2017 IL App (2d) 150334-U
No. 2-15-0334
Order filed October 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-1236
WILLIAM V. CLIFFORD III,	)	Honorable Robert G. Kleeman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of first-degree murder was affirmed. The State laid a sufficient foundation to admit its expert's opinion that defendant's palm print matched a print found on the murder weapon. Even if the expert's testimony that another examiner verified her conclusion was inadmissible hearsay, defendant did not demonstrate his entitlement to relief under the plain-error doctrine. The record did not support defendant's contention that the trial court refused to consider his mental illness as a mitigating factor at sentencing.

¶ 2 Following a jury trial, defendant, William V. Clifford III, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2010)). He was sentenced to 35 years' imprisonment. On appeal, he challenges the admissibility of the State's expert's opinion that his palm print matched

a print that was found on the murder weapon. He further contends that the court erroneously refused to consider certain mitigating evidence at the sentencing hearing. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with murdering his father, William V. Clifford Jr. The State presented the following evidence. In April 2011, defendant moved into room 345 of an extended-stay hotel in Westmont, Illinois. His parents supported him financially, and his father visited him most weekends to take him to lunch and to go grocery shopping. At around 1 p.m. on May 28, 2011, Joseph Hohlman, the occupant of room 339, heard someone utter a painful cry. He went into the hallway and saw a man, whom he later identified as defendant, stab an older man. Defendant fell on top of the older man. Hohlman went toward the men, straddled both of their backs, and grabbed defendant's arms and told him to stop. After Hohlman tried for at least 10 seconds to get defendant off the older man, defendant dropped the knife and stood up. Defendant walked toward his own room but was unable to get in. He then came back toward Holhman, "chest bumping" him before backing away and exiting the hallway.

¶ 5 Holhman testified that he was concerned that defendant might return and stab the older man again. He decided to pick up the knife and bring it to his own room before calling 911. When police arrived, they found defendant's father's body in the hallway just past room 345. The keycard to room 345 was next to his body. There was blood on the door to room 345 as well as on the door jamb. Holhman directed the police to the knife. He also gave them his own shirt, which was stained with blood. Emergency responders took defendant's father to the hospital, where he was pronounced dead. The cause of death was multiple stab and incised wounds.

¶ 6 Defendant returned to the hotel approximately three-and-a-half hours after the stabbing

and was taken into custody. Although Hohlman had seen defendant wearing a striped shirt, defendant was now wearing a white tee shirt that had "a substantial amount of blood" on it. Defendant also had multiple lacerations and scratches on his body.

¶ 7 The State sent defendant's shirt, Hohlman's shirt, and the knife to a laboratory for forensic testing. The State's experts presented the following findings: (1) the blood on defendant's shirt was his own; (2) the blood on Hohlman's shirt belonged to defendant's father; (3) the blood on the knife belonged to defendant's father; and (4) a latent print found on the knife matched defendant's palm print.

¶ 8 Approximately 15 months before the murder, defendant sent his father an e-mail threatening that the father would "find [himself] in [*sic*] coffin." Additionally, according to defendant's brother, several years after the murder, defendant admitted to having taken his frustrations out on their father. Defendant's brother testified that defendant would frequently get angry.

¶ 9 Defendant did not present any evidence. The jury found him guilty.

¶ 10 On appeal, defendant challenges the admissibility of the evidence that his palm print matched the print found on the knife. He also argues that the trial court refused to consider certain mitigating evidence at the sentencing hearing. We will address the factual context surrounding those claims in further detail.

¶ 11 (A) Palm Print Evidence

¶ 12 The State presented Jennifer Cones, a former employee of the Du Page County Forensic Science Center, to testify that defendant's palm print matched a print found on the knife. Before Cones testified, defense counsel directed the court's attention to *People v. Safford*, 392 Ill. App. 3d 212 (2009). Relying on *Safford*, defense counsel indicated that she would object to Cones'

conclusion because Cones "doesn't have any notes of analysis." The State responded that Cones indeed had three-quarters of a page of typewritten notes, "along with a digital copy and an electronic file of the latent [print] and the analysis that is shown on that electronic file." Defense counsel acknowledged having received those materials.

¶ 13 Defense counsel nevertheless argued that *Safford* "stands for *** the proposition that the defense needs to have an adequate opportunity to see how [the experts] got to their conclusion to be able to adequately cross-examine." According to defense counsel, because Cones' notes did not specify whether "there's a swirl or a loop or what matches," the defense was unable to cross-examine her adequately. The State responded that Cones had "always been accessible to both sides" and was available now if defense counsel had questions regarding the palm print comparison. The court refused to bar Cones' testimony but offered defense counsel the chance to speak with Cones prior to direct examination. Defense counsel declined that opportunity.

¶ 14 After Cones detailed her educational background and employment history, the court accepted her as an expert in latent print examinations without objection from the defense. She explained that the skin on the palms of one's hands consists of thousands of minute sweat pores surrounded by built-up ridges. "Friction ridge skin" works like treads on a tire and increases one's ability to grip objects. A "record print," she explained, is "a controlled recording or an intentional recording of the friction ridge skin." A "latent print," by contrast, is the "unintentional or a chance recording of that friction ridge skin" by touching an object.

¶ 15 According to Cones, to compare a latent print to a record print, she uses the methodology known as "ACE-V," which stands for "analyze, compare, evaluation, and verify." During the analysis phase, she looks for friction ridge detail on the latent print to determine whether it is

suitable for identification. The first level of detail she looks for is "pattern, overall ridge flow, [and] ridge shape." The second and third levels of detail she looks for are "unique characteristics that can be used for a means of identification." If there is sufficient first, second, and third-level detail, the latent print is suitable for identification and she can move to the comparison process.

¶ 16 The comparison process involves comparing the latent print to an individual's record print. The evaluation phase proceeds simultaneously. She uses her experience, training, and observations to interpret the data and determine whether the prints are of common origin. If she makes an identification, all of the information is given to another examiner, who reapplies the same methodology.

¶ 17 Cones testified that she examined People's Exhibit 1, the knife, to determine whether there were any latent prints. After processing the knife with Super Glue fuming and rinsing it with a dye, she was able to detect ridge detail. She determined that there was one latent palm print on the knife that was suitable for identification.

¶ 18 Cones identified People's Exhibit 7 as a right palm print that was taken from defendant on May 29, 2011, while he was in custody. She compared the latent print on the knife to defendant's record palm print. When the prosecutor asked Cones to describe the result of her comparison, defense counsel objected based on lack of foundation. The court sustained the objection, directing the prosecutor to elicit testimony as to how Cones reached her conclusion before actually offering that conclusion.

¶ 19 The State asked Cones to describe the process she used to come to her conclusion. She testified that she applied the ACE-V method. Specifically, she photographed the area of ridge detail that she had developed on the knife and determined that it was suitable for identification. She then compared the three levels of detail from the latent print to defendant's record print.

When Cones began to testify as to the results of her comparison, defense counsel again objected based on lack of foundation. This time the court overruled the objection. Cones testified that there was sufficient information to determine that the two prints were of common origin.

¶ 20 Cones identified People's Exhibit 6 as a digital image of the area friction ridge skin detail that she developed on the knife. The prosecutor published that image to the jury on a television screen and asked Cones to describe the image. Cones referred to the image and described the ridge detail. She explained that she had placed blue dots on the image to mark the second-level detail on the latent print. During the comparison phase, she found "the same data set" on the record print that she had observed on the latent print.

¶ 21 When Cones began to testify that she gave the evidence to another examiner, defense counsel raised a hearsay objection. The court asked the prosecutor to "lay a little bit further foundation as to that issue." Cones then explained that ACE-V includes a verification process in the event that an examiner concludes that there is an identification. Specifically, a second examiner must reapply the scientific methodology. Cones testified that this was done in the present case. When the prosecutor asked her the result, defense counsel raised another hearsay objection.

¶ 22 At a sidebar conference, defense counsel argued: "Without being able to cross-examine or being given a report by the verifier, I don't think they [the prosecution] can get into the ultimate conclusion of the verifier." The State responded: "Judge, in terms of her expert opinion, it's the process that's gone through. And whether or not it's been, you know, met, is part of that process." The court interjected that if the facts or data forming the basis of Cones' opinion were of a type reasonably relied on by experts in her field, they would be admissible pursuant to Illinois Rule of Evidence 703 (eff. Jan. 1, 2011). The court asked defense counsel whether it was

her position that there was insufficient foundation for the court to find that this was the type of information reasonably relied on by experts in Cones' field. Defense counsel responded: "Yes, I think so. And also in terms of foundation as well. We don't know who verified." The court overruled defendant's objection, reasoning that the testimony was not being offered for the truth of the matter asserted but as a basis for Cones' opinion. The court asked defense counsel whether she wanted a limiting instruction. She declined.

¶ 23 Cones then testified that another latent print examiner, Courtney Melendez, reviewed her work. The prosecutor asked Cones: "And in terms of your analysis and the review that was done by another latent print examiner, Courtney Melendez, do you have an opinion within a reasonable degree of scientific certainty the result [*sic*] of your comparisons?" Cones responded in the affirmative. The result of the comparisons was that the latent print and the record print were both made by defendant. Direct examination concluded when Cones agreed that the protocols and procedures she used were generally accepted and reasonably relied on by experts in her field.

¶ 24 On cross-examination, Cones reiterated that she had used blue dots, rather than words, to document the second-level detail on the latent print. Defense counsel asked her whether any standards required her to document her observations in a place other than on the actual photograph of the knife. She responded that she was not required to write a narrative.

¶ 25 When Cones concluded her testimony, the court informed defense counsel that it would give her an opportunity after the lunch hour to discuss issues relating to *Safford*. After the lunch break, defense counsel declined the opportunity to make any further record or argument. The court indicated that it had taken "a harder look" at *Safford* and determined that defense counsel's argument had "some force." Nevertheless, the court stood by its original ruling, finding *Safford*

to be distinguishable.

¶ 26 The court admitted into evidence, without objection from the defense, People's Exhibit 101. People's Exhibit 101 is a disk containing a digital image of People's Exhibit 6. Upon zooming in on the image, one can see at least 11 blue dots on the knife.

¶ 27 Defendant reiterated his objection to the foundation for Cones' testimony in his posttrial motion. The court denied the motion.

¶ 28 (B) The Sentencing Hearing

¶ 29 Defendant had a documented history of severe mental illness predating the May 2011 murder. In March 2014, the court found him unfit to stand trial. In October 2014, the court found that defendant had been restored to fitness. Defendant pleaded not guilty to the charges, and he did not raise any affirmative defenses. The matter proceeded to trial in January 2015, and the jury found him guilty of first-degree murder.

¶ 30 At the sentencing hearing, defense counsel asked the court to impose the minimum sentence of 20 years' imprisonment. Defense counsel repeatedly emphasized defendant's mental illness. Specifically, she urged the court to consider it as a factor in mitigation that "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense." 730 ILCS 5/5-5-3.1(a)(4) (West 2016). She conceded that defendant's mental illness was "in no way a defense to what happened here," but argued that it was "something that colored the entire case." The other mitigating factors that defense counsel argued applied were that defendant had "led a law-abiding life for a substantial period of time" (730 ILCS 5/5-5-3.1(a)(7) (West 2016)) and that his "criminal conduct was the result of circumstances unlikely to recur" (730 ILCS 5/5-5-3.1(a)(8) (West 2016)), given that he would receive "stable medication and treatment" while incarcerated.

¶ 31 The court mentioned that it "spent some time considering" whether mitigating factor four applied. The court recognized that defendant had a history of mental illness going back at least 10 years. But the question was whether that history of mental illness tended to excuse or justify his conduct. The court recalled that there was no evidence presented at trial that mental illness constituted an excuse. Nor did defendant raise an insanity defense. According to the court, although defendant's mental illness explained some of his conduct and the circumstances surrounding his relationship with his father, it did not excuse or justify his criminal conduct. However, the court agreed with defense counsel that mitigating factor seven applied, insofar as defendant had "no history of delinquency or criminal activity and ha[d] led a law-abiding life for a substantial period of time."

¶ 32 The court found that the applicable aggravating factors included that "the sentence is necessary to deter others from committing the same crime" (730 ILCS 5/5-5-3.2(a)(7) (West 2016)) and that "defendant committed the offense against a person 60 years of age or older" (730 ILCS 5/5-5-3.2(a)(8) (West 2016)).

¶ 33 The court then returned to the issue of defendant's mental illness, indicating that it had given the matter "a great deal of thought." The court understood that defendant's mental health issues were "substantial and real" and "played in the whole scope of things." According to the court, "though it doesn't justify or excuse his behavior, I do consider that mitigating." The court reiterated: "I do think his mental health issues are something I take into account and are mitigating." Despite the mitigating factors, the court found it appropriate to impose a sentence of 35 years' imprisonment rather than the minimum of 20 years.

¶ 34 In his motion to reconsider the sentence, defendant argued that his "significant mental health issues and diagnoses tended to justify his conduct, though they did not establish a defense

at trial." The court denied the motion, and defendant timely appealed.

¶ 35 II. ANALYSIS

¶ 36 (A) Foundation for Palm Print Testimony

¶ 37 Defendant argues that the State failed to lay an adequate foundation for Cone's opinion that his palm print matched the print found on the knife. The parties dispute the applicable standard of review. Some courts, including this one, have applied *de novo* review where defendants challenged the foundation for an expert's opinions. See, *e.g.*, *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 38. In *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 114, the court rejected the *de novo* standard in favor of the abuse-of-discretion standard. We need not comment further on this issue, as defendant's claim fails under either standard of review.

¶ 38 Defendant relies heavily on *People v. Jones*, 2015 IL App (1st) 121016, and *People v. Safford*, 392 Ill. App. 3d 212 (2009). As the State correctly notes, our supreme court ordered the First District to vacate its judgment in *Jones* due to the defendant's death. "We cannot consider *Jones*, as that judgment has no effect." *Simmons*, 2016 IL App (1st) 131300, ¶ 116.

¶ 39 In *Safford*, the defendant was charged with the attempted murder of a police officer as well as aggravated battery with a firearm. *Safford*, 392 Ill. App. 3d at 212. Brent Cutro, a forensic scientist, testified as an expert for the State. *Safford*, 392 Ill. App. 3d at 216. He explained that police discovered 45 latent prints on a police vehicle. *Safford*, 392 Ill. App. 3d at 216. He compared those prints to the defendant's prints with a magnifying glass and determined that one latent print matched the defendant. *Safford*, 392 Ill. App. 3d at 216-17. With respect to the foundation for his opinion, Cutro explained that his practice was to look at three levels of detail on each fingerprint to come up with points of comparison. *Safford*, 392 Ill. App. 3d at 217. Although he testified that "Level Two detail focuses on the points of comparison," he

acknowledged that he had not actually noted the number of points of comparison when examining the defendant's prints. *Safford*, 392 Ill. App. 3d at 221. Nor did his notes explain how he arrived at his conclusion. *Safford*, 392 Ill. App. 3d at 217. The jury found the defendant guilty, and he appealed. *Safford*, 392 Ill. App. 3d at 218-19.

¶ 40 On appeal, the defendant argued that the trial court erroneously allowed Cutro to present his conclusion about a fingerprint match without disclosing any points of comparison. *Safford*, 392 Ill. App. 3d at 219. The majority of the court agreed. The court found it significant that Cutro never testified to the " 'Level One, Level Two, or Level Three' detail of the comparison process involving the latent print and the defendant's known print." *Safford*, 392 Ill. App. 3d at 221. Nor did Cutro's notes explain how he reached his opinion. *Safford*, 392 Ill. App. 3d at 221. The court's concern was that "admitting expert testimony without a showing of the requisite foundation so curtails the ability of the defendant to challenge the conclusion drawn by the expert that it leads to a suggestion of infallibility." *Safford*, 392 Ill. App. 3d at 223. Although the court declined to establish "a minimum number of points of similarity" for a fingerprint identification to be admissible, the court stressed that "[t]he defense must be allowed to challenge the analytical process" used by the expert. *Safford*, 392 Ill. App. 3d at 224. To that end, "[c]ritical to testing the subjective nature of the fingerprint identification is a disclosure of the points of comparison the examiner claims are present between the latent print and the exemplar, to which the conclusion of a match is inextricably tied." *Safford*, 392 Ill. App. 3d at 228. According to the court, "Cutro's testimony amounted to no more than 'take my word for it.' " *Safford*, 392 Ill. App. 3d at 224. The court determined that the error in admitting the fingerprint evidence was not harmless under the circumstances, and it remanded the matter for a new trial. *Safford*, 392 Ill. App. 3d at 228-30.

¶ 41 We note that a different division of the First District has questioned *Safford*'s analysis. See *Simmons*, 2016 IL App (1st) 131300, ¶ 124 ("And looking to *Safford* itself, we conclude that its analysis was flawed."). At any rate, *Safford* is distinguishable from the present case for multiple reasons. Unlike in *Safford*, both the prosecutor and the trial court here offered defense counsel the chance to speak with Cones prior to beginning her direct examination. Defense counsel declined that opportunity. The *Safford* court's primary concern was that the defendant have a meaningful opportunity to cross-examine the State's expert as to the bases for his opinions. Where defendant's attorney here expressly declined an invitation to question the State's expert in advance of her testimony, that severely undercuts any claim that he was deprived of a meaningful opportunity to cross-examine her.

¶ 42 Moreover, although Cones identified with blue dots numerous areas of ridge detail on the latent print, defendant complains that Cones failed to correlate those marks to his record print. He insists that Cones merely told the jury about how she generally makes print identifications, "not anything specific about *this case*." (Emphasis in original.) He goes so far as to assert that "Cones could not even describe a single detail that matched between the two prints." The record does not support defendant's contentions. After directing the jury's attention to the numerous blue dots on the latent print representing areas of ridge detail, Cones testified that she proceeded to the comparison process. According to Cones: "So the information that I observed during my analysis, I looked for that same information, that same data set in the record print, and I did find that." A reasonable inference to be drawn from Cones' statement is that she found at least 11 points of comparison between the latent print and defendant's record print. To the extent that there was any ambiguity as to this portion of her testimony, defense counsel never explored the issue on cross-examination. In *Safford*, on the other hand, defense counsel directly asked the

expert whether he noted the number of points of comparison, and the expert responded "no." *Safford*, 392 Ill. App. 3d at 221. This was not a situation where Cones was asking the jury to "take her word" that defendant's palm print matched the latent print on the knife. The concerns underpinning the decision in *Safford* are not present here.

¶ 43 We find guidance in *People v. Negron*, 2012 IL App (1st) 101194. The defendant in *Negron* was charged with residential burglary. *Negron*, 2012 IL App (1st) 101194, ¶ 1. The police recovered three latent print impressions from a glass door at the scene of the crime. *Negron*, 2012 IL App (1st) 101194, ¶ 10. William Kovacs, a fingerprint expert, compared those latent prints to the defendant's palm prints and determined that two of the latent prints matched the defendant. *Negron*, 2012 IL App (1st) 101194, ¶ 18. Specifically, Kovacs testified that all three latent prints were from palm prints and were suitable for comparison. *Negron*, 2012 IL App (1st) 101194, ¶ 20. Using a magnifying glass, he compared the friction ridge design that was visible on the latent prints to the defendant's card sample. *Negron*, 2012 IL App (1st) 101194, ¶ 20. Over defense counsel's objection, Kovacs testified that he "found unique areas that matched." *Negron*, 2012 IL App (1st) 101194, ¶ 21. On cross-examination, Kovacs explained the first-level and second-level detail that he looks for, although he acknowledged that he "does not take notes in describing similarities in the minutia he observes." *Negron*, 2012 IL App (1st) 101194, ¶ 22. He also testified that he did not have a certain threshold of points of similarity before making an identification, and he did not count the areas of similarity when analyzing the defendant's prints. *Negron*, 2012 IL App (1st) 101194, ¶ 23. Kovacs explained that he confirmed his findings by obtaining an additional set of prints from the defendant and by having another examiner verify his results independently. *Negron*, 2012 IL App (1st) 101194, ¶ 23.

¶ 44 On appeal, the defendant contended that Kovacs' testimony lacked sufficient foundation and was inadmissible pursuant to *Safford*. *Negron*, 2012 IL App (1st) 101194, ¶¶ 33, 36. The court rejected that argument and found *Safford* distinguishable. *Negron*, 2012 IL App (1st) 101194, ¶¶ 36-37. The court reasoned that in addition to explaining the process of fingerprint comparison in general terms, Kovacs detailed how he compared the prints in this case, including "a description of the various minutia he looked for in the comparison process." *Negron*, 2012 IL App (1st) 101194, ¶ 37. The court emphasized that Kovacs compared the prints side-by-side with a magnifying glass, "found unique areas in the minutia that matched," and repeated the ACE-V process with a new set of record prints from the defendant. *Negron*, 2012 IL App (1st) 101194, ¶ 37. Although Kovacs did not specify the number of points of comparison, the court held that "a technical minimum number of points of similarities is not required in order for such testimony to be admissible." *Negron*, 2012 IL App (1st) 101194, ¶ 39.

¶ 45 Cones provided even more information about her comparison process than Kovacs did in *Negron*. The prosecutor published a picture of the latent print to the jury, and Cones used that picture to point out specific areas of ridge detail. During the process of analyzing the latent print, Cones had marked blue dots on that picture reflecting the ridge detail. Cones then testified that she found the "same data set" on defendant's record print. Defendant essentially argues that Cones should have gone a step further and demonstrated to the jury the corresponding ridge detail on defendant's record print. Although defense counsel would have been free on cross-examination to show Cones a picture of the record print and have her identify the ridge detail, the State was not required to do so. See *Harmon*, 2013 IL App (2d) 120439, ¶ 42 (where the State's expert testified that he found 12 points of comparison between a latent print and a record print,

there was an adequate foundation for the expert's opinion, even though he did not demonstrate those points of comparison to the jury).

¶ 46 For these reasons, we hold that the State laid a proper foundation for Cones' opinion that defendant's palm print matched the latent print found on the knife.

¶ 47 (B) Cones' Testimony that Melendez Verified Her Conclusions

¶ 48 Defendant further argues that the palm-print identification was inadmissible because the ACE-V methodology requires verification by a second expert, and the only evidence of verification here constituted inadmissible hearsay that violated the Confrontation Clause.

¶ 49 Defendant never presented a Confrontation Clause challenge in the trial court. The parties dispute whether defendant properly preserved this issue for appellate review. To preserve an issue, a defendant must make a timely objection at trial and raise the issue in a posttrial motion. *People v. Leach*, 2012 IL 111534, ¶ 60. Although defendant contemporaneously objected to portions of Cones' verification testimony on the basis of hearsay, he did not advance the specific argument that he raises on appeal—*i.e.*, that Cones' conclusion as to the palm print match was inadmissible for want of competent evidence that her results were verified. Nor did defendant reiterate his hearsay objection in his posttrial motion. Defendant thus failed to preserve his arguments.

¶ 50 Defendant nevertheless proposes that we may review this issue for plain error. Under the plain-error doctrine, a reviewing court may excuse a procedural default in two instances: "(1) when 'a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,' or (2) when 'a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process,

regardless of the closeness of the evidence.' " *People v. Sebby*, 2017 IL 119445, ¶ 48 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

¶ 51 Cones testified that the ACE-V methodology contains a verification process. According to Cones: "[A]fter the initial examiner makes or draws a conclusion and if that conclusion specifically is an identification, it has to be verified by another examiner; meaning that *** that evidence has to have the scientific methodology reapplied by a second examiner." She confirmed that the verification process was done in the present case and that Melendez reviewed her work. She testified that, based on her analysis and the review that was done by Melendez, her opinion was that defendant's record print matched the latent print found on the knife.

¶ 52 Relying on *People v. Yancy*, 368 Ill. App. 3d 381 (2005), *People v. Prince*, 362 Ill. App. 3d 762 (2005), and *People v. Smith*, 256 Ill. App. 3d 610 (1994), defendant contends that Cones' verification testimony was inadmissible hearsay. He further argues that Cones' testimony violated the Confrontation Clause of the United States Constitution. The State's response to both the hearsay argument and the constitutional argument is that the trial court admitted Cones' testimony for a non-hearsay purpose. According to the State, "[t]hat an examiner's results are verified is not offered for the truth of the matter asserted, but instead to explain the process through which identifications are made, a necessary part of the recognized scientific methodology for latent fingerprint examination."

¶ 53 We recognize that under either prong of the plain-error doctrine, the first step in the analysis is ordinarily to determine whether there was a clear or obvious error. *Sebby*, 2017 IL 119445, ¶ 49. We need not do so here, however, as it is evident that any error was not reversible plain error. See *People v. Czapla*, 2012 IL App (2d) 110082, ¶¶ 10-11 (declining to decide

whether there was a Confrontation Clause violation, and instead determining that any error was not reversible plain error).

¶ 54 Under the first prong of the plain-error doctrine, the defendant must show that "the evidence was so closely balanced [that] the error alone severely threatened to tip the scales of justice." *Sebby*, 2017 IL 119445, ¶ 51. In determining whether the evidence was close, the reviewing court must "evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *Sebby*, 2017 IL 119445, ¶ 53.

¶ 55 Even were we to disregard Cones' testimony in its entirety, the evidence was not closely balanced. Defendant's mother testified that her husband planned to visit their son on the afternoon of May 28, 2011. At around 1 p.m. that day, Hohlman, who resided on the same floor as defendant, witnessed defendant stabbing his father. Police noticed that there was blood on the door to defendant's room. They also found a keycard to defendant's room lying next to the body.

¶ 56 Although the defense insinuated to the jury that Hohlman might have been responsible for the murder, he had no motive. Indeed, Hohlman's uncontradicted testimony was that he never met defendant's father. Holhman also cooperated fully with the investigation. He informed the police that the perpetrator had exited the hallway, and he directed them to the murder weapon. He also volunteered his own shirt for forensic analysis. Holhman's initial statements to police were corroborated when defendant returned to the hotel several hours later with blood on his clothes and multiple lacerations and scratches on his body. Holhman's story remained consistent from the time he made the 911 call through the time of trial. Furthermore, there was evidence that defendant would frequently get angry and that he had threatened his father in an e-mail 15 months before the murder. And while defendant was awaiting trial, he told

his brother that he had taken his frustrations out on their father. Considering the totality of the circumstances, the evidence at trial was not closely balanced. Defendant has failed to demonstrate first-prong plain error.

¶ 57 Unlike the first prong, prejudice is presumed under the second prong if the defendant can demonstrate that "the error was so serious [that] it affected the fairness of the trial and challenged the integrity of the judicial process." *Sebby*, 2017 IL 119445, ¶ 50. Very few trial errors meet that standard. Indeed, second-prong plain error is generally equated with "structural error," though not necessarily the limited categories of structural error recognized by the Supreme Court of the United States. *People v. Clark*, 2016 IL 118845, ¶ 46. This court has held that Confrontation Clause violations are not structural errors and are "not cognizable under the second prong of plain error." *Czapla*, 2012 IL App (2d) 110082, ¶ 19.

¶ 58 Defendant cites *People v. Bean*, 137 Ill. 2d 65, 81 (1990), for the proposition that the right to confront witnesses is a "substantial right." The court's comment must be considered in context. When the *Bean* court mentioned "substantial rights," it was in the context of explaining the right under the Illinois Constitution to be present in court when witnesses testify. In the portion of the opinion that defendant cites, the court was not discussing the Confrontation Clause of the United States Constitution, let alone holding that Confrontation Clause violations implicate the second-prong of the plain-error doctrine.

¶ 59 Defendant cites *Bullcoming v. New Mexico*, 564 U.S. 647, 658-63 (2011), in further support of his argument under the second prong of the plain-error doctrine. But the defendant's Confrontation Clause challenge in *Bullcoming* was preserved for appellate review, and the court said nothing about plain error.

¶ 60 Defendant also cites *People v. Feazell*, 386 Ill. App. 3d 55 (2007). In that case, the defendant was convicted of first-degree murder and other charges. *Feazell*, 386 Ill. App. 3d at 56. Her co-defendant, Dion Banks, was convicted in separate proceedings and did not testify at the defendant's trial. *Feazell*, 386 Ill. App. 3d at 60. At the defendant's trial, Detective Edward Winstead detailed his interrogation of the defendant. *Feazell*, 386 Ill. App. 3d at 60. Winstead testified that he told the defendant during the interrogation that Banks had told him that the defendant knew that Banks had a gun." *Feazell*, 386 Ill. App. 3d at 60. The appellate court concluded that this testimony violated the defendant's rights under the Confrontation Clause and was an error that was "so serious as to deny her the fundamental right to a fair trial." *Feazell*, 386 Ill. App. 3d at 67. The court emphasized that Banks' statements contradicted what the defendant told the jury and constituted the only direct evidence that the defendant knew that Banks possessed a gun. *Feazell*, 386 Ill. App. 3d at 67.

¶ 61 To the extent that *Feazell* suggests or holds that a Confrontation Clause violation can constitute second-prong plain error, the case is distinguishable. As explained above, even without the palm print identification testimony, there was other direct evidence of defendant's guilt in the form of an eyewitness identification. Unlike in *Feazell*, any hearsay error or Confrontation Clause violation was not so serious as to deprive defendant of a fair trial.

¶ 62 (C) Mitigating Sentencing Factors

¶ 63 Finally, defendant argues that his sentence of 35 years' imprisonment was not warranted, because the court "refused to consider the mitigating evidence that [his] mental illness, and its effect on his relationship with his father, was likely to blame for this crime, making it unlikely that the defendant would ever engage in such actions again."

¶ 64 In fashioning a sentence, the trial court must consider the particular circumstances of the case along with other factors such as "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The trial court is the proper forum for determining an appropriate sentence, and its judgment is accorded great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). Where the court imposes a sentence that is within the statutory limits for the offense, we will not disturb the judgment unless the court abused its discretion, which occurs only if the sentence is "greatly at variance with the spirit and purpose of the law" or "manifestly disproportionate to the crime." *People v. Watt*, 2013 IL App (2d) 120183, ¶ 49.

¶ 65 Defendant asserts that "the court refused to consider evidence that he was suffering from mental health problems." That assertion is flatly contradicted by the record. The trial court twice indicated that it considered defendant's mental illness to be a mitigating factor.

¶ 66 Defendant nevertheless complains that the court should have considered his mental illness under the specific ground listed in section 5-5-3.1(a)(4) of the Unified Code of Corrections (Code). That provision applies where "[t]here were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense." 730 ILCS 5/5-5-3.1(a)(4) (West 2016). The trial court found that this particular factor did not apply, as defendant's mental illness did not excuse or justify his conduct.

¶ 67 We hold that the court did not abuse its discretion in sentencing defendant. Section 5-4-1(a)(4) of the Code requires the trial court to consider, *inter alia*, the "evidence and information offered by the parties in aggravation and mitigation." 730 ILCS 5/5-4-1(a)(4) (West 2016). Section 5-4.5-50(c) of the Code provides:

> "The sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case, as provided in Section 5-4-1 ***. Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such factors, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes and principles of sentencing set out in this Code." 730 ILCS 5/5-4.5-50(c) (West 2016).

¶ 68 Defense counsel asked the court to consider defendant's mental illness as a mitigating factor, and the court clearly did so. Defendant fails to articulate how he was prejudiced by the court considering his mental illness as a non-statutory mitigating factor rather than as a statutory factor. He cites *People v. Robinson*, 221 Ill. App. 3d 1045 (1991), but that case is distinguishable. The problem in *Robinson* was not that the trial court considered the defendant's mental condition as a non-statutory mitigating factor rather than as a statutory factor; the trial court failed to consider the defendant's mental condition *at all*. See *Robinson*, 221 Ill. App. 3d at 1052 ("We do not believe that the trial court took into consideration defendant's mental condition as a mitigating factor."). Under the circumstances here, the trial court's sentence did not constitute an abuse of discretion.

¶ 69 III. CONCLUSION

¶ 70 For the reasons stated, we affirm the judgment of the circuit court of Du Page County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4–2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 71 Affirmed.