2017 IL App (1st) 150705-U

SIXTH DIVISION
Order filed: June 2, 2017

No. 1-15-0705

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. 14 CR 08719
	)	
ANGELO POWELL,	)	Honorable
	)	Nicholas R. Ford,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction of aggravated domestic battery is affirmed where: (1) the evidence was sufficient to show that the defendant strangled his mother; (2) the circuit court did not deprive the defendant of a fair trial by misrecalling or misapprehending evidence; and (3) his six-year sentence was not excessive. The defendant's conviction for aggravated battery and his convictions and sentence for domestic battery are vacated pursuant to the one-act, one-crime doctrine.

¶ 2 Following a bench trial, the defendant, Angelo Powell, was convicted of aggravated domestic battery, aggravated battery, and domestic battery. He was sentenced to six years'

imprisonment and a four-year term of mandatory supervised release (MSR) on his conviction for aggravated domestic battery as well as six years' imprisonment and a one-year term of MSR on his conviction for domestic battery, to be served concurrently. On appeal, the defendant argues that: (1) the evidence was insufficient to prove him guilty of all of his convictions beyond a reasonable doubt; (2) he was deprived of a fair trial because the circuit court misrecalled the evidence; (3) his six-year sentence was excessive; and (4) pursuant to the one-act, one-crime doctrine, his convictions for aggravated battery and domestic battery should be vacated. For the following reasons, we vacate the defendant's conviction for aggravated battery and his convictions and sentence for domestic battery, but we affirm his conviction and sentence for aggravated domestic battery.

¶ 3 Based upon a physical altercation that the defendant had with his mother, Francine Kenner, which occurred on April 20, 2014, the defendant was charged by indictment with one count of aggravated domestic battery (count I) (720 ILCS 5/12-3.3(a-5) (West 2014)), one count of aggravated battery (count II) (720 ILCS 5/12-3.05(a)(5) (West 2014)), and four counts of domestic battery (counts III through VI) (720 ILCS 5/12-3.2(a)(1)-(2) (West 2014)).

¶ 4 In September 2014, the case proceeded to a bench trial, at which the following evidence was adduced.

¶ 5 Kenner testified that she lived on the 6400 block of South Rockwell Street in Chicago, with her fiancé, John Frieson; her daughter, Tameka Powell; her son, the defendant; and the defendant's children. The defendant had been living with her "[o]n and off for the last couple of years." Kenner explained that, if the defendant was staying at her house, he was not allowed to drink alcohol. Nonetheless, at approximately 5 p.m. on April 20, 2014, she observed the defendant sitting on the front porch, drinking beer. She confronted the defendant, took the beer, and walked

into the house. The defendant followed her inside. At that time, Frieson and Tameka were also in the house.

¶ 6 Kenner stated that she walked to the kitchen and poured an opened beer down the sink. She then began walking towards her bedroom with the remaining unopened beers. The defendant continued to follow her, saying, "[t]hese are my beer[s], [M]a, you can't take something from me that belongs to me." Frieson and Tameka trailed behind the defendant and Kenner. According to Kenner, when she reached the doorway of her bedroom, the defendant began pushing her chest with his forearm and elbow, backing her into the room. "[A]s he's pushing [Kenner], [she's] falling back, and some kind of way, [she] end[s] up falling back into [her] computer." Kenner testified that the defendant then began "choking" her by putting her in "a headlock." The assistant State's Attorney (ASA) and Kenner engaged in the following colloquy regarding the headlock:

"Q And could you feel pressure on your neck at that point?

A Yes, ma'am.

* * *

*** Q Did you have any difficulty breathing?

A Yes, I did.

Q Were you experiencing any pain?

A I don't remember parts of what happened because I end up, from my understanding I end up passing out, and that's all I could remember, is when his, you know, with his arms around me.

* * *

Q Did the defendant have his hands on you as you passed out?

A Yes.

Q And where [*sic*] they around your neck at that point?

A Yes, ma'am."

¶ 7 Kenner stated that she regained consciousness while she was on her bed. She felt "weak, out of breath because [she] was having chest pains and everything, [and she] thought [she] was having a heart attack." Kenner also testified that she was experiencing pain in her arms; she "[could not] remember" if her neck hurt at that time. She recalled seeing Tameka and her grandson when she woke up, who informed her that the police were there; however, she did not "remember the police."

¶ 8 Subsequently, the paramedics arrived and transported Kenner to Holy Cross Hospital. While in the ambulance, Kenner was still experiencing chest pains. The paramedics "took blood tests" and gave her "nitroglycerin pills" because her blood pressure "was up very high." Kenner acknowledged that she normally has high blood pressure and had previously been in the hospital for treatment of it, but stated that her blood pressure was higher than usual following the incident. She also stated that, before the incident, she never experienced any chest pain and had never passed out.

¶ 9 Kenner testified that, when she arrived to the hospital, she was still experiencing chest pain and shortness of breath. Accordingly, the doctors conducted an electrocardiogram or EKG. She also noticed that she had bruises "[a]ll on [her] arms." She did not experience soreness or pain anywhere except for her arms. The following day, the police took pictures of Kenner's face and arms. The pictures depicted bruises on Kenner's arms; however, there were no visible injuries to her neck.

¶ 10 On cross-examination, Kenner testified that, the day after the incident, she was interviewed by Detective Tierney and an ASA and she gave a handwritten statement. At first, Kenner stated

that she told Detective Tierney that the defendant had put her in a headlock. She then admitted that, at the time she gave her statement, she "didn't remember [the defendant] putting [her] into a headlock" and that she did not mention it in her statement. Kenner explained that she remembered the defendant choking her "[a]s days went by."

¶ 11 On re-direct examination, Kenner confirmed that her statement included the fact that she passed out during the incident.

¶ 12 Frieson corroborated Kenner's testimony. Additionally, he testified that, before Kenner returned from work on April 20, 2014, he was at home with the defendant. The defendant left the house for approximately two hours and, when he returned, he was carrying "clear liquor in a cup," which smelled like tequila. According to Frieson, the defendant appeared to be intoxicated at that time. Thereafter, the defendant sat on the front porch and drank beer.

¶ 13 Frieson and the ASA engaged in the following colloquy regarding when the argument between Kenner and the defendant became physical:

> "A Well, he charged at her at [*sic*] open hands pushing her back, and she fell—well, not fell, she—they was struggling, and, like, once she hit her head, but by that time, his arm was going aro8nd [*sic*] her neck like in a choke hold.
>
> * * *
>
> Q What happened with [Kenner] after the defendant had her in a choke hold?
>
> A She passed out."

He also stated that he observed the defendant grabbing Kenner's arms.

¶ 14 According to Frieson, while the defendant had Kenner in a chokehold, he and Kenner's grandson pulled the defendant away from her and "pushed him in the kitchen." While they were in

the kitchen, the police arrived and called the paramedics. Frieson also stated that, when Kenner came home from the hospital, he observed bruises on her arms as well as "by the chest area[.]"

¶ 15 On cross-examination, Frieson acknowledged that, when the defendant was attacking Kenner, he called 9-1-1. He denied telling the dispatcher that the defendant had Kenner in a chokehold or that someone in the house had a gun. When defense counsel asked Frieson if he told responding officers that the defendant "strangled" Kenner, Frieson replied, "I didn't say strangle, I said he was trying to put her in a choke hold." He confirmed that the defendant "had his arms around [Kenner's] neck" for "at the most *** five seconds[.]"

¶ 16 The State moved to admit the pictures of Kenner into evidence and noted the defendant's August 18, 2011, conviction for domestic battery (Cook County case number 11 DV 74655). The State then rested.

¶ 17 Defense counsel filed a motion for directed finding, which the circuit court denied. The defense then called Officer Brown, one of the responding officers who arrived at the scene at approximately 6 p.m. on April 20, 2014. Officer Brown testified that, when he arrived, Frieson told him that the defendant had become "irate and threw [Kenner] into the wall[;]" Frieson did not say anything about the defendant strangling Kenner. Officer Brown also did not observe any injuries to Kenner.

¶ 18 The parties stipulated that, if the 9-1-1 operator or dispatcher was called to testify, she would state that, at 6:07 p.m. on April 20, 2014, she received a phone call reporting that "a female adult [was] having chest pains and that the person calling stated that his stepson—his stepson is fighting family members and he has a gun." The defense then rested.

¶ 19 Following closing arguments, the circuit court found the defendant guilty of all counts. In so holding, the court explained: "I've listened and watched closely to [*sic*] *** Frieson and to

[Kenner] testify in this case, and both of then [*sic*], two of the better witnesses I've had (Inaudible) in this courtroom in some time, I believed every words [*sic*] they said." The court also acknowledged that Kenner and Frieson were impeached as to the allegation of strangulation; nonetheless, it found them to be credible witnesses, stating: "in this particular circumstances [*sic*], these witnesses' testimony was so powerful and so accurate and so telling of the defendant's conduct that day, I have no doubt in my mind regarding his guilt *** relative to the counts relating to strangulation."

¶ 20 The defendant filed a motion to reconsider the circuit court's finding of guilt and, in the alternative, a motion for a new trial, which contained broad allegations that the State failed to prove him guilty beyond a reasonable doubt and that he did not receive a fair and impartial trial. The following colloquy between the court and defense counsel ensued:

> "[Defense counsel]: *** Judge, the main basis of our motion to reconsider is whether or not there was a strangle [*sic*] involved in this battery. It's our position that the State did not prove through *** Kenner *** or *** Fr[ie]son *** that, in fact, Ms. Kenner was strangled.
>
> THE COURT: You mean other than the fact that [Kenner], his own mother, was said to have blacked out and testified that she blacked out completely when his hands were around her throat?
>
> [Defense counsel]: That's correct."

Thereafter, defense counsel finished arguing and the court denied the motion.

¶ 21 At the sentencing hearing in November 2014, the circuit court inquired whether both parties were in receipt of the presentence investigation report (PSI) and they answered affirmatively. The court then asked whether the parties had "[a]ny corrections or deletions" to the

PSI; they did not. The State, by way of aggravation, argued that the defendant should be sentenced to "at least five years['] " incarceration because he had a prior "domestic violence case[,]" as well as "four prior felony convictions"—including aggravated battery to a police officer. For evidence in mitigation, defense counsel pointed out that, "other than what's in the" PSI, the defendant did have family, aside from Kenner, present at "every court date in support of him." The defendant made a statement in allocution, wherein he denied that he strangled Kenner. He also explained that the April 20, 2014, altercation was "all over money[.]"

¶ 22 The circuit court merged the defendant's aggravated-battery conviction (count II) with his aggravated-domestic-battery conviction (count I) and sentenced him to six years' incarceration with a four-year term of MSR on the aggravated-domestic-battery conviction. The court also merged the four convictions for domestic battery into a single conviction (counts IV through VI merged with count III), and sentenced the defendant to six years' incarceration with a one-year MSR term, to run concurrently with his sentence for the aggravated-domestic-battery conviction. This appeal followed.

¶ 23 On appeal, the defendant's first assignment of error is that the State failed to prove beyond a reasonable doubt that he was guilty of aggravated domestic battery. We disagree.

¶ 24 In addressing challenges to the sufficiency of the evidence, a reviewing court will not retry a defendant. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). Rather, we review " 'the evidence in the light most favorable to the prosecution*** [to determine whether] *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979)). A reviewing court must draw all reasonable inferences from the record in favor of the prosecution. *Davison*, 233 Ill. 2d at 43. Additionally, we will not overturn a

criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 25 In order to prove a defendant guilty of aggravated domestic battery, the State is required to show that he strangled someone while committing domestic battery. 720 ILCS 5/12-3.3(a-5) (West 2014). A defendant commits domestic battery when he "[c]auses bodily harm to *** or *** [m]akes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)-(b) (West 2014). "Strangle," for the purposes of subsection a-5 of the Criminal Code of 1961 (Code), is defined, in relevant part, as "intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual[.]" 720 ILCS 5/12-3.3(a-5) (West 2014).

¶ 26 Here, the defendant contends that Kenner's and Frieson's testimony was unreliable because they did not tell the police or the paramedics that Kenner was strangled. They also failed to explain how the "five-second hold of Kenner *** rendered her unconscious, not the blow she suffered to her head" or her high blood pressure. The defendant also argues that Kenner's account of the incident was further "undermined by her fading memory" and that Frieson was impeached by testimony of Officer Brown and the 9-1-1 dispatcher. At trial, Frieson stated that he told responding officers that the defendant had put Kenner into a chokehold; however, Officer Brown testified that Frieson only reported the defendant throwing Kenner into a wall. Additionally, Frieson testified that he did not tell the 9-1-1 dispatcher that the defendant had a gun, but the 9-1-1 dispatcher's testimony was that he did. The defendant also points out that there was no evidence of an injury to Kenner's neck and that the medical treatment following the incident was not consistent with strangulation.

¶ 27 We find that the inconsistencies in Frieson's testimony as well as Kenner's "fading memory" are related to their credibility and the weight to be given to their testimony. It is not the function of this court to "reevaluate the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal. [Citation.] Whether minor inconsistencies in testimony irreparably undermined the credibility of the State's witnesses was a matter for the trier of fact to decide." *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007); see also *People v. Gray*, 2016 IL App (1st) 134012, ¶ 53 (sustaining the defendant's aggravated domestic battery despite the victim's poor recollection and inconsistencies in her testimony); *People v. Green*, 298 Ill. App. 3d 1054, 1064 (1998) ("Minor inconsistencies and discrepancies in the testimony of a witness do not render the testimony unworthy of belief and affect only the weight to be given the testimony."); *People v. Taher*, 329 Ill. App. 3d 1007, 1018 (2002) (the victim's uncorroborated testimony was sufficient to sustain the defendant's conviction for domestic battery). The circuit court acknowledged that Kenner and Frieson had been impeached, but it nonetheless found them to be credible witnesses. Therefore, the testimonial evidence that the defendant put Kenner in a headlock or chokehold and, as a result, she had difficulty breathing and lost consciousness was sufficient to sustain the defendant's conviction for aggravated domestic battery based upon strangulation.

¶ 28 Additionally, the defendant's assertion that there is no evidence of strangulation is rebutted by the record. Two witnesses testified that the defendant put Kenner in a chokehold, causing her to lose consciousness. Moreover, subsection a-5 of the Code does not require that the victim sustain an injury or seek medical treatment, as this type of evidence will not be present in every case. 720 ILCS 5/12-3.3(a-5) (West 2014). Rather, in domestic battery cases, the victim's testimony and the reasonable inferences drawn therefrom are key to the fact finder's determination. See *People v.*

Dabbs, 396 Ill. App. 3d 622, 627 (noting that domestic violence cases "typically become[] a credibility contest between the alleged abuser and victim."). It is also of no import whether Kenner hitting her head or having high blood pressure were contributing factors to or the main reason for her losing consciousness. All that the State was required to show was that the defendant "intentionally imped[ed] the *normal* breathing or circulation of the blood of an individual by *applying pressure on the throat or neck of that individual[.]*" (Emphasis added.) 720 ILCS 5/12-3.3(a-5) (West 2014). Here, the evidence established that the defendant placed Kenner in a chokehold and she lost consciousness. This was sufficient to show that the defendant impeded *Kenner's* normal breathing or circulation of the blood.

¶ 29 Therefore, in this case, we find that the evidence, when viewed in the light most favorable to the State, was sufficient to prove the defendant guilty beyond a reasonable doubt of aggravated domestic battery.

¶ 30 The defendant next contends that the circuit court misapprehended or failed to properly recall the evidence "when it claimed that [the defendant] choked [Kenner] with his hands, rather than put her in a headlock." The defendant also argues that the circuit court's comments during defense counsel's arguments on his motion to reconsider or, alternatively, his motion for new trial indicate that the court had "disdain" for him and that the court was basing its decision to deny the motion "on something other than the evidence presented at trial." We disagree.

¶ 31 Normally, "[a] defendant must object contemporaneously as well as in a posttrial motion to preserve issues for our review." *People v. Thompson*, 2015 IL App (1st) 122265, ¶ 34. The defendant here acknowledges that he failed to do either and, thus, he forfeited this issue. However, forfeiture is a limitation on the parties, not this court. *People v. Demitro*, 406 Ill. App. 3d 954, 957

(2010) ("It is a well-established principle that waiver is a limitation on the parties and not the court."). As such, we choose to address the merits.

¶ 32 During a bench trial, a circuit court's failure to recall and consider testimony crucial to the defense may result in a denial of the defendant's due process rights. *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992). However, if a circuit court properly recalls the crux of the defense, then an "incorrect reference" or mere "misstatement" by the court, when considered in context, does not amount to a denial of the defendant's due process rights. *People v. Roman*, 2013 IL App (1st) 102853, ¶¶ 21-24. Where the record does not indicate that the court was mistaken, there is a presumption that the court considered only competent evidence in reaching a verdict. *People v. Gilbert*, 68 Ill. 2d 252, 258-59 (1977).

¶ 33 In this case, we reject the defendant's argument that the circuit court misrecalled the evidence at trial when it incorrectly referred to the strangulation as being with the defendant's "hands" rather than his arm. First, there was testimony that the defendant's "hands" were around Kenner's neck. Kenner and the ASA engaged in the following colloquy:

> "Q Did the defendant have his *hands* on you as you passed out?
>
> A Yes.
>
> Q And where [*sic*] they around your neck at that point?
>
> A Yes, ma'am." (Emphasis added.)

The court's statement is supported by Kenner's testimony and, as a consequence, we cannot say that it misrecalled the evidence. Although there was testimony that the defendant used his arm to put Kenner in a chokehold, it was for the circuit court to resolve the conflicts in the testimony. In any event, the court's reference to the defendant putting his hands on Kenner's throat, when considered in context, did not amount to a denial of the defendant's due process rights as the court

properly recalled the overall substance of Kenner's and Frieson's testimony, *i.e.*, while the defendant was attacking Kenner, he strangled her for several seconds and, as a result, she lost consciousness.

¶ 34 Because the record does not affirmatively indicate a substantial misrecollection or misapprehension of the evidence by the circuit court or its failure to recall the crux of the defense (*i.e.*, Kenner's and Frieson's incredibility), the defendant has failed to show that he was denied due process and deprived of a fair trial.

¶ 35 The defendant's next assignment of error is that, pursuant to the one-act, one-crime doctrine, his mittimus should be corrected to reflect a single aggravated-domestic-battery conviction. We agree.

¶ 36 The defendant acknowledges that he forfeited this issue by failing to raise it in the circuit court proceedings or in a post-sentencing motion, but argues that review under the plain-error doctrine is warranted. We agree. "[F]orfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Whether a conviction should be vacated under the one-act, one-crime doctrine is a matter which we review *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 37 Under the one-act, one-crime doctrine, multiple convictions cannot stand when they are " 'carved from the same physical act.' " *People v. Miller*, 238 Ill. 2d 161, 165 (2010) (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). The following two-step analysis is used when courts are determining whether the one-act, one-crime doctrine has been violated: "(1) whether the defendant's conduct involved a single act (in which case multiple convictions are improper) or multiple acts, and, (2) if multiple acts, whether any of the offenses were lesser included offenses

(in which case multiple convictions are improper)." *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 33.

¶ 38 In this case, the circuit court found the defendant guilty of one count of aggravated domestic battery, one count of aggravated battery, and two counts of domestic battery based upon his strangulation of Kenner. The defendant argues that his convictions for aggravated battery and domestic battery based upon strangulation violated the one-act, one-crime doctrine because they were based upon the same physical act. The State concedes and we accept its concession. Accordingly, we vacate the defendant's convictions for aggravated battery, count II, and domestic battery based upon the strangulation of Kenner, counts V and VI.

¶ 39 The defendant also argues that his two remaining convictions for domestic battery based upon hitting Kenner, counts III and IV, are lesser-included offenses of and should merge with his conviction for aggravated domestic battery, count I. The State, on the other hand, contends that these two convictions should merge into one conviction for domestic battery, which should stand. According to the State, the one-act, one-crime doctrine was not violated because it apportioned the defendant's striking of Kenner from his strangling of Kenner by charging him with separate and distinct acts. We disagree with the State.

¶ 40 In arguing that striking Kenner—the basis for the remaining domestic-battery convictions—was a separate and distinct act from strangling Kenner—the basis for the aggravated-domestic-battery conviction, the State was conceding that multiple acts were involved. Therefore, the first prong of the one-act, one-crime two-step analysis is not at issue here. *Stanford*, 2011 IL App (2d) 090420, ¶ 33. Instead, we must analyze the second prong: if there were multiple acts, the reviewing court should determine "whether any of the offenses were lesser included offenses (in which case multiple convictions are improper)." *Id.* "[W]hen the issue is whether one

charged offense is a lesser included offense of another charged offense, the correct approach is the abstract-elements approach." *Id.* ¶ 36 (citing *People v. Miller*, 238 Ill. 2d 161, 173 (2010)). In *Miller*, the supreme court explained:

> "Under the abstract elements approach, a comparison is made of the statutory elements of the two offenses. If all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second. *** In other words, it must be impossible to commit the greater offense without necessarily committing the lesser offense." *Miller*, 238 Ill. 2d at 166.

¶ 41 As discussed above, a defendant commits aggravated domestic battery under subsection a-5 of the Code when he strangles someone *while committing domestic battery*. 720 ILCS 5/12-3.3(a-5) (West 2014). A defendant commits domestic battery when he "[c]auses bodily harm to *** or *** [m]akes physical contact of an insulting or provoking nature with any family or household member." 720 ILCS 5/12-3.2(a)-(b) (West 2014). It is impossible to commit aggravated domestic battery without committing domestic battery. Accordingly, pursuant to the abstract-elements approach of the one-act, one-crime doctrine, the defendant's remaining convictions for domestic battery based upon striking Kenner, counts III and IV, are vacated.

¶ 42 In sum, we vacate the defendant's conviction for aggravated battery and his convictions and sentence for domestic battery. Having held that the defendant's convictions for aggravated battery and domestic battery must be vacated, we need not address the defendant's arguments that the State failed to prove him guilty of aggravated battery and domestic battery beyond a reasonable doubt.

¶ 43 The defendant's final contention is that his six-year sentence was excessive because the circuit court did not announce which aggravating and mitigating factors it considered in reaching its determination. According to the defendant, "the circuit court ignored numerous factors in mitigation"—such as his education and employment history, and how a lengthy incarceration would impact his three children—and his sentence is not proportional to the harm caused or the nature of the offense. He also asserts that, because the court sentenced him to a longer incarceration term than what was proposed in his plea offer, the court was merely punishing him for exercising his right to trial.[*]

¶ 44 The State, on the other hand, maintains that the defendant's six-year sentence for aggravated domestic battery was appropriate, but argues that the defendant's six-year sentence for domestic battery should be reduced to three years because the sentencing range is one to three years. Because we vacate the defendant's convictions for domestic battery for the reasons explained *supra* ¶¶ 35-42, we need not address the State's arguments pertaining to the defendant's sentence for these convictions. However, we otherwise agree with the State. We review a circuit court's sentencing determination under an abuse-of-discretion standard. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 10.

¶ 45 The defendant acknowledges that he forfeited the issues related to sentencing by failing to raise them below; however, we, again, will address his contentions on the merits because forfeiture is not a limitation on this court. *Demitro*, 406 Ill. App. 3d at 957.

[*] The defendant further argues that his sentence was higher than the State requested at the sentencing hearing; however, the State asked that he be sentenced to "*at least* five years[']" incarceration—meaning a minimum of five years. (Emphasis added.)

¶ 46 On to the merits, we do not believe that, in imposing the defendant's sentence, the circuit court was merely punishing him for exercising his right to trial. Before trial, a conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012) was held between the parties and the court regarding a plea offer. At the conclusion of the hearing, the plea offer of three years' imprisonment was revoked. However, "the mere fact that the defendant was given a greater sentence than that offered during plea bargaining does not, in and of itself, support an inference that the greater sentence was imposed as a punishment for demanding trial." *People v. Carroll*, 260 Ill. App. 3d 319, 348 (1992); see also *People v. Taylor*, 2015 IL App (4th) 140060, ¶ 48. Rather, the record must clearly show that the defendant was being punished for going to trial, such as where "the court has stated explicitly that it was imposing a more severe sentence because the defendant exercised his right to trial *** or where the defendant's sentence after trial was *outrageously* higher than the one offered during plea negotiations." (Emphasis added.) *Carroll*, 260 Ill. App. 3d at 349 (citing *People v. Dennis*, 28 Ill. App. 3d 74, 78 (1975) (where the sentence imposed was 20 times greater than the minimum offered before trial)). Here, there was no such showing. During the sentencing hearing, the circuit court did not mention the plea offer or explicitly state that the defendant's sentence was higher because he exercised his right to trial. Additionally, although the defendant's sentence was two times greater than the sentence offered during plea negotiations, we cannot say that it was "*outrageously* higher." (Emphasis added.) *Id.*

¶ 47 We also do not believe that the circuit court abused its discretion when it failed to explicitly state which aggravating and mitigating factors it considered. Although "[a] sentence within the statutory guidelines is presumed proper" (*Wilson*, 2016 IL App (1st) 141063, ¶ 12), a sentence can be considered 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" (*People v. Stacey*, 193 Ill. 2d

203, 210 (2000)). In making a sentencing decision, however, a circuit court is entitled to great deference because it assesses "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Stacey*, 193 Ill. 2d at 209. Unless the defendant presents evidence to the contrary, the circuit court is presumed to consider "all relevant factors and any mitigation evidence presented." *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. The court "has *no obligation to recite and assign a value to each factor*[,]" and we, as the reviewing court, will not substitute our judgment for the circuit court's in the event that we would have weighed those factors differently. (Emphasis added.) *Wilson*, 2016 IL App (1st) 141063, ¶ 11.

¶ 48 In this case, the sentencing range for the defendant's aggravated-domestic-battery conviction was three to seven years. 720 ILCS 5/12-3.3(b) (West 2014); 730 ILCS 5/5-4.5-35 (West 2014). While the defendant received only a year less than the maximum sentence, we do not find that the circuit court abused its discretion. In imposing the defendant's sentence, the court did not state which factors it considered; however, it was not required to do so. *Wilson*, 2016 IL App (1st) 141063, ¶ 11. The PSI, which the court ordered, was available to the court at the sentencing hearing and reflected, *inter alia*, the defendant's education and employment history, as well as his familial relationships. The court also heard the evidence in mitigation presented by defense counsel and the defendant's statement in allocution. There is no evidence suggesting that the court disregarded the relevant factors; rather, the defendant's sentence reflects that the court found the mitigating evidence was outweighed by the seriousness of the offense as well as the defendant's propensity towards violence.

¶ 49 For the foregoing reasons, we vacate the defendant's conviction for aggravated battery and his convictions and sentence for domestic battery. However, we affirm the defendant's conviction and sentence for aggravated domestic battery.

¶ 50 Vacated in part and affirmed in part.