

NOTICE

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FILED

July 10, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150209-U

NO. 4-15-0209

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
DARMEL L. SMITH,)	No. 13CF1978
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant failed to demonstrate the trial court committed error when admitting certain evidence at his jury trial or imposing his sentence.

¶ 2 In December 2014, a jury convicted defendant, Darmel L. Smith, of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2012)), and, in January 2015, the trial court sentenced him to 52 years' imprisonment. Defendant appeals, arguing he is entitled to a new trial because the trial court improperly allowed the jury to hear evidence of the victim reporting him for a theft of \$900 months prior to the charged offense. In the alternative, defendant asserts he is entitled to either a reduction in his sentence or a new sentencing hearing because (1) the court's findings were unsupported by the evidence and based on its own subjective beliefs and (2) the sentence imposed is excessive. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Information

¶ 5

In December 2013, the State charged defendant by information with four counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2012)) for the unlawful killing of Sheena Williams.

¶ 6

B. Motions *in Limine*

¶ 7

In November 2014, defendant filed pretrial motions *in limine* seeking to prevent the State from introducing evidence or testimony suggesting he committed thefts against Sheena in the past. Specifically, defendant sought to exclude any evidence or testimony relating to the theft of \$900 and an iPad. Defendant asserted the thefts were irrelevant and amounted to uncharged bad acts, and any probative value was substantially outweighed by the danger of unfair prejudice.

¶ 8

At a hearing on defendant's motions *in limine*, the State asserted the prior thefts were relevant to motive, mental state, and the chronology of events. The State alleged defendant and the victim were in a relationship and lived together in Sheena's home until approximately September 1, 2013. After that date, the relationship ended and defendant moved out, taking Sheena's iPad without her consent. After moving out, Sheena and defendant maintained contact, discussing the return of the iPad. On September 5, 2013, she reported to the police the theft of her iPad. A police officer used Sheena's phone to contact defendant. Defendant indicated he had the iPad and would return it. In the morning hours of September 6, 2013, Sheena and defendant communicated about the return of the iPad. Later that day, Sheena was discovered murdered in her home. The State argued the theft of the iPad was relevant to both defendant's motive for

going to her home on the morning she was murdered and part of his motive to kill her, as she reported the theft to the police. The State also suggested defendant's statement regarding the theft of monies in the past indicated Sheena forgave defendant for those acts.

¶ 9 Following arguments, the trial court denied defendant's motions *in limine* and found the evidence to be admissible. The court found the evidence to be relevant to the chronology of events, the ongoing relationship between Sheena and defendant, defendant's motive and mental state, and defendant's access to Sheena.

¶ 10 C. Jury Trial

¶ 11 In a December 2014 jury trial, the State elicited testimony from multiple detectives and police officers, Sheena's mother, sister, and landlord, a forensic pathologist, members of the coroner's office, defendant's roommate, and a woman who gave defendant a ride in her vehicle on the date of the murder. The State introduced the pathologist's examination report, as well as multiple photographs of Sheena's home and surrounding area, her body, her cell phone, recovered text messages, defendant's apartment, defendant's cell phone, and the clothes, shoes, and backpack defendant wore on the date of Sheena's murder. The State also introduced evidence of audio- and video-recorded interviews of defendant at the police station and video recordings from multiple buses defendant rode on the date of Sheena's murder. Other than moving for the admission of a store receipt from the woman who gave him a ride on the date of the murder, defendant did not present any evidence. The following is a summary of the testimony and evidence.

¶ 12 Sheena and defendant had an off-and-on relationship for over two years, during which defendant primarily lived with Sheena and her two minor sons in her rented home. The

home was adjacent to the home of Sheena's mother. The landlord gave Sheena three keys when she moved into the home, and he kept three keys. Sheena's mother recalled Sheena having three keys but, at some point, one of the keys went missing. Sheena and defendant each had a key to the home.

¶ 13 On September 2, 2013, the relationship ended, and defendant moved out. Defendant stated he moved out of the home because he was tired of dealing with Sheena's family, who lived next door. While moving out, defendant admittedly stole the iPad. That same day, Sheena texted her landlord about having the locks on her home changed because she lost a key. The landlord indicated he could change the locks but Sheena would have to pay for it. She indicated she did not have the money. The landlord also asked whether Sheena had her rent money. Sheena did not respond until September 6, 2013.

¶ 14 In the days after defendant moved out of the home, Sheena and defendant continued to communicate regarding the iPad. Defendant admittedly sold the iPad to a third party the day after moving out but nevertheless implied to Sheena he would return it to her. On September 5, 2013, Sheena reported the theft of the iPad to police. A police officer called defendant on his cell phone from Sheena's cell phone to ask about the stolen iPad. After speaking with the officer, defendant indicated his cell phone stopped working. That night, Sheena and her sons spent the night at her mother's home.

¶ 15 On September 6, 2013, at 2 a.m., defendant stated he went to Sheena's home to have sex with her. After using his key to enter the home, defendant discovered the home was empty. Defendant assumed Sheena was staying with her mother. Defendant left the home, locking the door behind him, and decided not to go next door. Defendant indicated he was not

upset Sheena was not home. He also stated, however, he was so “pissed off,” he discarded his key to the home. Defendant could not remember where he discarded the key. He then went back to an apartment where he had been staying to sleep.

¶ 16 Around 9 a.m., Sheena left her mother’s home to drive her youngest son to school and then pick up her niece from her sister’s home. After picking up her niece, she briefly returned to her mother’s home with her niece. She stayed for a couple of minutes and then, at approximately 10 a.m., went home, leaving her niece with her mother. At 10:23 a.m., Sheena texted her landlord and told him she had \$400 in rent money and he could come pick it up when he wanted. The landlord never collected the money. At 10:33 a.m., (1) Sheena’s sister called Sheena’s cell phone and her call went to voicemail, (2) a call was made from Sheena’s phone to her voicemail, and (3) Sheena’s cell phone ceased to be connected to cell service.

¶ 17 Sheena’s mother became concerned when she did not return. She called Sheena’s cell and house phones but received no response. Her mother went next door and knocked on the front and back doors, both of which were locked, and called through the mail slot. She received no response.

¶ 18 Around 11 a.m., Sheena’s sister arrived at their mother’s home. Her sister and mother again attempted to contact Sheena by knocking on her doors, yelling for her to come out, and calling her phone. With no success, her sister requested assistance from the police. A police officer responded and spoke with her mother, as her sister previously left. The officer concluded he did not have probable cause to enter the home as nothing appeared out of the ordinary. The officer asked the mother if she wanted to force open the door herself, but she decided not to. The officer left.

¶ 19 The sister later returned, and both she and her mother decided to enter Sheena's home through a window in the bedroom. They obtained a stepladder, took the screen off the window, and created a small opening. Because the two of them were too big to climb through, they pushed Sheena's three-year-old niece into the house. As soon as the niece entered, she started to scream. The mother and sister instructed the niece how to open the front door, which she did by turning the deadbolt and the doorknob locks. The mother entered the home, discovered her daughter lying on the floor in her bedroom with blood coming from her neck, and went to her body. The police were called.

¶ 20 That same morning, around 8:30 a.m., defendant woke up, went for breakfast, visited a gas station to purchase a lottery ticket, and then went to a grocery store to purchase a bottle of liquor. At some point, defendant spoke with Sheena on the phone, asking whether the police were looking for him because of the iPad. After picking up a bottle of liquor, defendant rode a bus to the bus terminal, where he caught another bus with his brother, whom he met at the bus terminal.

¶ 21 Video recordings showed, at 10:19 a.m., defendant and his brother entered a bus at the bus terminal. At 10:22 a.m., defendant's brother handed defendant a cell phone. Defendant used the cell phone to send a text message and make a call to the victim's cell phone. Immediately before the phone call ended, the video shows defendant taking something out of his pocket. After ending the phone call, a small switchblade appeared in defendant's hand. Defendant opened the switchblade and then quickly brought the blade to his neck. At 10:27 a.m., defendant exited the bus within blocks of Sheena's home and began walking north in the direction of her home.

¶ 22 Defendant stated he exited the bus to buy “weed,” not to go to Sheena’s home. Defendant changed his mind, however, because he wanted to obtain a union job and knew he would be tested for drugs. Defendant indicated he then went approximately two blocks south or southwest and saw his friend and his friend’s mother in a vehicle. Defendant obtained a ride to his friend’s place of employment.

¶ 23 Linda Reynolds gave defendant a ride the morning Sheena was murdered. That morning, Reynolds was running errands in town. After buying something at Home Depot, she went to pick up her son. Reynolds said she picked up her son at a location that was approximately four minutes away from Home Depot. A Home Depot receipt showed, at 10:45 a.m., she made a purchase. Reynolds also indicated her son called her prior to picking him up. At 11:14 a.m. and 11:20 a.m., Reynolds received calls from her son’s phone. After picking up her son, she saw defendant. Defendant appeared sweating and out of breath and smelled of alcohol. It was hot outside, and defendant indicated he had been running. Defendant did not otherwise seem unusual, and no blood was seen on him. Reynolds dropped defendant off at her son’s place of employment.

¶ 24 Defendant stated he later rode a bus to the apartment where he was staying. The police were unable to obtain bus videos from this trip. After arriving at the apartment, defendant stated he spoke with his roommate and then went to the grocery store to buy steaks and potatoes. Upon returning, defendant cooked and ate his food and then changed and washed his clothes. Defendant did not dry his clothes because he did not have enough money. Defendant’s roommate indicated defendant returned home, did some laundry, went to the grocery store, and then returned and ate two steaks. He did not see blood on defendant. At 3:30 p.m., defendant

voluntarily went to the police station and participated in an interview.

¶ 25 Sheena was discovered lying on her back in her bedroom, with one of her shoes knocked off. An undisturbed line of blood went across her neck and pooled under her body. No blood was found on her face, hands, upper chest, right arm, or lower body. Blood may have been on her left forearm, and a bloody footprint may have been near the pool of blood. Sheena's blood was found on her mother's shoes.

¶ 26 Autopsy results indicated Sheena had abrasions on both the middle and right side of her forehead and irregular bruising along her neck. She also had hemorrhages to her frenula, the tissue connecting her lips to her teeth, and to her conjunctiva, the tissue underneath the eyelid, both of which were caused by lack of oxygen to the head. Her hyoid bone, the bone at the top of the windpipe, was fractured, which was likely caused by manual strangulation. She had two stab wounds to her neck, caused by a sharp-edged weapon at least one inch long. She had no obvious trauma to her hands or defensive wounds. No deoxyribonucleic acid (DNA) was found under her fingernails. A forensic pathologist concluded the cause of death was multiple stab wounds to the neck with manual strangulation as a significant contributing condition. The pathologist could not determine which occurred first: the stabbing or the strangulation.

¶ 27 The door locks of Sheena's home were functional. Except for the window in the victim's bedroom, all the windows were secure. No evidence of a disturbance or forced entry existed. Setting aside the wounds to Sheena, no significant signs of a struggle existed. Her cell phone was discovered disassembled and in the toilet. Her house and car keys were found in the living room. Her vehicle was locked. No money in excess of \$20 was found in her vehicle or her home.

¶ 28 The police obtained the clothing, backpack, and shoes defendant wore in the bus videos. The clothing had been washed, and no DNA was discovered on either the clothes or the shoes. The backpack contained job applications. No DNA from either Sheena or defendant was found in Reynolds's vehicle. Defendant's key to Sheena's home and his knife were never discovered.

¶ 29 At the end of its case in chief, the State published to the jury portions of defendant's video-recorded interview conducted at the police station. In the video, an exchange occurred between the detective and defendant regarding a report from April 2013, where Sheena alleged defendant had stolen \$900 from her. Defendant explained the situation and indicated Sheena, approximately four or five days after he moved out of her home, called him and told him she did not want the money, and then they got back together. With respect to the iPad, defendant also stated, although he previously sold the iPad, he had hoped to get another so Sheena would "let it slide."

¶ 30 In its closing argument, the State argued defendant was the only person who had a key to the home and could have committed the murder and then locked the doors from the outside. The State noted the off-and-on relationship between Sheena and defendant, with the last period of separation occurring the week before Sheena's death. It also noted defendant could be seen putting a knife to his throat after speaking with Sheena—a knife that was never found—and then walking in the direction of Sheena's home. The State asserted defendant provided no real explanation of what he did for the 50 minutes he was in the area of Sheena's home.

¶ 31 The State noted defendant stole the iPad when he moved out and "[t]here was some discussion about him taking some money from her before." The State suggested, after

being contacted by the police about the stolen iPad, defendant may have gone over to her home to “smooth it over” with her and have her call the police to retract her complaint. The State also suggested, noting defendant’s unemployment, he may have gone over to Sheena’s home because he was angry she was no longer supporting him.

¶ 32 After arriving at the home, the State argued, a disagreement occurred between defendant and Sheena either about the iPad, the police, where Sheena was at 2 a.m., or whether she would still support him financially. The State argued defendant obtained possession of her phone to figure out where she was the night before and saw the text messages to her landlord about the \$400 rent money, which the State noted was never found. Defendant then disabled the phone, struck her on the head, strangled her, and then stabbed her twice once she was on the ground. The State contended the blood on her body was undisturbed and no blood was found on defendant’s clothes because the stabbing occurred after Sheena was disabled.

¶ 33 The State also highlighted defendant’s demeanor in the police interview after he learned the woman he lived with for over a year, and whom he claimed to love, was murdered. The State noted he was seen laughing, joking, slouching, and did not seem upset. The State maintained the circumstantial evidence proved defendant’s guilt beyond a reasonable doubt.

¶ 34 The defense argued no direct evidence connected defendant to Sheena’s death. No one saw defendant at the scene, no DNA or physical evidence placed defendant at the scene, and the testimony of defendant’s roommate and Reynolds supported his innocence because neither saw any blood on him or noticed anything unusual about him. The defense maintained defendant was looking for work, which was supported by the job applications in his backpack, and noted he went to the police station voluntarily. The defense argued coincidences were not enough to prove

defendant guilty beyond a reasonable doubt.

¶ 35 The jury found defendant guilty of first degree murder.

¶ 36 D. Motion for a New Trial and Sentencing

¶ 37 In January 2015, defendant filed a motion for a new trial, arguing he was not proved guilty beyond a reasonable doubt and suffered unspecified due process and equal protection violations. After a hearing, the trial court denied defendant's motion, finding the evidence was sufficient to support the verdict. It did not address defendant's unspecified due process and equal protection claims.

¶ 38 That same month, the trial court held a sentencing hearing. The court considered defendant's presentence investigation report and its addendum, a victim impact statement, and letters of recommendation for defendant. The court also heard testimony from the victim's mother and sister, defendant's mother and cousin, and the mother of one of defendant's children. Defendant declined to make a statement.

¶ 39 The State recommended the maximum 60-year sentence, noting the violent act and lack of remorse during the police interview. The State asserted it was a crime of control rather than passion. The State argued the requested sentence would deter others from committing domestic violence and prevent defendant from committing a similar act in the future. Conversely, the defense recommended a 20-year sentence, noting defendant's nonviolent past and stating defendant's actions were out of character.

¶ 40 After considering the statutory factors in aggravation and mitigation and the recommendations of the parties, the trial court sentenced defendant to 52 years' imprisonment. In the oral pronouncement of its decision, the court reviewed defendant's age, education, and

family support. The court found defendant's criminal record, although not egregious, was "not insignificant." It also found his imprisonment would not be a hardship to his children, noting his unemployment, lack of support, and inability to be an appropriate paternal role model. The court found, other than the statements of defendant's family and friends indicating he was an affable and nonviolent person, not one factor in mitigation "particularly" applied.

¶ 41 The trial court found "one of the most significant" factors in aggravation was the nature and circumstances of the offense, noting the murder was "horrific" and "targeted." The court found defendant "literally executed his victim" in her own bedroom. It also found a strong inference from the victim's injuries she fought back. The court noted defendant was aware when he took Sheena's life she had two minor children, and he had to surmise she would be discovered by her family, which it found to be "brutal," "savage," and "without mercy." It also found defendant had not expressed "a scintilla of regret or remorse" and demonstrated a "callous indifference" to what he had done when he went home, ate some steaks, and washed his clothes. The court found the video of defendant pulling out the knife and gesturing to his own neck was "frightening" and demonstrated "a depth of depravity." It noted a person who would joke about committing the offense prior to actually committing the offense was a "sociopath," and the danger defendant presented to the public was "absolutely chilling."

¶ 42 The trial court found the inference was the murder was not about needing support, but rather, an act of control. The court noted this was a pattern it observed in domestic relationships that were breaking up. The court found defendant was manipulating the situation by indicating he was going to return her iPad and then attempting to silence her when she had the temerity to contact the authorities to follow through on the fact he had taken her property. It

found a crime initiated as retribution for someone calling the police and reporting a crime had to be dealt with strongly.

¶ 43 E. Motion To Reconsider the Sentence

¶ 44 In February 2015, defendant filed a motion to reconsider his sentence, arguing his sentence was “excessive and without due regard for [his] rehabilitative potential.” Following a March 2015 hearing, the trial court denied defendant’s motion, finding it considered all of the factors in aggravation and mitigation and did not err in imposing the sentence.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 On appeal, defendant argues he is entitled to a new trial because the trial court improperly allowed the jury to hear evidence of the victim reporting him for a theft of \$900 months prior to the charged offense. In the alternative, defendant asserts he is entitled to either a reduction in his sentence or a new sentencing hearing because (1) the court’s findings were unsupported by the evidence and based on its own subjective beliefs and (2) the sentence imposed is excessive.

¶ 48 A. April 2013 Theft Report

¶ 49 Defendant asserts he is entitled to a new trial because the trial court improperly allowed the jury to hear evidence of the victim reporting him for a theft of \$900 months prior to the charged offense. Specifically, defendant contends the April 2013 theft report was irrelevant and unduly prejudicial as it suggested to the jury he was a bad person prone to repeat criminal conduct. Defendant concedes he did not preserve this issue but requests it be reviewed as a matter of plain error or ineffective assistance of trial counsel.

¶ 50 The State asserts the evidence was highly probative as to why defendant went to Sheena's home and not unduly prejudicial. Specifically, the State asserts the reports of the April 2013 theft and the September 2013 theft had uncanny similarities, and Sheena's capitulation after her April 2013 theft report was relevant as tending to show defendant had a strong motive to meet the victim in person at her home to have her retract her September 2013 theft report.

¶ 51 Forfeited claims may be reviewed under the plain-error doctrine "where a clear and obvious error occurred" and (1) "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) the "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. Belknap*, 2014 IL 117094, ¶ 48, 23 N.E.3d 325. "The first step of plain-error review is to determine whether error occurred," and "[t]he burden of persuasion rests with the defendant." *People v. Curry*, 2013 IL App (4th) 120724, ¶ 62, 990 N.E.2d 1269.

¶ 52 As a general rule, evidence of other crimes or prior bad acts—evidence of crimes or acts for which a defendant is not on trial—is inadmissible if its purpose is merely to show the defendant's propensity to commit criminal acts. *People v. Pikes*, 2013 IL 115171, ¶ 11, 998 N.E.2d 1247; Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). Evidence of other crimes or prior bad acts is admissible if it is relevant for any other purpose. *Pikes*, 2013 IL 115171, ¶ 11, 998 N.E.2d 1247. Evidence is " 'relevant' if it has any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would be without the evidence." *People v. Illgen*, 145 Ill. 2d 353, 365-66, 583 N.E.2d 515, 520 (1991). Even where the evidence is relevant, however, it should not be admitted if its probative value is substantially

outweighed by its prejudicial effect. *Pikes*, 2013 IL 115171, ¶ 11, 998 N.E.2d 1247. A trial court's ruling regarding the admissibility of evidence will not be disturbed absent an abuse of discretion. *Id.* ¶ 12. A trial court abuses its discretion only where its "ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001).

¶ 53 Defendant contends the April 2013 theft report was not relevant to establish any material question relating to the murder charge. He argues the theft did not occur close in time to Sheena's death, was not discussed in the days before her death, and was not related to the most recent break-up. A principle issue at trial was whether defendant was visiting Sheena in her home at the time of the murder. In his interview, defendant explained the situation surrounding the April 2013 theft report of \$900 and indicated Sheena, approximately four or five days after he moved out of her home, called him and told him she did not want the money, and then they got back together. A mere five months later, in September 2013, Sheena again reported defendant for theft—this time for a theft of her iPad. At that time, defendant had been out of her home for approximately four days. Defendant stated, although he had previously sold the iPad, he had hoped to get another so she would "let it slide." As the State argues, the two theft incidents had uncanny similarities, and the April 2013 theft was relevant to show defendant's possible motive and mental state for returning to Sheena's home when she was present in hopes of having her forgo her complaint with the police and forgive him for taking her property like she had done before.

¶ 54 Defendant further asserts, even if the April 2013 theft report had some relevance, that relevance was substantially outweighed by the risk of unfair prejudice, especially because

the only evidence against him was circumstantial and the State’s theory of motive for committing the offense was particularly important. Defendant suggests the State essentially told the jury he was a bad man who repeatedly stole from Sheena, so he must have killed her. Evidence will have an unfair prejudicial effect if it casts “a negative light upon a defendant for reasons that have nothing to do with the case on trial” and likely lead a jury to “decid[e] the case on an improper basis, such as sympathy, hatred, contempt, or horror.” (Internal quotation marks omitted.) *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 37, 964 N.E.2d 1174. The evidence of the April 2013 theft report (1) was not a focal point of the trial, (2) did not serve as a distraction from the issue to be decided, and (3) would not rise to the level of horrifying a jury tasked with deciding a murder case. See *People v. Pelo*, 404 Ill. App. 3d 839, 867, 942 N.E.2d 463, 487 (2010); *People v. Bedoya*, 325 Ill. App. 3d 926, 938, 758 N.E.2d 366, 377 (2001). Further, defendant does not address the fact the jury was given an instruction modeled off of Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000), which provided the evidence introduced indicating he was involved in conduct other than that charged in the information was to be considered only for the limited purpose of defendant’s identification, motive, and knowledge. See *Illgen*, 145 Ill. 2d at 375-76, 583 N.E.2d at 524-25. We find defendant has failed to demonstrate the trial court clearly and obviously abused its discretion in admitting this evidence.

¶ 55 Having concluded the trial court did not err in allowing evidence of the April 2013 theft report, we need not continue in our plain-error analysis, and any claim of ineffective assistance of counsel on this basis must also fail.

¶ 56 B. Defendant's Sentence

¶ 57 Defendant asserts he is entitled to either a reduction in his sentence or a new

sentencing hearing because (1) the trial court made findings that were unsupported by the evidence and based on its own subjective beliefs and (2) the sentence imposed is excessive.

¶ 58

1. *Trial Court's Findings*

¶ 59

Defendant contends the trial court made findings that were unsupported by the evidence and based on its own subjective beliefs. Specifically, defendant raises error with the following findings by the court: (1) the victim struggled, (2) he was a sociopath, and (3) the murder occurred because of an act of control and domestic violence. The State asserts defendant has forfeited these claims by failing to raise them in his motion to reconsider his sentence, and he failed to show a clear or obvious error occurred. For the first time in his reply brief, defendant briefly contends he did not forfeit his claims or, alternatively, he requests we review his claims for plain error.

¶ 60

In his motion to reconsider his sentence, defendant argued his sentence was “excessive and without due regard for [his] rehabilitative potential.” Neither in his motion nor at the hearing on his motion did defendant suggest the trial court’s findings were unsupported by the evidence or based on its own subjective beliefs. Having denied the trial court the opportunity to review the claims he now raises on appeal, we agree with the State and find defendant’s claims to be forfeited. See 730 ILCS 5/5-4.5-30(d) (West 2014) (“A defendant’s challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit clerk within 30 days following the imposition of sentence.”); *People v. Heider*, 231 Ill. 2d 1, 15, 896 N.E.2d 239, 247 (2008) (“[S]entencing issues must be raised in a postsentencing motion in order to preserve them for appellate review.”). We will review defendant’s claims for plain error. Again, the first step of plain-error review is to determine

whether error occurred, and the burden of persuasion rests with the defendant. *Curry*, 2013 IL App (4th) 120724, ¶ 62, 990 N.E.2d 1269.

¶ 61 Defendant asserts the trial court could not reasonably infer from the evidence the victim struggled. He highlights the evidence and testimony demonstrated a lack of disturbances or disarray in the home, and no DNA was discovered under her fingernails. The court, citing the pathologist's examination report, found Sheena's injuries indicated she fought back and struggled when defendant strangled her. Given the injuries, we find the court could reasonably infer the victim struggled during the altercation.

¶ 62 Defendant also argues the evidence did not support the trial court's comment indicating he was a sociopath. The court made the comment in discussing the danger defendant presented to the public. The court contrasted the brutality of the murder with defendant's demeanor before and after the incident. Prior to the killing, defendant was seen gesturing with a knife to his own neck and, in the immediate hours after the murder, defendant can be seen as calm, collected, and joking. The court also noted his callous indifference to what he had done when he went home, ate some steaks, and washed his clothes. Given defendant's behavior, we find the court's evaluation of the danger he presented to the public is supported by the evidence, and its comment does not merit a reduction in his sentence or a new sentencing hearing.

¶ 63 Finally, defendant contends the evidence did not support the trial court's inference the murder occurred because of an act of control, but rather, was based off its own subjective beliefs about domestic violence cases. The court inferred defendant murdered the victim because she was breaking off a relationship he did not want to end and because she reported the theft to the police. The court noted defendant manipulated the situation by leading the victim to believe

he would return the iPad. The court perceived the sentence would deter the kind of domestic violence defendant perpetrated as a punishment for Sheena's break from his control over her. We find the court made a reasonable inference defendant's act of confiscating the iPad when separating from the victim was an act of control, and it did not lose objectivity in rendering a sentence.

¶ 64 Because the trial court's findings were supported by the evidence presented and objectively rendered, we need not continue our plain-error analysis.

¶ 65 *2. Sentence Imposed*

¶ 66 Defendant contends his sentence is excessive in light of his rehabilitative potential and lack of other convictions for violent crimes.

¶ 67 On appeal, it is not our duty to reweigh the sentencing factors. *People v. Alexander*, 239 Ill. 2d 205, 214, 940 N.E.2d 1062, 1067 (2010). A trial court's sentencing decision is entitled to great deference as it is generally "in a better position than a court of review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341. "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *Id.* We review a trial court's sentencing decision for an abuse of discretion. *Id.*

¶ 68 The sentencing range for first degree murder is 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2012). The trial court sentenced defendant to 52 years' imprisonment. In rendering its sentence, the court considered the facts of this case, as well as the factors in

aggravation and mitigation. The court found no mitigating factors “particularly” applied, and the most significant factors were the nature and circumstances of the offense and the need to protect the public. Defendant has failed to show his sentence is “greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense.” (Internal quotation marks omitted.) *Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341. We find no abuse of discretion.

¶ 69

III. CONCLUSION

¶ 70 We affirm the trial court’s judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 71

Affirmed.