶ 6 In March 2012, FCS psychologist Dr. Susan Messina issued her opinion, to a reasonable degree of psychological and scientific certainty, that defendant was legally sane at the time of the charged offense, and specifically that he "was not experiencing symptoms of a prominent mental illness or defect around the time of the alleged offense that would have precluded him from being able to appreciate the criminality of his behavior at that time." The opinion mentioned that

Dr. Messina examined defendant on October 18 and November 3 of 2011 and on March 6, 2012. The opinion referred to Dr. Messina's psychological summary, but there is no copy in the record.

¶ 7 At trial, Carolyn Bates testified that she was defendant's mother and also victim Terry's friend for nearly five decades as of his death about two weeks after his 72nd birthday. As of November 2010, both Terry and Bates were retired, and Bates and defendant, 47 or 48 years old, resided in Terry's apartment for about two years.

¶ 8 On the evening of November 29, 2010, Bates, Terry, and defendant were home alone. Defendant was drinking beer. After Bates and Terry ate dinner, Terry went to his bedroom to sleep while Bates sat down on the living room sofa. Defendant "wanted to do a lot of talking" on unspecified matters they had discussed "about 50 times that day or the day before and the day before that." However, Bates was tired and did not want to converse with defendant. Defendant said "okay" but returned a short time later seeking to talk. When Bates refused to talk to defendant, he said "we'll see about that." Bates went into Terry's bedroom, closed the door, and began to watch a movie as Terry continued sleeping. However, defendant came to the bedroom door and knocked to be admitted; he continued though Bates told him that she would not open the door. As he repeatedly but intermittently knocked on the door, defendant told Bates that she "was gonna talk to [defendant] that night because he had a lot of questions that needed answering" and that "he was gonna bump our old asses" or "old selves off," which she took to mean that he would kill Bates and Terry. Defendant did this for "a long time," leaving the apartment and then returning to knock forcefully on the bedroom door. As the lock on that door was easily defeated, Bates barred the door with an exercise bench and sat on it to add her weight. At one point, while Terry was still asleep, defendant told Bates that "he was gonna leave the

back door open and the kitchen door which goes down to the fire escape *** and make a scene like somebody else had come there and did it. Because he was smarter than me and he knew that they would believe him." When defendant began repeatedly kicking the bedroom door, Bates woke up Terry and told him to call the police; Terry declined at first saying that "he'll quiet down in a little bit." Bates denied that defendant was "kinda like in a sleep state" and explained that she and Terry believed that defendant would eventually calm down as he had on prior occasions.

¶ 9 Defendant did not calm down. Instead, he told Bates and Terry to prepare to "meet our maker" and pray, and said "we got to finish her" and "this is gonna be just like *American Psycho*." Terry phoned the police, and defendant began kicking the door much harder. Terry told Bates that he was going to "make him go because I'm tired of this noise." Terry was trying to open the door as defendant pushed on it, but the exercise bench kept them apart. Terry and defendant tried to grab each other, grappling for "a few minutes" with neither visibly holding a weapon. However, Terry then stopped struggling and clutched his chest before falling at Bates's feet, while defendant continued kicking the door. Bates phoned the police and noticed the blood on Terry's chest during the call, so she told the operator that Terry was bleeding. By now, defendant had stepped away from the door, and when Bates asked him what he had done to Terry, he replied "I didn't do anything to him, mother dear" or "Nothing, mother dear." Bates stayed in the room until an ambulance arrived and took Terry away. By the time the police arrived, defendant was gone. Two or three days after the incident, defendant phoned Bates to ask her for money. They agreed to meet the next day at a restaurant, but Bates informed the police of the time and location and did not attend.

¶ 10 Bates testified that defendant was the third of four children. When he was four or five years old, he was struck by a car and a truck while crossing the street, requiring months of hospitalization and rehabilitation. During his teenage years, defendant had a "fine" relationship with Bates but not his stepfather, who struck him at least once and caused defendant to "run away" for "a couple of days." (Terry was not his stepfather.) Defendant left Bates's home when he was 19 years old and maintained only sporadic contact with her for years. She did not notice a "dramatic" change in defendant in his 20s, though he "used to have his little tantrums, but nothing that severe." Bates opined that defendant was "acting strange" on the night at issue "after he started taking that medicine." Defendant would speak when nobody else was present, and he had previously said that he would "bump you guys off," but Bates could not recall when. Bates could not recall that defendant was hospitalized for anything but physical injury, but was aware that he had been prescribed medication.

¶ 11 Police officer Robert Watson testified that he responded at about 4:30 a.m. to a call to the Terry/Bates apartment and saw Terry lying on the floor next to a pool of blood. Paramedics were already there and told Officer Watson that Terry was dead. Officer Watson declared the apartment a crime scene and interviewed Bates, and as a result sent a radio message that he was seeking defendant. Officer Watson's search of the apartment found nobody else present, and he stayed there until other officers arrived. Forensic investigator Carl Brasic testified that he examined and photographed the apartment. Terry's body was in the front bedroom, with two apparent puncture wounds to the chest and nothing in his hands. The bedroom door was undamaged but there was an exercise bench near the door. Investigator Brasic inventoried a knife in the kitchen, two screwdrivers, and a pen found just outside the front bedroom. Forensic

scientist Ronald Tomek testified to examining, but finding no apparent blood stains upon, the knife and screwdrivers.

¶ 12 The parties stipulated to Dr. Adrienne Segovia's testimony that her autopsy of Terry found a fatal stab wound, and another superficial wound, to his left chest.

¶ 13 Officer Ryan Sheahan testified that, on December 3, 2010, he and other officers went to a particular restaurant at a time provided by Bates and there arrested defendant. He was calm and cooperative, and did not attempt to flee.

¶ 14 Defendant's motion for a directed verdict was denied, and defendant chose not to testify.

¶ 15 Dr. Michael Rabin testified for the defense that he worked for over 20 years at FCS but now has a private practice in forensic psychology; he was accepted without objection as an expert in forensic psychology. Dr. Rabin reviewed defendant's records (from the instant case, 18 psychiatric hospitalizations over 31 months, and the jail hospital) and examined him for fitness to stand trial and sanity at the time of the offense. Defendant was previously diagnosed primarily with a psychotic or schizoaffective disorder and also with bipolar disorder and schizophrenia. Dr. Rabin explained that schizoaffective disorder is schizophrenia combined with bipolar disorder, so that one would have both delusions and mood swings from extreme depression to "impulsive, pretty much unthinking" mania. In some of his hospitalizations, he was also diagnosed with substance abuse. Defendant reported auditory hallucinations – voices telling him to kill himself or others – in every hospitalization; they were not constant but worsened when he was not taking his medication or was abusing drugs or alcohol. At various times, defendant received a global assessment of functioning score (GAF), an assessment ranging from 0 to 100 where less than 50 signifies "major mental problems" and less than 40 is "pretty much disabled." Defendant's GAFs

upon admission ranged from 20 to 40 with an average GAF of 27. Dr. Rabin explained that someone with a GAF of 20 or even 27 is psychotic and dangerous to himself or others.

¶ 16 Dr. Rabin reviewed the records in the instant case, and in particular Bates's accounts as she was present for the incident. He noted her statement that defendant was talking to himself during the incident and in particular that he would leave the door open to make it appear that someone else committed the crime. Dr. Rabin denied that this would "mean that he consciously knew what he was doing was criminal," though it "shows indication that he could get in trouble for what he's doing and he realizes it." Instead, Dr. Rabin characterized this as defendant "discussing that with his hallucinations" and thus "psychotic enough to get advice from his imaginary voices" rather than having "the judgment or insight necessary to determine whether he was right or wrong." While defendant threatened to "bump them off," he had done so previously and never acted on the statement, and Bates did not consider it "very threatening" usually but was "frightened" this time. When defendant told Bates and Terry they would "meet their maker," it showed he was prepared to fight or attack them but not that he knew doing so would be criminal as "at the time he was so psychotic, he could not make that judgment."

¶ 17 Dr. Rabin reviewed the video of defendant's post-arrest interview and found him "in a manic state" and "somewhat irrational" including walking around the room rather than remaining seated, reading the signs on the walls, and looking to one side and speaking as if to someone not there or to himself. While defendant denied recalling the incident in the interview, Dr. Rabin did not consider this "especially helpful either way." The interview video was shown to the jury, with Dr. Rabin indicating the aforementioned behavior.

¶ 18 Dr. Rabin personally interviewed defendant in June 2011, by which time he was receiving Risperdal, an antipsychotic medication, and was no longer acutely psychotic. He reported a very difficult childhood, with physical and emotional abuse by his stepfather (not Terry) culminating in a blow to the head causing a concussion and prompting him to run away from home when he was about 13 years old. As he lived on the street, he abused drugs and alcohol and "supported himself by thievery and prostitution." He felt depressed and "weak" with a poor self-image all his life. He reported auditory hallucinations telling him that "he was no good, he was useless" and directing him to kill himself and to attack others as they presented a threat to him. He reported "several suicide attempts in the past." On the evening in question, he was angry at Bates, though he could not recall why, and recalled "storming out of the house angry." Dr. Rabin attributed defendant's auditory hallucinations during the incident at issue and the post-arrest interview to his schizoaffective disorder rather than to drug or alcohol abuse. While Dr. Rabin admitted that defendant "could have been lying," he "relied on what his mother had to say about his behavior rather than on his account."

¶ 19 Dr. Rabin administered tests to defendant. One was a "test for malingering" disguised as a memory test to determine if one is cooperative or feigning illness; defendant was cooperative. Another test was for neurological impairment or brain damage, where a person defendant's age should score 46 or more out of a possible 50. Defendant's score was 41, indicating minor neurological impairment with memory, concentration, and visual problem-solving. Dr. Rabin considered this consistent with his two reported brain injuries: the car accident when he was a very young and the blow to the head when he was about 13. Defendant had poor ability to recite past occurrences, which Dr. Rabin considered "not unusual" for his mental illness but also "not

indicative." A Rorschach or ink-blot test found two issues: long-standing depression manifesting "under even minor stress," and a "coping deficit" or poor interpersonal skills. Defendant also had "fairly close" indications of suicidal tendencies and hypervigilance or paranoia. A personality inventory showed "exaggeration," or a tendency to be histrionic and overdramatize events in his life, which is consistent with depression in that the person "can't function and sees things worse off than they are." However, exaggeration may also indicate malingering.

¶ 20 Dr. Rabin diagnosed defendant with schizoaffective disorder in remission with medication and with polysubstance abuse in remission in a controlled environment, explaining that he was depressed but not "psychotically depressed." Dr. Rabin concluded that defendant, due to his mental illness, lacked substantial capacity to appreciate the criminality of his conduct and so was insane at the time of this offense. After making his report to defense counsel in June 2011, Dr. Rabin received defendant's FCS records; nothing therein changed Dr. Rabin's opinion.

¶ 21 On cross-examination, Dr. Rabin testified that defendant had four hospitalizations in 2009 or 2010 with the rest in 2003 or 2004. In two of the 2009 hospitalizations, he either admitted to, or testing found, cocaine use. In the police interview reports and grand jury testimony of Bates, she did not use the word "hallucinations" in reference to defendant but said that he was "talking to his voices." While Dr. Rabin reviewed Bates's accounts, he did not interview her nor any of defendant's friends or neighbors. However, on redirect examination, he explained that forensic psychologists generally do not interview witnesses. While defendant seemed hypermanic during his police interview, he had just been arrested for murder, which "may" stress or excite someone and cause him to act surprised. Dr. Rabin denied that defendant saying "oh, shit" when left alone in the interview room indicated that he knew right from wrong

or appreciated the criminality of his conduct. He also denied that, in the video, defendant seemed to be pondering or contemplating his actions. While defendant said, "kiss my ass goodbye, I'm going to the county," Dr. Rabin opined that it merely indicated that he understood, four days after the incident, that "he's in trouble" but did not indicate that he was pondering or contemplating the incident. When asked if defendant's interjection that "this is some serious shit" indicated such contemplation, Dr. Rabin replied "not at all."

¶ 22 In Dr. Rabin's interview, defendant described a sporadic employment history. While defendant was unlikely to forget his stepfather's abuse, "he might [or] might not" admit to the abuse if asked about it. In one of his 2009 hospitalizations, defendant replied to a question about being a perpetrator or victim of abuse with "not applicable," and during a 2004 hospitalization he reported a "happy" childhood and did not mention abuse. However, he did mention abuse during another 2004 hospitalization, and Dr. Rabin explained on redirect examination that defendant was ashamed of his mental illness and thus did not consistently report his symptoms. Defendant has had a substance abuse problem for over 20 years but believed that his alcohol and marijuana abuse was caused by his difficult childhood rather than the cause of it. Abuse of drugs including alcohol can cause hallucinations, but only "when you get to a very toxic state where there's brain damage." Dr. Rabin never asked defendant if he has any siblings, but Dr. Rabin did not consider that important to his opinion. Defendant would receive Zoloft and Trazodone while hospitalized, including from the jail hospital when Dr. Rabin interviewed him, but he admitted to not taking his medication while on the street because he was embarrassed by the need to take medication and believed his thinking was clearer without medication. During a 2009 hospitalization, he reported that he stopped taking medication because, in part, he wanted to drink alcohol. Upon

entering the jail hospital in December 2010, he was uncooperative (so that the intake person opined that he was feigning illness) and denied drug or alcohol use. Dr. Rabin had no medical records from defendant's car accident and could not learn whether either of his concussions (from the accident or his stepfather's blow) was severe or mild. Defendant did not attend special education and received his general-equivalency degree (GED). On the personality inventory, he displayed a tendency to respond falsely or inconsistently, and Dr. Rabin admitted that misleading or exaggerated information could affect his opinion. Dr. Rabin admitted that "a large part" of his opinion is based on defendant's self-reporting.

¶ 23 While defendant denied having an anger problem, his poor impulse control would impair his ability to control his response when angry. As to his history of auditory hallucinations, including commands or instructions, Dr. Rabin "never said he had to" obey them and in fact "tries to resist them, but *** usually he does." Dr. Rabin admitted that defendant's drug and alcohol abuse, and refraining from taking medication, are "volitional acts." Defendant told Dr. Rabin that he was hearing voices during the incident at issue but could not recall what they said. Dr. Rabin admitted that a diagnosis of mental illness does not inherently constitute insanity. Dr. Rabin was aware from the police reports that defendant left the scene of the incident, and fleeing the scene of a crime can indicate that one knew one's actions were wrong. While Dr. Rabin opined that defendant's reference to leaving the door open to place suspicion on another did not indicate appreciation of criminality because his statement was made to his voices and thus indicated impaired judgment, it was from Bates's account that Dr. Rabin concluded that defendant made that statement to his voices. On redirect examination, Dr. Rabin clarified that Bates' verbatim account of defendant's statement (as opposed to a summary of her words by Dr.

Rabin) was "you remember what we decided, you know we can bump their ass off and tell them you know someone else did it." When asked if "just because the defendant hears some voices he's insane," Dr. Rabin replied "I never said that." Dr. Rabin denied that defendant removing the weapon from the apartment would change his opinion as it would "not necessarily" indicate appreciation of criminality. Dr. Rabin explained that insanity is a state of mind during a crime, so that before the crime "he's not insane, but he is psychotic." When asked about whether drug use by defendant on the night in question would change that, Dr. Rabin opined that defendant's psychosis "outweighs the effects of the drugs by quite a bit," explaining on redirect examination that his testing showed major depression despite having been drug-free in jail for several months.

¶ 24 Dr. Susan Messina testified that she evaluated defendant's sanity at the court's order. She reviewed prior FCS evaluations, extensive medical records, and police reports, and she interviewed defendant three times, in October and November 2011 and March 2012. In the first interview, he was "superficially cooperative" in that he gave general or vague answers and was less than forthcoming about personal details, but he was increasingly cooperative in the two later interviews. She considered administering psychological tests because she was skeptical that he was providing accurate information, but decided not to perform testing when he was cooperative by the third interview. Defendant was alert and seemed to understand Dr. Messina's questions. His mood was "neutral," without apparent mania or depression, and consistent with the topics being discussed. His thought processes seemed organized, without "loose associations or tangential speaking." He showed no delusions or paranoia, and no signs of hearing voices during the interview, though he reported having auditory hallucinations – telling him that he was inferior and weak and should get a better job – when he was not taking his medication.

¶ 25 To Dr. Messina, defendant described his education as having completed high-school equivalency and attending one year of college, and reported having been unemployed for some time. He recalled multiple hospitalizations and that he was taking medication but at first could not be more specific. He described being hit in the head with a baseball bat while a child but not whether he received medical treatment. He "presented differently at different times" but was "eventually fairly forthcoming." He initially denied drug use and would admit only drinking a "six pack" of beer weekly, contrary to his records, but then admitted cocaine use and drinking alcohol daily and as much as he could afford. He also admitted using marijuana and "acid" (LSD) as well as trying heroin. He admitted using alcohol, cocaine, and LSD at the time of the incident at issue – in particular taking LSD but then feeling depressed and thus taking cocaine as a stimulant – and that he was not taking his medication at the time. He recalled "ranting and raving" to himself because he was angry, and attributed this to an "acid trip." He could not remember killing Terry, nor could he affirm that he had not. He recalled unsuccessfully searching for something in his bedroom, then going to Terry's bedroom to speak to him and knocking on the bedroom door, then leaving the apartment still angry for not finding whatever he was seeking. He wandered the city, drinking alcohol for part of the time, until after a "couple days" he called Bates because he had no money. He went to the meeting at the restaurant he chose, but she did not appear. Dr. Messina considered defendant's account coherent.

¶ 26 Based on her review of records and interviews of defendant, Dr. Messina concluded that he was sane at the time of the offense; that is, not suffering from a prominent mental illness causing him to not appreciate the criminality of his actions. She diagnosed him with polysubstance dependence and rule-out mood disorder, the former not being a mental illness. She

reviewed Dr. Rabin's report, and explained that she did not diagnose defendant with schizoaffective disorder because of his long history of substance abuse and that "many, if not all, of his hospitalizations co-occur with use of mood-altering substances." She is reluctant to diagnose a mood disorder until the patient is no longer taking the abused substances.

¶ 27 On cross-examination, Dr. Messina testified that she did not interview Bates, nor any of the police officers in this case, but explained that "we don't do that." She reviewed a 2009 report from FCS psychiatrist Dr. Jonathan Kelly, noting that defendant was taking Risperdal, Zoloft, and Trazodone and would show symptoms of mental illness if not taking this medication, and that defendant reported auditory hallucinations and demonstrated paranoia, so that Dr. Kelly diagnosed defendant with alcohol dependence and a mood disorder with psychotic symptoms in partial remission. She also reviewed a 2008 report from Dr. Kelly, noting that defendant reported auditory hallucinations and prior head trauma, demonstrated paranoia, and was not taking medication, so that Dr. Kelly diagnosed defendant with alcohol dependence in remission, ruled out a mood disorder, and noted a history of antisocial and schizotypal personality features. On redirect examination, Dr. Messina added that Dr. Kelly found defendant fit to stand trial in both reports and sane in the 2009 report. Dr. Messina did not review Dr. Kelly's reports with him. Similarly while she reviewed Dr. Rabin's report, she did not contact him to discuss it. Dr. Messina had examined defendant in 2000, during which he made paranoid statements, and she diagnosed him with schizotypal personality disorder with no diagnosis of substance abuse or dependence. On redirect examination, she added that she found defendant sane at the time of that offense. Dr. Messina could not recall if the records of the jail hospital showed that defendant was referred for drug treatment, though "they asked him questions about his substance use and

thought he was minimizing his use." In one of his 2009 hospitalizations, defendant was diagnosed with mood disorder, substance abuse disorder, drug-induced mood disorder, and antisocial personality disorder.

¶ 28 When Dr. Messina asked defendant why he stopped taking his medication, he replied that "he starts to think that he doesn't need it" and when the "voices became louder" he took medication or drugs but preferred alcohol or drugs over his medication. No social history of defendant was prepared. Dr. Messina did not perform the GAF assessment or Rorschach test because they are appropriate to treatment rather than forensic psychology. She did not test defendant for cognitive impairment because she did not consider his self-reported reference in Dr. Kelly's 2008 report sufficient indication of brain injury. She sought but did not receive records of treatment for head trauma, and the earliest medical records she had were from 2003.

¶ 29 In closing argument, the defense argued that defendant indeed killed Terry but he did not appreciate the criminality of that act due to his mental illness so that the defense was not challenging that the State proved defendant guilty of first degree murder and "not asking you to find my client not guilty" but instead not guilty by reason of insanity. The State in turn argued that defendant's plan to leave the door open and his flight from the apartment with the fatal weapon indicate that he appreciated the criminality of his actions.

¶ 30 The jury was instructed on first degree murder based on intent to kill or do great bodily harm, knowledge that death will result, and knowledge of strong probability of death or great bodily harm. The jury was also instructed on insanity and on being guilty but mentally ill, so that its verdict options were not guilty, not guilty by reason of insanity, guilty, and guilty but

mentally ill. The jury was not instructed on the legal definitions of intent or knowledge, as neither party sought such instructions.

¶ 31 After about an hour of deliberation, the jury sent the court a note: "What is the definition of intent and does intent imply premeditation?" The State opposed instructing the jury on the definition of intent, while defendant asked for such an instruction; namely, Illinois Pattern Jury Instructions, Criminal, No. 5.01A (4th ed. 2000) ("IPI 5.01A"). The court refused the instruction, noting that the note posed a single question asking about the definition of intent, a legal issue, but also asking about the implications of that definition, a matter within the jury's province. The court instead responded to the jury: "You have the law and the evidence continue to deliberate." Following further deliberation for about an hour, the jury found defendant guilty but mentally ill of first degree murder.

¶ 32 In his post-trial motion, defendant argued in relevant part that the court erred by refusing defendant's request to define intent using IPI 5.01A in response to the jury's question. Following arguments of the parties, the court denied the motion. Regarding the IPI 5.01A issue, the court reiterated that the jury did not merely ask for a definition of intent but also asked about premeditation. The court found that it would infringe on the jury's powers if it would "agree or disagree with them about the word 'premeditation' " and noted that the defense closing argument conceded that defendant performed the acts that killed Terry so that it was "just like premeditation and intent meant nothing."

¶ 33 The presentencing investigation report (PSI), accepted by the parties without amendment, stated that defendant had convictions for a controlled substance offense in 2008, two trespassing cases in 2006, prostitution in 1998, robbery in 1993, and theft convictions in 1990, 1984, and

four cases in 1981. At the time of the PSI, the controlled substance offense was pending on an unsatisfactory termination of probation. Defendant has one brother and two sisters. He described his childhood, raised by his mother in the absence of his father, as "good" despite physical abuse by his stepfather causing him to leave home at age 13. The PSI preparer was unable to contact Bates, his mother. Defendant was homeless, never married, received his GED, and denied having any employment history. Defendant admitted being under psychiatric care with a diagnosis of bipolar (or manic-depression) disorder and schizophrenia, being treated by Zoloft, Trazodone, and Risperidone. He "stated that he enjoys 'talking to himself.' " He admitted drinking a pint of alcohol daily from when he was age 19 (defendant was born in 1962) until 2010, and admitted regularly using LSD and cocaine from his mid-twenties until he was 47 years old. He received alcohol "detox" in 2010 and was in drug treatment in jail at the time of the PSI.

¶ 34 At the sentencing hearing, Terry's daughter Olivia Terry testified that she has been depressed since her father's untimely death and "missed time from work to process my grief." Olivia's brother "has suffered tremendously" and "has withdrawn from the family due to his inability to handle grief," and she noted that Terry's grandchildren will never meet him. The State argued in aggravation defendant's criminal history, that defendant killed Terry though he was allowing him to reside in his home, that defendant acted out of anger with his mother Bates and then with Terry when he phoned the police, and that defendant fled the scene.

¶ 35 Defendant introduced a letter from his brother Lance Jackson extending his "humblest apology and condolences to the Terry family, who are long-time friends of our family," apologizing for defendant's actions due to his mental state being "in severe disarray," and asking the court to "send [defendant] somewhere he can get professional help to heal his mind."

Defendant addressed the court, apologizing to Terry's family as "I was out of control" due to not taking his medication. "I was hearing voices. Those voices overwhelmed me." He also asked the court for mercy. Defense counsel argued in mitigation that defendant has only two prior felony convictions, that his mental health history is extensive and demonstrates both mental illness and "his struggle with" substance abuse, and that defendant regrets killing Terry as he was close to Terry. Defense counsel noted that "we could not ask the jury not to consider a verdict of not guilty without [defendant's] permission," which demonstrates his willingness to take responsibility for his actions resulting from not taking his medication. Defense counsel sought the minimum prison sentence of 20 years.

¶ 36 The court sentenced defendant to 35 years' imprisonment. The court noted that it considered the PSI, victim-impact testimony, defendant's allocution, the arguments of the parties, and statutory factors in aggravation and mitigation. The court found that this case was "a cold and callous stabbing" of 72-year-old Terry, when defendant was angry and "knew what he was doing," despite Terry providing defendant a home. His flight from the apartment, and seeking money from his mother, indicated his appreciation of the criminality of his actions. The court acknowledged his "history of mental health treatment and mental illness" but found that "defendant brought a lot upon himself by his abuse of drugs [and] alcohol *** to the point where he was a drug and alcohol-addled felon in this case who decided to end the life of someone who cared for him in a senseless manner." The court ordered the Department of Corrections to evaluate his mental health and provide any necessary treatment.

¶ 37 Defendant's motion to reconsider his sentence was denied, with the court finding the sentence a necessary deterrent and justified by defendant's conduct and criminal history. This appeal timely followed.

¶ 38 On appeal, defendant contends that the trial court erred in denying his request to give the jury IPI 5.01A in response to the jury's question during deliberation.

¶ 39 A person commits first degree murder by killing another without lawful justification if, while doing so, "(1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another." 720 ILCS 5/9-1(a)(1), (2) (West 2012). The Criminal Code (Code) (720 ILCS 5/1-1 *et seq*. (West 2012)) defines intent: "A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct." 720 ILCS 5/4-4 (West 2012).

¶ 40 A defendant is insane, that is, "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 2012). However, a defendant who at the time of his conduct at issue was suffering from a mental illness – a "substantial disorder of thought, mood, or behavior" – that "impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior" is not relieved of criminal responsibility and may be found guilty but mentally ill. 720 ILCS 5/6-2(c), (d) (West 2012). The defendant bears the burden of proof by clear and convincing evidence that he is not guilty by

reason of insanity, while the State still bears the burden of proof beyond a reasonable doubt of all elements of the charged offense; thus, "the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged." 720 ILCS 5/6-2(e) (West 2012).

¶ 41 IPI 5.01A instructs a jury that "A person [(intends) (acts intentionally) (acts with intent)] to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct." As to when this instruction is appropriate, the Committee Note to IPI 5.01A states that:

> "The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. See *People v. Powell*, [citation], for the general proposition that the words 'intentionally' and 'knowingly' have a plain meaning within the jury's common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense." IPI 5.01A Committee Note, citing *People v. Powell*, 159 Ill. App. 3d 1005 (1987).

¶ 42 The purpose of jury instructions is to inform the jury of the applicable legal rules and guide it in reaching a verdict. *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL App (1st) 093547, ¶ 71, citing *People v. Lovejoy*, 235 Ill. 2d 97, 150 (2009). The court need not define a term that is within the common knowledge of the jury but has a duty to clarify the law where the jury demonstrates confusion over the law, so that the court must instruct a jury that asks it to define a mental-state term or manifests confusion or doubt regarding a term's meaning.

People v. Chai, 2014 IL App (2d) 121234, ¶ 46; *Le Mirage*, 2013 IL App (1st) 093547, ¶ 100. However, the court may refuse to answer a jury question if the general instructions are readily understandable and sufficiently explain the law, further instruction would not be useful or may mislead the jury, the jury question involves an issue of fact or is ambiguous, or answering the question would require the court to express an opinion likely to direct the verdict. *Le Mirage*, 2013 IL App (1st) 093547, ¶ 91.

¶ 43 The court has discretion in answering jury questions and we will not reverse its decision absent an abuse of discretion, as when instructions may mislead the jury or do not accurately state the law. *Chai*, 2014 IL App (2d) 121234, ¶ 46; *Le Mirage*, 2013 IL App (1st) 093547, ¶ 72. Moreover, error in giving a jury instruction is harmless if the result of the trial would not have been different with proper instructions. *Le Mirage*, 2013 IL App (1st) 093547, ¶ 85, citing *People v. Pomykala*, 203 Ill. 2d 198, 210 (2003).

¶ 44 Here, the jury asked the court to define intent and whether intent implies premeditation. Defendant focuses on the first part of the question and argues that a jury note seeking the definition of a legal term must be responded to by providing that definition. However, as we do with statutes, we shall presume that every word the jurors included in their note had meaning and is not superfluous, and we shall view the document as a whole rather than construing words and phrases in isolation. *See, e.g.*, *People v. Perez*, 2014 IL 115927, ¶ 9. The jury asked the court whether intent implies premeditation, and the court concluded that this portion of the question was both inseparable from the definition request and fraught with potential to infringe on the province of, or even direct, the jury on a factual issue. We do not consider those conclusions

unreasonable, and we therefore find no abuse of discretion in the court instructing the jury to continue deliberating without giving IPI 5.01A.

¶ 45 Moreover, we find any error in the court not giving IPI 5.01A to be harmless. The defense of insanity is not considered by the finder of fact until it first concludes that all the elements of the offense, *mens rea* as well as acts, were proven. More importantly, defendant argued at the end of trial for a verdict of not guilty by reason of insanity and did not argue for a verdict of not guilty. Thus, defendant's intent was not at issue at trial, but whether defendant was nonetheless not responsible due to mental illness causing him to be unable to appreciate the criminality of his actions. Specifically, there was ample evidence that defendant intended to "bump our old selves off," as Bates recalled him saying and as he did to Terry, but the issue intensely and ably debated at trial was whether he appreciated the criminality of doing so at the time he did so.

¶ 46 Defendant also contends that his sentence is excessive because of his mental health history, lack of recent felony convictions, and the court's consideration of factors inherent in the offense. Regarding the lack of recent felony convictions, defendant argues that his 2008 controlled substance conviction was vacated and then dismissed after his sentencing herein.

¶ 47 First degree murder is punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2012). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382, ¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a

defendant to any term within the applicable range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010).

¶ 48 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. Information about a defendant's mental or psychological impairment, including but not limited to a history of substance abuse, is not inherently mitigating; the court can consider the information either mitigating in that it evokes compassion or aggravating in that it demonstrates possible future dangerousness. *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 61, citing *People v. Coleman*, 183 Ill. 2d 366 (1998). The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Snyder*, 2011 IL 111382, ¶ 36. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id.*, citing *Alexander*, 239 Ill. 2d at 214.

¶ 49 Here, it was not improper for the court to consider the severity of defendant's offense: that he killed Terry, a senior citizen and his mother's close friend, in his own home that he was sharing with defendant, while defendant was angry but not insane. The court was entitled to rely

upon and agree with the jury's conclusion that defendant appreciated the criminality of his conduct when he committed the murder, and moreover to give the mental health evidence from Drs. Rabin and Messina a different weight than that assigned by the defense. The court acknowledged defendant's extensive history of mental illness but also noted that defendant abused drugs and alcohol including at the time of the murder. While defendant argues that his substance abuse should be a mitigating factor due to its link to his mental illness, the evidence that defendant was taking drugs and alcohol as self-medication, while admittedly not taking his prescribed medication at the time of the murder, can reasonably be considered an aggravating factor for worsening the danger he presents to society. *See, e.g., People v. Rogers*, 364 Ill. App. 3d 229, 248 (2006). As to defendant's criminal history, we note that the controlled-substance case was pending on an unsatisfactory termination of probation at the time of sentencing here and that, regardless of the status of that case, his criminal history includes a felony conviction for robbery. We see no reversible error in the court's oblique sentencing reference to defendant as a "felon in this case," nor in its mention of his unspecified "criminal history" in denying a reduction of sentence, as neither indicates any significant weight given to the controlled-substance case. We conclude that the sentence of 35 years' imprisonment, less than half of the applicable range, was not an abuse of the court's broad sentencing discretion.

¶ 50 Accordingly, we affirm the judgment of the circuit court.

¶ 51 Affirmed.