2016 IL App (1st) 14-0901-U

SIXTH DIVISION
Order filed: July 29, 2016

No. 1-14-0901

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. 11 CR 21331
	)	
KENYAHTA BECK,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is affirmed, where the court: properly precluded the defendant from impeaching a witness based upon collateral evidence of his gang affiliation; responded to a jury inquiry with a concise and accurate statement of the law; did not abuse its discretion in denying a defense request to unseal the juror cards for further inquiry into alleged improper jury contact; did not abuse its discretion in sentencing the defendant.

¶ 2 Following a jury trial, the defendant, Kenyahta Beck, was found guilty of murder with a firearm under section 9-1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/9-1(a)(1), (a)(2)

(West 2012)), and sentenced to 75 years' imprisonment. He now appeals from his conviction and sentence, contending that the circuit court (1) denied him of his constitutional right to confrontation (U.S. Const. amend. VI) by restricting his cross-examination of a State witness regarding his gang affiliation; (2) deprived him of a properly-instructed jury by failing to sufficiently respond to a question posed during deliberations; (3) failed to hold a hearing to question individual jurors as to whether they had overheard a potentially prejudicial comment made by a sheriff's deputy during deliberations; and (4) sentenced him to an excessive term of imprisonment without properly considering his non-violent criminal history and potential for rehabilitation. The defendant also contends that his mittimus order must be corrected to reflect the circuit court's judgment of one conviction of murder, rather than two. For the reasons that follow, we affirm the judgment of the circuit court, and order that the mittimus be corrected.

¶ 3 The defendant was charged with multiple counts of first-degree murder following the shooting death of Jonathan Banks. The evidence at trial established that, on the evening of June 10, 2011, Banks was in the hallway of a building at 1407 South Trumbull (building), playing dice with McKenzie Phillips, brothers Adam and Amir Abdul-Aziz, brothers Jarrod and Damascious Curry, and others. The defendant was also present at the dice game, but not participating. Around 9:30 p.m., the game was winding down and the men began leaving the building. As Banks exited through the building's front door, the defendant retrieved a weapon from his clothing, and shot him in the back of the head.

¶ 4 The State's case rested primarily upon the testimony of four eyewitnesses: Phillips, Amir, Jarrod and Damascious. The State also introduced video footage of the shooting which was obtained from a security camera placed on the building at 1407/1409 South Trumbull.

¶ 5 Phillips testified that, earlier in the day on June 10, 2011, he was on the "boulevard," a grassy area in front of the building, with Banks, Adam, Amir and the defendant, smoking marijuana and playing dice. Phillips described the defendant's attire as consisting of a white tank top, blue shorts and white shoes. He initially described the defendant as his friend, but then testified that he had just been introduced to him by Adam on the day of the shooting. Phillips also denied previously knowing the others who were present, stating that they were all friends of Adam.

¶ 6 Later in the day, Banks, Amir, Adam and Phillips went inside the building to continue their dice game in the hallway. They joined others already present, including Jarrod and Damascious and their cousin, Brandon Scarver. According to Phillips, the defendant, who had left for a time, entered the hallway and "pulled out a $20 bill" indicating that he wanted to join the dice game; however, he never actually participated. Phillips testified that the defendant had changed clothes and was now wearing a black sweater, black pants and black shoes.

¶ 7 After the dice game concluded, Phillips left the building with Adam and Banks. According to Phillips, the defendant also left around the same time, or just before them. Phillips testified that, as he and Banks walked out of the front door of the building, he noticed the defendant "waiting" near the door. He then saw the defendant pull a gun from the hood of his jacket and shoot Banks in the back of the head. Phillips saw "fire" coming from the gun and heard a "pow," at which point Banks fell to the ground. Phillips stated that he immediately ran away from the scene and did not return. He acknowledged that he did not contact the police on the day of the shooting. However, he testified that, on November 12, 2011, he was at the police station and identified the defendant as the shooter from a photo array. On November 17, 2011, Phillips was again at the police station, and identified the defendant from a lineup.

¶ 8 On cross-examination, defense counsel inquired whether Phillips was a Gangster Disciple, to which he replied "no." Phillips testified that, when he spoke with an assistant State's Attorney the previous week about the prospect of being called to testify, he expressed concern regarding some outstanding arrest warrants from another county. He admitted that the State's Attorney's office ultimately quashed and recalled the warrants in order to secure his testimony. Phillips also acknowledged that the video footage of the shooting depicted him in front of both Banks and the defendant at the time the gun was fired. He testified that, nonetheless, he was able to see the gunfire "from of the corner of [his] eye." In addition, Phillips stated that he had given a videotaped statement in November 2011, naming the defendant as the shooter, and had identified the defendant as the shooter in his grand jury testimony.

¶ 9 Damascious testified that he exited the building around the same time as Phillips, Banks and Adam, and that he also noticed the defendant standing outside by the front doorway. According to Damascious, Banks was two to three feet behind him but in front of the defendant. As Damascious watched, the defendant reached below his waistband, pulled out a gun, and pointed it towards Banks' back reaching up towards his head area. Damascious stated that he began to run away, and then heard a gunshot.

¶ 10 Amir testified that, on the afternoon of the shooting, he and Adam met Banks, Adam's friend Phillips, and others on the boulevard and later participated in a dice game in the building hallway. The defendant also was present at the dice game but "never really got in tune" with it. Amir testified that he knew both Banks and the defendant from the neighborhood. According to Amir, he noticed that, at one point during the dice game, the defendant, Banks, Adam and Phillips were gone. Shortly thereafter, he heard a gunshot, and subsequently ran downstairs where he saw Banks lying on the ground, bleeding. Amir admitted to having a prior conviction

for aggravated unlawful use of a weapon. Amir also admitted that he never notified the police about the shooting until November 2011, when he gave a statement placing the defendant at the dice game that night.

¶ 11 In his testimony, Jarrod similarly identified the defendant as being present during the dice game, although he was "just standing there." Jarrod eventually lost all his money in the game and was leaving to go to the store, when he noticed the defendant standing by the door of the building. According to Jarrod, Damascious and Adam were outside at that point, but Banks was still inside the building. Jarrod testified that he was walking in the direction of the store when he heard gun shots coming from behind him, in the area of the building. He then "took off running" towards his cousin's house. Jarrod testified that, prior to the shooting, he had seen the defendant once before in the neighborhood. He described Banks, Adam and Amir as his friends.

¶ 12 Jarrod admitted that he did not speak to the police on the night of the shooting. On September 21, 2011, he was in custody for an unrelated offense and identified the defendant from a photo array as someone he had seen on June 10, 2011. On November 13, 2011, Jarrod returned to the police station and viewed a still-image from the security video, identifying Adam, himself and Damascious as they left the building just prior to the shooting. Jarrod acknowledged that, at the time of his testimony, he had a criminal case pending involving drugs.

¶ 13 Investigating Officer Robert Goerlich testified that he discovered a puddle of blood just northeast of the doorway entrance to 1407/1409 South Trumbull. He also recovered a baseball cap on the ground outside of the building and a pair of dice and several cigarette butts in the stairwell. Finally, Officer Goerlich stated that he obtained video footage of the shooting from a security camera placed on the building. A subsequent DNA test revealed that the baseball cap was worn by Banks.

¶ 14 After the conclusion of the State's case, the defendant chose not to testify or present witnesses. During closing arguments, defense counsel repeatedly challenged the plausibility and veracity of the accounts of the State's four eyewitnesses. She argued that the video footage proved that there was "more to this story," that the State's witnesses "know what it is," and that it led them to "point the finger" at the defendant.

¶ 15 On October 3, 2013, the jury found the defendant guilty of murder with a firearm (720 ILCS 5/9-1(a) (West 2012)). The court granted a motion *in limine* by the State to seal the juror cards in order to safeguard the jurors' backgrounds and personal information. The defendant filed a motion for a new trial along with two *pro se* motions asserting the ineffective assistance of counsel, claiming, *inter alia*, that his attorney was deficient in refusing to call seven alibi witnesses who were prepared to testify on his behalf. The court denied the motions, and then sentenced the defendant to 75 years' imprisonment, comprised of 50 years' imprisonment for first-degree murder with a sentence enhancement of 25 years for the defendant's use of a firearm, to be served consecutively to the 50-year term. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012). The instant appeal followed.

¶ 16 The defendant first argues that the circuit court violated his right to confront witnesses against him by refusing to allow him to impeach Phillips's testimony with a prior admission of his gang affiliation.

¶ 17 During Phillips's cross-examination, defense counsel inquired whether he was a member of the Gangster Disciple street gang. Over objection by the State, the court permitted Phillips to respond, and he replied in the negative. Defense counsel then sought to introduce a prior statement that Phillips allegedly made to the police in which he remarked that he was a "gangster disciple from K-town." The court refused to admit the prior statement, concluding that it

amounted to collateral impeachment. The defendant now asserts that the court's decision prevented him from exposing the bias of Phillips, as well as the State's other three eyewitnesses, which "sprang from the witnesses' and [the defendant's] affiliation with different gangs." He points out that his conviction was based almost exclusively upon the testimony of these witnesses, all of whom were of questionable credibility. Evidence of Phillips's gang membership was therefore necessary to alert the jury of his motive to fabricate testimony against the defendant. In response, the State argues that there was no evidence that the shooting was gang-related and that the proffered statement was properly disallowed. We agree with the State.

¶ 18 Both the federal and state constitutions vest defendants with the right to cross-examine witness against them in order to reveal biases, prejudices, or a motive to testify falsely. U.S. Const., amend. VI; Ill. Const.1970, art. I, sec. 8; *People v. Gonzalez*, 104 Ill. 2d 332, 337 (1984). However, "it is well established that a trial judge retains wide latitude insofar as the confrontation clause is concerned to impose reasonable limits on such cross-examination based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *People v. Harris*, 123 Ill. 2d 113, 144 (1988) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986)). Cross-examination about gang affiliation or concerted activity on the part of prosecution witnesses has been upheld where such evidence is essential to the defense's theory of the case (see, *e.g.*, *People v. Gonzalez*, 104 Ill. 2d 332, 338 (1984) (the concerted activity of the gang in threatening the defendant and harassing his family "formed the very basis of the defense theory"), or where, based upon evidence of gang rivalry or involvement, it is found to be probative of the witnesses' motivation to testify falsely. See *People v. Blue*, 205 Ill. 2d 1, 15 (2001) (and cases cited therein). Conversely, evidence of gang membership is inadmissible where gang status is completely

unrelated to the crime and not part of the defendant's theory at trial. *People v. Jefferson*, 260 Ill. App. 3d 895, 904 (1994). The circuit court's determination with regard to the scope of cross-examination will not be disturbed on appeal absent a clear abuse of discretion resulting in manifest prejudice to the defendant. *People v. Collins*, 106 Ill. 2d 237, 269 (1985).

¶ 19 In the cases upon which the defendant relies, there was at least some evidence at trial as to competing gang loyalties on the part of the witnesses and the defendant. See *Gonzales*, 104 Ill. 2d 332; *Blue*, 205 Ill. 2d 1. Here, by contrast, there was no testimony, evidence or argument that the shooting was connected to gang activity, or that the defendant or any of the remaining State witnesses had any gang ties whatsoever. Contrary to the defendant's assertion, there was no suggestion, in the form of an offer of proof or otherwise, that the State's eyewitnesses were "all members of the same gang." In fact, Phillips denied previously knowing the others present at the dice game, claiming that they were friends of Adam's. Accordingly, evidence of Phillips's purported gang membership lacked any real probative value in this case.

¶ 20 In general, a witness is not subject to impeachment on matters that are merely collateral to the proof at trial. *Collins*, 106 Ill. 2d at 269. "Collateral evidence" is any evidence not independently admissible, but offered solely to contradict the testifying witness. *Id.* In this case, once Phillips denied being a member of the Gangster Disciples street gang, the defendant was required to accept his response. As there was no independent basis for the introduction of evidence of his gang affiliation, further impeachment on the issue would have been collateral and improper. Accordingly, there was no abuse of discretion by the circuit court in barring the defendant from impeaching Phillips based upon his prior statement.

¶ 21 Next, the defendant argues that the court denied him of his right to have the jury properly instructed regarding the State's burden of proof by failing to provide an adequate response to a question posed during deliberations.

¶ 22 Several hours into deliberations, the jury sent a note to the trial judge with the following inquiry: "Dear judge, are the prosecution and defense attorneys equally able to introduce evidence or call witnesses?" After considering arguments by both parties, the court determined that the jury's inquiry involved a question of law and, therefore, had to be answered, and that it would answer the inquiry in the affirmative. The defense requested that the court also "remind the jury that the defense has no burden to present anything." The court noted that, as to the issue of the "burden of proof and burden shifting," it could "[certainly] see the defense's concern;" however, it observed that it must be cautious not to direct a verdict one way or another, and that it had previously given instructions regarding the indictment, the elements of the offense, the presumption of innocence and the burden of proof. Accordingly, the court responded to the jury: "the answer to your question is yes." The defendant now asserts that this response was insufficient and denied him a fair trial.

¶ 23 In reviewing the trial court's response to a jury question, this court employs a two-step analysis. First, we determine whether the court should have answered the question at all, which we review for an abuse of discretion. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 16 (citing *People v. Millsap*, 189 Ill. 2d 155, 161 (2000)). Second, we determine if the answer was legally correct, which is reviewed under the *de novo* standard. *Id.* In general, the court is required to provide instruction to the jury "when the jury has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion." *People v. Brooks*, 187 Ill. 2d 91, 138 (1999) (citing *People v. Childs*, 159 Ill. 2d 217, 229

(1994)). Under certain circumstances, however, the court may exercise its discretion and refrain from answering a jury question. These circumstances include where further instructions would serve no useful purpose or would potentially mislead the jury; the jury's inquiry involves a question of fact; or, where further instruction could cause the court to express an opinion that would likely direct a verdict one way or another. *Millsap*, 189 Ill. 2d at 160-61. When the court does answer the jury's inquiry, it must do so accurately and concisely. *Childs*, 159 Ill. 2d at 229.

¶ 24 We find no error in the court's response to the jury's question. First, as the defendant admits in his reply brief, the court "had a duty to answer the jury's question of law." Further, the parties do not dispute that the court's response was both concise and accurate, simply affirming for the jury that the defense has the same right as the State to present witnesses and evidence. More importantly, the record reflects that the jury was thoroughly admonished as to the elements to be proven on each charge, the State's sustained burden of proving each element, and the fact that the defendant was not required to prove his own innocence. As observed by the State, the jury must be presumed to know and understand the law as conveyed in the jury instructions, and to apply the law correctly. *People v. Taylor*, 166 Ill. 2d 414, 438 (1995); *People v. Sutton*, 353 Ill. App. 3d 487, 505 (2004). While the court could have reemphasized the burden of proof issue, its decision not to do so, standing alone did not amount to reversible error in this case. See *People v. Stringer*, 52 Ill. 2d 564, 569 (1972); see also *People v. Hall*, 143 Ill. App. 3d 766, 774 (1986) (repetitive instructions are not favored and should be avoided).

¶ 25 The defendant maintains that this case is analogous to *People v. Parham*, 377 Ill. App. 3d 721, 731-33 (2007), because, as in this case, the jury's question manifested confusion over fundamental principles like the presumption of innocence and the State's burden of proof. *Parham*, however, is readily distinguishable.

¶ 26 In *Parham*, 377 Ill. App. 3d at 731, the jury inquired whether it could infer that a crime had been committed from the fact that a crime had been charged in the indictment. In response, the trial court never directly answered the question, but merely reiterated several of the instructions previously given to the jury. *Id.* at 732. We found this to be clear error, in that the trial court failed to provide the jury with a correct statement of the law, leaving it with the inaccurate understanding that it could assume the commission of a crime merely from the existence of a charged offense. *Id.*

¶ 27 In this case, unlike in *Parham*, the court did respond to the jury's communication with a correct statement of the law, and further determined that it had been sufficiently instructed regarding the State's burden of proof, thus rectifying any misunderstanding on that issue. There was no error in the court's response to the jury.

¶ 28 In the alternative, the defendant seeks a remand of this case for the limited purpose of determining whether members of the jury overheard comments made to him by a courtroom deputy, which, according to the defendant, led to the jury's confusion regarding his ability to call witnesses.

¶ 29 Following the verdict, the defendant addressed the trial court stating that, during jury deliberations, Sheriff's Deputy John Keehan made the following comment to him in the hallway immediately behind the jury room: "Man, dude, what happened to your witnesses? The State had a lot of questions for your witnesses." The defendant argued that he was concerned the jury may have overheard the comment because it occurred only "minutes" before the jury came forward with its inquiry regarding his ability to call witnesses. Based upon the defendant's argument, defense counsel filed a motion to unseal the jury cards in order to question members of the jury regarding the defendant's claim.

¶ 30 At the hearing on the motion, Deputy Keehan testified that, during the jury deliberations, he and Deputy Jessica Vergara were working in the area behind the courtroom performing security and transporting the defendant in and out of the lockup. Keehan testified that the rear of the courtroom had a double door, with about five feet in between each door. The outermost door was about 25 feet from the lockup. According to Keehan, the outermost door to the jury room always remained closed during deliberations so that the jury could not see the defendant in custody. Keehan denied making any statement to the defendant regarding his witnesses or the lack thereof. Deputy Vergara similarly testified that she would never leave both doors to the jury room open when the jury is present. She stated that, on October 2, 2011, during deliberations in this case, both doors to the jury room were closed. She also denied hearing Keehan make any comments to the defendant regarding his witnesses.

¶ 31 The defendant testified that, when Keehan made his comment, he and Keehan were standing by the threshold to the lockup about two or three feet from the jury door. According to the defendant, Keehan had just come out of the courtroom and the door to the jury room was open. Vergara was on the threshold of the "doors" to the jury room. The defendant testified that after Keehan made the comment, "time passed" and then the jury tendered its inquiry. Following arguments, the court concluded that the evidence did not support the defendant's version of events, and denied his request to unseal the juror cards.

¶ 32 The defendant now argues that he was denied a fair trial before an impartial jury (U.S. Const., amend. VI; Ill. Const. 1970, art. I, §§ 8, 13), because the hearing held by the court was insufficient to ascertain whether the jury was actually influenced by Keehan's alleged remark. He maintains that, instead, the court should have granted his motion to unseal the juror cards to enable him to question the jurors to ensure they did not overhear the comment. We disagree.

¶ 33 It is generally recognized that a jury verdict may not be impeached by the testimony of the jurors. See *People v. Hobley*, 182 Ill. 2d 404, 457 (1998). This rule does not, however, preclude juror testimony offered as proof of improper extraneous influences on the jury. *Id.* at 457-58. Outside influences or communications may result in the verdict being set aside, but only if it is established that the "jurors have been influenced and prejudiced to such an extent that they would not, or could not, be fair and impartial." *People v. Runge*, 234 Ill. 2d 68, 103-04 (2009).

¶ 34 "The trial court has substantial discretion in determining whether an improper contact with a juror has caused prejudice to the defendant." *People v. Ward*, 371 Ill. App. 3d 382, 398-99 (2007) (citing *People v. Harris*, 123 Ill. 2d 113, 132 (1988)); accord, *Runge*, 234 Ill. 2d at 104. Further, the trial court is entitled to broad discretion in arriving at the proper means to investigate the alleged third-party juror contact, including evaluating the need for further inquiry or for a hearing regarding any alleged harm to the defendant. *Ward*, 371 Ill.App.3d at 398-99 (citing *United States v. Williams-Davis*, 90 F.3d 490, 498-99 (D.C. Cir. 1996) ("court has broad discretion over the 'methodology' of inquiries into third-party contacts with jurors. [Citation.] We have explicitly rejected any automatic rule that jurors are to be individually questioned")). The individual questioning of a juror regarding alleged misconduct is generally warranted only where there has been a strong indication of bias or irregularity. *Runge*, 234 Ill. 2d at 103-04. A court abuses its discretion only when it acts arbitrarily, exceeds the bounds of reason and ignores recognized principles of law so that no reasonable person would take the view adopted by that court. *Ward*, 371 Ill. App. 3d at 398-99.

¶ 35 In this case, the court noted that it had considered the testimony of the defendant and Deputies Keehan and Vergara, and concluded that the defendant failed to prove that Keehan's alleged remarks were heard by the jury. There is no basis in the record to disturb the court's

finding. Both deputies testified that the doors to the jury room had remained closed during deliberations, and Keehan denied ever making the comments as alleged by the defendant. Although the defendant argued that the jury's inquiry regarding his ability to call witnesses occurred within minutes after Keehan's alleged remarks, the time proved to be about three hours afterwards, casting doubt upon the defendant's recollection of events. In light of the court's finding that no illicit juror contact occurred, there was no abuse of discretion in its denial of the defendant's motion to unseal the juror cards.

¶ 36 The defendant argues that the 75-year sentence imposed by the trial court was excessive and constituted an abuse of discretion. He asks that we vacate his sentence and remand this case for resentencing or, in the alternative, exercise our authority under Illinois Supreme Court Rule 615(b)(4) (eff. April 1, 2016) to reduce the sentence. In particular, the defendant argues that the court failed to sufficiently consider his rehabilitative potential and non-violent history.

¶ 37 Established law dictates that a reviewing court not disturb a sentencing determination that falls within the statutory range, unless it constitutes an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010); *People v. Madura*, 257 Ill. App. 3d 735, 740 (1994). A sentence is deemed an abuse of discretion where it is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Alexander*, 239 Ill. 2d at 212 (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)). The trial court is entitled to such deference because it has the opportunity to weigh factors such as the defendant's credibility and demeanor, his general moral character, mentality, social environment, habits, and age. *Id.* Accordingly, this court will not substitute its judgment for that of the trial court merely because it would have balanced the appropriate sentencing factors differently. *Id.* Further, where mitigation evidence and a sentencing report have been submitted to the trial court, it is presumed,

absent evidence to the contrary, that the court considered the evidence and took into account the defendant's potential for rehabilitation. *Madura*, 257 Ill. App. 3d at 740-41.

¶ 38 In this case, defendant was convicted of first degree murder, which mandates a sentence of 20 to 60 years' imprisonment. See 730 ILCS 5/5-4.5-20(a) (West 2010). In arriving at the 50-year sentence, the court stated it had listened to the arguments of both the state and the defense, reviewed the statutory provisions in aggravation and mitigation as well as non-statutory provisions in mitigation, and examined the pre-sentence investigation. The defendant nonetheless urges that we find an abuse of discretion in this case because the sentence imposed is greatly at variance with the purpose and spirit of the law. See *People v. Calhoun*, 404 Ill. App. 3d 362, 385 (2010). He points to the fact that (1) despite permanent internal injuries, he had maintained steady part-time or full-time employment in order to support his wife and child; and (2) his prior convictions were for non-violent, drug-related offenses.

¶ 39 However, the court is not required to impose a sentence at the low end of the sentencing range merely because there is some evidence in mitigation. Here the crime involved a gunshot to the back of the victim's head fired from close range. In contrast to *Calhoun*, 404 Ill. App. 3d at 386, upon which the defendant heavily relies, the defendant's acts were committed in "cold blood" rather than in response to "extreme provocation." See *Id.* (victim had raped defendant's infant daughter shortly before murder). The defendant admitted that he was raised by his mother in a loving environment and completed his GED. He had also obtained part-time employment for several years. Notwithstanding these facts, however, the defendant elected throughout this period to engage in criminal activity, and also repeatedly violated his probation. His sentence enhancement for personally discharging the firearm causing the death was at the lowest end of the range of 25-years-to-life imprisonment. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012).

Based upon the record, we are unable to conclude that the circuit court's sentence was an abuse of discretion.

¶ 40 As a final point, the defendant requests that we correct the mittimus because it erroneously reflects two convictions of first degree murder, under sections 9-1(a)(1)(a) and (a)(2) of the Unified Code of Corrections. As the State concedes this issue, we grant the defendant's request, and order that the mittimus be corrected to reflect only one conviction of murder.

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County. We order that the mittimus be corrected to reflect a single conviction of first-degree murder.

¶ 42 Judgment affirmed; mittimus corrected.